what THE NETWORK will be

Infinera Corporation
2013 Proxy Statement
and
2012 Annual Report on Form 10-K

Infinera Corporation
140 Caspian Court
Sunnyvale, CA 94089

NOTICE OF 2013 ANNUAL MEETING OF STOCKHOLDERS

To Be Held on May 15, 2013
10:00 a.m., Pacific Time

Dear Stockholder:

You are cordially invited to attend the 2013 Annual Meeting of Stockholders (the "Annual Meeting") of Infinera Corporation, a Delaware corporation ("Infinera"). Notice is hereby given that the meeting will be held on May 15, 2013, at 140 Caspian Court, Sunnyvale, CA 94089 at 10:00 a.m., Pacific Time, for the following purposes:

1. To elect to the Board of Directors (the "Board") the three nominees for Class III directors named in the Proxy Statement;

2. To ratify the appointment of Ernst & Young LLP as Infinera's independent registered public accounting firm for the fiscal year ending December 28, 2013;

3. To approve, on an advisory basis, Infinera's executive compensation, as described in the Proxy Statement; and

4. To transact such other business as may properly come before the meeting or any postponement or adjournment thereof.

These items of business are more fully described in the Proxy Statement accompanying this Notice.

The record date for the Annual Meeting is March 20, 2013. Only stockholders of record at the close of business on that date may vote at the Annual Meeting or any postponement or adjournment thereof. A list of our stockholders will be maintained and open for examination by any of our stockholders, for any purpose germane to the Annual Meeting, during regular business hours at the address listed above for ten days prior to the meeting.

We are pleased to inform you that Infinera will again be utilizing the U.S. Securities and Exchange Commission rules that allow issuers to furnish proxy materials to their stockholders via the Internet. We believe that these rules allow us to provide our stockholders with the information they need more quickly and conveniently, while lowering the cost of delivery and reducing the environmental impact of our Annual Meeting.

As a stockholder of Infinera, your vote is important. Whether or not you expect to attend the Annual Meeting in person, it is important that you vote as soon as possible so that your shares are represented.

On behalf of our Board, thank you for your participation in this important annual process.

By Order of the Board,
/s/ MICHAEL O. MCCARTHY III

Michael O. McCarthy III
Chief Legal and Administrative Officer and Corporate Secretary

Sunnyvale, California
March 29, 2013

PROXY

PROXY STATEMENT SUMMARY

This summary highlights selected information contained elsewhere in our proxy statement. The summary does not contain all of the information that you should consider, and you should read and consider carefully the more detailed information contained in this proxy statement before voting.

2013 Annual Meeting of Stockholders

Time and Date:	10:00 a.m. Pacific Time on May 15, 2013
Place:	Infinera Corporation, 140 Caspian Court, Sunnyvale, CA 94089
Record Date:	March 20, 2013
Voting:	Stockholders as of the record date are entitled to vote. Each share of common stock is entitled to one vote for each director nominee and one vote for each of the other proposals to be voted on.

Meeting Agenda and Voting Matters

Agenda Items	Board Vote Recommendation	Page Reference (for more detail)
1. To elect to the Board of Directors the three nominees for Class III directors named in the Proxy Statement.	FOR EACH DIRECTOR NOMINEE	6
2. To ratify the appointment of Ernst & Young LLP as Infinera's independent registered public accounting firm for the fiscal year ending December 28, 2013.	FOR	21
3. To approve, on an advisory basis, Infinera's executive compensation, as described in the Proxy Statement.	FOR	59
4. To transact such other business that may properly come before the meeting or any postponement or adjournment thereof.		

Board Nominees

Name	Age	Director Since	Independent(1)	Committee Memberships(2) AC	CC	NGC	TAC	Other Public Company Boards
Kenneth A. Goldman . . .	63	2005	X	M				NXP Semiconductors
Carl Redfield	66	2006	X		M	C		
Mark A. Wegleitner	62	2011	X		C		M	

AC = Audit Committee; CC = Compensation Committee; NGC = Nominating and Governance Committee; TAC = Technology and Acquisition Committee C = Chairman; M = Member

(1) Under the rules and regulations of the SEC and the listing standards of NASDAQ.

(2) As of fiscal year-end 2012.

Executive Compensation Program

Our executive compensation program is designed to balance near-term results with long-term success and continue to encourage employees to build value through innovation and execution. To fulfill this mission, Infinera has a pay-for-performance philosophy that forms the foundation for all decisions regarding executive compensation made by our management team and our Compensation Committee.

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Key Elements of Executive Compensation

Compensation Component	Reason
Base Salary	In an effort to align executive officer's compensation with the interests of our stockholders, we have historically compensated our named executive officers with lower levels of base cash compensation. We believe this represents the baseline that must be paid in order to attract and retain these executives.
Total Cash Compensation	In an effort to align executive officer's compensation with the interests of our stockholders, we have historically compensated our named executive officers with lower levels of total cash compensation. We chose to target total cash compensation, which includes base salary and performance-based incentive cash awards, at slightly below median market levels because it allows us to offer compensation opportunities to our executives that more significantly link pay to the achievement of annual individual and company performance goals.
Equity Compensation • Restricted Stock Units • Performance-based Restricted Stock Units	We opted to emphasize compensation that relies heavily on equity compensation because it allows us to offer attractive long-term compensation opportunities while linking pay to the achievement of both personal and company performance goals, while maintaining modest levels of total cash compensation. In addition, we believe this provides an attractive opportunity to earn above-market, long-term compensation in a manner that is highly aligned with the interests of our stockholders.

Other Key Compensation Features

- *"Double Trigger" Change of Control Agreements*
- *Clawback Policy*
- *Stock Ownership Guidelines*
- *No Hedging of Infinera Stock*
- *No Tax Gross-Ups*
- *No Employment Agreements*

Fiscal 2012 Executive Compensation Actions

Fiscal 2012 was a period of transition for Infinera as we continued to significantly invest in our DTN-X product in advance of revenues related thereto. Our pay-for-performance philosophy during this period of transition resulted in certain fiscal 2012 compensation decisions and other actions taken by the Compensation Committee. Some of the significant changes to our executive compensation for fiscal 2012 included the following:

- ***Increased Use of Restricted Stock Units and Performance-based Restricted Stock Units***. In fiscal 2012, the Compensation Committee granted only restricted stock units and performance-based restricted stock units ("PSUs") for equity awards, weighting the split of equity awards more heavily toward the performance-based PSUs for our CEO, and no longer granted stock option awards to our named executive officers.
- ***Majority of CEO's 2012 Compensation was Performance Based***. In fiscal 2012, the Compensation Committee continued its practice of providing a majority of our CEO's equity compensation in the form of performance-based compensation. Specifically, the Compensation Committee provided a majority of Mr. Fallon's equity compensation in the form of PSUs and a majority of Mr. Fallon's cash compensation in the form of performance-based incentive cash compensation tied to Infinera's financial and operational performance.
- ***No Exercise of Negative Discretion Pursuant to our Performance-Based Cash Incentive Plan***. For fiscal 2012, the Compensation Committee evaluated our performance against the financial and operational goals established pursuant to our performance-based cash incentive plan, the 2012

Bonus Plan, in order to determine the payout, if any, to award to our named executive officers. Although the 2012 Bonus Plan provided that the Compensation Committee could exercise its discretion to adjust a named executive officer's payout, the Compensation Committee chose not to exercise such discretion.

- ***Modification of Peer Group.*** The Compensation Committee modified the composition of the peer group used for our executive compensation program for fiscal 2012 to more closely reflect our market capitalization and annual revenue level.

2012 Realizable Pay

We believe that our executive compensation philosophy for fiscal 2012, with the changes highlighted above, correctly aligns the interests of our executives with the interests of our stockholders. This is evidenced by the fact that, as a result of our financial performance and the decline in our stock price during fiscal 2012, our named executive officers' realized cash and equity compensation was significantly reduced as compared to target cash and equity compensation in fiscal 2012. The SEC's calculation of total compensation includes several items that are driven by accounting and actuarial assumptions, which are not necessarily reflective of compensation actually realized by our named executive officers in 2012. To supplement the SEC-required disclosure, we have included additional tables that set forth the compensation actually realized by each of the named executive officers for fiscal 2012. The supplemental disclosures are set forth on pages 29.

Advisory Vote on Executive Compensation—"Say-on-Pay Vote"

Last year at our 2012 Annual Meeting of Stockholders, we provided stockholders with the opportunity to cast an annual advisory vote on our fiscal 2011 executive compensation (the "Say-on-Pay Vote"). We were disappointed with the result of the Say-on-Pay Vote, and, as a result, we initiated a review to gain further feedback from key stakeholders. Accordingly, our management team engaged in substantial discussions with individual and institutional investors to gather feedback regarding our executive compensation programs in which we learned that stockholders and other key stakeholders wanted to see an enhanced link of pay and performance embedded in the design of our executive compensation programs, as well as enhanced disclosure related thereto. Accordingly, some of the specific changes that you will see in this Proxy Statement include the following:

- ***Enhanced Disclosures***. We are committed to continuing to enhance the disclosure related to our executive compensation programs in this Proxy Statement. Accordingly, we have included a more robust executive summary at the beginning of our Compensation Discussion and Analysis on page 27.
- ***Peer Group Composition.*** The Compensation Committee adopted a revised peer group for fiscal 2012 to more closely link our executive pay comparisons to companies that more closely reflect our current market capitalization and annual revenue levels.
- ***Commitment to Corporate Governance Practices***. We increased our stock ownership requirements for our Board members and increased our disclosure related to our insider trading policy to include information regarding our anti-hedging policies.
- ***Clawback Policy***. In early fiscal 2013, the Compensation Committee adopted a clawback policy for our Section 16 Officers and directors pursuant to which the Compensation Committee has a one-year look-back provision and provides the authority to recoup up to 100% of any incentive compensation that resulted from a material misstatement of financial results.

The Compensation Committee is committed to continuing to explore ways to enhance and improve our executive compensation programs. Accordingly, the Compensation Committee will consider input from stockholders when making future executive compensation program decisions, as well as the outcome of our annual say-on-pay vote.

PROXY

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PROXY STATEMENT
2013 ANNUAL MEETING OF STOCKHOLDERS

QUESTIONS AND ANSWERS ABOUT THE PROXY MATERIALS AND VOTING PROCEDURAL MATTERS

Annual Meeting

Q: Why am I being provided access to these proxy materials?

A: The Board of Directors (the "Board") of Infinera Corporation ("Infinera") is providing you access to these proxy materials in connection with the solicitation of proxies for use at the 2013 Annual Meeting of Stockholders (the "Annual Meeting") to be held on Wednesday, May 15, 2013 at 10:00 a.m., Pacific Time, and at any adjournment or postponement thereof, for the purpose of considering and acting upon the matters described herein. These materials were first sent or given to stockholders on or about March 29, 2013.

Q: What is the Notice of Internet Availability of Proxy Materials?

A: In accordance with rules and regulations adopted by the U.S. Securities and Exchange Commission (the "SEC"), instead of mailing a printed copy of Infinera's proxy materials to all stockholders entitled to vote at the Annual Meeting, Infinera is furnishing the proxy materials to its stockholders via the Internet. If you received a Notice of Internet Availability of Proxy Materials (the "Notice") by mail, you will not receive a printed copy of the proxy materials. Instead, the Notice will instruct you as to how you may access and review the proxy materials and submit your vote via the Internet. If you received a Notice by mail and would like to receive a printed copy of the proxy materials, please follow the instructions for requesting such materials included in the Notice.

Choosing to receive your future proxy materials by email will save us the cost of printing and mailing the documents to you and will reduce the impact of our Annual Meeting on the environment. If you choose to receive future proxy materials by email, you will receive an email next year with instructions containing a link to those materials and a link to the proxy voting site. Your election to receive proxy materials by email will remain in effect until you terminate it.

On the date of mailing of the Notice, all stockholders and beneficial owners will have the ability to access all of Infinera's proxy materials on a website referred to in the Notice. These proxy materials will be available free of charge.

Q: Where is the Annual Meeting?

A: The Annual Meeting will be held at Infinera's principal executive offices, located at 140 Caspian Court, Sunnyvale, California 94089.

Q: Can I attend the Annual Meeting?

A: You are invited to attend the Annual Meeting if you were a stockholder of record or a beneficial owner as of the close of business on March 20, 2013 (the "Record Date"). You should bring photo identification for entrance into the Annual Meeting. The Annual Meeting will begin promptly at 10:00 a.m., Pacific Time.

Q: What proposals will be voted on at the Annual Meeting?

A: At the Annual Meeting, stockholders will be asked to vote on:

- The election of three Class III directors to serve until the 2016 Annual Meeting of Stockholders or until successors have been duly elected and qualified;
- The ratification of the appointment of Ernst & Young LLP as Infinera's independent registered public accounting firm for the fiscal year ending December 28, 2013; and
- The advisory approval of Infinera's executive compensation, as described in the Proxy Statement.

We are not currently aware of any other business to be acted upon at the Annual Meeting. If any other matters are properly submitted for consideration at the Annual Meeting, including any proposal to adjourn the Annual Meeting, the persons named as proxies will vote the shares represented thereby at their discretion. Adjournments of the Annual Meeting may be made for the purpose of, among other things, soliciting additional proxies. Any adjournment may be made from time to time by approval of the holders of common stock representing a majority of the votes present in person or by proxy at the Annual Meeting, whether or not a quorum exists, without further notice other than by an announcement at the Annual Meeting.

Q: What is the voting requirement to approve each of the proposals and how does the Board recommend that I vote?

A: *Proposal 1*—Directors are elected by a plurality vote, which means that the three directors who receive the most "FOR" votes cast by the shares present in person, or represented by proxy, and entitled to vote at the Annual Meeting will be elected. "WITHHOLD" votes will not affect the outcome of the election. Stockholders may not cumulate votes in the election of directors. Broker non-votes are not deemed to be votes cast and, therefore, are not included in the tabulation of the voting results on this proposal and will not affect the outcome of the vote. **The Board unanimously recommends that you vote your shares "FOR" the nominees listed in Proposal 1**.

Proposal 2—Ratification of the appointment of Ernst & Young LLP as Infinera's independent registered public accounting firm for the fiscal year ending December 28, 2013, requires the affirmative vote of a majority of the total votes cast by holders of shares present in person, or represented by proxy, and entitled to vote on this proposal at the Annual Meeting. You may vote "FOR," "AGAINST" or "ABSTAIN" on this proposal. Abstentions are deemed to be votes cast and have the same effect as a vote "AGAINST" this proposal. Broker non-votes are not deemed to be votes cast and, therefore, are not included in the tabulation of the voting results on this proposal and will not affect the outcome of the vote. **The Board unanimously recommends that you vote your shares "FOR" Proposal 2**.

Proposal 3—The advisory approval of Infinera's executive compensation requires the affirmative vote of a majority of the total votes cast by holders of shares present in person, or represented by proxy, and entitled to vote on this proposal at the Annual Meeting. You may vote "FOR," "AGAINST" or "ABSTAIN" on this proposal. Abstentions are deemed to be votes cast and have the same effect as a vote "AGAINST" this proposal. Broker non-votes are not deemed to be votes cast and, therefore, are not included in the tabulation of the voting results on this proposal and will not affect the outcome of the vote. **The Board unanimously recommends that you vote your shares "FOR" Proposal 3**.

Stock Ownership

Q: What is the difference between holding shares as a stockholder of record and as a beneficial owner?

A: *Stockholders of Record*—If your shares are registered directly in your name with our transfer agent, Computershare Shareowner Services LLC, you are considered the "stockholder of record" with respect to those shares, and, with the exception of certain stockholders who have been solicited by mail, the Notice has been sent directly to you by Infinera.

Beneficial Owners—Many stockholders hold their shares through a broker, trustee or other nominee, rather than directly in their own name. If your shares are held in a brokerage account or by a bank or other nominee, you are considered the "beneficial owner" of shares held in "street name." The Notice has been forwarded to you by your broker, trustee or other nominee who is considered, with respect to those shares, the stockholder of record. As the beneficial owner, you have the right to direct your broker, trustee or other nominee on how to vote your shares. For directions on how to vote shares beneficially held in street name, refer to the voting instruction card provided by your broker, trustee or other nominee. Because a beneficial owner is not the stockholder of record, you may not vote these shares in person at the Annual Meeting unless you obtain a proxy voting form from the broker, trustee or other nominee that holds your shares, giving you the right to vote the shares at the Annual Meeting.

Quorum and Voting

Q: Who is entitled to vote at the Annual Meeting?

A: Stockholders of record of Infinera's common stock at the close of business on the Record Date are entitled to receive notice of and to vote their shares at the Annual Meeting. Such stockholders are entitled to cast one vote for each share of common stock held as of the Record Date. As of the close of business on the Record Date, there were 115,604,314 shares of common stock outstanding and entitled to vote at the Annual Meeting.

Q: How many shares must be present or represented to conduct business at the Annual Meeting?

A: The presence of the holders of a majority of the shares of Infinera's common stock entitled to vote at the Annual Meeting is necessary to constitute a quorum at the Annual Meeting. Such stockholders are counted as present at the meeting if they (1) are present in person at the Annual Meeting or (2) have properly submitted a proxy.

Under the General Corporation Law of the State of Delaware, as amended, abstentions and broker "non-votes" are counted as present and entitled to vote and are included for purposes of determining whether a quorum is present at the Annual Meeting.

Q: What is a broker "non-vote" and how are they counted at the Annual Meeting?

A: 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 exercise available discretionary voting power with respect to that item or, in the absence of discretionary voting power, has not received instructions from the beneficial owner. Broker "non-votes" will be counted towards the presence of a quorum, but will not be counted towards the vote total for any proposal. The ratification of Ernst & Young LLP as our independent registered public accounting firm (Proposal 2) is considered to be a "routine" matter for which such discretionary voting power should exist and your nominee will be able to vote on that item even if your nominee does not receive instructions from you, so long as your nominee holds your shares in their name. The election of directors (Proposal 1) and the advisory approval of Infinera's executive compensation (Proposal 3) are "non-routine" matters for which such discretionary voting power does not exist. If you do not instruct your nominee how to vote with respect to these proposals, your nominee may not vote with respect to such proposals and those votes will be counted as broker "non-votes" for Proposals 1 and 3.

Q: How can I vote my shares in person at the Annual Meeting?

A: *Stockholders of Record*—Shares held in your name as the stockholder of record may be voted in person at the Annual Meeting, even if previously voted by another method.

Beneficial Owners—Shares held beneficially in street name may be voted in person at the Annual Meeting only if you obtain a proxy voting form from the broker, trustee or other nominee that holds your shares giving you the right to vote the shares.

Even if you plan to attend the Annual Meeting, we recommend that you submit your vote as described in the Notice and below, so that your vote will be counted if you later decide not to attend the Annual Meeting.

Q: How can I vote my shares without attending the Annual Meeting?

A: Whether you hold shares directly as the stockholder of record or beneficially in street name, you may direct how your shares are voted without attending the Annual Meeting. If you are a stockholder of record, you may vote by submitting a proxy (please refer to the voting instructions in the Notice or below). If you hold shares beneficially in street name, you may vote by submitting voting instructions to your broker, trustee or other nominee (please refer to the voting instructions provided to you by your broker, trustee or other nominee).

Internet—Stockholders of record with Internet access may submit proxies by following the instructions on the Notice. Most of Infinera's stockholders who hold shares beneficially in street name may vote by accessing the website specified in the voting instructions provided by their brokers, trustees or other nominees. A large number of banks and brokerage firms are participating in Broadridge Financial Solutions, Inc.'s online program. This program provides eligible stockholders the opportunity to vote over the Internet or by telephone.

Voting forms will provide instructions for stockholders whose bank or brokerage firm is participating in Broadridge's program.

Telephone—Depending on how your shares are held, you may be able to vote by telephone. If this option is available to you, you will receive information explaining this procedure.

Mail—If you have not already received one, you may request a proxy card from Infinera, and indicate your vote by completing, signing and dating the card where indicated and returning it in the prepaid envelope that will be included with the proxy card.

Q: How will my shares be voted if I submit a proxy via the Internet, by telephone or by mail and do not make specific choices?

A: If you are a stockholder of record or have obtained a proxy voting form from your broker, trustee or other nominee that holds your shares giving you the right to vote the shares, and you submit a proxy via the Internet, by telephone or by mail and do not make voting selections, the shares represented by that proxy will be voted "FOR" the nominees listed in Proposal 1 and "FOR" Proposals 2 and 3. If you are a beneficial owner of shares and your broker, trustee or other nominee does not receive instructions from you about how your shares are to be voted, the shares represented by that proxy will not be voted with respect to Proposals 1 or 3 and will be counted as broker non-votes, and will be voted with respect to Proposal 2 at the discretion of your broker, trustee or other nominee.

Q: Can I change or revoke my vote?

A: Subject to any rules your broker, trustee or other nominee may have, you may change your proxy instructions at any time before your proxy is voted at the Annual Meeting.

Stockholders of Record—If you are a stockholder of record, you may change your vote by (1) filing with Infinera's Chief Legal and Administrative Officer, prior to your shares being voted at the Annual Meeting, a written notice of revocation or a duly executed proxy card, in either case dated later than the prior proxy relating to the same shares or (2) attending the Annual Meeting and voting in person (although attendance at the Annual Meeting will not, by itself, revoke a proxy). Any written notice of revocation or subsequent proxy card must be received by Infinera's Chief Legal and Administrative Officer prior to the taking of the vote at the Annual Meeting. Such written notice of revocation or subsequent proxy card should be hand delivered to Infinera's Chief Legal and Administrative Officer or should be sent to Infinera's principal executive offices, Attn: Chief Legal and Administrative Officer.

Beneficial Owners—If you are a beneficial owner of shares held in street name, you may change your vote by (1) submitting new voting instructions to your broker, trustee or other nominee or (2) attending the Annual Meeting and voting in person if you have obtained a proxy voting form from the broker, trustee or other nominee that holds your shares giving you the right to vote the shares,.

A stockholder of record who has voted via the Internet or by telephone may also change his or her vote by making a timely and valid Internet or telephone vote at a later time but prior to 11:59 p.m., Eastern Time, on the day prior to the Annual Meeting.

Q: Who will bear the cost of soliciting votes for the Annual Meeting?

A: Infinera will bear all expenses of soliciting proxies for the Annual Meeting. Infinera may reimburse brokerage firms, custodians, nominees, fiduciaries and other persons representing beneficial owners of common stock for their reasonable expenses in forwarding solicitation materials to such beneficial owners. Directors, officers and employees of Infinera may also solicit proxies in person or by other means of communication. Such directors, officers and employees will not be additionally compensated, but may be reimbursed for reasonable out-of-pocket expenses in connection with such solicitation. Infinera engaged the services of Morrow & Co., LLC, 470 West Avenue, Stamford, CT, as our proxy solicitor to aid in the solicitation of proxies from certain brokers, bank nominees and other institutional owners. Morrow's fees for this service will be $9,500.

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

A: Infinera intends to announce preliminary voting results at the Annual Meeting and will publish final results on a Current Report on Form 8-K filed with the SEC within four business days after the Annual Meeting.

Additional Information

Q: What should I do if I receive more than one Notice or set of proxy materials?

A: If you receive more than one Notice or set of proxy materials, your shares are likely registered in more than one name or brokerage account. Please follow the voting instructions on each Notice or voting instruction card that you receive to ensure that all of your shares are voted.

Q: Can I access Infinera's proxy materials and Annual Report on Form 10-K via the Internet?

A: Infinera's proxy materials will be available on its website at *http://www.infinera.com/annual_meeting*, and all stockholders of record and beneficial owners will have the ability to vote free of charge online with their control number referred to in the Notice at *http://www.proxyvote.com*. Infinera's Annual Report on Form 10-K for the fiscal year ended December 29, 2012 (the "2012 Annual Report") is also available on the Internet as indicated in the Notice. In addition, you can access this Proxy Statement and the 2012 Annual Report by going to Infinera's website at *http://www.infinera.com/annual_meeting*. The 2012 Annual Report is not incorporated into this Proxy Statement and is not considered proxy soliciting material.

PROXY

PROPOSAL 1

ELECTION OF DIRECTORS

General

Our Board currently consists of nine directors and is divided into three classes, each consisting of three directors. Each class of our Board serves a staggered three-year term. Our Class III directors, whose terms expire at the Annual Meeting, are Kenneth A. Goldman, Carl Redfield and Mark A. Wegleitner.

At the Annual Meeting, three directors will be elected to fill positions as Class III directors. Messrs. Goldman, Redfield and Wegleitner are each a Class III director and are the nominees for election at the Annual Meeting. The nomination of these directors to stand for election at the Annual Meeting has been recommended by the Nominating and Governance Committee and has been approved by the Board. Each of the nominees for our Class III directors, if elected, will serve for a three-year term expiring at the 2016 Annual Meeting of Stockholders, or until his successor is elected and qualified, or until his earlier death, resignation or removal from the Board.

Director Qualifications

The Nominating and Governance Committee reviews candidates for service on the Board and recommends nominees for election to fill vacancies on the Board, including nomination for re-election of directors whose terms are due to expire. In discharging its responsibilities to nominate candidates for election to the Board, the Nominating and Governance Committee endeavors to identify, recruit and nominate candidates characterized by wisdom, maturity, sound judgment, excellent business skills and high integrity. The Nominating and Governance Committee generally recommends that any new director be appointed to the class of directors that is up for re-election at the next annual meeting of stockholders, while maintaining the quality of distribution of the three classes of directors that comprise the Board. The Nominating and Governance Committee seeks to assure that the Board is composed of individuals of diverse backgrounds who have a variety of complementary experience, training and relationships relevant to Infinera's business. This diversity of background and experience includes ensuring that the Board includes individuals with experience or skills sufficient to meet the requirements of the various rules and regulations of The NASDAQ Stock Market ("NASDAQ") and the SEC, such as the requirements to have a majority of independent directors and an Audit Committee Financial Expert. In nominating candidates to fill vacancies created by the expiration of the term of a director, the Nominating and Governance Committee determines whether the incumbent director is willing to stand for re-election. The Nominating and Governance Committee evaluates each director's performance to determine suitability for re-election, taking into consideration, among other things, each director's willingness to fully participate and contribute to the Board and its committees, ability to work constructively with the rest of the members of the Board, personal and professional integrity and familiarity with Infinera's business, operations and markets.

Each of the nominees to fill positions as Class III directors has consented to serve if elected. However, if any of the persons nominated by the Board subsequently declines to accept election, or is otherwise unavailable for election prior to our Annual Meeting, proxies solicited by our Board will be voted by the proxy holders for the election of any other person or persons as the Board may recommend, or our Board, at its option, may further reduce the number of directors that constitute the entire Board.

Information Regarding Nominees and Continuing Directors

Set forth below is information regarding each person nominated for election as a Class III director at the Annual Meeting, as well as for each director continuing service on the Board, including their ages as of March 29, 2013, the periods during which they have served as a director, certain information as to their principal occupations, directorships they hold in corporations whose shares are publicly registered and qualifications for serving as a member of our Board, including the skills, qualities, attributes and experiences that led the Board to determine it is appropriate to nominate these directors.

Nominees for Election as Class III Directors whose Terms Expire at the 2016 Annual Meeting of Stockholders

Kenneth A. Goldman
Director since 2005
Age 63

Kenneth A. Goldman has been a member of our Board since February 2005. Since October 2012, Mr. Goldman has been the Chief Financial Officer (CFO) of Yahoo! Inc., responsible for Yahoo!'s global finance functions, including financial planning and analysis, controllership, tax, treasury, and investor relations. From September 2007 to September 2012, he was CFO of Fortinet Inc., a provider of threat management technologies. From November 2006 to August 2007, Mr. Goldman served as Executive Vice President and CFO of Dexterra, Inc. From August 2000 until March 2006, Mr. Goldman served as Senior Vice President of Finance and Administration and CFO of Siebel Systems, Inc., a supplier of customer software solutions and services, and has held CFO positions at several technology companies in his career, including Excite@Home, Sybase, Cypress Semiconductor and VLSI Technology. Mr. Goldman currently serves on the board of directors of NXP Semiconductors N.V., a mixed signal and standards product semiconductor company.

As a member of our Audit Committee and as an Audit Committee Financial Expert, the Board believes that Mr. Goldman provides a high level of expertise and significant leadership experience in the areas of finance, accounting and audit oversight. The Board also benefits from Mr. Goldman's service on our Audit Committee, extensive executive experience and service as a member of the Financial Accounting Standards Board Advisory Council.

Carl Redfield
Director since 2006
Age 66

Carl Redfield has been a member of our Board since August 2006. From September 2004 to his retirement in May 2008, Mr. Redfield served as Senior Vice President, New England Development Center Executive Sponsor, of Cisco Systems. From February 1997 through September 2004, Mr. Redfield served as Cisco Systems' Senior Vice President, Manufacturing and Logistics.

The Board believes that Mr. Redfield's executive management experience, along with his significant manufacturing and logistics experience, enable Mr. Redfield to make significant contributions to the Board. In addition, the Board benefits from Mr. Redfield's institutional knowledge of Infinera and his service as a member of our Compensation Committee and as Chairman of our Nominating and Governance Committee.

Mark A. Wegleitner
Director since 2011
Age 62

Mark A. Wegleitner has been a member of our Board since May 2011. Since April 2011, Mr. Wegleitner has served as President of Wegleitner Consulting, LLC, a privately owned telecommunications consulting company. From September 2007 until his retirement in July 2010, Mr. Wegleitner served as the Senior Vice President, Technology, for Verizon Communications Inc., a telecommunications company, where his responsibilities included technology assessment, network architecture, platform development and laboratory testing for wireline and wireless communications networks. From July 2000 to September 2007, he served as Chief Technology Officer (CTO) for Verizon, with responsibility for wireline communications technologies. Prior to the creation of Verizon, Mr. Wegleitner held various positions in the Network Services division of Bell Atlantic, a telecommunications company, including CTO from January 1999 to July 2000. Prior to joining Bell Atlantic, he worked at Bell Laboratories and AT&T General Departments.

The Board believes that Mr. Wegleitner's extensive experience in the telecommunications industry provides the Board with a high level of expertise and experience. The Board also benefits from Mr. Wegleitner's service as a member of our Technology and Acquisition Committee and Chairman of our Compensation Committee.

Incumbent Class II Directors whose Terms Expire at the 2015 Annual Meeting of Stockholders

Dan Maydan, Ph.D.
Director since 2001
Age 77

Dan Maydan, Ph.D. has been a member of our Board since September 2001. From December 1993 to April 2003, Dr. Maydan served as President of Applied Materials Inc., a semiconductor equipment manufacturing company, and was appointed President Emeritus of Applied Materials from April 2003 to December 2012. Dr. Maydan was a member of the board of directors of Applied Materials from June 1992 until March 2006. Dr. Maydan serves on the board of directors of Electronics for Imaging, Inc., a digital imaging and print management solutions company, or EFI.

Dr. Maydan brings to the Board a significant institutional knowledge of Infinera through his long-standing service on the Board and service on our Compensation and Nominating and Governance Committees. The Board also benefits from Dr. Maydan's executive management, technical and industry experience from his time at Applied Materials, as well as his experience as a public company director at Applied Materials and EFI.

David F. Welch, Ph.D.
Director since 2010
Age 52

David F. Welch, Ph.D. co-founded Infinera and has served as our Executive Vice President, Chief Strategy Officer, since January 2004 and as a member of our Board since October 2010. From January 2005 to January 2009, Dr. Welch served as our Chief Marketing Officer. From May 2001 to January 2005, Dr. Welch served as our Chief Development Officer/CTO. From May 2001 to November 2006, Dr. Welch also served as a member of our Board. Prior to founding Infinera, Dr. Welch was CTO of the Transmission Products Group of JDS Uniphase Corporation, an optical component company. From January 1985 to February 2001, Dr. Welch served in various executive roles, including CTO and Vice President of Corporate Development for SDL Inc., an optical component company.

As co-founder and Executive Vice President, Chief Strategy Officer of Infinera, Dr. Welch has strong institutional knowledge of Infinera, coupled with a deep technical understanding of the optical networking industry. The Board believes that Dr. Welch's leadership skills, industry experience and comprehensive technical knowledge provide the Board with an important perspective into Infinera's product development, marketing and selling strategies. The Board also benefits from Dr. Welch's service on our Technology and Acquisition Committee.

Paul J. Milbury
Director since 2010
Age 64

Paul J. Milbury has been a member of our Board since July 2010. Mr. Milbury served as Vice President of Operations and CFO of Starent Networks, Corp., a provider of mobile network solutions, from January 2007 until its acquisition by Cisco Systems, Inc., a networking and telecommunications company, in December 2009. From December 2009 to July 2010, Mr. Milbury played a key role in integrating Starent Networks into Cisco Systems to create the Mobile Internet Technology Group. From December 2000 to March 2007, Mr. Milbury served as Vice President and CFO of Avid Technology, Inc., a digital media creation, management and distribution solutions company.

As Chairman of our Audit Committee and as an Audit Committee Financial Expert, Mr. Milbury provides the Board with a strong understanding and high level of experience in the areas of finance, accounting and operations. The Board also benefits from Mr. Milbury's service on our Compensation Committee, his executive management experience at Starent Networks, Cisco Systems and Avid Technology, and his experience as a director at Crossbeam Systems and Accedian Networks.

Incumbent Class I Directors whose Terms Expire at the 2014 Annual Meeting of Stockholders

Thomas J. Fallon
Director since 2009
Age 51

Thomas J. Fallon has served as our President and Chief Executive Officer (CEO) since January 2010 and as a member of our Board since July 2009. Mr. Fallon served as our Chief Operating Officer from October 2006 to December 2009 and as our Vice President of Engineering and Operations from April 2004 to September 2006. From August 2003 to March 2004, Mr. Fallon was Vice President, Corporate Quality and Development Operations of Cisco Systems, Inc., a networking and telecommunications company. From May 2001 to August 2003, Mr. Fallon served as General Manager of Cisco Systems' Optical Transport Business Unit.

As the President and CEO of Infinera, the Board believes that Mr. Fallon provides significant institutional knowledge of Infinera and industry knowledge, as well as key insight and advice in the Board's consideration and oversight of corporate strategy and management development. The Board believes that Mr. Fallon's leadership skills and executive management experience, along with his operational management experience and technical expertise, enable Mr. Fallon to make significant contributions to the Board.

Kambiz Y. Hooshmand
Director since 2009
Age 51

Kambiz Y. Hooshmand has been a member of our Board since December 2009 and has served as Chairman of our Board since October 2010. From March 2005 to May 2009, Mr. Hooshmand served as President and CEO of Applied Micro Circuits Corporation, a communications solutions company, or AMCC. From March 2000 to February 2002, Mr. Hooshmand served as Vice President and Division General Manager of the DSL Business Unit at Cisco Systems. From February 2002 to March 2005, Mr. Hooshmand served as Group Vice President and General Manager of Cisco Systems. From June 1997 to February 2000, Mr. Hooshmand served as Cisco System's Vice President of Engineering. From January 1992 to June 1997, Mr. Hooshmand served as Director of Engineering of StrataCom, Inc., a networking solutions company, which was acquired by Cisco Systems.

As the Chairman of the Board of Infinera, Mr. Hooshmand brings his leadership skills, industry experience and comprehensive knowledge of Infinera's business, financial position and operations to the Board deliberations. Mr. Hooshmand brings significant executive management and technical experience in the networking industry as a result of his executive positions at AMCC, Cisco Systems and StrataCom. The Board also benefits from Mr. Hooshmand's service on our Nominating and Governance Committee and as Chairman of our Technology and Acquisition Committee.

Philip J. Koen
Director since 2010
Age 61

Philip J. Koen has been a member of our Board since February 2010. Mr. Koen has been the Chairman of the board of directors and CEO of Intermedia.net, Inc., a cloud-based provider of hosted Microsoft Exchange, collaboration and content management services, since June 2011. From February 2010 to May 2011, Mr. Koen served as CEO of Montero Partners, an advisory services company. From March 2006 to January 2010, Mr. Koen served as CEO and Director of SAVVIS, Inc., a cloud infrastructure and hosted IT solutions provider. From July 1999 until February 2006, Mr. Koen was employed by Equinix, Inc., a provider of network neutral data centers and Internet exchange services, as President and Chief Operating Officer and as CFO. Mr. Koen serves on the board of directors of Proofpoint, Inc., a cloud-based email security company.

The Board believes that Mr. Koen's leadership skills, executive management experience and industry knowledge provides the Board with a high level of expertise and experience in the operations of a global, technology company. In addition, the Board benefits from Mr. Koen's experience as a public company director at Proofpoint and prior experience as a public company director at SAVVIS, significant expertise in the areas of finance, accounting and audit oversight, and service on our Audit and Technology and Acquisition Committees.

Vote Required

Directors are elected by a plurality vote, which means that the three directors who receive the most "FOR" votes cast by the shares present in person, or represented by proxy, and entitled to vote at the Annual Meeting will be elected. "WITHHOLD" votes and broker non-votes will not affect the outcome of the election. Stockholders may not cumulate votes in the election of directors.

Proposal 1—Recommendation of the Board

Our Board unanimously recommends a vote "FOR" the election to the Board of the three Class III nominees listed above.

CORPORATE GOVERNANCE AND THE BOARD OF DIRECTORS

Infinera has adopted a number of policies and practices, some of which are described below, that highlight our commitment to sound corporate governance principles. Infinera also maintains a Corporate Governance section on the Investor Relations' page on our website, which can be found at *http://www.infinera.com*.

Independence of the Board

In accordance with the current listing standards of NASDAQ, the Board, on an annual basis, affirmatively determines the independence of each director or nominee for election as a director. The Board has determined that, with the exception of Mr. Fallon and Dr. Welch, both of whom are employees of Infinera, all of its members are "independent directors," using the definition of that term in the listing standards of NASDAQ. Also, all members of the Audit Committee, Compensation Committee and Nominating and Governance Committee, as more fully described below, are independent directors.

Stockholder Communications with our Board

Stockholders may communicate with our Board by writing to the following address:

Board of Directors
c/o Chief Legal and Administrative Officer
Infinera Corporation
140 Caspian Court
Sunnyvale, CA 94089

Communications are distributed to the Board or to any individual director, as appropriate, depending on the facts and circumstances outlined in the communication. Communications that are unduly hostile, threatening, illegal or similarly unsuitable will be excluded with the provision that any communication that is filtered out will be made available to any independent or non-employee director upon request.

Board Leadership Structure

In January 2010, we separated the positions of Chairman of the Board and CEO. Separating these positions allows our CEO to focus on our day-to-day business, while allowing the Chairman of the Board to lead the Board in its fundamental role of providing advice to and independent oversight of management. While our Bylaws do not require that our Chairman of the Board and CEO positions be separate, the Board believes that having separate positions is the appropriate leadership structure for Infinera at this time and demonstrates our commitment to good corporate governance practices. The Board has assigned the Chairman of the Board with responsibility for presiding over meetings of the Board, developing meeting agendas, facilitating communication between management and the Board, representing director views to management and improving meeting effectiveness, among other things.

The Board believes that its leadership structure is appropriate. The Board also believes that the combination of an independent chairman, three of our four committees comprised entirely of independent directors and the regular use of executive sessions of the independent directors enables the Board to maintain independent oversight of our strategies and activities.

Board Oversight of Risk

Risk is inherent with every business and the Board is responsible for overseeing our risk management function. Members of our senior management team are responsible for implementation of our day-to-day risk management processes, while the Board, as a whole and through its committees, has responsibility for the oversight of overall risk management. In connection with the Board's annual strategic plan review, senior management makes a multidisciplinary presentation to the Board that includes any significant strategic, operational, financial, legal and compliance risks facing Infinera, our general risk management strategy and actions taken by senior management in compliance with this strategy. At other meetings of the Board, senior management provides updates to the Board on any specific risk-related issues. In its risk oversight role, the Board has the responsibility to satisfy itself that the risk management processes designed and implemented by management are adequate and functioning as designed. In addition, each of the committees of our Board considers any risks that may be within its area of responsibilities and Board members, or Board committee members, periodically engage in discussions with members of our senior management team as appropriate. Specifically, the Audit Committee assists the Board in fulfilling its oversight responsibilities with respect to risk management in the areas of financial reporting, internal controls and compliance with legal and regulatory requirements. The Audit Committee also discusses policies with respect to risk assessment and risk management and reports are regularly provided by management to the Audit Committee. The Compensation Committee assists the Board in fulfilling its oversight responsibilities with respect to the management of risks arising from our compensation policies and programs. The Nominating and Governance Committee assists the Board in fulfilling its oversight responsibilities with respect to the management of risks associated with Board organization, membership and structure, succession planning for our directors and executive officers, and corporate governance. The Technology and Acquisition Committee assists the Board in fulfilling its oversight responsibilities with respect to managing the risks associated with Infinera's strategy, technology development and acquisitions and investments.

Code of Business Conduct and Ethics

Infinera has adopted a Code of Business Conduct and Ethics that applies to all of our employees, officers (including our principal executive officer, principal financial officer, and principal accounting officer or controller, or persons performing similar functions) and our directors. The Code of Business Conduct and Ethics reflects Infinera's policy of dealing with all persons, including our customers, employees, investors and suppliers, with honesty and integrity. All employees are required to complete training on our Code of Business Conduct and Ethics.

A copy of our Code of Business Conduct and Ethics is posted on our website at *http://www.infinera.com* in the Corporate Governance section on the Investor Relations' page. You may also obtain a copy of our Code of Business Conduct and Ethics without charge by writing to: Infinera Corporation, 140 Caspian Court, Sunnyvale, CA 94089, Attn: Corporate Secretary. We intend to disclose future amendments to certain provisions of our Code of Business Conduct and Ethics, or waivers of such provisions, applicable to any principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and our directors on our website identified above or on a Form 8-K if required by the applicable listing standards.

Corporate Governance Guidelines

Our Board has adopted Corporate Governance Guidelines which govern, among other things, member criteria, responsibilities, compensation and education, committee composition and charters, communication activities and management succession. You can access these Corporate Governance Guidelines, along with other materials such as Board committee charters, on our website at *http://www.infinera.com* in the Corporate Governance section on the Investor Relations' page.

Stock Ownership Guidelines

Our Board believes that it is important to link the interests of our directors and management to those of our stockholders. Accordingly, the Compensation Committee adopted Stock Ownership Guidelines for our directors and executive officers who are designated as reporting officers under Section 16 of the Securities Exchange Act of 1934, as amended ("Section 16 Officers"). The Stock Ownership Guidelines require our directors and Section 16 Officers to accumulate and hold a minimum number of shares of Infinera common stock within three years of the later of (i) the effective date of the guidelines or (ii) the date of appointment or promotion of the Section 16 Officer or the election of the director. The following bullet points list the specific Infinera stock ownership requirements as a multiple of each Section 16 Officers' base salary or directors' annual cash retainer:

- CEO: 4x base salary
- CFO: 2x base salary
- Other Section 16 Officers: 1x base salary
- Non-Employee Directors: 3x annual cash retainer

PROXY

For purposes of calculating the stock ownership of each Section 16 Officer and director, we aggregate all Infinera common stock owned or beneficially owned by each Section 16 Officer or director, together with all vested, but unexercised in-the-money stock options. As of the Record Date, each of our Section 16 Officers and directors has either satisfied these ownership guidelines or had time remaining to do so. If, however, an individual is not compliant with these stock ownership guidelines, then 25% of the net, after-tax stock option sales must be retained until the guideline levels are met. Other than these stock ownership guidelines, we have no other stock holding requirements.

Information Regarding the Board and its Committees

The Board met six times during fiscal 2012. The Board did not act by written consent during fiscal 2012. During fiscal 2012, each director then in office attended 75% or more of the meetings of the Board and the committees on which he served during the period for which he was a director, committee chairman or committee member, as applicable. Our independent directors meet in executive sessions, without management present, during most regular meetings of the Board.

Directors are encouraged, but not required, to attend our annual meetings of stockholders. Two members of our Board attended our 2012 Annual Meeting of Stockholders.

The Board has four standing committees: an Audit Committee, a Compensation Committee, a Nominating and Governance Committee and a Technology and Acquisition Committee. Mr. Fallon does not serve on any committees of the Board. The following table provides membership and meeting information for the Board and each of the committees of the Board as of the end of fiscal 2012:

Name	Board	Audit	Compensation	Nominating and Governance	Technology and Acquisition
Thomas J. Fallon	M	—	—	—	—
Kenneth A. Goldman	M	M	C	—	—
Kambiz Y. Hooshmand	C	—	—	—	M
Philip J. Koen	M	M	—	—	M
Dan Maydan, Ph.D.	M	—	M	M	—
Paul J. Milbury	M	C	M	—	—
Carl Redfield	M	—	M	C	—
Mark A. Wegleitner	M	—	—	M	C
David F. Welch, Ph.D.	M	—	—	—	M
Total Meetings in Fiscal 2012	6	9	6	4	3

C = Chairman
M = Member

Below is a description of each standing committee of the Board. The Board has determined that each member of the Audit, Compensation, and Nominating and Governance Committees meets the applicable rules and regulations regarding “independence” and that each such member is free of any relationship that would interfere with his individual exercise of independent judgment with regard to Infinera. Each committee of the Board has a written charter approved by the Board. Copies of each charter are posted on our website at *http://www.infinera.com* in the Corporate Governance section on the Investor Relations’ page.

Audit Committee

The Audit Committee reviews and monitors our financial statements and reporting and our external audits, including, among other things, our internal controls and audit functions, the results and scope of the annual audit and other services provided by our independent registered public accounting firm and our compliance with legal matters that have a significant impact on our financial statements. Our Audit Committee also consults with our management and our independent registered public accounting firm prior to the presentation of financial statements to stockholders and, as appropriate, initiates inquiries into aspects of our financial affairs. Our Audit

Committee is responsible for establishing procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, and for the confidential, anonymous submission by our employees of concerns regarding questionable accounting or auditing matters. In addition, our Audit Committee is directly responsible for the appointment, retention, compensation and oversight of the work of our independent registered public accounting firm, including approving services and fee arrangements. All related party transactions are subject to approval by our Audit Committee. A more detailed description of the Audit Committee's functions can be found in our Audit Committee charter. A copy of the Audit Committee charter is available on our website at *http://www.infinera.com* in the Corporate Governance section on the Investor Relations' page.

The current members of the Audit Committee are Messrs. Goldman, Koen and Milbury. Mr. Milbury chairs the Audit Committee. The Audit Committee met nine times during fiscal 2012. The Audit Committee did not act by written consent during fiscal 2012. Each member of our Audit Committee is independent for Audit Committee purposes under the rules and regulations of the SEC and the listing standards of NASDAQ. In addition to qualifying as independent under the NASDAQ rules, each member of our Audit Committee can read and understand fundamental financial statements in accordance with NASDAQ Audit Committee requirements. The Board has determined that Messrs. Goldman and Milbury are each an "Audit Committee Financial Expert" as defined in Item 407(d)(5)(ii) of Regulation S-K, including the relevant independence requirements. The designation does not impose on Messrs. Goldman and Milbury any duties, obligations or liabilities that are greater than are generally imposed on them as members of the Audit Committee and the Board.

Compensation Committee

The Compensation Committee has the responsibility, authority and oversight relating to the development of our overall compensation strategy and compensation programs. The Compensation Committee establishes our compensation philosophy and policies, as well as administers all of our compensation plans for executive officers. The Compensation Committee seeks to assure that our compensation practices promote stockholder interests and support our compensation objectives and philosophy. Our compensation program for executive officers focuses on addressing the following principal objectives:

- Attract and retain talented personnel by offering competitive compensation packages;
- Motivate employees to achieve strategic and tactical objectives and the profitable growth of Infinera;
- Reward employees for individual and corporate performance; and
- Align executive compensation with stockholder interests.

In making compensation decisions, the Compensation Committee also seeks to promote teamwork among and high morale within our executive team. The Compensation Committee evaluates the performance of our CEO against objectives set by the Board and may seek assistance in such evaluation from the Chairman of the Board and its compensation consultant. Our CEO is asked by the Compensation Committee to provide his assessment of the performance of the other named executive officers, but he does not participate in the determination of his own compensation. Our CEO is assisted by our Vice President of Human Resources and our Chief Legal and Administrative Officer in making the assessments of the performance of the named executive officers. No other named executive officers participate in the determination of the amount or form of the compensation of named executive officers.

The Compensation Committee also oversees, reviews and administers all of our material employee benefit plans, including our 401(k) plan, and reviews and approves various other compensation policies and matters. The Compensation Committee may form and delegate authority to one or more subcommittees as appropriate. A more detailed description of the Compensation Committee's functions can be found in our Compensation Committee charter. A copy of the Compensation Committee charter is available on our website at *http://www.infinera.com* in the Corporate Governance section on the Investor Relations' page.

During fiscal 2012, the Compensation Committee consisted of Messrs. Goldman, Milbury and Redfield and Dr. Maydan. Mr. Goldman chaired the Compensation Committee during fiscal 2012. In February, 2013, Mr. Wegleitner replaced Mr. Goldman on the Compensation Committee and as chair. The Compensation

Committee met six times during fiscal 2012. The Compensation Committee did not act by written consent during fiscal 2012. Each member of our Compensation Committee is a non-employee director, as defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), an outside director, as defined pursuant to Section 162(m) of the Internal Revenue Code and satisfies the NASDAQ independence requirements.

During fiscal 2012, the Compensation Committee engaged the services of Compensia, Inc. (“Compensia”) to advise the Compensation Committee with respect to executive compensation philosophy, cash incentive design and the amount of cash and equity compensation awarded to our named executive officers. In addition, Compensia gathered market data and compensation information, including data about the compensation paid by a peer group of companies and other companies that may compete with us for executives, and developed recommendations for structuring Infinera’s compensation programs. The Compensation Committee selected Compensia, who reports directly to the Compensation Committee and interacts with management at the direction of the Compensation Committee. Compensia has not performed work for Infinera other than pursuant to the engagement by the Compensation Committee. The Compensation Committee regularly, but not less than annually, considers the independence of Compensia and determines whether any related conflicts of interest require disclosure.

Non-Executive Equity Award Subcommittee

The levels for new hire, promotional and annual retention equity awards for named executive officers are reviewed and approved by the Compensation Committee on an annual basis. The Compensation Committee has delegated to the Non-Executive Equity Award Subcommittee, consisting of the CEO, Chief Legal and Administrative Officer and Vice President of Human Resources, the authority to formally approve new hire, promotional and annual retention equity awards to certain employees pursuant to guidelines pre-approved by the Compensation Committee. The delegation does not include the authority to make equity awards to employees who are named executive officers of Infinera. The Non-Executive Equity Award Subcommittee generally meets on the first Monday of each month (unless it is a holiday, in which case the Non-Executive Equity Award Subcommittee meets on the first business day thereafter) to approve new hire and promotional grants that are within the pre-approved guidelines. The delegation of authority to the Non-Executive Equity Award Subcommittee is not exclusive and the Board and Compensation Committee have retained the right to approve any equity awards at their discretion. The Non-Executive Equity Award Subcommittee met 12 times during fiscal 2012.

Nominating and Governance Committee

The Nominating and Governance Committee reviews, implements or recommends corporate governance policies and practices applicable to Infinera and recommends the compensation for the non-employee directors of the Board. In addition, the Nominating and Governance Committee is responsible for identifying, evaluating and making recommendations of nominees to the Board and evaluating the performance of the Board and individual directors, including those eligible for re-election at the annual meeting of stockholders. The Nominating and Governance Committee is also responsible for reviewing developments in corporate governance practices, evaluating and making recommendations to the Board concerning corporate governance matters and overseeing the evaluation of management. A more detailed description of the Nominating and Governance Committee’s functions can be found in our Nominating and Governance Committee charter. A copy of the Nominating and Governance Committee charter is available on our website at *http://www.infinera.com* in the Corporate Governance section on the Investor Relations’ page.

During fiscal 2012, members of our Nominating and Governance Committee included Messrs. Hooshmand, Redfield and Wegleitner and Dr. Maydan, each of whom is independent under the listing standards of NASDAQ. Mr. Redfield chairs the Nominating and Governance Committee. In February 2013, Mr. Wegleitner resigned from the Nominating and Governance Committee. The Nominating and Governance Committee met four times during fiscal 2012. The Nominating and Governance Committee did not act by written consent during fiscal 2012.

Board Nominees and Diversity

The Nominating and Governance Committee reviews and reports to our Board on a periodic basis with regard to matters of corporate governance, and reviews, assesses and makes recommendations on the effectiveness of our corporate governance policies. In addition, our Nominating and Governance Committee reviews and makes recommendations to our Board regarding the size and composition of our Board and the appropriate qualities and skills required of our directors in the context of the then-current composition of our Board. This includes an assessment of each candidate's independence, personal and professional integrity, financial literacy or other professional or business experience relevant to an understanding of our business, ability to think and act independently and with sound judgment, and ability to serve our stockholders' long-term interests. While we do not have a formal written policy on director diversity, the Board and the Nominating and Governance Committee consider diversity when reviewing the overall composition of the Board and considering the slate of nominees for annual election to the Board and the appointment of individual directors to the Board. Diversity, in this context, includes factors such as experience, specialized expertise, geographic location, cultural background, gender and ethnicity. These factors, and others considered useful by our Nominating and Governance Committee, are reviewed in the context of an assessment of the perceived needs of our Board at a particular point in time. As a result, the priorities and emphasis of our Nominating and Governance Committee and of our Board may change from time to time to take into account changes in business and other trends, as well as the portfolio of skills and experience of current and prospective directors.

Our Nominating and Governance Committee leads the search for, selects and recommends candidates for election to our Board. Consideration of new director candidates typically involves a series of committee discussions, review of information concerning candidates and interviews with selected candidates. Candidates for nomination to our Board typically have been suggested by other members of our Board or by our executive officers. From time to time, our Nominating and Governance Committee may engage the services of a third-party search firm to identify director candidates. Our Nominating and Governance Committee will also consider candidates proposed in writing by stockholders, provided such proposal meets the eligibility requirements for submitting stockholder proposals for inclusion in our next proxy statement and is accompanied by the required information about the candidate specified in Section 2.4 of our Bylaws. Candidates proposed by stockholders are evaluated by our Nominating and Governance Committee using the same criteria as for all other candidates.

If a stockholder wishes to recommend a director candidate for consideration by the Nominating and Governance Committee, pursuant to Infinera's Corporate Governance Guidelines, the stockholder must have held at least 1,000 shares of our common stock for at least six months and must notify the Nominating and Governance Committee by writing to our Chief Legal and Administrative Officer at our principal executive offices, and must include the following information:

- To the extent reasonably available, information relating to such director candidate that would be required to be disclosed in a proxy statement pursuant to Regulation 14A under the Exchange Act, in which such individual is a nominee for election to the Board;
- The director candidate's written consent to (a) if selected, be named in our proxy statement and proxy and (b) if elected, to serve on the Board;
- The other information set forth in the applicable sections of Section 2.4 of our Bylaws; and
- Any other information that such stockholder believes is relevant in considering the director candidate.

Technology and Acquisition Committee

The Technology and Acquisition Committee reviews with management, makes recommendations to the Board on and, when expressly authorized by the Board, approves acquisitions, investments, joint ventures and other strategic transactions in which we engage from time-to-time as part of our business strategy. The Technology and Acquisition Committee also evaluates the execution, financial results and integration of any such potential transactions. In addition, the Technology and Acquisition Committee provides advice and counsel on matters relating to technology and innovation, as well as enhancing the Board's understanding to allow for better input and direction regarding our strategy, progress and risks. A more detailed description of the Technology and Acquisition Committee's functions can be found in our Technology and Acquisition Committee charter. A copy of the Technology and Acquisition Committee charter is available on our website at *http://www.infinera.com* in the Corporate Governance section on the Investor Relations' page.

The current members of the Technology and Acquisition Committee are Messrs. Hooshmand, Koen and Wegleitner and Dr. Welch. Mr. Hooshmand chairs the Technology and Acquisition Committee. The Technology and Acquisition Committee met three times during fiscal 2012. The Technology and Acquisition Committee did not act by written consent during fiscal 2012.

Compensation Committee Interlocks and Insider Participation

During fiscal 2012, the Compensation Committee of the Board consisted of Messrs. Goldman, Milbury and Redfield and Dr. Maydan. None of these individuals was at any time during fiscal 2012, or at any other time, an executive officer or employee of Infinera. No member of our Compensation Committee had any relationship with us during fiscal 2012 requiring disclosure under Item 404 of Regulation S-K under the Exchange Act. None of our executive officers has ever served as a member of the board or compensation committee of any other entity that has or has had one or more executive officers serving as a member of our Board or our Compensation Committee.

COMPENSATION OF DIRECTORS

Our director compensation program is designed to attract and retain highly-qualified, independent directors to represent stockholders on the Board and to act in their best interest. The Nominating and Governance Committee, which consists solely of independent directors, has the primary responsibility for reviewing and recommending any changes to our director compensation program, with compensation changes approved or ratified by the full Board. The Nominating and Governance Committee has engaged an outside advisor to provide relevant market data regarding director compensation programs. The Nominating and Governance Committee and Board determined that a mix of cash compensation and equity awards should be utilized in our director compensation program for independent directors. Directors who are also employees of Infinera do not participate in our director compensation program, nor do they receive any additional compensation for their service as directors.

Director Fees

During fiscal 2012, our cash compensation program for non-employee directors was as follows:

Position	Annual Retainer Fee
Non-Employee Director	$40,000
Chairman of the Board	$40,000
Audit Committee Chair	$30,000
Audit Committee Member	$12,500
Compensation Committee Chair	$16,000
Compensation Committee Member	$ 8,000
Nominating and Governance Committee Chair	$10,000
Nominating and Governance Committee Member	$ 5,000
Technology and Acquisition Committee Chair	$10,000
Technology and Acquisition Committee Member	$ 5,000

Each non-employee member of our Board also received fees of $2,000 per meeting of the Board attended in person and $1,000 per meeting attended telephonically. We do not pay any meeting fees for any of the committees of the Board. We pay the retainer fees set forth above in quarterly installments. Retainer fees, together with meeting attendance fees, are generally paid in arrears at the first Board meeting of each new fiscal quarter. In addition, we have a policy of reimbursing our directors for reasonable travel, lodging and other expenses incurred in connection with their attendance at Board and committee meetings.

Director Equity Awards

In May 2012, we granted 20,634 restricted stock units (“RSUs”) to each non-employee member of the Board then in office. The RSUs vest in full on May 16, 2013, subject to each non-employee director’s continued service to Infinera. The Nominating and Governance Committee considered a range of factors in determining the May 2012 director equity awards, including factors such as the amount of the Board’s cash compensation and number of Board and committee meetings required each year.

Our policy has been to provide future non-employee directors with an initial equity award upon such director’s election to the Board. The form, amount and vesting schedule of such initial equity award will depend on our then-current practice regarding equity awards granted to members of our Board, on our potential future common stock price and the associated Black Scholes valuation of such initial equity award.

2012 Summary of Director Compensation

The following table sets forth all of the compensation awarded to, earned by, or paid to the non-employee members of our Board in fiscal 2012.

Name	Fees Earned or Paid in Cash ($)(1)	Stock Awards ($)(2)	Option Awards ($)(2)	Total ($)
Kenneth A. Goldman	78,500	133,296	—	211,796
Kambiz Y. Hooshmand	100,000	133,296	—	233,296
Philip J. Koen	67,500	133,296	—	200,796
Dan Maydan, Ph.D.	63,000	133,296	—	196,296
Paul J. Milbury	89,000	133,296	—	222,296
Carl Redfield	68,000	133,296	—	201,296
Mark A. Wegleitner	65,000	133,296	—	198,296

(1) The amounts in this column represent cash compensation paid to each non-employee director for services as a director during fiscal 2012.

(2) The amounts in these columns represent the aggregate grant date fair value of the equity awards granted in fiscal 2012 computed in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, "Compensation—Stock Compensation" ("ASC 718"). These amounts reflect Infinera's accounting expense for these awards and do not correspond to the actual value that will be recognized by the directors with respect to these awards. A supplemental table following these footnotes sets forth: (i) the aggregate number of equity awards outstanding at fiscal year-end; (ii) the aggregate number of equity awards granted during fiscal 2012; and (iii) the grant date fair value of the equity awards granted by Infinera during fiscal 2012 to each of our directors who was not a named executive officer.

PROXY

Additional Information With Respect to Director Equity Awards

Name	Stock Awards Granted During Fiscal 2012 (#)(1)	Option Awards Granted During Fiscal 2012 (#)	Grant Date Fair Value of Stock and Option Awards Granted in Fiscal 2012 ($)(2)	Stock Awards Outstanding at Fiscal Year-End (#)(1)	Option Awards Outstanding at Fiscal Year-End (#)(3)
Kenneth A. Goldman	20,634	—	133,296	20,634	175,069
Kambiz Y. Hooshmand	20,634	—	133,296	20,634	132,100
Philip J. Koen	20,634	—	133,296	20,634	132,100
Dan Maydan, Ph.D.	20,634	—	133,296	20,634	94,600
Paul J. Milbury	20,634	—	133,296	20,634	117,600
Carl Redfield	20,634	—	133,296	20,634	157,100
Mark A. Wegleitner	20,634	—	133,296	20,634	100,000

(1) Includes unvested RSUs.

(2) Represents the fair value of stock options, RSUs and performance-based restricted stock units ("PSUs"), calculated in accordance with ASC 718. For stock option awards, that number is calculated by multiplying the Black-Scholes value by the number of stock options awarded. For RSUs and PSUs, that number is calculated by multiplying (x) the fair market value of our common stock on the date of grant by (y) the number of units awarded.

(3) Includes both vested and unvested stock options to purchase our common stock.

PROPOSAL 2

RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Audit Committee of the Board has selected Ernst & Young LLP, independent registered public accounting firm, as our independent auditors for the fiscal year ending December 28, 2013 and has further directed that we submit the appointment of independent auditors for ratification by the stockholders at the Annual Meeting. Ernst & Young LLP has audited our financial statements since fiscal 2001. Representatives of Ernst & Young LLP are expected to be present at the Annual Meeting. They will have an opportunity to make a statement if they so desire and will be available to respond to appropriate questions.

Ratification of appointment of Ernst & Young LLP as our independent registered public accounting firm is not required pursuant to our Bylaws, our other governing documents or law. However, we are submitting the appointment of Ernst & Young LLP to the stockholders for ratification as a matter of good corporate practice. If the stockholders fail to ratify the appointment, the Audit Committee will reconsider whether or not to retain that firm. Even if the appointment is ratified, the Audit Committee in its discretion may direct the appointment of different independent auditors at any time during the year if it determines that such change would be in the best interests of Infinera and its stockholders.

The affirmative vote of the holders of a majority of the shares present in person or represented by proxy and entitled to vote at the Annual Meeting will be required to ratify the appointment of Ernst & Young LLP. Abstentions will be counted toward the tabulation of votes cast on this proposal and will have the same effect as negative votes. Broker non-votes are counted towards a quorum, but are not counted for any purpose in determining whether this matter has been approved.

Independent Registered Public Accounting Firm's Fees

The following table sets forth the aggregate fees for audit, tax and other services provided by Ernst & Young LLP for the fiscal years ended December 29, 2012 and December 31, 2011. All of the services described in the following table were approved in conformity with the Audit Committee's pre-approval processes and procedures.

	2012	2011
Audit Fees	$1,402,000	$1,256,000
Tax Fees	35,000	32,000
All Other Fees	2,000	2,000
Total Fees	$1,439,000	$1,290,000

Audit Fees

This category of the table above includes fees for the integrated audit of our annual consolidated financial statements and internal control over financial reporting, review of the condensed consolidated financial statements included in our quarterly reports on Form 10-Q, and services that are normally provided by Ernst & Young LLP in connection with statutory and regulatory filings or engagements for those fiscal years. The category also includes statutory audits required by non-U.S. jurisdictions. The preparation of Infinera's audited consolidated financial statements includes compliance with Section 404 of the Sarbanes-Oxley Act of 2002 and the preparation by Ernst & Young LLP of a report expressing its opinion regarding the effectiveness of our internal control over financial reporting. Audit fees for fiscal 2012 include $0.1 million of audit fees related to the enterprise resource planning system that the Company implemented during the year.

Tax Fees

This category of the table above includes fees for tax compliance, tax advice and tax planning.

All Other Fees

This category of the table above principally includes support and advisory services provided by Ernst & Young LLP that are not included in the service categories reported above.

PROXY

Pre-Approval Policies and Procedures

The Audit Committee's policy is to pre-approve all audit and permissible non-audit services rendered by Ernst & Young LLP, our independent registered public accounting firm. The Audit Committee can pre-approve specified services in defined categories of audit services, audit-related services and tax services up to specified amounts, as part of the Audit Committee's approval of the scope of the engagement of Ernst & Young LLP or on an individual case-by-case basis before Ernst & Young LLP is engaged to provide a service. The Audit Committee has determined that the rendering of the services other than audit services by Ernst & Young LLP is compatible with maintaining the principal accountant's independence.

Vote Required

Approval of Proposal 2 requires the affirmative vote of a majority of the votes cast on this proposal. "ABSTENTIONS" will have the same effect as an "AGAINST" vote. Broker non-votes are not deemed to be votes cast and, therefore, are not included in the tabulation of the voting results on this proposal and will not affect the outcome of the vote.

Proposal 2—Recommendation of the Board

The Board unanimously recommends a vote "FOR" the ratification of the appointment of Ernst & Young LLP as Infinera's independent registered public accounting firm for its fiscal year ending December 28, 2013.

REPORT OF THE AUDIT COMMITTEE

The Audit Committee of the Board currently consists of the three non-employee directors named below. The Board annually reviews the NASDAQ listing standards' definition of independence for Audit Committee members and has determined that each member of the Audit Committee meets that standard. The Board has also determined that Messrs. Goldman and Milbury are each an Audit Committee Financial Expert as described in applicable rules and regulations of the SEC.

The principal purpose of the Audit Committee is to assist the Board in its general oversight of Infinera's accounting practices, system of internal controls, audit processes and financial reporting processes. The Audit Committee is responsible for appointing and retaining our independent auditor and approving the audit and non-audit services to be provided by the independent auditor. The Audit Committee's function is more fully described in its charter, which the Board has adopted and which the Audit Committee reviews on an annual basis.

Infinera's management is responsible for preparing our financial statements and ensuring they are complete and accurate and prepared in accordance with generally accepted accounting principles. Ernst & Young LLP, our independent registered public accounting firm, is responsible for performing an independent audit of our consolidated financial statements in accordance with generally accepted auditing standards and expressing an opinion on the effectiveness of Infinera's internal control over financial reporting.

The Audit Committee has reviewed and discussed with our management the audited financial statements of Infinera included in our 2012 Annual Report.

The Audit Committee has also reviewed and discussed with Ernst & Young LLP our audited financial statements in the 2012 Annual Report. In addition, the Audit Committee has discussed with Ernst & Young LLP those matters required to be discussed by the Statement on Auditing Standards No. 61, as amended, as adopted by the Public Company Accounting Oversight Board in Rule 3200T. Additionally, Ernst & Young LLP has provided and the Audit Committee has received the written disclosures and the letter required by applicable requirements of the Public Company Accounting Oversight Board regarding Ernst & Young LLP's communications with the Audit Committee concerning independence. The Audit Committee has also discussed with Ernst & Young LLP its independence from Infinera.

Based upon the review and discussions described above, the Audit Committee recommended to the Board that the audited financial statements referred to above be included in Infinera's 2012 Annual Report for filing with the SEC.

Submitted by the following members of the Audit Committee:

Paul J. Milbury, Chairman
Kenneth A. Goldman
Philip J. Koen

PROXY

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information known to us regarding beneficial ownership of our common stock as of the Record Date by:

- Each person known by us to be the beneficial owner of more than 5% of any class of our voting securities;
- Our named executive officers;
- Each of our directors; and
- All executive officers and directors as a group.

The information provided in this table is based on Infinera's records, information filed with the SEC and information provided to Infinera, except where otherwise noted. Unless otherwise indicated, to our knowledge, each stockholder possesses sole voting and investment power over the shares listed, except for shares owned jointly with such person's spouse. The table below is based upon information supplied by our named executive officers, directors and principal stockholders and Schedules 13G and 13G/A filed with the SEC. Our named executive officers include the CEO, the CFO and the three other most highly compensated executive officers at the end of fiscal 2012.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting power and/or investment power with respect to the securities held. Shares of common stock subject to stock options currently exercisable or exercisable within 60 days of the Record Date are deemed outstanding and beneficially owned by the person holding such stock options for purposes of computing the number of shares and percentage beneficially owned by such person, but are not deemed outstanding for purposes of computing the percentage beneficially owned by any other person. Except as indicated in the footnotes to this table, and subject to applicable community property laws, the persons or entities named have sole voting and investment power with respect to all shares of our common stock shown as beneficially owned by them. Percentage beneficially owned is based on 115,604,314 shares of common stock outstanding on the Record Date. Unless otherwise indicated, the principal address of each of the stockholders below is c/o Infinera Corporation, 140 Caspian Court, Sunnyvale, CA 94089.

Name of Beneficial Owner	Common Shares Currently Held	Common Shares That May Be Acquired Within 60 Days of the Record Date(1)	Total Beneficial Ownership	Percent Beneficially Owned(2)
5% or More Stockholders				
FMR LLC(3)	15,430,953	—	15,430,953	13.3%
Platinum Investment Management Limited(4)	7,649,603	—	7,649,603	6.6%
BlackRock, Inc.(5)	6,273,182	—	6,273,182	5.4%
The Vanguard Group(6)	5,966,605	—	5,966,605	5.2%
Named Executive Officers and Directors				
Thomas J. Fallon(7)	1,001,160	1,205,709	2,206,869	1.9%
Ita M. Brennan	117,734	294,983	412,717	*
David F. Welch, Ph.D.(8)	2,409,310	853,460	3,262,770	2.8%
Michael O. McCarthy III	105,499	391,136	496,635	*
Ronald D. Martin	—	125,097	125,097	*
Kenneth A. Goldman(9)	53,373	195,703	249,076	*
Kambiz Y. Hooshmand	14,600	152,734	167,334	*
Philip J. Koen(10)	15,183	152,734	167,917	*
Dan Maydan, Ph.D.(11)	68,400	115,234	183,634	*
Paul J. Milbury	9,100	138,234	147,334	*
Carl Redfield(12)	185,034	177,734	362,768	*
Mark A. Wegleitner	—	116,467	116,467	*
All current named executive officers and directors as a group (12 persons)	3,979,393	3,919,225	7,898,618	6.6%

* Less than 1% of the outstanding shares of common stock.

(1) Includes shares represented by vested, unexercised stock options as of the Record Date and stock options and RSUs that are expected to vest within 60 days thereof. These shares are deemed to be outstanding for the purpose of computing the percentage ownership of the person holding the stock options or RSUs, but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

(2) Based on 115,604,314 shares issued and outstanding on the Record Date.

(3) According to a Schedule 13G/A filed with the SEC on February 14, 2013 by FMR LLC ("FMR") and Edward C. Johnson III, all such shares are beneficially owned by Fidelity Management & Research Company ("Fidelity"), a registered investment advisor to various investment companies ("Fidelity Funds") and a wholly-owned subsidiary of FMR. Fidelity is the beneficial owner of 15,430,953 shares and has sole voting power with respect to 1,400 shares and sole dispositive power with respect to all reported shares. Mr. Johnson, Chairman of FMR, FMR (through its control of Fidelity) and the funds each has sole dispositive power with respect to 15,430,953 shares. Neither Mr. Johnson nor FMR has the sole power to vote or direct the voting of the shares beneficially owned by Fidelity Funds, which power resides with the Board of Trustees of such funds. The address of Fidelity, FMR and Mr. Johnson is 82 Devonshire Street, Boston, Massachusetts 02109.

(4) According to a Schedule 13G filed with the SEC on February 15, 2013 by Platinum Investment Management Limited ("Platinum"). Platinum is the beneficial owner of 7,649,603 shares and has sole voting power with respect to 7,061,072 shares and sole dispositive power with respect to all voting shares. The address of Platinum is Level 8, 7 Macquarie Place, Sydney, Australia NSW 2000.

(5) According to a Schedule 13G/A filed with the SEC on February 8, 2013 by BlackRock, Inc. ("BlackRock"). BlackRock is the beneficial owner of 6,273,182 and has sole voting power with respect to 6,273,182 shares and sole dispositive power with respect to all voting shares. The address of BlackRock is 40 East 52nd Street, New York, New York 10022.

(6) According to a Schedule 13G filed with the SEC on February 13, 2013 by The Vanguard Group ("Vanguard"). Vanguard is the beneficial owner of 5,966,605 and has sole voting power with respect to 147,465 shares, sole dispositive power with respect to 5,822,640 shares and shared dispositive power with respect to 143,965 shares. The address of Vanguard is 100 Vanguard Boulevard, Malvern, Pennsylvania 19355.

(7) Consists of (i) 779,246 shares held by the Fallon Family Revocable Trust dated 9/7/94; (ii) 100,672 shares held by the Thomas J. Fallon 2011 Annuity Trust A dated 8/1/11; (iii) 100,672 shares held by the Shannon F. Fallon 2011 Annuity Trust A dated 8/1/11 and (iv) 20,570 shares held by Mr. Fallon as trustee for his minor children. Mr. Fallon disclaims beneficial ownership of the shares held in trust for his minor children.

(8) Consists of (i) 20,553 shares held by Dr. Welch; (ii) 233,014 shares held by the Welch Family Trust dated 4/3/96; (iii) 1,099,493 shares held by LRFA, LLC, a limited liability company of which Dr. Welch is the sole managing member; (iv) 500,000 shares held by Welch Group, L.P., a limited partnership of which Dr. Welch is the general partner; (v) 553,750 shares held by SEI Private Trust Company, Trustee of the Welch Family Heritage Trust I u/l dated 9/24/01 and (vi) 2,500 shares held by Dr. Welch as trustee for his minor children. Dr. Welch disclaims beneficial ownership of the shares held in trust for his minor children.

(9) Consists of (i) 16,600 shares held by Mr. Goldman; (ii) 3,051 shares held by the Goldman-Valeriote Family Trust u/a/d 11/15/95 and (iii) 33,722 shares held by G.V. Partners, L.P.

(10) Consists of (i) 583 shares held by Mr. Koen and (ii) 14,600 shares held by the Koen Family Trust dated 11/3/10.

(11) Consists of (i) 54,597 shares held by Dan Maydan, TTEE, Maydan Marital Share One UAD 5/6/00 and (ii) 13,803 shares held by Dan Maydan, TTEE, Dan Maydan 1981 Trust Marital Share 1 U/A DTD 3/26/81.

(12) Consists of (i) 89,562 shares held by Mr. Redfield and (ii) 95,472 shares held by the Carl Redfield Trust 2000 dated 10/18/00.

PROXY

RISK ASSESSMENT OF COMPENSATION PRACTICES

During fiscal 2012, at the request of the Compensation Committee, Infinera undertook a review of the risks associated with our compensation policies and practices. This review was conducted by Compensia with input from our legal, finance and human resources departments. This assessment included:

- A review of the policies and practices relating to the components of our compensation programs and arrangements;
- A review of incentive-based equity and cash compensation features;
- The identification of compensation design features that could potentially encourage excessive or imprudent risk taking, and identification of business risks that these features could potentially encourage; and
- Consideration of the presence or absence of controls, oversight or other factors that mitigate potential risks.

Although all compensation programs were considered, particular attention was paid to incentive-based programs involving variable payouts, where an employee might be able to influence payout factors and compensation programs involving our executive team. In substantially all cases, compensation programs are centrally designed and administered and, excluding sales incentive compensation, are substantially identical across function and geography. Incentive compensation was found to be based on a blend of financial and operational goals, which allows us to avoid an over-emphasis on shorter-term financial goals. In addition, financial and operational objectives used to determine performance metrics for incentive-based compensation programs were found to be substantially derived from Infinera's annual operating plan, which is approved by the Board.

In addition, the assessment considered the controls and other mitigating factors that serve to offset elements of our compensation policies and practices that may introduce risk, including:

- Oversight of major incentive compensation programs and decision-making by the Compensation Committee, which, in most cases, retains the ability to adjust elements of incentive compensation in its discretion;
- Internal controls over financial reporting and compensation practices regularly reviewed and/or tested by internal auditors and subject to testing as part of the annual independent integrated audit by our external auditors;
- Audit Committee oversight and review of financial results and non-GAAP adjustments used in certain components of incentive compensation;
- The existence of, and training relating to, corporate standards of business conduct and ethics;
- Substantial alignment of compensation of and benefits for executive and non-executive, salaried employees;
- A clawback policy pursuant to which the Compensation Committee has a one-year look-back provision and provides the authority to recoup up to 100% of any incentive compensation that resulted from a material misstatement of financial results; and
- Stock ownership guidelines applicable to executive officers to align their interests with those of our stockholders.

Based on the assessment and factors described above, Compensia determined that the risks associated with our compensation policies and practices are not reasonably likely to result in a material adverse effect. Compensia's risk assessment was reviewed by the Board and Compensation Committee.

COMPENSATION OF EXECUTIVE OFFICERS

Compensation Discussion and Analysis

This section of our Proxy Statement provides a description and analysis of our executive compensation program, the various components thereof, and the compensation-related decisions for fiscal 2012 with respect to our named executive officers. As discussed throughout this section, the individuals who served as Infinera's CEO and CFO during fiscal 2012 and our three other most highly compensated executive officers at the end of fiscal 2012 were as follows:

- Thomas J. Fallon, President and CEO;
- Ita M. Brennan, CFO;
- David F. Welch, Ph.D., Executive Vice President, Chief Strategy Officer;
- Michael O. McCarthy III, Chief Legal and Administrative Officer; and
- Ronald D. Martin, former Senior Vice President, Worldwide Sales.

These employees are referred to in this Proxy Statement as our named executive officers. We have provided detailed compensation information related to these individuals in the "Summary Compensation Table for Fiscal 2012" on page 49. All of the named executive officers are or were officers designated as Section 16 Officers in fiscal 2012. As of January 31, 2013, Mr. Martin ceased to be an employee of Infinera.

Executive Summary

Our executive compensation program is designed to balance near-term results with long-term success and continue to encourage employees to build value through innovation and execution. To fulfill this mission, Infinera has a pay-for-performance philosophy that forms the foundation for all decisions regarding executive compensation made by our management team and our Compensation Committee.

Fiscal 2012 Executive Compensation Program

Fiscal 2012 was an important year for Infinera as we successfully brought our next generation DTN-X platform to market. The DTN-X platform quickly gained market share exiting the year with 22 customer purchase commitments and significant revenue recognized in the second half of 2012. The Dell'Oro Group, which tracks the telecommunications market, ranked Infinera number one for the second half of 2012 in the global long-haul 100G market as measured by the number of long-haul 100G ports sold. We also saw double digit revenue growth in the fourth quarter of fiscal 2012 on a year-over-year basis, as well as on a sequential quarterly basis, which reflected robust sales of our DTN-X platform, combined with continued revenue from our DTN platform.

Although, DTN-X market traction and the resulting growth in revenue contributed to an improvement in our overall financial performance in the second half of 2012, we had incurred significant pre-production DTN-X related expenditures in the first half of 2012, and this resulted in financial and stock performance for the year that was below our expectations. We ended fiscal 2012 with $438.2 million in GAAP revenue and a non-GAAP net loss of $(43.5) million, which excludes non-cash stock-based compensation expense. This financial outcome resulted in significantly lower levels of compensation pursuant to our performance-based compensation plans for our named executive officers. In particular, our executives received no bonus related to our financial performance goals and received a total bonus payout for fiscal 2012 of their on-target amounts of 5% for the CEO and CFO and 10% for the other named executive officers.

Our pay-for-performance alignment during this transition period was reflected in certain fiscal 2012 compensation decisions and other actions taken by the Compensation Committee. Some of the significant changes to our executive compensation for fiscal 2012 included the following:

- ***Increased Use of Restricted Stock Units and Performance Stock Units***. In fiscal 2012, the Compensation Committee granted only RSUs and PSUs for equity awards, weighting the split of equity awards more heavily toward the performance-based PSUs for our CEO, and no longer granted stock option awards to our named executive officers. The RSUs vest annually over a three-year period. The vesting criteria for the PSUs were tied to the attainment of long-term strategic objectives related to our DTN-X product, with 50% of the PSUs vesting upon the achievement of $100 million in recognized revenue from the DTN-X product prior to June 2013 and 50% of the PSUs vesting upon the achievement of certain targeted operating income performance levels for fiscal 2013 or fiscal 2014.

- ***Majority of CEO Compensation is Performance Based***. In fiscal 2012, the Compensation Committee continued its practice of providing a majority of our CEO's equity compensation in the form of performance-based compensation. As noted above, the Compensation Committee discontinued the use of stock option awards to provide performance-based compensation, and instead provided a majority of Mr. Fallon's equity compensation in the form of PSUs in fiscal 2012. In particular, in fiscal 2012, Mr. Fallon received a PSU grant of 175,000 shares and an RSU grant of 155,000 shares. As described above, Mr. Fallon's PSU grant vests only if we achieve certain revenue milestones for the DTN-X product prior to June 2013 and certain targeted operating income performance levels for fiscal 2013 or fiscal 2014. In addition, Mr. Fallon's base salary remained unchanged for fiscal 2012 and a majority of Mr. Fallon's total eligible cash compensation was performance based. Specifically, Mr. Fallon's performance-based cash compensation was tied to Infinera's financial and operational performance, which resulted in a payout of 5% of Mr. Fallon's eligible on-target performance-based cash compensation available for fiscal 2012.
- ***No Exercise of Negative Discretion Pursuant to our Performance-Based Cash Incentive Plan***. For fiscal 2012, the Compensation Committee evaluated our performance against the financial and operational goals established pursuant to our performance-based cash incentive plan, the 2012 Bonus Plan, in order to determine the payout, if any, to award to our named executive officers. Although the 2012 Bonus Plan provided that the Compensation Committee could exercise its discretion to adjust a named executive officer's payout by 25%, the Compensation Committee chose not to exercise such discretion. Accordingly, the Compensation Committee awarded a 2012 Bonus Plan payout to our named executive officers based solely on the achievement of one operational goal, which resulted in a payout (as a percentage of base salary) of 5% for our CEO and CFO and 10% for our other named executive officers.
- ***Modification of Peer Group.*** The Compensation Committee modified the composition of the peer group used by the Compensation Committee for our executive compensation program for fiscal 2012 to more closely reflect our market capitalization and annual revenue level.

In addition, our executive compensation program for fiscal 2012 included the following aspects that we believe align the interests of our executives with those of our stockholders:

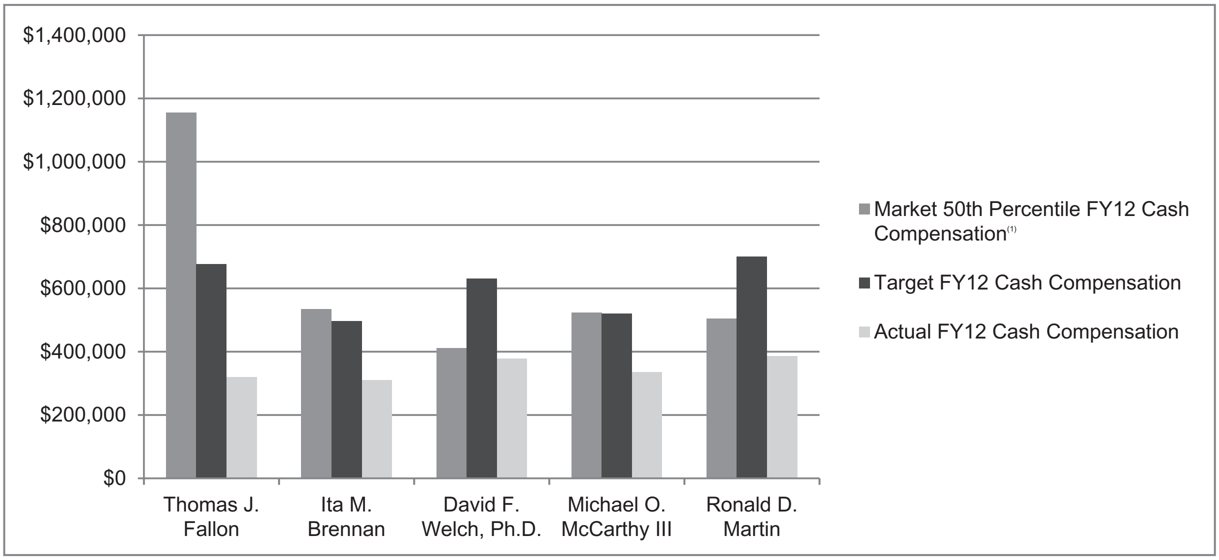
- ***Balance of Short- and Long-Term Incentives***. The executive compensation program provides an appropriate balance of annual and long-term incentives, which include a significant portion of performance that is tied to financial and operational metrics within the current year, together with equity awards that are both time based and tied to operational and/or financial targets.
- ***Targeting of Base Salary Below Median***. The Compensation Committee continued to target less than median base salary for the CEO and most of the named executive officers in order to weigh executive compensation more heavily toward equity compensation that better aligns the interests of our named executive officers with those of our stockholders.
- ***No Change to CEO Cash Compensation***. Even though our CEO's total cash compensation (base salary and incentive compensation bonus plan) has been significantly below the median, the Compensation Committee did not make any changes to our CEO's base salary or at-target incentive cash compensation for fiscal 2012. As a result of these targeted levels and the low level of payout pursuant to our incentive compensation bonus plan, both our CEO's targeted cash compensation and actual cash compensation were significantly below the median level of pay as compared to our peer group.
- ***"Double Trigger" Change of Control Agreements***. We provide for "double trigger" change of control benefits that are only triggered upon a qualifying termination of employment within twelve months following a change of control.
- ***Stock Ownership Guidelines***. In fiscal 2012, we increased the ownership requirements in our stock ownership guidelines. As a result, these guidelines provide that the CEO must own 4x base salary, the CFO must own 2x base salary, the other named executive officers must own 1x base salary, and the Board members must own 3x their annual director cash retainers.

- ***No Hedging of Infinera Stock***. Our insider trading policy prohibits all employees, including the named executive officers, from hedging their Infinera stock.
- ***No Employment Agreements or Tax Gross-Ups***. We do not have employment agreements with any of our named executive officers and we do not provide for any tax gross-ups for payments made in connection with our change of control or separation benefits.

Realizable Pay

We believe that our executive compensation philosophy for fiscal 2012, with the changes highlighted above, correctly aligns the interests of our executives with the interests of our stockholders. This is evidenced by the fact that, as a result of financial performance below our expectations and the decline in our stock price during fiscal 2012, our named executive officers' realized cash and equity compensation was significantly reduced as compared to target cash and equity compensation in fiscal 2012. In fact, our named executive officers received a 5-10% payout on their incentive cash compensation and considerably lower valuation of their equity compensation as compared to grant date fair values, resulting in significantly lower levels of actual compensation for fiscal 2012.

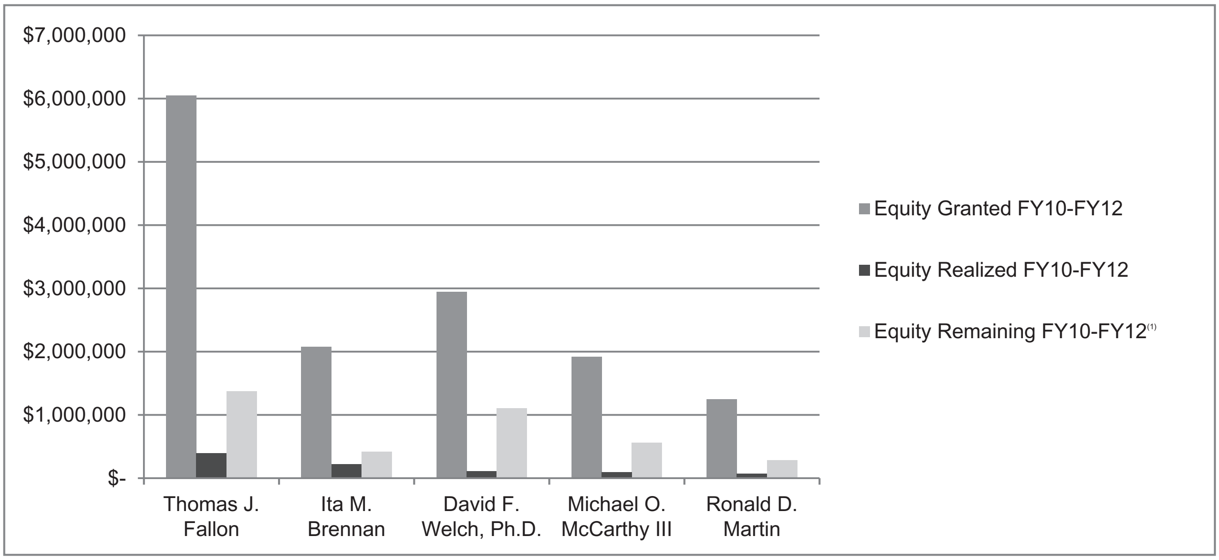
For fiscal 2012, the total actual versus target cash compensation for our named executive officers was as follows:



(1) Market is based on our 2012 peer group, as supplemented by survey data, as described further below.

PROXY

Pursuant to our executive compensation programs, our named executive officers received the following aggregate equity compensation in the last three fiscal years:



(1) Equity remaining reflects in-the-money stock options (vested and unvested), as well as unvested RSUs and PSUs as of the end of fiscal 2012.

The table below sets forth in further detail the equity compensation our named executive officers received in the last three fiscal years:

		Equity Granted			Equity Realized			Equity Remaining		
Name and Principal Position	**Year**	**Stock Awards**		**Option Awards**	**Stock Awards**		**Option Awards**	**Stock Awards**		**In-the-Money Value of Option Awards**
		RSUs ($)(1)	**PSUs ($)(1)**	**($)(1)(2)**	**RSUs ($)(3)**	**PSUs ($)(3)**	**($)(2)(3)**	**RSUs ($)(4)**	**PSUs ($)(4)**	**($)(2)**
Thomas J. Fallon	2012	1,233,800	1,393,000	—	—	—	—	899,000	1,015,000	—
President and CEO	2011	1,218,360	—	2,204,842	396,659	—	—	549,063	—	—
	2010	—	—	—	—	—	—	—	—	—
Ita M. Brennan	2012	465,280	206,960	—	—	—	—	371,200	150,800	—
CFO	2011	283,140	—	589,773	92,180	—	—	127,600	—	—
	2010	258,750	—	272,895	129,844	—	—	108,750	—	—
David F. Welch, Ph.D.	2012	1,595,200	262,680	—	—	—	—	1,202,050	191,400	—
Executive Vice President,	2011	351,780	—	734,947	114,529	—	—	158,531	—	—
Chief Strategy Officer	2010	—	—	—	—	—	—	—	—	—
Michael O. McCarthy III	2012	843,380	206,960	—	—	—	—	646,700	150,800	—
Chief Legal and	2011	283,140	—	589,773	92,180	—	—	127,600	—	—
Administrative Officer	2010	—	—	—	—	—	—	—	—	—
Ronald D. Martin	2012	407,120	183,080	—	—	—	—	324,800	133,400	—
former Senior Vice	2011	214,500	—	444,598	69,839	—	—	96,663	—	—
President, Worldwide Sales	2010	—	—	—	—	—	—	—	—	—

(1) The amounts in this column represent the aggregate grant date fair value of the listed equity awards, computed in accordance with ASC 718. See Note 2 of the notes to our consolidated financial statements contained in our 2012 Annual Report on Form 10-K filed on March 5, 2013 for a discussion of all assumptions made by us in determining the ASC 718 values of equity awards.

(2) Excludes the stock options granted in connection with Infinera's fiscal 2010 Option Exchange Program. The new stock options were exchanged on a fair-value basis with the value of the new stock option equal to the value of the cancelled stock options.

(3) These amounts represent the actual value realized upon exercise of stock options and release of RSUs and PSUs. For comparison purposes, the value realized is included in the line item for the fiscal year of the date of grant regardless of the fiscal year in which the exercise or release occurred.

(4) These amounts represent the value of the remaining RSUs and target PSUs calculated using Infinera's stock price as of the last day of fiscal 2012, which was $5.80.

Advisory Vote on Executive Compensation—"Say-on-Pay Vote"

Last year at our 2012 Annual Meeting of Stockholders, we provided stockholders with the opportunity to cast an annual advisory vote on our fiscal 2011 executive compensation (the "Say-on-Pay Vote"). Approximately 41% of the stockholder votes cast on this proposal were voted in favor of our executive compensation proposal, as disclosed in our 2012 Proxy Statement. We were disappointed with this result, recognizing the need to better understand our investors' opinions and perspectives on our executive compensation programs and, as a result, we initiated a review to gain further feedback from key stakeholders. In reaction to the Say-on-Pay Vote, and the feedback received from stakeholders, the Compensation Committee considered the following input:

- The results of our Say-on-Pay Vote;
- Changes in the design of our executive compensation program in fiscal 2012 versus fiscal 2011;
- Feedback from individual and institutional stockholders;
- Feedback from proxy advisory services and corporate governance research firms;
- Feedback from compensation consultants; and
- Management recommendations based on Infinera's strategic direction and market practices.

Stakeholder Outreach and Resulting Changes to Proxy Statement

In connection with our failed Say-on-Pay Vote, our management team engaged in substantial discussions with individual and institutional investors to gather feedback regarding our executive compensation programs. Such discussions included topics such as CEO compensation, executive compensation program disclosures, equity and long-term incentive compensation programs, the composition of our peer group, change of control and severance arrangements, policies related to clawbacks, and our corporate governance practices. Some of the particular recommendations of our stockholders included the following:

- Adding a summary of the annual changes to executive compensation in the Compensation Discussion and Analysis;
- Providing a majority of the equity for our CEO in the form of performance-based compensation;
- Disclosing whether we restrict hedging of Infinera's stock;
- Increasing the stock ownership requirements for members of our Board;
- Providing additional information on realized pay; and
- Including the specific performance metrics for any performance-based equity grants in the Compensation Discussion and Analysis.

As a result of the review of our executive compensation programs, we identified that stockholders and other key stakeholders wanted to see an enhanced link of pay and performance embedded in the design of our executive compensation programs, as well as enhanced disclosure related thereto. In addition, the Compensation Committee will continue to explore ways to enhance and improve our executive compensation programs. However, it is important to note that the impact of some of these changes will not be reflected in the named executive officer compensation reported in this Proxy Statement because many of the decisions related to our fiscal 2012 executive compensation programs reported in this Proxy Statement were made before our Say-on-Pay Vote. Some of the specific changes that you will see in this Proxy Statement include the following:

- ***Enhanced Disclosures***. We are committed to continuing to enhance the disclosure related to our executive compensation programs in this Proxy Statement. Accordingly, we have included a more robust executive summary at the beginning of this Compensation Discussion and Analysis and highlighted the significant changes in executive compensation for fiscal 2012. As requested, we also are disclosing more detailed information about the performance metrics underlying our performance-based PSUs and other performance-based awards.

- ***Realized Pay Tables***. To continue our commitment to enhancing the disclosure of our executive compensation programs, we have included in this Proxy Statement supplemental tables illustrating the impact of Infinera's below-target financial performance in fiscal 2012, which had a significant impact on realized versus target cash incentive and equity compensation of our named executive officers. The realized pay tables are located above.

- ***Peer Group Composition.*** We are committed to the ongoing improvement of our executive compensation programs through the continual review and update of our peer group. The Compensation Committee adopted a revised peer group for both fiscal 2012 and fiscal 2013 to more closely link our executive pay comparisons to companies that more closely reflect our market capitalization and annual revenue levels.

- ***Commitment to Corporate Governance Practices***. We strive to continually improve and enhance our corporate governance practices. As a result, we have increased our stock ownership requirements for our Board members and will increase disclosure of our insider trading policy, including disclosure related to our anti-hedging policies.

- ***Clawback Policy***. In early fiscal 2013, the Compensation Committee adopted a clawback policy for our Section 16 Officers and directors pursuant to which the Compensation Committee has a one-year look-back provision and provides the authority to recoup up to 100% of any incentive compensation that resulted from a material misstatement of financial results. The Compensation Committee recognizes that the SEC has not yet developed definitive clawback policy recommendations, but believes it is important to establish this policy in advance of definitive requirements by the SEC.

The Compensation Committee is committed to continuing to explore ways to enhance and improve our executive compensation programs. Accordingly, the Compensation Committee will consider input from stockholders when making future executive compensation program decisions, as well as the outcome of our annual say-on-pay vote.

Compensation Objectives and Philosophy

Objectives. Our executive compensation program is designed to:

- Attract and retain our executives;
- Motivate our executives to pursue our corporate objectives; and
- Encourage the creation of long-term value for our stockholders.

Philosophy. Consistent with these compensation objectives, we have a pay-for-performance philosophy that forms the foundation for all decisions regarding the design of our executive compensation programs. In designing these programs, we also are guided by secondary principles which include:

- **Maintaining a clear link between the achievement of business goals and compensation payout.** Executive compensation programs can be an effective means of driving the behavior needed to accomplish our objectives, but only if each executive clearly understands how achievement of predetermined business goals influences his or her compensation.

- **Selecting the right performance metrics.** Equally important is the selection of performance metrics. Such metrics should be measurable and linked to business success and increased stockholder value.

- **Sharing information and encouraging feedback.** We also believe that focused and clear program design supports transparency for our stockholders. It is important for stockholders to understand the basis for our named executive officers' compensation, as this provides stockholders insight into our goals and direction and the manner in which Infinera's resources are being used to increase stockholder value.

Compensation Elements. With these objectives, philosophy and principles in mind, we created an executive compensation program that has a mix of short- and long-term components, cash and equity elements, and fixed and contingent payments. We provide such elements of compensation because we believe each is necessary to attract, retain and motivate our named executive officers, on whom our success largely depends. The main elements of compensation for our executive officers include base salary, annual performance-based incentive cash bonuses, and long-term incentives in the form of equity awards, including a mix of time-based RSUs and performance-based PSUs for fiscal 2012.

The following chart summarizes the principal elements of executive compensation that Infinera utilizes and the reasons the Compensation Committee emphasizes each form of compensation.

Compensation Component	Reason
Base Salary	In an effort to align executive officer's compensation with the interests of our stockholders, we have historically compensated our named executive officers with lower levels of base cash compensation. We believe this represents the baseline that must be paid in order to attract and retain these executives. Individual compensation may vary from the reference point based on the qualitative factors described above.
Total Cash Compensation	In an effort to align executive officer's compensation with the interests of our stockholders, we have historically compensated our named executive officers with lower levels of total cash compensation. We chose to target total cash compensation, which includes base salary and performance-based incentive cash awards, at slightly below median market levels because it allows us to offer compensation opportunities to our executives that more significantly link pay to the achievement of annual individual and company performance goals. Actual payments of performance-based incentive cash awards will vary based on our performance as compared to pre-determined financial and operational goals. The target amount of the performance-based incentive cash award may change to align the mix of compensation (targeted amount of "at-risk" pay) as deemed appropriate by the Compensation Committee based on the qualitative factors described above.
Long-Term Equity Incentive Compensation	We opted to emphasize compensation that relies heavily on equity awards because it allows us to offer attractive long-term compensation opportunities while linking pay to the achievement of both personal and company performance goals, while maintaining modest levels of cash compensation. In addition, we believe this provides an attractive opportunity to earn above-market, long-term compensation in a manner that is highly aligned with the interests of our stockholders. Actual compensation will vary based upon stock price performance and achievement relative to the equity incentive plan targets. The target amount of the long-term incentives may change to align the mix of compensation (targeted amount of "at-risk" pay) based on the qualitative factors described above. A portion of the equity awards to our named executive officers is performance-based and will only be paid if Infinera achieves certain pre-determined milestones. We believe that allocating a portion of the total equity compensation to performance-based equity more closely aligns the named executive officers with the interests of our stockholders.

Compensation Component	Reason
Health and Welfare Benefits	Programs for the named executive officers are substantially the same as for all other eligible employees. Benefits under the plans are set to what is reasonable with respect to the intent of the program and what is competitive with comparator group practices.
Separation and Change of Control Benefits	Program benefits provide minimum security to executives and are set to what is reasonable with respect to the intent of the program and what is competitive with comparator group practices. Benefits for separation from service take into account the role of the executive, expected length of time until subsequent employment is secured, expense management, and the ability to attract qualified candidates into senior roles. Change of control benefits are structured to support decisions that are in the best interests of stockholders, neutralizing personal concerns and managing related expenses.

PROXY

Fiscal 2012 Executive Compensation

In setting executive compensation for fiscal 2012, the Compensation Committee sought to balance the need to recognize individual performance and execution of the DTN-X product with Infinera's focus on revenue growth and achieving profitability on an adjusted (non-GAAP) basis. In particular, the Compensation Committee sought to mitigate any risk that its compensation decision-making and design, including any resulting compensation awards or payouts, could adversely affect our results of operations. In furtherance of both of these goals, and in seeking to ensure a close alignment of the short- and long-term interests of our named executive officers with those of our stockholders, the Compensation Committee took the following key actions relating to executive compensation for fiscal 2012:

- Reassessed and modified the composition of the peer group used by the Compensation Committee for executive compensation comparison purposes to more closely reflect our market capitalization and annual revenue level;
- Continued to target less than median base cash compensation for most of our named executive officers in recognition that fiscal 2012 would be a transition year while Infinera continued to develop its next-generation product;
- Increased the use of PSUs for equity grants to our CEO, weighting the split of such awards more heavily toward the performance-based PSUs with vesting criteria tied to the attainment of long-term strategic objectives related to Infinera's DTN-X product;
- Maintained the CEO's base cash compensation at the same level as fiscal 2011, even though it was significantly below the median as compared to our peer group, while continuing to provide for a majority of the CEO's equity compensation in the form of PSUs, which resulted in a majority of the CEO's overall compensation being performance based;
- Structured the performance-based incentive cash bonus plan to ensure that no award would be earned by the executive officers (including the named executive officers) if Infinera failed to meet specific financial and operational goals for fiscal 2012; and
- Transitioned the base for the total target cash compensation of our Senior Vice President, Worldwide Sales, from sales incentive-based compensation to company-wide, performance-based compensation. In particular, we increased the allocation for the former Senior Vice President, Worldwide Sales from 75% company-wide performance-based to 100% in fiscal 2012. We believe that this creates better uniformity among the named executive officers with regard to cash incentive arrangements.

Governance of Executive Compensation

The Compensation Committee's approach to our fiscal 2012 compensation program reflects our core executive compensation governance principles and practices, including the following:

- Our executive compensation programs are reviewed and established annually by the Compensation Committee, which consists solely of independent directors;

- The Compensation Committee relies upon input from an independent compensation consultant that is retained directly by the Compensation Committee and does not perform additional consulting or other services for Infinera or its management;
- Elements of our performance-based equity and cash incentive compensation are aligned with the financial and operational objectives of Infinera, as established in our Board-approved annual operating plan;
- Our change of control agreements are "double trigger" arrangements that require a termination (or a constructive termination) of employment following a change in control of Infinera before severance benefits are triggered;
- Our executive officers and Board members are subject to stock ownership requirements;
- Our executive officers and Board members are prohibited from hedging their Infinera stock under our insider trading policy;
- The Compensation Committee annually conducts a compensation risk assessment to determine whether our compensation arrangements, or components thereof, create risks that are reasonably likely to have a material adverse effect on Infinera (as discussed in "Risk Assessment of Compensation Practices"); and
- We do not provide excessive perquisites, such as tax gross-ups or executive retirement plans to our named executive officers.

Compensation-Setting Process, Participants and Comparative Framework

Participants in Compensation-Setting Process

Role of Compensation Committee. The Compensation Committee is responsible for administering Infinera's executive officer compensation plans, policies and programs. The Compensation Committee has the responsibility of determining the salary, bonus, equity compensation, severance arrangements, change of control protections and any other compensatory arrangements of our CEO based on his performance and other relevant criteria, as well as annually reviewing and setting such elements of compensation for our other named executive officers based on consultation with our CEO. In addition, the Compensation Committee also reviews, approves and administers our other material employee benefit plans (for example, our 401(k) plan), which are generally available to our employees, including the named executive officers.

Role of Independent Compensation Consultant. The Compensation Committee has the authority to engage its own advisors to assist it in carrying out its responsibilities. During fiscal 2012, the Compensation Committee engaged the services of Compensia to advise the Compensation Committee with respect to its executive compensation philosophy, executive compensation program design, composition of our peer group, and the amount of cash and equity compensation awarded to the named executive officers. Compensia also provided the Compensation Committee with analysis and data regarding our named executive officer compensation relative to external market benchmarks, compensation trends, compensation strategies, peer group and general market data, and incentive compensation plan design, as well as recommendations for structuring our compensation programs. The Compensation Committee selected Compensia and they reported directly to the Compensation Committee. Compensia interacted with management at the direction of the Compensation Committee, but did not perform work for Infinera other than pursuant to their engagement by the Compensation Committee. Compensia's fees were paid by Infinera.

Role of Executive Officers. The CEO, Chief Legal and Administrative Officer and Vice President of Human Resources typically attend all meetings of the Compensation Committee. In connection with his close working relationship with each of the other named executive officers, our CEO is asked by the Compensation Committee to provide his assessment of the performance of each of the other named executive officers. Our CEO is assisted by our Vice President of Human Resources in making these assessments. Our CEO also takes an active role in the discussions of the Compensation Committee at which compensation of the other named executive officers is discussed; however, all decisions regarding the CEO's compensation are made by the Compensation Committee or by the Board in an executive session that excludes the CEO. The Compensation Committee considers, but is in no way bound by, the recommendations made by the CEO in determining compensation for the other named executive officers. None of the named executive officers makes any recommendations regarding his or her own compensation and none of the executive officers are present at meetings in which their compensation is determined. Our compensation consultant and our Vice President of Human Resources provide recommendations for the Compensation Committee to consider in relation to our CEO's compensation. As part of this process, the Compensation Committee considers input from the Board and feedback from the CEO. Similarly, the Compensation Committee considers, but is in no way bound by, the recommendations of its compensation consultant.

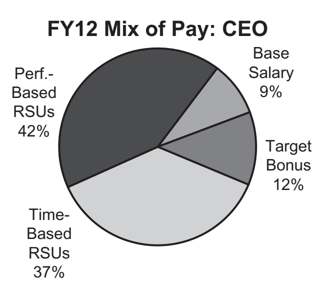
Comparative Framework, Mix and Positioning of Compensation

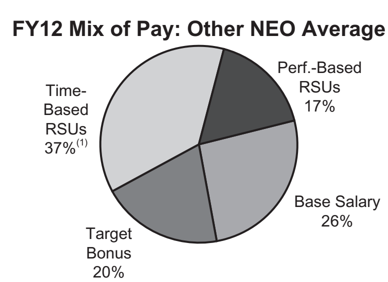
Determining the Proper Mix of Pay Elements. For fiscal 2012, the principal components of our executive compensation programs included the following:

- Base salary;
- Annual performance-based incentive cash bonuses; and
- Long-term incentives in the form of equity awards, including a mix of performance-based PSUs and time-based RSUs (together with the cash compensation, the "total direct compensation");
- Health and welfare benefits; and
- Separation and change of control benefits.

In determining how we allocate a named executive officer's total direct compensation package among the various components, we emphasize compensation elements that reward performance against measures that we believe correlate closely with increases in stockholder value, which underscores our pay-for-performance philosophy. Accordingly, a significant portion of our named executive officer compensation is at-risk, including the annual performance-based incentive cash bonuses and performance-based equity awards. We generally aimed total cash compensation (base salary plus performance-based incentive cash bonuses) at slightly below the median and equity compensation at above median for our named executive officers for the reasons stated above, and, as a result, each of the named executive officers has a higher percentage of at-risk compensation (and thus greater upside potential and downside risk) relative to our other employees. Equity awards, which for fiscal 2012 consisted of RSUs and PSUs, represent a large component of our named executive officers' total compensation in order to encourage sustained, long-term performance and ensure alignment of the interests of our named executive officers with the interests of our stockholders. We believe this mix of pay elements is appropriate because our named executive officers have the greatest influence on Infinera's performance. Accordingly, approximately 54% of our CEO's compensation is considered "at-risk."

The following shows the mix of pay elements as a percentage of overall compensation for fiscal 2012 for our named executive officers.





(1) Excludes one-time retention RSU awards granted to Mr. McCarthy and Dr. Welch in fiscal 2012.

Internal Equity Considerations. The Compensation Committee seeks to promote teamwork among, and high morale within, our executive team. While the Compensation Committee does not use any quantitative formula or multiple for comparing or establishing compensation among the named executive officers, it is mindful of internal pay equity considerations and assesses the relationship of the compensation of each named executive officer to other members of the executive team. Each fiscal year, the Compensation Committee also considers, on a relative basis, the aggregate portion of equity awards, in terms of economic value and allocation of shares, made to the named executive officers, in comparison to other eligible members of the executive team and senior employees.

Consideration of Qualitative Factors. In any given year, and for any particular named executive officer, the Compensation Committee may consider a range of subjective or qualitative factors when making compensation decisions, including the following:

- The role the executive plays and the importance of such individual to Infinera's business strategy and objectives;
- Differences in each executive's tenure, skills and experience;
- The responsibilities and particular nature of the functions performed or managed by the executive;
- Our CEO's recommendations and his assessment of the executive's performance;
- The value of prior unvested equity grants for each named executive officer; and
- Competitive labor market pressures and the likely cost and difficulty that would be encountered in recruiting a replacement and the risk that such individual would leave Infinera if not appropriately compensated and motivated.

The Compensation Committee's consideration of any particular factor may range from inapplicable to significant, depending upon the individual and period under consideration. The Compensation Committee does not assign relative weights or rankings to such factors. Moreover, the Compensation Committee does not target a specified percentile as compared to our peer group in determining each named executive officer's total compensation, but instead targets certain compensation elements at a specified percentile (for example, with respect to equity compensation) or below the median generally (for example, with respect to base salary). The Compensation Committee relies upon its members' knowledge and judgment in assessing the various qualitative and quantitative inputs it receives as to each individual and makes compensation decisions accordingly.

With respect to determining fiscal 2012 executive compensation, in addition to any specific factors or assessment of peer group and market data (as described below) in determining each element of compensation for the named executive officers, the Compensation Committee broadly considered the following qualitative factors in making its compensation decisions for each named executive officer:

- Mr. Fallon has served as our CEO since January 2010 and as a member of our Board since July 2009. The Compensation Committee believed that Mr. Fallon has demonstrated considerable leadership and strategic direction in managing Infinera and our executive team during his time as CEO. In addition, the Compensation Committee believes that Mr. Fallon has provided Infinera with significant institutional and industry knowledge, as well as key oversight of corporate strategy and management development.
- Ms. Brennan assumed the role of CFO in June 2010. The Compensation Committee believed that Ms. Brennan demonstrated strong performance during her tenure as CFO. In addition to her significant responsibilities in interacting with the financial community, our Board and our Audit Committee, the Compensation Committee determined that Ms. Brennan effectively supervised and managed a number of functions, including the financial, accounting, and internal audit organizations.
- Dr. Welch is a co-founder of Infinera, has served as our Executive Vice President, Chief Strategy Officer, since January 2007, and has served as a member of our Board since October 2010. In addition, Dr. Welch assumed the position of Chief Technology Officer in January 2012. The Compensation Committee believed that Dr. Welch added significant value in supervising and managing our product marketing, corporate marketing, business development, network strategy, product line management, product architecture and network systems analysis organizations. In particular, his experience, knowledge and deep technical understanding of the optical network industry enabled Dr. Welch, among other things, to successfully align our product development initiatives with our marketing and selling strategies.

- Mr. McCarthy joined Infinera in May 2003 as our General Counsel and since March 2010 has served as our Chief Legal and Administrative Officer. The Compensation Committee determined that Mr. McCarthy had continued to utilize his business acumen with his significant experience as Infinera's Chief Legal Officer to continue his strong interaction with the Board and the executive management team, as well as provided effective leadership of Infinera's legal organization. Mr. McCarthy has successfully integrated the human resources, information technology and facilities teams into his organization and continued to work closely with our CEO on strategic and cross-functional priorities for Infinera. The Compensation Committee believed that he demonstrated a strong performance in his role and in sponsoring Infinera's enterprise risk management project.
- Mr. Martin continued his effective performance in leading Infinera's global sales organization since he joined Infinera as our Senior Vice President, Worldwide Sales, in August 2009. Mr. Martin has over 30 years' experience in the telecommunications industry and long-term relationships with many Tier 1 telecommunications service providers. The Compensation Committee believed that Mr. Martin demonstrated his leadership during a period of intense competition within our industry sector and focused his team on driving a strong flow of sales orders during this transition period.

Determination of Peer Group and Considerations of Peer Group and Market Data. In making compensation decisions for our named executive officers, the Compensation Committee compares a number of elements of total compensation against a peer group of companies for analyzing, benchmarking and setting compensation. This list of peer group companies is periodically reviewed and updated by the Compensation Committee to take into account changes in both Infinera's business and the businesses of the peer group companies. The Compensation Committee reviewed and updated our peer group in late fiscal 2011 for evaluating fiscal 2012 compensation. In developing the peer group, the Compensation Committee focused on those companies that had annual revenues between $250 million and $1 billion in the last four quarters and a current market capitalization between $400 million and $2 billion. By selecting companies that fall within a narrower range with respect to market capitalization and revenue as compared to Infinera, the Compensation Committee believed that the market data allowed for comparisons that provided better guidance with respect to setting our executive compensation. The Compensation Committee then further limited this data to focus on companies in the systems level communications equipment market, with a total number of employees between 650 and 2,500, and generally positive revenue growth. The Compensation Committee selected peer group companies that it believes reflect those companies that it considers to be similar to, and competitive with, Infinera in terms of size, product market and revenue opportunity in which Infinera may compete for executive talent. The data on the compensation practices of the peer group was gathered by Compensia's search of publicly available information. At the time of the Compensation Committee's assessment of our peer group, Infinera compared to the peer group identified below as follows:

	Revenue(1)	Market Capitalization	Headcount
Peer Group Average	$630.8M	$944.6M	2,043
Infinera	$436.0M	$888.4M	1,072
Infinera Percentile of Peer Group	35%	53%	30%

(1) Includes revenue over the four fiscal quarters preceding the assessment.

As part of the Compensation Committee's review, ten companies (ADC Telecommunications, Inc., Aruba Networks, Inc., Brocade Communications Systems, Inc., F5 Networks, Inc., JDS Uniphase Corporation, Juniper Networks, Inc., Polycom, Inc., Riverbed Technology, Inc., Sonus Networks, Inc. and Tekelec) were removed from the peer group, including ADC Telecommunications, Inc., which was acquired in 2010 as they no longer fit the fiscal 2012 peer group criteria. Seven companies (ADTRAN, Inc., Calix, Inc., Coherent, Inc., Emulex Corporation, IPG Photonics Corporation, Ixia, Neophotonics Corporation, Openwave Systems Inc. and Opnext, Inc.) were added to the fiscal 2012 peer group for the reasons discussed above.

For fiscal 2012, the peer group consisted of the following companies:

ADTRAN, Inc.
Arris Group, Inc.
Blue Coat Systems, Inc.
Calix, Inc.
Ciena Corporation
Coherent, Inc.
Emulex Corporation
Finisar Corporation
Harmonic Inc.
IPG Photonics Corporation
Ixia
Neophotonics Corporation
Netgear, Inc.
Oclaro, Inc.
Openwave Systems Inc.
Opnext, Inc.
ViaSat, Inc.

The Compensation Committee looked to information about the peer group as one of a number of considerations in establishing named executive officer compensation levels. In addition to the peer group data, the Compensation Committee also considered Radford's Global Technology Survey for companies with revenue between $200 million and $1 billion. In this discussion, where we refer to "market" levels of pay and the "market group," we are referring to the combined peer group and survey data described above. In considering peer group compensation data, the Compensation Committee recognizes that executives at different companies can play significantly different roles, with different responsibilities and scopes of work, even though they may hold similar titles or positions. Moreover, from the available information about peer group compensation, it is not always possible to determine the respective qualitative factors that may influence compensation, such as scope of each named executive officer's responsibilities, their performance during the period under consideration or their perceived importance to their company's business, strategy and objectives. Accordingly, the Compensation Committee looked to information about the peer group as one of a number of considerations in establishing named executive officer compensation levels.

Principal Elements of Executive Compensation

2012 Cash Compensation

2012 Base Salaries

For fiscal 2012, the Compensation Committee reviewed each named executive officer's experience, skills, knowledge and responsibilities and analyzed such base salaries in comparison to the market group. In determining our compensation positioning for each of our named executive officers, the Compensation Committee used available information from the market group to position base salaries below median market levels. The Compensation Committee also considered internal equity of named executive officer compensation between their various roles, as well as potential retention concerns based on the competitiveness of our current compensation levels.

The Compensation Committee determined it was best to increase Dr. Welch's and Mr. McCarthy's base salaries. The Compensation Committee concluded Dr. Welch's unique position as a founder, executive vice president and Chief Strategy Officer of Infinera, along with the significant leadership role he assumes at Infinera, warranted such increase. Mr. McCarthy's continued leadership over our legal, human resources, information technology and facilities teams, as well as his continued strong interaction with the Board, led the Compensation Committee to conclude an increase in Mr. McCarthy's was appropriate. The Compensation Committee determined an adjustment was not necessary to the base salaries for Messrs. Fallon and Martin and Ms. Brennan, as their base salaries were already set at appropriate levels as compared to our market group.

For fiscal 2012, the base salary as compared to the market group was set at less than the 25^{th} percentile for Mr. Fallon, the 25^{th} percentile for Ms. Brennan, and the 26^{th} percentile for Mr. McCarthy. As described above, Dr. Welch's unique role with Infinera and the significant scope of his leadership resulted in an increase in Dr. Welch's base salary for fiscal 2012, which brought him to slightly above median as compared to the market group at the 58^{th} percentile. Due to Mr. Martin's significant sales experience and lower equity compensation, Mr. Martin's base salary was set at greater than the 75^{th} percentile as compared to the market group.

The following table shows the base salary for each of our named executive officers for fiscal 2011 and fiscal 2012.

Name and Principal Position	Fiscal 2011 Base Salary	Fiscal 2012 Base Salary
Thomas J. Fallon, President and CEO	$300,000	$300,000
Ita M. Brennan, CFO	$300,000	$300,000
David F. Welch, Ph.D., Executive Vice President, Chief Strategy Officer	$300,000	$350,000
Michael O. McCarthy III, Chief Legal and Administrative Officer	$300,000	$315,000
Ronald D. Martin, former Senior Vice President, Worldwide Sales	$350,000	$350,000

2012 Performance-Based Incentive Cash Compensation Plan

Under the performance-based incentive cash compensation plan for fiscal 2012 (the "2012 Bonus Plan"), the Compensation Committee has the discretion to, among other things, determine eligibility for participation, establish bonus pool funding criteria, determine target awards, and establish individual performance criteria. On January 30, 2012, the Compensation Committee approved the bonus pool funding and award payout criteria for all employees of Infinera, including each of the named executive officers for fiscal 2012. The funding of the bonus pool for named executive officers under the 2012 Bonus Plan was based 80% on achievement by Infinera against financial performance metrics, including revenue and operating income goals, for fiscal 2012, and 20% on achievement by Infinera against certain operational goals for fiscal 2012.

To drive increased focus on results and align our named executive officers' interests with those of our stockholders, the Compensation Committee determined that revenue and operating income performance metrics were the appropriate financial goals to utilize under the 2012 Bonus Plan. The Compensation Committee believed that revenue growth is an essential component of the long-term success and viability of Infinera. In addition, the Compensation Committee determined that a focus on operating income could serve to make generating a return for investors a priority, while allowing Infinera to re-invest in research and development and people for future success. In addition, the Compensation Committee determined that focusing on specific operational goals was key to attaining success in fiscal 2012 and providing for long-term value for our stockholders.

Pursuant to the 2012 Bonus Plan, each named executive officer was eligible to receive a midyear bonus payout based on the achievement of the financial goals for the first two quarters of fiscal 2012 and the projected achievement of the financial goals for the balance of 2012. The midyear bonus payout, if any, would be determined as the product of: (a) the named executive officer's target bonus expressed as a percentage of base salary, (b) the named executive officer's base salary as of the last day of the second quarter of fiscal 2012, and (c) the percentage of achievement of the financial goals against targets established by the Compensation Committee. The midyear bonus payout for each named executive officer will be paid only if Infinera is on track to achieve the minimum thresholds established for the financial goals. The midyear bonus payout for each named officer is capped at 100% of such named executive officer's target bonus (as prorated for the first two fiscal quarters of fiscal 2012).

In addition, pursuant to the 2012 Bonus Plan, each named executive officer was eligible for a final bonus payout based on the achievement of the financial goals and operational goals for fiscal 2012. The final bonus payout, if any, was determined as (i) the product of: (a) the named executive officer's target bonus expressed as a percentage of base salary, (b) the named executive officer's base salary as of the last day of fiscal 2012, (c) the named executive officer's individual performance rating, and (d) the percentage of achievement of the financial goals and operational goals against targets established by the Compensation Committee, minus (ii) any midyear bonus payout. The individual performance rating was set at 100%; provided, however, that the Compensation Committee, in its sole discretion and upon solicitation of the recommendation of the CEO, may increase or decrease the individual performance rating for any named executive officer by up to 25%. The final bonus payout for each named executive officer is capped at 200% of such named executive officer's target bonus less any midyear bonus paid to such named executive officer.

The following table shows the performance metrics and weighting as established by the Compensation Committee for the 2012 Bonus Plan, as well as the actual performance for each of the performance metrics:

Performance Metrics	Weighting	Target	Actual Performance
Financial Metrics (80%)			
Revenue	50%	$500 million	$438.4 million
Operating Loss(1)	50%	$(23) million	$(41.2) million
Operational Metrics for CEO and CFO (20%)			
Improve Credibility with Investment Community(2)	50%	—	Not Achieved
Close Tier 1 Account(3)	25%	—	Achieved
Cash, Cash Equivalents, Restricted Cash and Investments Balance at Fiscal Year-End to be at Least $195 Million	25%	$195 million	$187.6 million
Operational Metrics for Other NEOs (20%)			
Close Tier 1 Account(3)	50%	—	Achieved
Cash, Cash Equivalents, Restricted Cash and Investments Balance at Fiscal Year-End to be at Least $195 Million	50%	$195 million	$187.6 million

(1) Revenue and operating loss are non-GAAP and exclude non-cash stock-based compensation expenses. We believe these adjustments are appropriate to enhance an overall understanding of our underlying financial performance as well as our prospects for the future and are considered by management for the purpose of making operational decisions.

(2) This includes (i) meeting projections for the fiscal year and every fiscal quarter, (ii) improving performance as the fiscal year proceeds and (iii) conducting a survey of institutional investors and buy-side investors showing demonstrable improvement, consistent with fully accurate GAAP reporting.

(3) This includes the first purchase order accepted with minimum of $2.5 million and annual revenue forecast of at least $25 million with one of Infinera's Tier 1 accounts.

At the time that the performance goals for the 2012 Bonus Plan were set, the Compensation Committee believed that the targets were set to be challenging but attainable if our financial and operational performance for fiscal 2012 was strong.

2012 Bonus Plan Targets

For fiscal 2012, the Compensation Committee continued to aim for slightly below, but closer to, median market levels as compared to the market group for the 2012 Bonus Plan targets for each of our named executive officers. As part of its review, the Compensation Committee noted that fiscal 2012 was a transition year for Infinera and concluded that performance-based cash compensation should continue to be "at-risk" to align with our pay-for-performance compensation philosophy. Ultimately, the Compensation Committee determined that no changes were necessary to the bonus targets for each of our named executive officers. However, to better align Mr. Martin with our other named executive officers, the Compensation Committee determined that Mr. Martin's target performance-based cash compensation should no longer be split between the Bonus Plan and the Sales Incentive Compensation Plan, but rather be solely based on the 2012 Bonus Plan. The Compensation Committee believed that this provided Mr. Martin with an opportunity to balance his focus on sales with the strategic goals of Infinera, which is consistent with our overall compensation philosophy for our named executive officers. Mr. Martin's total cash incentive compensation remained at 100% of his base salary.

For fiscal 2012, the total target cash compensation as compared to the market group was set at less than the 25th percentile for Mr. Fallon, the 34th percentile for Ms. Brennan, the 65th percentile for Dr. Welch, the 48th percentile for Mr. McCarthy and greater than the 75th percentile for Mr. Martin. As discussed above, Dr. Welch's unique role with Infinera and Mr. Martin's significant sales experience were the driving factors elevating each of their total target cash compensation levels at above the median as compared to the market group. Total target cash compensation includes base salary and annual performance-based incentive cash awards in the form of bonuses.

The following table shows the target bonus as a percentage of base salary, the target bonus amount in dollars and the actual bonus as a percentage of the target bonus for each of our named executive officers for fiscal 2011 and 2012:

Name and Principal Position	Fiscal 2011 Target Bonus	Fiscal 2011 Target Amount	Fiscal 2011 Actual Bonus	Fiscal 2012 Target Bonus	Fiscal 2012 Target Amount	Fiscal 2012 Actual Bonus
Thomas J. Fallon, President and CEO	125%	$375,000	0%	125%	$375,000	5%
Ita M. Brennan, CFO	65%	$195,000	0%	65%	$195,000	5%
David F. Welch, Ph.D., Executive Vice President, Chief Strategy Officer	80%	$240,000	0%	80%	$280,000	10%
Michael O. McCarthy III, Chief Legal and Administrative Officer	65%	$195,000	0%	65%	$204,750	10%
Ronald D. Martin, former Senior Vice President, Worldwide Sales	100%(1)	$350,000	0%(1)	100%	$350,000	10%

(1) Mr. Martin's total target cash incentive compensation was targeted at 100% of his base salary and split between the 2011 Bonus Plan (75%) and the 2011 Sales Incentive Compensation Plan (25%). Mr. Martin received a payment under the 2011 Sales Incentive Compensation Plan in the amount of $75,010 for fiscal 2011.

Following completion of the first half of fiscal 2012, the Compensation Committee determined that no midyear bonus payout would be made because the financial goals for the first two quarters of fiscal 2012 were not achieved and the projected achievement of the financial goals for the balance of 2012 was below the required levels. Following the completion of 2012, upon review of the full fiscal 2012 actual financial and operational performance as compared to the targets, the Compensation Committee approved a payout to our named executive officers based solely on the achievement of certain operational goals pursuant to the 2012 Bonus Plan. Although the Compensation Committee could have exercised its discretion to adjust the payouts for our named executive officers, the Compensation Committee did not approve a payout related to the financial goals because Infinera did not achieve the minimum threshold amounts previously established for the financial goals under the 2012 Bonus Plan.

The following table sets forth the total actual cash compensation earned in fiscal 2012 by each of our named executive officers.

Name and Principal Position	2012 Base Salary	2012 Bonus Plan Payout	2012 Total Actual Cash Compensation
Thomas J. Fallon, President and CEO	$300,000	$18,750	$318,750
Ita M. Brennan, CFO	$300,000	$ 9,750	$309,750
David F. Welch, Ph.D., Executive Vice President, Chief Strategy Officer	$350,000	$28,000	$378,000
Michael O. McCarthy III, Chief Legal and Administrative Officer	$315,000	$20,475	$335,475
Ronald D. Martin, former Senior Vice President, Worldwide Sales	$350,000	$35,000	$385,000

2012 Long-Term Equity-Based Incentive Compensation

Infinera currently maintains the 2007 Plan, under which equity awards are granted to eligible employees, including our named executive officers. The Compensation Committee periodically reviews our equity award granting practices and may make adjustments and policy changes as it deems appropriate. In addition, the Compensation Committee has moved to judiciously manage our annual aggregate equity utilization during the last few years, including fiscal 2012. This has been accomplished by limiting the employees eligible for equity awards, by utilizing a mix of stock options, RSUs and PSUs, and by reducing the size of the annual grants made to employees, including the named executive officers. The Compensation Committee has also determined it is appropriate to grant performance-based equity awards to senior employees, including our named executive officers. The Compensation Committee believes that such performance-based equity awards foster a more direct pay-for-performance culture whereby longer-term incentives are created to more closely align the interests of our named executive officers with those of our stockholders.

For fiscal 2012, the Compensation Committee granted a mix of RSUs and PSUs to each of our named executive officers. In determining the appropriate mix of such equity awards, the Compensation Committee considered how each equity vehicle supports Infinera's long-term compensation strategy as follows:

Type of Award	Description	Why It Is Used
Restricted Stock Units	• RSUs provide the opportunity to receive a set number of shares subject to the participant's continued employment for a specified period. • RSUs typically have a three- or four-year vesting period to encourage better alignment of our named executive officers' interests with that of our stockholders and to encourage key employees to remain at Infinera.	• Supports retention and succession planning. • Provides a direct incentive for future performance. • Useful in recruiting new executives to Infinera.
Performance-Based Restricted Stock Units	• PSUs provide the right to receive shares upon the achievement of pre-determined performance objectives. • If the threshold is not achieved for a specific pre-determined performance metric, the entire portion of the award tied to such performance metric may be forfeited.	• Supports pay-for-performance philosophy and retention efforts. • Links compensation to Infinera performance for key operational and strategic metrics to support growth and profitability.

Our named executive officers are intended to benefit from these equity awards based on our sustained performance over time and the ability of our named executive officers to impact the results that drive stockholder value. In addition, the Compensation Committee evaluates the retention value of prior equity awards to an individual based on the potential value of the unvested portion of such equity awards under various scenarios. For 2012, we did not grant any stock options, which we have in prior years. The Compensation Committee determined the mix of equity awards in particular based on retention concerns, and taking into consideration generally the greater retentive value of restricted stock units over stock options.

2012 Annual Equity Awards

In determining the size of the equity awards to grant for fiscal 2012, the Compensation Committee reviewed the equity awards granted to the named executive officers throughout their tenure at Infinera, as well as the awards to be granted in fiscal 2012, and scrutinized the dilutive effect such awards have on stockholders. The Compensation Committee also considered the importance of maintaining internal equity in the size and value of the equity awards to the named executive officers, as well as Infinera's financial performance and product development cycles, including the fact that fiscal 2012 was considered a transition year. For fiscal 2012, the Compensation Committee granted each of our named executive officers equity awards in the form of RSUs with time-based vesting provisions and PSUs with performance-based vesting provisions. The RSUs vest annually over three years, while the PSUs vest based on the achievement of performance goals related to Infinera's DTN-X product, with 50% of the PSUs vesting upon achievement of $100 million in recognized revenue from the DTN-X product and 50% of the PSUs vesting upon achievement of certain targeted operating income performance levels for fiscal 2013 or fiscal 2014. The Compensation Committee believed that the mix of time-based and performance-based awards was appropriate to address our retention concerns during the fiscal year while motivating our named executive officers to focus on achievement of important strategic and business goals of Infinera. In addition to the equity awards described above, the Compensation Committee granted RSUs to Dr. Welch and Mr. McCarthy, as one-time retention equity awards. The Compensation Committee concluded such retention RSUs were necessary to ensure continuity among the executive team during this important transition period for Infinera. Retaining Dr. Welch and Mr. McCarthy would allow the executive team to execute Infinera's business strategy without the distraction of retention concerns among senior members of the team.

For fiscal 2012, the Compensation Committee aimed to position the time-based equity compensation for each of our named executive officers at or about the median as compared to the market group. In addition, the Compensation Committee targeted above the median as compared to the market group for total equity compensation, which includes RSUs and the on-target achievement of the PSUs, for each of our named executive officers for fiscal 2012. Consistent with our pay-for-performance philosophy, the Compensation Committee determined targeting the total equity compensation at above the median was necessary to offset the lower than median base salaries for most of our named executive officers, including our CEO.

The time-based equity compensation for fiscal 2012 as compared to the market group was set at the 35th percentile for Mr. Fallon, the 46th percentile for Ms. Brennan, the 61st percentile for Mr. McCarthy (excluding the one-time retention RSUs), and the 42nd percentile for Mr. Martin. Due to Dr. Welch's unique role with Infinera and the significant scope of his leadership, his time-based equity compensation was greater than the 75th percentile (excluding the one-time retention RSUs) as compared to the market group. For fiscal 2012, assuming the on-target achievement of the PSU performance criteria, the total equity award compensation as compared to the market group was greater than the 75th percentile for each of Messrs. Fallon and McCarthy, Dr. Welch and Ms. Brennan. The total equity award compensation for Mr. Martin, which resulted in total equity compensation at the 68th percentile as compared to the market group, was slightly lower than the targeted level to reflect his larger total cash compensation as compared to the other named executive officers.

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The following table sets forth the equity awards granted to each of our named executive officers for fiscal 2012:

Name and Principal Position	RSUs(1)	PSUs (Target Shares)(2)
Thomas J. Fallon, President and CEO	155,000	175,000
Ita M. Brennan, CFO	64,000	26,000
David F. Welch, Ph.D., Executive Vice President, Chief Strategy Officer	207,250	33,000
Michael O. McCarthy III, Chief Legal and Administrative Officer	111,500	26,000
Ronald D. Martin, former Senior Vice President, Worldwide Sales	56,000	23,000

(1) For Mr. McCarthy, 47,500 RSUs vest on December 31, 2014, subject to Mr. McCarthy's continued service to Infinera. For Dr. Welch, 57,000 RSUs vest on December 31, 2013 and 71,250 RSUs vest on December 31, 2014, each subject to Dr. Welch's continued service to Infinera. The remaining RSUs for Mr. McCarthy and Dr. Welch, as well as all RSUs granted to the other named executive officers, vest as to one-third annually on each of February 5, 2013, 2014 and 2015, subject to each named executive officer's continued service to Infinera.

(2) The PSUs for all of the named executive officers will only vest upon the achievement of certain performance metrics related to our DTN-X product and are subject to each named executive officer's continued service to Infinera. Specifically, 50% of the PSUs vest upon achievement of $100 million in recognized revenue from the DTN-X product and 50% of the PSUs vest upon achievement of certain targeted operating income performance levels for fiscal 2013 or fiscal 2014. If the performance metrics are not met within the time limits specified in the award agreements, the PSUs will be canceled.

Perquisites

We provide employee benefits to all eligible employees, including our named executive officers, which Infinera and the Compensation Committee believe are reasonable and consistent with its overall compensation objective to better enable us to attract and retain employees. These benefits include medical, dental, vision, and disability benefits and other plans and programs, including our 2007 Employee Stock Purchase Plan (the "2007 ESPP"), made available to other eligible employees in the applicable country of residence. At this time, we do not provide any special plans or programs for our named executive officers. Accordingly, employee benefits and perquisites are reviewed from time to time only to ensure that benefit levels remain competitive, but are not included in the Compensation Committee's annual determination of our total compensation for each of our named executive officers.

We sponsor a 401(k) tax-qualified retirement savings plan pursuant to which all U.S.-based employees are entitled to participate. Employees may make contributions to the 401(k) plan on a before-tax basis, or on a post-tax basis for those employees participating in the Roth 401(k) plan-component, to the maximum amount prescribed by the Internal Revenue Service. We do not provide any matching contributions to the 401(k) plan. Other than the 401(k) plan, we do not maintain any other deferred savings plans in which the named executive officers participate. We do not maintain or provide any defined benefit plans for our employees.

"Double Trigger" Change of Control and Separation Benefits

Change of Control Benefits

The Compensation Committee considers maintaining a stable and effective management team to be essential to protecting and enhancing the best interests of Infinera and its stockholders. To that end, the Compensation Committee recognized that the possibility of a "Change of Control" of Infinera (as more fully described below) may exist from time to time, and that this possibility, and the uncertainty and questions it may raise among our management team, may result in the departure or distraction of members of our management team to the detriment of Infinera and our stockholders. Accordingly, the Compensation Committee decided to take appropriate steps to encourage the continued attention, dedication and continuity of members of our management team, including the named executive officers, to their assigned duties without the distraction that may arise from the possibility or occurrence of a Change of Control. As a result, Infinera has entered into Change of Control Agreements (the "COC Agreements") with certain vice president level officers and above, including each of our named executive officers. Pursuant to the COC Agreements, the named executive officers will receive no benefit thereunder unless their employment is terminated without "Cause," or terminated by the named executive officer as a result of a "Constructive Termination" (as more fully described below), within 12 months following the effective date of a Change of Control transaction. The Compensation Committee believes that this "double trigger" structure strikes the correct balance between the corporate objectives described above and the potential compensation payable to each named executive officer upon a Change of Control transaction. The Compensation Committee also believes that should Infinera engage in discussions or negotiations relating to a Change of Control transaction, which our Board believes is in the best interests of our stockholders, these COC Agreements will help to ensure that our named executive officers remain focused on the consummation of such potential transaction, without significant distraction or concern regarding their personal circumstances, such as continued employment.

The following terms apply with respect to our named executive officers if we undergo a Change of Control transaction and such individual is terminated without Cause or as a result of a Constructive Termination within 12 months following the Change of Control transaction, subject to such individual entering into and not revoking a release of claims in our favor within 60 days of the termination date:

- 100% of all outstanding equity awards will vest;
- The CEO will be paid a lump sum severance payment equal to two (2) times annual base salary and the other named executive officers will be paid a lump sum severance payment equal to one and one-half (1.5) times annual base salary; and
- The CEO will be reimbursed for premiums under COBRA for a period of twenty-four (24) months and the other named executive officers will be reimbursed for premiums under COBRA for a period of eighteen (18) months.

Executive Severance Policy

In addition to the Change of Control benefits discussed above, the Compensation Committee determined, in order to remain competitive in the market, it was necessary to take appropriate steps to encourage the continued attention, dedication and continuity of members of our management team, including the named executive officers, to their assigned duties without the distraction that may arise from the possibility of termination, other than for

Cause or following a Change of Control. Accordingly, the Compensation Committee adopted an Executive Severance Policy consisting of the following terms for severance payments, payable if the individual is terminated without Cause or as a result of a Constructive Termination, subject to such individual entering into and not revoking a release of claims in our favor within the time specified in the applicable separation agreement:

- The CEO will be paid a lump sum severance payment equal to one and one-half (1.5) times annual base salary and the other named executive officers will be paid a lump sum severance payment equal to one (1) times annual base salary; and
- The CEO will be reimbursed for premiums under COBRA for a period of eighteen (18) months and the other named executive officers will be reimbursed for premiums under COBRA for a period of twelve (12) months.

If a named executive officer's employment with Infinera is less than one year, the amount of severance payable to such individual shall be equal to the lesser of (x) the salary paid to such individual during his or her period of employment, or (y) the severance amount set forth above.

Acceleration of Equity Awards Upon Death or Disability

During the review of our equity award granting practices in December 2009, the Compensation Committee amended stock option, RSU and PSU awards granted under our equity incentive plans to permit accelerated vesting in the event of an employee's death or terminal illness (with exceptions in certain circumstances). Because we do not have any other policy with respect to severance benefits in the event of an employee's death or disability, the Compensation Committee believed that in the event of an employee's death or terminal illness, it would be appropriate to provide the accelerated vesting of his or her RSUs, PSUs and stock options.

The amount of compensation and benefits payable to each named executive officer in connection with a termination without Cause or following a Change of Control has been estimated in the "Estimated Payments and Benefits upon Termination, Change of Control or Death/Disability" table on page 58.

Stock Option Granting Policy

In 2007, the Compensation Committee approved a policy for granting equity awards. Under this policy, the Non-Executive Equity Award Subcommittee of the Board is delegated the authority to grant new hire, promotional and annual retention equity awards to non-executive employees pursuant to certain pre-approved guidelines. The Non-Executive Equity Award Subcommittee consists of our CEO, Chief Legal and Administrative Officer and Vice President of Human Resources. The Non-Executive Equity Award Subcommittee generally meets on the first Monday of each month to approve new hire and promotional grants that are within pre-approved guidelines established by the Compensation Committee. Annual performance equity awards for such non-executive employees are also scheduled to occur as part of the monthly meetings of the Non-Executive Equity Award Subcommittee. The delegation to the Non-Executive Equity Award Subcommittee does not include the authority to grant equity awards to new employees who are or are reasonably expected to become Section 16 Officers or to current Section 16 Officers. All equity award grants to Section 16 Officers, as well as grants that are outside of the pre-approved guidelines, must be made by the Compensation Committee. Annual equity awards for Section 16 Officers and directors typically are scheduled to occur during the last quarter of the current calendar year or the first quarter of the next calendar year, and are determined as discussed above in this Compensation Discussion and Analysis.

Clawback Policy

In early fiscal 2013, the Compensation Committee adopted a clawback policy for Section 16 Officers and directors pursuant to which the Compensation Committee has the authority to seek repayment of any cash incentive payment or any compensation earned on previously exercised or released equity incentive awards, as well as cancellation of any unvested, unexercised or unreleased equity incentive awards, where the incentive payments were predicated on financial results that were augmented by fraud or intentional misconduct of such Section 16 Officer or director.

Anti-hedging Policy

Infinera adopted its insider trading policy in order to prevent insider trading violations of its officers, directors and employees. Accordingly, Infinera's insider trading policy applies to members of the Board and all employees, including the named executive officers. Our insider trading policy establishes mandatory trading windows and pre-clearance procedures for certain restricted persons, including our Board members and named executive officers. In addition, all employees, including the named executive officers, and Board members are strictly prohibited from short-selling Infinera's stock or engaging in transactions involving Infinera-based derivative securities. Accordingly, the named executive officers and members of the Board are not permitted to hedge against Infinera's performance.

Stock Ownership Guidelines

In fiscal 2012, the Compensation Committee amended the Stock Ownership Guidelines for our directors and Section 16 Officers. The Stock Ownership Guidelines require our directors and Section 16 Officers to accumulate and hold a minimum number of shares of Infinera common stock within three years of the later of (i) the effective date of the guidelines or (ii) the date of appointment or promotion of the Section 16 Officer or the election of the director. The following lists the specific Infinera stock ownership requirements as a multiple of each Section 16 Officers' base salary or directors' annual cash retainer:

- CEO: 4x base salary
- CFO: 2x base salary
- Other Section 16 Officers: 1x base salary
- Non-Employee Directors: 3x annual cash retainer

For purposes of calculating the stock ownership of each Section 16 Officer and director, we aggregate all Infinera common stock owned or beneficially owned by each Section 16 Officer or director, together with all vested, but unexercised in-the-money stock options. As of the Record Date, each of our Section 16 Officers and directors has either satisfied these ownership guidelines or had time remaining to do so. If, however, an individual is not compliant with these stock ownership guidelines, then 25% of the net, after-tax stock option sales must be retained until the guideline levels are met. Other than these stock ownership guidelines, we have no other stock holding requirements.

Tax and Accounting Treatment of Compensation

Internal Revenue Code Section 162(m) limits the amount that we may deduct for compensation paid to our CEO and to certain other of our most highly compensated executive officers to $1,000,000 per person, unless certain exemption requirements are met. Exemptions to this deductibility limit are available for various forms of "performance-based" compensation. In addition to salary and bonus compensation, upon the exercise of stock options that are not treated as incentive stock options, the excess of the current market price over the option price, or option spread, is treated as compensation and accordingly, in any year, such exercise may cause an executive officer's total compensation to exceed $1,000,000. Under certain regulations, option spread compensation from stock options that meet certain requirements will not be subject to the $1,000,000 cap on deductibility, and in the past we have granted stock options that we believe met those requirements. While the Compensation Committee cannot predict how the deductibility limit may impact our compensation program in future years, the Compensation Committee intends to maintain an approach to executive compensation that strongly links pay to performance. While the Compensation Committee has not adopted a formal policy regarding tax deductibility of compensation paid to our CEO and certain other of our most highly compensated executive officers, the Compensation Committee intends to consider tax deductibility under Internal Revenue Code Section 162(m) as a factor in its compensation decisions.

We account for equity compensation paid to our employees under the rules of ASC 718, which requires us to estimate and record an expense for each award of equity compensation over the service period of the award. Accounting rules also require us to record cash compensation as an expense at the time the obligation is incurred.

Summary

The Compensation Committee believes that our executive compensation philosophy and programs are designed to foster a performance-oriented culture that aligns our named executive officers' interests with those of our stockholders. The Compensation Committee also believes that the compensation of our named executive officers is both appropriate and responsive to the goal of improving stockholder value.

Compensation Committee Report

The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis with management. Based on its review and discussions with management, the Compensation Committee has recommended to the Board that the Compensation Discussion and Analysis be included in this Proxy Statement.

Compensation Committee

Kenneth A. Goldman, former Chairman (resigned February 26, 2013)
Mark A. Wegleitner, Chairman (appointed February 26, 2013)
Dan Maydan, Ph.D.
Paul J. Milbury
Carl Redfield

EXECUTIVE COMPENSATION TABLES

The following tabular information and accompanying narratives and footnotes provide all of the compensation awarded to, earned by, or paid to the individuals who served as our principal executive officer, principal financial officer and our three other highest paid executive officers during fiscal 2012. As previously noted, we refer to these executive officers as our "named executive officers."

The summary compensation table below represents "total compensation" in accordance with SEC requirements. This amount is not the actual compensation received by our named executive officers during the years reported. Total compensation includes the dollar amounts set forth in the "Stock Awards" and "Option Awards" columns, which reflect the aggregate grant date fair value of such awards computed in accordance with ASC 718. The aggregate grant date fair value will likely vary from the amounts actually realized by any named executive officer based on a number of factors, including the number of shares that ultimately vest, the timing of any exercise or sale of the shares, and the price of our common stock. The actual value realized by our named executive officers from the exercise of stock option awards and vesting of stock awards during fiscal 2012 is presented in the "Option Exercises and Stock Vested for Fiscal 2012" table. Details about the equity awards granted to our named executive officers during fiscal 2012 can be found in the "Grants of Plan Based Awards in Fiscal 2012" table.

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Summary Compensation Table for Fiscal 2012

Name and Principal Position	Year	Salary ($)	Stock Awards ($)(1)	Option Awards ($)(1)(2)	Non-Equity Incentive Plan Compensation ($)(3)	Total ($)
Thomas J. Fallon	2012	300,000	2,626,800	—	18,750	2,945,550
President and CEO	2011	300,000	1,218,360	2,204,842	—	3,723,202
	2010	300,000	—	827,440	750,000	1,877,440
Ita M. Brennan	2012	300,000	672,240	—	9,750	981,990
CFO	2011	300,000	283,140	589,773	—	1,172,913
	2010	260,192	420,196	272,895	270,000	1,223,283
David F. Welch, Ph.D.	2012	350,000	1,857,880	—	28,000	2,235,880
Executive Vice President,	2011	300,000	351,780	734,947	—	1,386,727
Chief Strategy Officer	2010	300,000	—	827,440	390,000	1,517,440
Michael O. McCarthy III	2012	315,000	1,050,340	—	20,475	1,385,815
Chief Legal and Administrative	2011	300,000	283,140	589,773	—	1,172,913
Officer	2010	270,000	—	498,700	351,000	1,119,700
Ronald D. Martin	2012	350,000	590,200	—	35,000	975,200
former Senior Vice President,	2011	350,000	214,500	444,598	75,010	1,084,108
Worldwide Sales	2010	350,000	—	—	591,414	941,414

(1) The amounts in this column represent the aggregate grant date fair value of the listed equity awards, computed in accordance with ASC 718. See Note 2 of the notes to our consolidated financial statements contained in our 2012 Annual Report on Form 10-K filed on March 5, 2013 for a discussion of all assumptions made by us in determining the ASC 718 values of equity awards.

(2) Includes the grant date fair value of the equity awards granted in connection with Infinera's fiscal 2010 Option Exchange Program. The new stock options were exchanged on a fair-value basis with the value of the new stock option equal to the value of the cancelled stock options.

(3) These amounts represent annual incentive cash awards under our Bonus Plan and, in the case of Mr. Martin, our Sales Incentive Compensation Plan. See the "Grants of Plan Based Awards in Fiscal 2012" table for more information on each annual incentive award granted in fiscal 2012.

Grants of Plan Based Awards in Fiscal 2012

The following table sets forth information regarding fiscal 2012 annual cash incentive compensation and equity awards granted to our named executive officers during fiscal 2012.

Name	Type of Award	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards[1] Threshold ($)	Target ($)	Maximum ($)	Estimated Future Payouts Under Equity Incentive Plan Awards[2] Threshold (#)	Target (#)	Maximum (#)	All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards ($/Sh)	Grant Date Fair Value of Stock and Option Awards ($)[3]
Thomas J. Fallon	RSU	2/13/2012	—	—	—	—	—	—	155,000	—	—	1,233,800
	PSU	2/13/2012	—	—	—	—	175,000	—	—	—	—	1,393,000
	Bonus	N/A	—	375,000	750,000	—	—	—	—	—	—	—
Total				**375,000**	**750,000**		**175,000**		**155,000**			**2,626,800**
Ita M. Brennan	RSU	1/30/2012	—	—	—	—	—	—	64,000	—	—	465,280
	PSU	2/13/2012	—	—	—	—	26,000	—	—	—	—	206,960
	Bonus	N/A	—	195,000	390,000	—	—	—	—	—	—	—
Total				**195,000**	**390,000**		**26,000**		**64,000**			**672,240**
David F. Welch, Ph.D.	RSU	1/30/2012	—	—	—	—	—	—	79,000	—	—	574,330
	RSU	2/13/2012	—	—	—	—	—	—	128,250	—	—	1,020,870
	PSU	2/13/2012	—	—	—	—	33,000	—	—	—	—	262,680
	Bonus	N/A	—	280,000	560,000	—	—	—	—	—	—	—
Total				**280,000**	**560,000**		**33,000**		**207,250**			**1,857,880**
Michael O. McCarthy III	RSU	1/30/2012	—	—	—	—	—	—	64,000	—	—	465,280
	RSU	2/13/2012	—	—	—	—	—	—	47,500	—	—	378,100
	PSU	2/13/2012	—	—	—	—	26,000	—	—	—	—	206,960
	Bonus	N/A	—	204,750	409,500	—	—	—	—	—	—	—
Total				**204,750**	**409,500**		**26,000**		**111,500**			**1,050,340**
Ronald D. Martin	RSU	1/30/2012	—	—	—	—	—	—	56,000	—	—	407,120
	PSU	2/13/2012	—	—	—	—	23,000	—	—	—	—	183,080
	Bonus	N/A	—	350,000	700,000	—	—	—	—	—	—	—
Total				**350,000**	**700,000**		**23,000**		**56,000**			**590,200**

(1) Represents the potential cash payment that may be earned for fiscal 2012 under our 2012 Bonus Plan.

(2) Represents PSUs, which vest based on specific performance metrics related to Infinera's DTN-X product and financial objectives for fiscal 2013 and 2014, and subject to each named executive officer's continued service to Infinera. If the performance metrics are not met within the time limits specified in the award agreements, the PSUs will be canceled.

(3) Represents the aggregate grant date fair value of each equity award computed in accordance with ASC 718.

Description of Awards Granted in 2012

The following narrative discusses the material information necessary to understand the information in the table above. For each equity award made to our named executive officers during fiscal 2012, the date the award was approved by our Compensation Committee was the same as the grant date. All RSU and PSU awards granted during fiscal 2012 to our named executive officers were granted pursuant to our 2007 Plan.

Restricted Stock Units

On January 30, 2012, Messrs. Martin and McCarthy, Dr. Welch and Ms. Brennan were granted RSUs covering the respective shares of common stock as indicated above in the “Grants of Plan Based Awards in Fiscal 2012” table. These RSUs vest annually over three years beginning on February 5, 2012.

On February 13, 2012, Mr. Fallon was granted RSUs covering the respective shares of common stock as indicated above in the “Grants of Plan Based Awards in Fiscal 2012” table. These RSUs vest annually over three years beginning on February 5, 2013.

Performance-Based Restricted Stock Units

On February 13, 2012, Messrs. Fallon, Martin and McCarthy, Dr. Welch and Ms. Brennan were granted PSUs, as indicated above in the “Grants of Plan Based Awards in Fiscal 2012” table. These PSU grants entitle the named executive officers to receive shares of common stock based on the attainment of long-term strategic objectives related to our DTN-X product. The PSUs vest as to 50% of the total grant upon the achievement of $100 million in recognized revenue from the DTN-X product and 50% of the total grant upon achievement of certain targeted operating income performance levels for fiscal 2013 or fiscal 2014. These PSUs will only vest based on specific performance metrics related to Infinera’s DTN-X product and subject to each named executive officer’s continued service to Infinera. If the performance metrics are not met within the time limits specified in the award agreements, the PSUs will be canceled.

Non-Equity Incentive Plan Awards

These amounts reflect the target and maximum annual incentive cash bonus awards payable under the 2012 Bonus Plan. Amounts actually earned under the 2012 Bonus Plan are reported in the “Non-Equity Incentive Plan Compensation” column of the “Summary Compensation Table for Fiscal 2012” above. The target amounts paid under the 2012 Bonus Plan vary depending on how actual performance compares to the established performance metrics set forth and more fully described on pages 40-42 of the Compensation Discussion and Analysis section of this Proxy Statement.

Calculation of Grant Date Fair Value

The amounts reported in the “Grant Date Fair Value of Stock and Option Awards” column of the “Grants of Plan Based Awards in Fiscal 2012” table above reflects, for each equity award granted during fiscal 2012, the grant date fair value of each equity award computed in accordance with ASC 718.

Outstanding Equity Awards at Fiscal Year-End 2012

The following table sets forth information regarding outstanding stock options, RSUs and PSUs held by each of our named executive officers as of December 29, 2012. The vesting conditions for each award are set forth in the footnotes below the table.

	Stock Option Awards						Stock Awards		
Name	Grant Date	Number of Securities Underlying Options Total Grant (#)	Number of Securities Underlying Unexercised Options Exercisable (#)	Number of Securities Underlying Unexercised Options Unexercisable (#)	Option Exercise Price ($)	Option Expiration Date	Grant Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)
Thomas J. Fallon	2/10/2009	100,000	100,000	—(1)	7.11	2/10/2019	2/10/2009	25,000(10)	145,000
	8/10/2009	150,000	150,000	—(1)	7.45	8/10/2019	11/23/2009	150,000(11)	870,000
	11/23/2009	75,000	75,000	—(1)	8.19	11/23/2016	2/10/2011	94,666(12)	549,063
	11/23/2009	5,595	—	5,595(2)	8.19	11/23/2019	2/13/2012	155,000(17)	899,000
	11/23/2009	294,405	231,250	63,155(2)	8.19	11/23/2019	2/13/2012	175,000(20)	1,015,000
	2/22/2010	29,214	27,591	1,623(3)	7.61	6/6/2017	—	—	—
	2/22/2010	101,342	95,711	5,631(3)	7.61	6/6/2017	—	—	—
	2/22/2010	2,817	1,995	822(4)	7.61	2/28/2018	—	—	—
	2/22/2010	81,683	57,858	23,825(4)	7.61	2/28/2018	—	—	—
	2/10/2011	41,279	23,310	17,969(8)	8.58	2/10/2021	—	—	—
	2/10/2011	201,721	125,190	76,531(8)	8.58	2/10/2021	—	—	—
	2/10/2011	60,750	60,750	—(1)	8.58	2/10/2021	—	—	—
	2/10/2011	182,250	182,250	—(1)	8.58	2/10/2021	—	—	—
Total		**1,326,056**	**1,130,905**	**195,151**				**599,666**	**3,478,063**
Ita M. Brennan	9/7/2006	3,125	3,125	—(1)	2.00	9/7/2016	2/28/2008	1,350(13)	7,830
	9/7/2006	2,344	2,344	—(1)	2.00	9/7/2016	3/2/2009	12,500(10)	72,500
	3/2/2009	50,000	50,000	—(1)	6.71	3/2/2019	11/23/2009	25,000(11)	145,000
	8/10/2009	33,000	33,000	—(1)	7.45	8/10/2019	2/22/2010	1,627(12)	9,437
	11/23/2009	37,500	37,500	—(1)	8.19	11/23/2016	2/22/2010	715(14)	4,147
	6/26/2010	62,226	38,359	23,867(5)	6.90	6/26/2020	2/22/2010	2,322(12)	13,468
	6/26/2010	12,774	8,516	4,258(6)	6.90	6/26/2020	6/26/2010	18,750(15)	108,750
	2/10/2011	65,000	39,722	25,278(8)	8.58	2/10/2021	2/10/2011	22,000(12)	127,600
	2/10/2011	16,250	16,250	—(1)	8.58	2/10/2021	1/30/2012	64,000(17)	371,200
	2/10/2011	48,750	48,750	—(1)	8.58	2/10/2021	2/13/2012	26,000(20)	150,800
Total		**330,969**	**277,566**	**53,403**				**174,264**	**1,010,731**

	Stock Option Awards						Stock Awards		
Name	Grant Date	Number of Securities Underlying Options Total Grant (#)	Number of Securities Underlying Unexercised Options Exercisable (#)	Number of Securities Underlying Unexercised Options Unexercisable (#)	Option Exercise Price ($)	Option Expiration Date	Grant Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)
David F. Welch, Ph.D.	8/8/2006	50,000	50,000	—(1)	2.00	8/8/2016	2/10/2009	25,000(10)	145,000
	8/8/2006	137,500	137,500	—(1)	2.00	8/8/2016	11/23/2009	50,000(11)	290,000
	2/10/2009	100,000	100,000	—(1)	7.11	2/10/2019	2/10/2011	27,333(12)	158,531
	8/10/2009	150,000	150,000	—(1)	7.45	8/10/2019	1/30/2012	79,000(17)	458,200
	11/23/2009	75,000	75,000	—(1)	8.19	11/23/2016	2/13/2012	128,250(19)	743,850
	2/22/2010	29,214	27,591	1,623(3)	7.61	6/6/2017	2/13/2012	33,000(20)	191,400
	2/22/2010	101,342	95,711	5,631(3)	7.61	6/6/2017	—	—	—
	2/22/2010	2,817	1,995	822(4)	7.61	2/28/2018	—	—	—
	2/22/2010	81,683	57,858	23,825(4)	7.61	2/28/2018	—	—	—
	2/10/2011	39,465	23,310	16,155(8)	8.58	2/10/2021	—	—	—
	2/10/2011	41,535	26,190	15,345(9)	8.58	2/10/2021	—	—	—
	2/10/2011	20,250	20,250	—(1)	8.58	2/10/2021	—	—	—
	2/10/2011	60,750	60,750	—(1)	8.58	2/10/2021	—	—	—
Total		**889,556**	**826,155**	**63,401**				**342,583**	**1,986,981**
Michael O. McCarthy III	11/28/2005	7,996	7,996	—(1)	1.32	11/28/2015	2/10/2009	18,750(10)	108,750
	8/8/2006	8,703	8,703	—(1)	2.00	8/8/2016	11/23/2009	37,500(11)	217,500
	8/8/2006	11,805	11,805	—(1)	2.00	8/8/2016	2/10/2011	22,000(12)	127,600
	2/10/2009	45,309	45,309	—(1)	7.11	2/10/2019	1/30/2012	64,000(17)	371,200
	8/10/2009	51,040	51,040	—(1)	7.45	8/10/2019	2/13/2012	47,500(18)	275,500
	11/23/2009	56,250	56,250	—(1)	8.19	11/23/2016	2/13/2012	26,000(20)	150,800
	2/22/2010	25,642	24,063	1,579(3)	7.61	6/6/2017	—	—	—
	2/22/2010	29,355	27,548	1,807(3)	7.61	6/6/2017	—	—	—
	2/22/2010	2,886	1,977	909(4)	7.61	2/28/2018	—	—	—
	2/22/2010	59,780	40,972	18,808(4)	7.61	2/28/2018	—	—	—
	2/10/2011	38,577	23,310	15,267(8)	8.58	2/10/2021	—	—	—
	2/10/2011	26,423	16,412	10,011(9)	8.58	2/10/2021	—	—	—
	2/10/2011	16,250	16,250	—(1)	8.58	2/10/2021	—	—	—
	2/10/2011	48,750	48,750	—(1)	8.58	2/10/2021	—	—	—
Total		**428,766**	**380,385**	**48,381**				**215,750**	**1,251,350**
Ronald D. Martin	8/3/2009	580	580	—(1)	6.97	8/3/2019	8/3/2009	6,250(16)	36,250
	8/3/2009	36,920	28,586	8,334(7)	6.97	8/3/2019	11/23/2009	12,500(11)	72,500
	11/23/2009	3,144	3,144	—(1)	8.19	11/23/2016	2/10/2011	16,666(12)	96,663
	11/23/2009	11,441	11,441	—(1)	8.19	11/23/2016	1/30/2012	56,000(17)	324,800
	2/10/2011	7,607	—	7,607(8)	8.58	2/10/2021	2/13/2012	23,000(20)	133,400
	2/10/2011	41,393	29,944	11,449(9)	8.58	2/10/2021	—	—	—
	2/10/2011	12,250	12,250	—(1)	8.58	2/10/2021	—	—	—
	2/10/2011	36,750	36,750	—(1)	8.58	2/10/2021	—	—	—
Total		**150,085**	**122,695**	**27,390**				**114,416**	**663,613**

(1) This stock option grant is fully vested.

(2) The remaining unvested portion of this stock option grant vests in monthly amounts through November 23, 2013, subject to the named executive officer's continued employment with Infinera.

(3) The remaining unvested portion of this stock option grant vests in monthly amounts through February 5, 2013, subject to the named executive officer's continued employment with Infinera.

(4) The remaining unvested portion of this stock option grant vests in monthly amounts through February 5, 2014, subject to the named executive officer's continued employment with Infinera.

(5) The remaining unvested portion of this stock option grant vests in monthly amounts through June 26, 2014, subject to the named executive officer's continued employment with Infinera.

(6) The remaining unvested portion of this stock option grant vests in monthly amounts through December 26, 2013, subject to the named executive officer's continued employment with Infinera.

(7) The remaining unvested portion of this stock option grant vests in monthly amounts through August 3, 2013, subject to the named executive officer's continued employment with Infinera.

(8) The remaining unvested portion of this stock option grant vests in monthly amounts through February 10, 2014, subject to the named executive officer's continued employment with Infinera.

(9) The remaining unvested portion of this stock option grant vests in monthly amounts through December 10, 2013, subject to the named executive officer's continued employment with Infinera.

(10) This PSU grant entitles the named executive officer to receive shares of common stock based on our stock price performance as compared to the NCI. The PSUs vest in two equal annual installments following each measurement period on January 1, 2012 and January 1, 2013, respectively. The amount of shares to be awarded pursuant to the PSUs is subject to adjustment within a range of 0.5x to 2x payout of shares based upon the change in our stock price as measured against the change of the NCI. The measurement periods are a comparison of the six month average between July 1 and December 31, 2011 and the six month average between July 1 and December 31, 2012, respectively, as compared to the 30 day trailing average as of December 31, 2008.

(11) This PSU grant entitles the named executive officer to receive shares of common stock based on our stock price performance as compared to NCI. The PSUs vest in one annual installment following the measurement period on January 1, 2013. The amount of shares to be awarded is subject to adjustment within a range of 0.5x to 2x payout of shares based upon the change in our stock price as measured against the change of the NCI. The measurement period is a comparison of the six month average between July 1 and December 31, 2012 as compared to the 30 day trailing average as of December 31, 2009.

(12) The remaining unvested portion of this RSU grant vests in its entirety on February 5, 2014, subject to the named executive officer's continued employment with Infinera.

(13) The remaining unvested portion of this RSU grant vests in its entirety on April 1, 2013, subject to the named executive officer's continued employment with Infinera.

(14) The remaining unvested portion of this RSU grant vests in its entirety on February 5, 2013, subject to the named executive officer's continued employment with Infinera.

(15) The remaining unvested portion of this RSU grant vests in its entirety on July 1, 2014, subject to the named executive officer's continued employment with Infinera.

(16) The remaining unvested portion of this RSU grant vests in its entirety on August 5, 2013, subject to the named executive officer's continued employment with Infinera.

(17) The remaining unvested portion of this RSU grant vests in its entirety on February 5, 2015, subject to the named executive officer's continued employment with Infinera.

(18) The remaining unvested portion of this RSU grant vests in its entirety on December 31, 2014, subject to the named executive officer's continued employment with Infinera.

(19) The remaining unvested portion of this RSU grant vests as to 57,000 of the RSUs on December 31, 2013 and 71,250 RSUs on December 31, 2014, subject to the named executive officer's continued employment with Infinera.

(20) This PSU grant entitles the named executive officer to receive shares of common stock based on the attainment of long-term strategic objectives related to our DTN-X product. The PSUs vest as to 50% of the total grant upon the achievement of $100 million in recognized revenue from the DTN-X product and 50% of the total grant upon achievement of certain targeted operating income performance levels for fiscal 2013 or fiscal 2014.

Option Exercises and Stock Vested for Fiscal 2012

The following table sets forth the number of shares acquired and the value realized upon the exercise of stock options and the vesting of RSUs and PSUs during fiscal 2012 by each of the named executive officers.

Name	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise ($)[1]	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting ($)[2]
Thomas J. Fallon	100,000	476,000	109,834	789,159
Ita M. Brennan	—	—	60,754	411,879
David F. Welch, Ph.D.	—	—	76,167	507,029
Michael O. McCarthy III	1,319	8,442	57,875	386,555
Ronald D. Martin	—	—	14,584	104,651

(1) The value realized on the exercise date is based on the difference in the fair market value of our common stock on the exercise date and the exercise price and does not necessarily reflect the proceeds actually received by the named executive officer.

(2) The value realized on vesting is based on the fair market value of our common stock on the vesting date and does not necessarily reflect the proceeds actually received by the named executive officer.

Estimated Payments and Benefits Upon Termination, Change of Control or Death/Disability

Change of Control Benefits

As discussed above in the "Compensation Discussion and Analysis—"Double Trigger" Change of Control and Separation Benefits" section, the terms below apply with respect to our named executive officers if we undergo a Change of Control transaction and such individual is terminated without Cause or as a result of a Constructive Termination within 12 months following the transaction, subject to such individual entering into and not revoking a release of claims in our favor within 60 days of the termination date:

- 100% of all outstanding equity awards will vest;
- The CEO will be paid a lump sum severance payment equal to two (2) times annual base salary and the other named executive officers will be paid a lump sum severance payment equal to one and one-half (1.5) times annual base salary; and
- The CEO will be reimbursed for premiums under COBRA for a period of twenty-four (24) months and the other named executive officers will be reimbursed for premiums under COBRA for a period of eighteen (18) months.

Separation Benefits

As discussed above in the "Compensation Discussion and Analysis—"Double Trigger" Change of Control and Separation Benefits" section, the Compensation Committee determined that Infinera shall pay severance to our named executive officers if such named executive officer is terminated by Infinera, except in the event of termination following a Change of Control or for Cause. The Compensation Committee adopted an Executive Severance Policy consisting of the following terms for severance payments, payable if the individual is terminated without Cause or as a result of a Constructive Termination, subject to such individual entering into and not revoking a release of claims in our favor within the time specified in the applicable separation agreement:

- The CEO will be paid a lump sum severance payment equal to one and one-half (1.5) times annual base salary and the other named executive officers will be paid a lump sum severance payment equal to one (1) times annual base salary; and
- The CEO will be reimbursed for premiums under COBRA for a period of eighteen (18) months and the other named executive officers will be reimbursed for premiums under COBRA for a period of twelve (12) months.

If a named executive officer's employment with Infinera is less than one year, the amount of severance payable to such individual shall be equal to the lesser of (x) the salary paid to such individual during their period of employment, or (y) the severance amount set forth above.

Death and Disability Benefits

Pursuant to our 2000 Stock Option Plan and 2007 Plan, accelerated vesting is provided in the event of the death (with exceptions in certain circumstances) or permanent disability of an employee, including the named executive officers. Accrued vacation will also be paid out in the event of the death or permanent disability of such individual. We do not currently provide any other benefits in the event of an employee's death or permanent disability.

For purposes of these benefits, the following terms have the following meanings:

Change of Control	(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of Infinera representing fifty percent (50%) or more of the total voting power represented by Infinera's then outstanding voting securities; (ii) the consummation of the sale or disposition by Infinera of all or substantially all of Infinera's assets; (iii) the consummation of a merger or consolidation of Infinera with any other corporation, other than a merger or consolidation which would result in the voting securities of Infinera outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of Infinera or such surviving entity or its parent outstanding immediately after such merger or consolidation; or (iv) a change in the composition of the Board occurring within a two (2) year period, as a result of which less than a majority of the directors are Incumbent Directors. "Incumbent Directors" means directors who either (A) are directors of Infinera as of the date hereof, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the directors of Infinera at the time of such election or nomination (but will not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to Infinera).
Constructive Termination	The executive officer's resignation as a result of, and within three (3) months following the expiration of any Company cure period (discussed below) following the occurrence of one or more of the following: (i) a material reduction in the executive officer's job, duties or responsibilities in a manner that is substantially inconsistent with the position, duties or responsibilities held by the executive officer immediately before such reduction, (ii) a material reduction in the executive officer's base salary (in other words, a reduction of more than five percent of executive's base salary within the twelve-month period following a Change of Control), or (iii) a material change in the work location at which the executive officer is required to perform services for Infinera (in other words, a requirement that the executive officer relocate to a work location that is more than 50 miles from the executive's work location in effect as of the date immediately prior to a Change in Control). The executive officer will not resign as the result of a Constructive Termination without first providing Infinera with written notice of the acts or omissions constituting the grounds for "Constructive Termination" within ninety (90) days of the initial existence of the grounds for "Constructive Termination" and a cure period of thirty (30) days following the date of such notice.

Cause . . . . (i) The executive officer's willful failure to substantially perform his or her duties and responsibilities to Infinera or deliberate violation of a company policy; (ii) the executive officer's commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in material injury to Infinera; (iii) unauthorized use or disclosure by the executive officer of any proprietary information or trade secrets of Infinera or any other party to whom the executive officer owes an obligation of nondisclosure as a result of his or her relationship with Infinera; or (iv) the executive officer's willful breach of any of his or her obligations under any written agreement or covenant with Infinera. The determination as to whether the executive officer is being terminated for Cause will be made in good faith by Infinera and will be final and binding on the executive officer.

Summary Table

The amount of compensation and benefits payable to each named executive officer in the case of termination by Infinera, a termination following a Change of Control transaction, or a termination due to death or permanent disability has been estimated in the table below. The value of the outstanding equity award vesting acceleration was calculated based on the assumption that the termination event occurred on December 29, 2012. The closing price of our stock as of the last trading day prior to our fiscal year-end, December 28, 2012, was $5.80, which was used as the value of our common stock in the calculations. The value of the vesting acceleration was calculated by (i) multiplying the number of accelerated shares of common stock underlying unvested, in the money equity awards as of December 29, 2012 by $5.80 and (ii) subtracting the exercise price for the unvested stock options. None of the unvested stock options held by the named executive officers were in-the-money as of December 29, 2012.

		Potential Payments in Connection With:		
Name	**Type of Benefit**	**Termination Under Separation Policy ($)**	**Termination After a Change of Control ($)**	**Termination Upon Death or Disability ($)**
Thomas J. Fallon	Cash Severance	450,000	600,000	—
	Vesting Acceleration[(1)]	—	3,478,063	3,478,063
	Continued Coverage of Employee Benefits	33,365	44,486	—
	Accrued Vacation Pay	11,152	11,152	11,152
	Total Benefits	**494,517**	**4,133,701**	**3,489,215**
Ita M. Brennan	Cash Severance	300,000	450,000	—
	Vesting Acceleration[(2)]	—	1,010,731	1,010,731
	Continued Coverage of Employee Benefits	7,360	11,040	—
	Accrued Vacation Pay	32,061	32,061	32,061
	Total Benefits	**339,421**	**1,503,832**	**1,042,792**
David F. Welch, Ph.D.	Cash Severance	350,000	525,000	—
	Vesting Acceleration[(3)]	—	1,986,981	1,986,981
	Continued Coverage of Employee Benefits	22,243	33,365	—
	Accrued Vacation Pay	44,107	44,107	44,107
	Total Benefits	**416,350**	**2,589,453**	**2,031,088**
Michael O. McCarthy III	Cash Severance	315,000	472,500	—
	Vesting Acceleration[(4)]	—	1,251,350	1,251,350
	Continued Coverage of Employee Benefits	22,243	33,365	—
	Accrued Vacation Pay	42,404	42,404	42,404
	Total Benefits	**379,647**	**1,799,619**	**1,293,754**
Ronald D. Martin	Cash Severance	350,000	525,000	—
	Vesting Acceleration[(5)]	—	663,613	663,613
	Continued Coverage of Employee Benefits	22,243	33,365	—
	Accrued Vacation Pay	39,942	39,942	39,942
	Total Benefits	**412,185**	**1,261,920**	**703,555**

(1) The vesting of 599,666 shares of common stock would accelerate if Mr. Fallon was terminated without Cause, as a result of a Constructive Termination within 12 months following a Change of Control or upon death or permanent disability as of December 29, 2012.

(2) The vesting of 174,264 shares of common stock would accelerate if Ms. Brennan was terminated without Cause, as a result of a Constructive Termination within 12 months following a Change of Control or upon death or permanent disability as of December 29, 2012.

(3) The vesting of 342,583 shares of common stock would accelerate if Dr. Welch was terminated without Cause, as a result of a Constructive Termination within 12 months following a Change of Control or upon death or permanent disability as of December 29, 2012.

(4) The vesting of 215,750 shares of common stock would accelerate if Mr. McCarthy was terminated without Cause, as a result of a Constructive Termination within 12 months following a Change of Control or upon death or permanent disability as of December 29, 2012.

(5) The vesting of 114,416 shares of common stock would accelerate if Mr. Martin was terminated without Cause, as a result of a Constructive Termination within 12 months following a Change of Control or upon death or permanent disability as of December 29, 2012.

PROPOSAL 3

ADVISORY APPROVAL OF OUR EXECUTIVE COMPENSATION

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act, enables our stockholders to vote to approve, on an advisory (nonbinding) basis, the compensation of our named executive officers as disclosed in the Compensation Discussion and Analysis and the tabular disclosures of this Proxy Statement. This proposal, commonly known as a "say-on-pay" proposal, provides our stockholders with the opportunity to express their views on the compensation of our named executive officers.

As described in detail under the heading "Compensation of Executive Officers—Compensation Discussion and Analysis," we believe that the skill, talent, judgment and dedication of our executive officers are critical factors affecting the long-term value of Infinera. The goals of our executive compensation programs are to fairly compensate our executives, attract and retain highly-qualified executives able to contribute to our long-term success, encourage performance consistent with clearly defined corporate goals and align our executives' long-term interests with those of our stockholders. The specific goals that our current executive compensation programs reward are focused on financial and operating goals, including specific revenue and operating income performance metrics and product development goals. Please read the Compensation Discussion and Analysis section of this Proxy Statement beginning on page 27 for additional details about our executive compensation programs, including information about the fiscal 2012 compensation of our named executive officers. Highlights of our executive compensation programs include the following:

- A mix of cash and equity incentive awards through the principal compensation components of base salary, performance-based incentive cash compensation and long-term equity incentive compensation;
- An overall cash compensation (assuming that targeted levels of performance are achieved) at or below the median compensation of our peer group of technology companies;
- A long-term equity incentive plan awarding substantially at-risk awards subject to the achievement of performance objectives;
- Clearly defined short- and long-term individual and company objectives; and
- Annual performance reviews of all named executive officers.

Our Board believes that our executive compensation program properly aligns the interests of our executive officers with those of our stockholders, and is worthy of the support of our stockholders. In determining whether to approve this say-on-pay proposal, we believe that our stockholders should consider the following factors:

- ***Independent Compensation Committee.*** Our executive compensation policies and programs are reviewed and established by the Compensation Committee of the Board, which is comprised entirely of independent directors. The Compensation Committee also receives data, analysis and input from an independent compensation consultant.
- ***Heavy Weighting of Performance-Based Compensation.*** We have heavily weighted the compensation for our executive officers towards performance-based cash and equity awards.
- ***Targeting Base Cash Compensation Below Median.*** The Compensation Committee continued to target less than median base cash compensation for the CEO and most of the named executive officers.
- ***"Double Trigger" Change of Control Agreements.*** We provide for "double trigger" change of control benefits that are only triggered upon a qualifying termination within twelve months following a change of control described in more detail in the "Estimated Payments and Benefits Upon Termination, Change of Control or Death/Disability" section of this Proxy Statement.
- ***Stock Ownership Guidelines.*** Our executive officers are subject to Stock Ownership Guidelines described in more detail in the "Corporate Governance and the Board of Directors" section of this Proxy Statement.
- ***Clawback Policy.*** Our executive officers and directors are subject to a clawback policy pursuant to which the Compensation Committee has a one-year look-back provision and provides the authority to recoup up to 100% of any incentive compensation that resulted from a material misstatement of financial results.

- ***No Hedging of Infinera Stock.*** Our insider trading policy prohibits all employees, including the named executive officers, from hedging their Infinera stock.
- ***No Employment Agreements or Tax Gross-Ups.*** Our executive officers are "at-will" employees and do not have employment agreements or supplemental executive retirement plans. We do not provide for any tax gross-ups for payments made in connection with our change of control or separation benefits.
- ***No Additional Perquisites.*** Our executive officers are eligible for the same benefits as non-executive employees and do not receive any significant additional perquisites.

For these reasons, we are asking our stockholders to indicate their support for the compensation of our named executive officers as described in this Proxy Statement. This vote is not intended to address any specific item of compensation, but rather the overall compensation of our named executive officers and the philosophy, policies, practices and objectives described in this Proxy Statement. Accordingly, we will ask our stockholders to vote "FOR" the following resolution at the Annual Meeting:

> "**RESOLVED:** That Infinera Corporation's stockholders approve, on an advisory basis, the compensation of the named executive officers, as disclosed in the Proxy Statement for the 2013 Annual Meeting of Stockholders pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the Compensation Discussion and Analysis, the Summary Compensation Table for Fiscal 2012 and the accompanying footnotes and narratives within the Compensation of Executive Officers section of the Proxy Statement."

As an advisory vote, this say-on-pay proposal is not binding upon Infinera, our Board or the Compensation Committee. However, Infinera, our Board and the Compensation Committee, which are responsible for overseeing, reviewing and administering our executive compensation programs, value the opinions expressed by our stockholders and will continue to consider our stockholders' concerns in evaluating future compensation options for our named executive officers.

Vote Required

Approval of Proposal 3 requires the affirmative vote of a majority of the votes cast on this proposal. "ABSTENTIONS" will have the same effect as an "AGAINST" vote. Broker non-votes will not be counted as having been voted on the proposal.

Proposal 3—Recommendation of the Board

The Board unanimously recommends a vote "FOR" the approval of the compensation of our named executive officers, as disclosed in this Proxy Statement pursuant to the compensation disclosure rules of the SEC.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

We have adopted a formal policy that our executive officers, directors, and principal stockholders, including their immediate family members and affiliates, are not permitted to enter into a related party transaction with us without the prior consent of our Audit Committee, or other independent members of our Board in the case it is inappropriate for our Audit Committee to review such transaction due to a conflict of interest. Any request for us to enter into a transaction with an executive officer, director, principal stockholder, or any of such persons' immediate family members or affiliates, in which the amount involved exceeds $120,000 must first be presented to our Audit Committee for review, consideration and approval. All of our directors, executive officers and employees are required to report to our Audit Committee any such related party transaction. In approving or rejecting the proposed agreement, our Audit Committee shall consider the relevant facts and circumstances available and deemed relevant to the Audit Committee, including, but not limited to the risks, costs and benefits to us, the terms of the transaction, the availability of other sources for comparable services or products, and, if applicable, the impact on a director's independence. Our Audit Committee shall approve only those agreements that, in light of known circumstances, are, or are not inconsistent with, our best interests, as our Audit Committee determines in the good faith exercise of its discretion.

In fiscal 2012, Infinera did not engage in any related party transactions.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

The members of our Board, our executive officers and persons who hold more than 10% of our outstanding common stock are subject to the reporting requirements of Section 16(a) of the Exchange Act, which requires them to file reports with respect to their ownership of our common stock and certain transactions in our common stock. Based solely upon (i) the copies of Section 16(a) reports that we received from such persons for their fiscal 2012 transactions in our common stock and their common stock holdings and (ii) the written representations received from one or more of such persons, we believe that all reporting requirements under Section 16(a) were met in a timely manner during fiscal 2012.

PROXY

EQUITY COMPENSATION PLAN INFORMATION

The following table provides information as of December 29, 2012 with respect to the shares of our common stock that may be issued under our existing equity compensation plans.

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in First Column)(1)
Equity compensation plans approved by security holders(2)	9,101,424	$7.11	13,903,123
Equity compensation plans not approved by security holders	—	—	—
Total	**9,101,424(3)**		**13,903,123**

(1) Includes 531,298 shares of common stock available for future issuances under Infinera's 2007 ESPP.

(2) Our 2007 Plan provides that on the first day of our fiscal year, the number of shares of common stock authorized under the 2007 Plan shall be increased by the lesser of (i) 9,000,000 shares of common stock, (ii) 5% of the outstanding shares of common stock on the last day of the immediately preceding fiscal year or (iii) such other amount as is determined by the Board or a committee of the Board. For 2013, the Board approved an increase in the number of shares of common stock authorized under the 2007 Plan of 5,623,070 shares. Our 2007 ESPP provides that on the first day of our fiscal year, the number of shares of common stock authorized under the 2007 ESPP shall be increased by the lesser of (i) 1,875,000 shares of common stock, (ii) 1% of the outstanding shares of common stock on such date or (iii) such other amount as is determined by the Board or a committee of the Board. For 2013, the Board approved an increase in the number of shares of common stock authorized under the 2007 ESPP of 1,124,614 shares.

(3) Excludes 8,070,063 shares subject to RSUs and PSUs outstanding as of December 29, 2012 that were issued under the 2007 Plan.

STOCKHOLDER PROPOSALS FOR 2014 ANNUAL MEETING

To be considered for inclusion in our Proxy Statement for the 2014 Annual Meeting of Stockholders (the "2014 Annual Meeting"), stockholder proposals must comply with our Bylaws and the requirements of Rule 14a-8 under the Exchange Act and be received by our Corporate Secretary at our principal executive offices no later than November 29, 2013, or no later than 120 calendar days before the one-year anniversary of the date on which we first mailed our Proxy Statement or Notice to stockholders in connection with this year's Annual Meeting.

To be raised at the 2014 Annual Meeting, stockholder proposals must comply with our Bylaws. Under our Bylaws, a stockholder must give timely notice thereof in proper written form to our Corporate Secretary of any business, including nominations of directors for our Board that the stockholder wishes to raise at our 2014 Annual Meeting. To be timely, the stockholder notice must be received by our Corporate Secretary no later than February 12, 2014 nor earlier than January 13, 2014, or no later than the 45th day nor earlier than the 75th day before the one-year anniversary of the date on which we first mailed our Proxy Statement or Notice to stockholders in connection with this year's Annual Meeting. To be in proper written form, the stockholder notice must contain a brief description of such business and the reasons for conducting such business at the meeting, as well as certain other information as set forth in greater detail in our Bylaws. In connection with a stockholder nomination of a candidate for our Board, the stockholder notice must also include certain information as set forth in our Bylaws about both the nominee and the stockholder making the nomination. If you wish to bring a stockholder proposal or nominate a candidate for director, you are advised to review our Bylaws, which contain additional requirements about advance notice of stockholder proposals and director nominations. Our current Bylaws may be found on our website at *http://www.infinera.com* in the Corporate Governance section on the Investor Relations' page.

Under Rule 14a-8 of the Exchange Act, if the date of the 2014 Annual Meeting changes by more than 30 days from the anniversary of this year's Annual Meeting, to be included in our Proxy Statement, stockholder proposals must be received by us within a reasonable time before our solicitation is made.

Under our Bylaws, if the date of the 2014 Annual Meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of this year's Annual Meeting, then, for notice by the stockholder to be timely, it must be received by our Corporate Secretary no earlier than the close of business on the 120th day prior to the 2014 Annual Meeting and no later than the close of business on the later of (i) the 90th day prior to the 2013 Annual Meeting, or (ii) the tenth day following the day on which disclosure in a press release reported by Marketwire, Inc., Associated Press or a comparable national news service or in a document publicly filed by Infinera with the SEC pursuant to Section 13, 14 or 15(d) of the Exchange Act of the date of the 2014 Annual Meeting is first made.

If we receive notice of a matter to come before the 2014 Annual Meeting that is not in accordance with the deadlines described above and as more fully set forth in our Bylaws and Rule 14a-8 of the Exchange Act, we will use our discretion in determining whether or not to bring such matter before the 2014 Annual Meeting. If such matter is brought before the 2014 Annual Meeting, then our proxy card for such meeting will confer upon our proxy holders' discretionary authority to vote on such matter.

DELIVERY OF DOCUMENTS TO STOCKHOLDERS SHARING THE SAME LAST NAME AND ADDRESS

To reduce the expense of delivering duplicate proxy materials to stockholders who may have more than one account holding our common stock, but sharing the same address, we have adopted a procedure, approved by the SEC, called "householding." Under this procedure, stockholders who have the same last name and address, and who do not participate in electronic delivery of proxy materials, will receive only one copy of our Notice, and as applicable, any additional proxy materials that are delivered. This procedure reduces duplicate mailings and saves printing costs and postage fees, as well as natural resources. Stockholders who participate in "householding" will continue to have access to and utilize separate proxy voting instructions.

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. If, at any time, you no longer wish to participate in "householding" and would prefer to receive a separate proxy materials or if you would like an additional copy of any of the proxy materials, please notify your broker or direct your written request to Infinera Corporation, 140 Caspian Court, Sunnyvale, CA 94089, Attn: Corporate Secretary, or call (408) 572-5200. Stockholders 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.

OTHER MATTERS

The Board knows of no other matters that will be presented for consideration at the Annual Meeting. If any other matters are properly brought before the Annual Meeting, it is the intention of the persons named in the accompanying proxy to vote on such matters in accordance with their best judgment.

By Order of the Board,

/s/ Michael O. McCarthy III

Michael O. McCarthy III
Chief Legal and Administrative Officer and Corporate Secretary

Sunnyvale, California
March 29, 2013

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

Form 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 29, 2012

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission file number: 001-33486

Infinera Corporation
(Exact name of registrant as specified in its charter)

Delaware	**77-0560433**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**

140 Caspian Court
Sunnyvale, CA 94089
(Address of principal executive offices, including zip code)
(408) 572-5200
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, $0.001 Par Value	**The NASDAQ Global Select Market**

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☐
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of the registrant's common stock, $0.001 par value per share, held by non-affiliates of the registrant on June 29, 2012, the last business day of the registrant's most recently completed second fiscal quarter, was approximately $509,611,108 (based on the closing sales price of the registrant's common stock on that date). Shares of the registrant's common stock held by each officer and director and each person who owns more than 5% or more of the outstanding common stock of the registrant have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes. As of February 25, 2013, 115,393,300 shares of the registrant's common stock, $0.001 par value per share, were issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

(1) Portions of the registrant's Proxy Statement for its 2013 Annual Meeting of Stockholders to be filed pursuant to Regulation 14A are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated.

INFINERA CORPORATION

ANNUAL REPORT ON FORM 10-K

For the Fiscal Year Ended December 29, 2012

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FORM 10-K

Part I

ITEM 1. BUSINESS

Overview

Infinera Corporation ("we" or "Infinera") provides optical networking equipment, software and services to communications service providers, internet content providers, cable operators and subsea network operators (collectively, "Service Providers") across the globe. Optical networks are deployed by Service Providers facing significant demands for transmission capacity prompted by increased use of high-speed Internet access, 3G/4G mobile broadband, business Ethernet services, cloud-based services and wholesale bandwidth services. We first introduced the Infinera Digital Optical Network architecture to Service Providers in 2004. This architecture is based on optical network platforms built with Infinera's unique photonic integrated circuits ("PICs"). As of December 29, 2012, 111 Service Providers have selected Infinera's optical architecture platform to efficiently grow and manage their optical networks.

Infinera manufactures what we believe to be the world's only commercially-deployed, large-scale PICs, which are used as a key differentiating component inside our optical transport platforms. Our first generation PICs transmit and receive 100 Gigabits per second ("Gbps") of optical transmission capacity and incorporate the functionality of over 60 discrete optical functions into a pair of indium phosphide chips approximately the size of a fingernail. Our next-generation PICs, now commercially available, transmit and receive 500 Gbps, incorporating over 600 discrete optical functions into a pair of indium phosphide chips. Our PICs are combined with high-performance Optical Transport Network ("OTN") switching capabilities in our Digital Optical Network architecture to offer Service Providers a unique combination of highly-scalable transmission capacity and bandwidth management tools to efficiently and simply utilize such capacity across platforms.

Many Service Providers are looking for new network architectures to respond to continued demand for bandwidth across their networks. These architectural changes include scaling optical transmission capacities from 10 Gbps and 40 Gbps to 100 Gbps and integrating OTN switching capabilities within the optical transport platform. Infinera's DTN platform currently supports 10 Gbps and 40 Gbps transmission capacity combined with integrated switching capabilities. Infinera's DTN-X platform supports 100 Gbps transmission capacity with 500 Gbps super-channels and also integrates our 5 terabits per second ("Tbps") OTN switch in a single bay. The DTN-X platform leverages the unique capabilities of our 500 Gbps PICs to deliver high-capacity transmission while optimizing power, cooling, space and operational simplicity.

Similar to how silicon integrated circuits changed the dynamics of the computing industry by increasing computing performance and reliability while reducing physical size, power consumption and heat dissipation, we believe Infinera's PICs change the dynamics of the optical network industry by increasing optical performance and reliability while reducing physical size, power consumption and heat dissipation. We fabricate PICs and develop the software and hardware that together comprise the optical network platforms at the foundation of our Digital Optical Network architecture. We sell these optical network platforms to Service Providers along with a comprehensive suite of installation, management and support services. We believe that Service Providers facing increasing demand for greater optical network transmission capacity and the need for more favorable network economics will adopt our DTN-X platform.

"Infinera," "Infinera DTN," "Infinera DTN-X," "ATN," "Infinera Digital Optical Network," "FlexCoherent," "Infinera Instant Bandwidth," and other trademarks or service marks of Infinera Corporation appearing in this report are the property of Infinera Corporation. This report contains additional trade names, trademarks and service marks of other companies. We do not intend our use or display of other companies' trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of us by, these other companies.

Infinera was founded in December 2000, originally operated under the name "Zepton Networks," and is headquartered in Sunnyvale, California. We are incorporated in the State of Delaware. Our principal executive offices are located at 140 Caspian Court, Sunnyvale, CA 94089. Our telephone number is (408) 572-5200.

Industry Background

Optical networking equipment carries digital information using light waves over fiber optic networks. The advent of wavelength division multiplexing (“WDM”) systems has enabled the transmission of larger amounts of data by using multiple wavelengths over a single optical fiber. Service Providers often use WDM systems to carry communications traffic between cities, referred to as long-haul networks, and within large metropolitan areas, referred to as metro networks. Fiber optic networks are generally capable of carrying most types of communications traffic, from conventional long-distance telephone calls, to e-mails, web sessions and to high-definition video streaming. As service traffic grows, Service Providers add transmission capacity to existing optical networks or purchase and deploy additional systems to keep pace with bandwidth demands and service expansion.

We believe that a number of trends in the communications industry are increasing demand for network capacity and ultimately will increase demand for optical networking systems. These trends include growth in bandwidth-intensive services like video, the proliferation of 4G and WiFi mobile broadband due to the availability of smartphones and tablets, the emergence of cloud services and the continued expansion of online business and information services.

We believe that Service Providers seek the following solutions that will allow them to increase their profit margins and/or expand their service offerings:

- high-capacity solutions that scale transmission capacity to meet increasing bandwidth demand;
- efficient solutions that optimize performance and increase reliability while reducing physical space, power consumption and heat dissipation;
- easy to use solutions that reduce the time to deploy new transmission capacity while lowering operational expenses; and
- improved integration between Internet Protocol equipment such as routers and optical networking equipment.

We believe that Infinera’s Digital Optical Network architecture is uniquely enabled to deliver improvements in these areas compared to competitive WDM systems that still rely on discrete optical components. We believe that our Digital Optical Network architecture enables Service Providers to deploy reliable, high-capacity, efficient optical network solutions that are easy to use and improve the integration between the layers of Service Provider networks with the lowest Total Cost of Ownership.

The Infinera Strategy

Our goal is to be a preeminent provider of optical networking systems to Service Providers around the world. Key aspects of our strategy to achieve this goal are as follows:

- *Increasing our customer base.* We continue to diversify our customer base across multiple customer segments including, long-haul network operators, regional and metro network operators, Tier 1 telecommunications service providers, bandwidth wholesalers, subsea network operators, cable multiple systems operators (“MSOs”) and internet content providers. In 2013 and beyond, we intend to increase our penetration with existing customers while leveraging our new DTN-X platform to target, in particular, Tier 1 U.S. and international telecommunications service providers, including U.S. regional Bell operating companies, international postal, telephone and telegraph companies, and other operators of fiber optic networks around the world. In 2012, we increased our presence outside of the United States, with the addition of new customers in Europe and Asia Pacific (“APAC”), as well as deployments in the Other Americas. We also had continued success in the submarine market, as subsea network operators deployed Infinera systems over existing subsea networks to increase capacity and utilize the efficiencies of our Digital Optical Network.
- *Penetrating adjacent markets.* We believe that our Digital Optical Network architecture can further benefit submarine network operators and operators with networks that extend to the metro edge. We intend to increase our addressable markets by continually adding functionality to our products and by developing the service and support infrastructure needed to address these markets.

- *Maintaining and extending our technology lead.* We intend to continue to incorporate the functionality of additional discrete functions into our PICs in order to continue to increase our technology lead. In addition, we will pursue the expansion of our digital switching and bandwidth management capabilities in order to enhance the performance, scalability and economic advantages of our products.
- *Continuing investment in PIC manufacturing activities.* We believe that our vertical integration and manufacturing capabilities serve as a competitive advantage and intend to continue to invest in the manufacturing capabilities needed to produce new generations of PICs.

Products

Infinera DTN Platform

The Infinera DTN platform utilizes our PIC technology to enable digital processing and management of data with the capability to generate WDM wavelengths and to add, drop, switch, manage, protect and restore network traffic digitally using integrated OTN switching. The DTN platform can automate the connection of circuits and provisioning of new services without costly and cumbersome manual intervention.

Our DTN platform is modular in design to provide Service Providers with the ability to add capacity in a cost-efficient manner. The initial deployment of our DTN platform at a customer site involves the installation of a line system (including common equipment, such as a chassis, amplifiers, management controllers and related equipment). Service Providers can increase the capacity of the DTN platform by purchasing our Digital Line Modules, Tributary Adapter Modules and Tributary Optical Modules. We believe that the density and the modular architecture of the DTN platform enable significant flexibility and scalability for Service Providers. Our current DTN platform delivers 10 Gbps and 40 Gbps wavelengths enabling fiber capacity from 1.6 Tbps to 6.4 Tbps.

Our DTN platform is carrier-class, which means that it complies with applicable Telcordia and equivalent major international standards for central office-based network elements. Our DTN platform supports a broad range of optical service interfaces including Ethernet (1 Gigabit Ethernet (“GbE”), 10 GbE, 40 GbE and 100GbE) and separate synchronous optical network/synchronous digital hierarchy.

Infinera DTN Platform for Submarine Network Applications

For submarine transport applications, the DTN platform can be used as a Submarine Line Terminating Equipment (“SLTE”) node, doubling the total optical capacity of many traditional submarine systems to a maximum of up to 6.4 Tbps and distances of up to 8,000 km. The DTN platform also provides dispersion compensation that is significantly simpler and cheaper than the per-channel dispersion management of many existing SLTE systems. Our DTN platform leverages its digital operations and software automation to allow Infinera’s SLTE solution to significantly reduce engineering complexity for submarine cable upgrades and to enable lower cost, faster deployment of additional capacity on existing systems.

Infinera Line System

Infinera’s Digital Optical Network platforms are built upon and connected to one another using an optical “line system.” The Infinera Line System (“ILS”) provides optical amplification and enables the management communication channels between network nodes. ILS currently supports up to 6.4 Tbps of optical capacity on a single fiber using the DTN platform and up to 8 Tbps of capacity using the DTN-X platform. ILS is fully integrated into Infinera’s management and control software and can be managed seamlessly across platforms. Infinera’s bandwidth management capabilities allow our customers to manage and utilize the available capacity as a single pool of bandwidth to satisfy customer requirements, including services at speeds from 1 Gbps up to 100 Gbps.

Infinera DTN-X Platform

Commercial shipments of the Infinera DTN-X platform began in the second quarter of 2012 and we recognized significant revenue from the platform in the second half of the year. The DTN-X platform is based on our third generation 500 Gbps PICs that integrate more than 600 discrete optical functions delivering the world’s first 500 Gbps FlexCoherent super-channels, based on 100 Gbps per channel. The DTN-X platform delivers a step function improvement in network economics to help Service Providers more efficiently manage the explosive growth of traffic brought on by video, mobile and cloud-based services. The DTN-X platform is a next-generation multi-terabit packet optical transport platform that is fundamentally three products in one:

- a dense WDM ("DWDM") transmission system based on the world's first 500 Gbps super-channels, unleashing cost-effective DWDM transmission capacity;
- an integrated OTN switching system that will scale from 5 Tbps in its first release and up to 100 Tbps in the future and will enable operators to efficiently manage larger data transmission with grooming of traffic down to 1 Gbps granularity; and
- a system that is designed to be upgradeable to Multi-Protocol Label Switching ("MPLS") switching in the future which will help further enable convergence of the network for improved efficiency, reducing the number interconnections between network layers.

We believe that the convergence of network layers can only be achieved when the best in class performance of each individual layer is realized in a single platform. In most competitive solutions, a Service Provider must make a choice between maximizing either the system's transmission capacity or its OTN switching capability. The DTN-X platform, unlike other competitive offerings, was designed to converge switching with DWDM transport without compromising overall system functionality. The purpose-built design centers around three unique technology building blocks – PICs paired with a FlexCoherent Processor, custom switching application-specific integrated circuits ("ASICs") and intelligent Generalized MPLS ("GMPLS") software. We believe that it is the only platform available in the market that will allow all components, including the optical functions based on our PIC technology, to scale in a manner consistent with Moore's Law-like semiconductor manufacturing economics and, therefore, deliver simultaneously best-of-breed switching, integrated with best-of-breed DWDM.

Infinera ATN Platform

The Infinera ATN platform is a state-of-the-art coarse WDM and DWDM aggregation and transport solution designed with 400 Gbps of total capacity. The ATN platform can be used to extend the Digital Optical Network architecture benefits of the DTN and DTN-X platforms, and can also be used as a standalone WDM access system.

Implementing numerous features in support of simplicity of use and operation, the ATN platform is a cost-effective, efficient multiservice aggregation and transport platform. The ATN platform supports direct wavelength connectivity to DTN and DTN-X nodes, reducing equipment costs and providing unique network management capabilities across our integrated Digital Optical Networks.

Infinera IQ Network Operating System

The Infinera IQ Network Operating System is our embedded software operating system, which enables our Service Providers to simplify and speed up the tasks they perform to deliver, differentiate, and manage services and to optimize the utilization of their networks. The IQ Network Operating System for the DTN and DTN-X platforms utilize GMPLS for end-to-end provisioning, protection and restoration services, and a host of performance monitoring and software-definable testing capabilities. The ATN platform supports end-to-end provisioning through software features similar to the DTN and DTN-X platforms.

Infinera Management Suite

The Infinera Management Suite is a broad set of standards-based network and element management tools and operations support system integration interfaces that are used by Service Providers to manage their DTN, DTN-X and ATN platforms. Our management suite software includes our Digital Network Administrator, a scalable, robust, feature-rich element management system, and our Graphical Node Manager, an easy-to-use web-based management interface. Our hardware products, the DTN, DTN-X and ATN platforms, are managed in an integrated fashion by the Infinera Management Suite.

Technology

Digital Optical Network Architecture

Infinera was founded with a vision of increasing the functionality and improving the economics of optical transport systems. To that end, our core engineering team consists of optical component and systems experts who have collaborated to create an innovative optical networking architecture that combines the delivery of large amounts of low-cost bandwidth with distributed switching and the embedded software intelligence of bandwidth management to manage larger networks and deliver high-capacity services quickly and cost-effectively. We have focused our efforts, time and capital on developing our Digital Optical Network architecture and our system products.

Our Digital Optical Network architecture is designed to allow our customers to expand service reach, expedite service provisioning, ensure reliability and more effectively manage, monitor and scale their networks by processing data digitally rather than in analog format. We believe that the key to delivering this capability in a cost-effective manner is integrating the functionality of multiple discrete devices into a single set of semiconductor chips. This integration allows us to eliminate separate optical packages for each discrete optical device, which we believe is the largest cost challenge facing traditional systems. This integration has further enabled us to provide additional functionality and intelligence to our optical networking systems.

Infinera PICs

We believe that our proprietary PICs are a key source of our value proposition and competitive advantage. We manufacture and package our PICs at our own facilities for use exclusively with our DTN and DTN-X platforms. We began the design and manufacture of our PICs shortly after we were founded in December 2000. We employ a multi-disciplinary approach towards the development and manufacture of our PICs, with significant interaction between our manufacturing, system engineering and advanced technology groups. As a leader in the development of photonic integration, we have protected the intellectual property associated with our PIC manufacturing through a combination of trade secrets, patents and contractual protections. We believe that as a result of the combination of the multiple disciplines that were required to develop our PIC, together with the intellectual property protections that we have established, it will be difficult for others to duplicate the technology we have developed.

Our DTN and DTN-X platforms transmit optical capacity, in increments of 100 Gbps and 500 Gbps, respectively, utilizing a pair of PICs. Our 100 Gbps PICs integrate the functionality of 60 optical functions onto a pair of chips, and our 500 Gbps PICs have increased this integration to over 600 discrete functions per pair of chips. We believe that large-scale photonic integration enables significantly improved manufacturing economics to optical networking, allowing future optical transport cost reductions to be viably sustained on a cost curve defined by volume manufacturing efficiencies, greater functional integration, increased device density, and manufacturing yield enhancements.

Infinera FlexCoherent Processor

The term “coherent transmission” generally implies the combination of a number of technologies used to transmit data over optical networks. These optical transmission methodologies are based on varying optical technologies, namely: phase modulation, polarization multiplexing, coherent detection and advanced digital signal processing. These “coherent technologies” are used by Service Providers to enable higher data capacities to be transmitted over their existing optical fiber infrastructure, typically using the same or better design rules than those used for 10 Gbps transmission. Typically, a coherent transmitter uses a more complex optical circuit and requires a significantly greater number of optical components than more traditional non-coherent transmission methodologies. Infinera has integrated proprietary coherent technologies onto our FlexCoherent Processor, which works in conjunction with our 500 Gbps PICs to construct a single module. This module incorporates our long-haul FlexCoherent 500 Gbps WDM super-channels with software selectable modulation formats and exceptional optical performance.

Super-Channels

Infinera’s DTN-X platform supports five channels of 100 Gbps capacity in a single line card. This 500 Gbps pool of bandwidth is managed as a super-channel that can be deployed in a single operational motion. Competitive solutions would require the installation of five discrete line modules, each turned up with its own operational motion, in order to achieve the same system capacity. This results in competitive advantages not only in the areas of space, power consumption and long-term system reliability, but also a significant reduction in time to service and operational costs.

In November of 2012, we introduced the Infinera Instant Bandwidth program, which enables Service Providers to license the 500 Gbps super-channel pool of bandwidth in 100 Gbps increments. With the Infinera Instant Bandwidth program, Service Providers can instantly provision an additional 100G of transmission capacity on demand without the deployment of any incremental equipment. The Instant Bandwidth program is uniquely enabled by Infinera's super-channel capability.

Integrated OTN Switching

OTN offers a highly-structured approach to service multiplexing and switching and enables customers to reduce operational costs and more efficiently utilize higher-capacity bandwidth in their long-haul networks. Historically, the OTN switching and DWDM transport functions have been deployed by Service Providers in separate systems. Our unique PIC technology allows our DTN-X platform to fully integrate DWDM transport and OTN switching capabilities in a single platform, without compromising overall system functionality or capacity. This is achieved by reducing the number of elements and fiber connections in the network, as well as lowering space and power requirements. This results in an improved total cost of ownership for the customer.

Customers

As of December 29, 2012, we have sold our Digital Optical Networks for deployment to 111 customers worldwide, including customers in each of the following segments:

- Tier-1 domestic carrier;
- Tier-1 international carrier;
- MSO/cable;
- internet content provider;
- incumbent carrier;
- research and education/government; and
- bandwidth wholesaler.

Some of our announced customers include CenturyLink, Telefonica, Cable&Wireless Worldwide, TeliaSonera International Carrier, Colt, Cox Communications, Deutsche Telekom, Equinix, Inc., Interoute, KVH, Level 3 Communications ("Level 3"), NTT, OTE, Pacnet and XO Communications. In addition, we currently have 41 customer deployments where customers have purchased our ATN platform to extend the Digital Optical Network experience to their metro edge deployments. We do not have long-term sales commitments from our customers. We had no customer that represented over 10% of our revenue for 2012 and 2011 and one customer that represented over 10% of our revenue for 2010.

Support and Services

We offer our customers a range of product offerings, including 24/7/365 technical support for all hardware and software products, a full range of deployment and installation services, spares management, first line maintenance services, on-site technical services, professional services, product technical training and extended product warranties. In 2012, we expanded all services to cover over 60 countries. We continue to increase our outsourced network monitoring and management services, provided from our two Technical Assistance Centers—one in Annapolis Junction, Maryland, and the other in the United Kingdom. We also expanded our technical support capabilities in APAC to include a facility in Hong Kong, providing a local environment for product demonstrations, training and support. Our customer support services are provided by our employees and augmented where necessary by strategic support partners. We believe that providing ongoing customer and technical support is critical to successful long-term relationships with, and follow-on sales to, our customers. We are committed to providing our customers with the highest levels of technical support and service on a global scale.

Sales and Marketing

We market and sell our products and related support services primarily through our direct sales force, supported by marketing and product management personnel. We may also use distribution or support partners to enter new markets or when requested by a potential customer. Our sales team has significant previous experience with the buying process and sales cycles typical of high-value telecommunications products. We expect to continue to add sales and support employees as we grow our business.

The sales process for our products entails discussions with prospective customers, analyzing their existing networks and identifying how they can utilize our systems capabilities within their networks. This process requires developing strong customer relationships, and we expect to leverage our sales force and customer support capabilities to establish relationships with both domestic and international Service Providers.

Over the course of the sales cycle, Service Providers often test our products before buying. Prior to commercial deployment, the Service Provider will generally perform a field trial of our products. Upon successful completion, the Service Provider generally accepts the products installed in its network and may continue with commercial deployment of additional products. We anticipate that our sales cycle, from initial contact with a Service Provider through the signing of a purchase agreement, may, in some cases, take several quarters.

Direct Sales Force. Our sales team sells directly to Service Providers worldwide. We maintain sales presences throughout the United States, as well as in a number of international locations, including Argentina, China, France, Germany, Hong Kong, Italy, Japan, Netherlands, Singapore, South Africa, Spain, Russia, and the United Kingdom. We expanded our sales force during 2012 as we prepared to address new geographical markets and to support the sales of our expanded portfolio of products. We expect any incremental sales headcount additions in the near-term to be limited to areas where sales achievements are ahead of planned amounts.

Indirect Sales Force. We have and will continue to employ business consultants, resale partners and sales agents to assist in our sales efforts and to accelerate and strengthen our customer relationships. We expect to work with business partners to assist our customers in the sale, deployment and maintenance of our systems and have entered into distribution and resale agreements to facilitate the sale of our products.

Marketing and Product Management. Our product management team is responsible for defining the product features and development plan required to maximize our success in the marketplace. Product management supports our sales efforts with product and application expertise. Our marketing team works to create demand for our products by communicating our value proposition and differentiation through direct customer interaction, public relations, attendance at tradeshows and other events, and via the Internet and other marketing channels.

Research and Development

Continued investment in research and development is critical to our business. To this end, we have assembled a team of engineers with expertise in various fields, including systems, sub-systems and components. Our research and development efforts are currently focused in Sunnyvale, California; Allentown, Pennsylvania; Beijing, China; Bangalore, India; and Kanata, Canada. We have invested significant time and financial resources into the development of our Digital Optical Network architecture, and our DTN-X, DTN and ATN platforms, including the IQ Network Operating System and Management Suite software. We will continue to expand our product offerings and capabilities in the future and plan to dedicate significant resources to these continued research and development efforts. We are continually increasing the scalability and software features of our current platforms. We are also working to develop new generations of PICs, and we intend to enable further integration in our Digital Optical Network architecture through continued research and development.

Our research and development expenses were $117.2 million, $127.1 million and $118.5 million in 2012, 2011 and 2010, respectively.

Employees

As of December 29, 2012, we had 1,242 employees. A total of 431 of those employees were located outside of the United States. None of our U.S. employees are subject to a collective bargaining agreement. Employees in certain foreign jurisdictions may be represented by local workers' councils and/or collective bargaining agreements, as may be customary or required in those jurisdictions. We have not experienced any work stoppages, and we consider our employee relationships to be good.

Manufacturing

We have invested significant time and capital to develop and improve the manufacturing process that we use to produce and package our PICs. This includes significant investments in personnel, equipment and the facilities needed to manufacture and package our PICs in Sunnyvale, California and Allentown, Pennsylvania. We also have invested in automating our manufacturing process and in training and maintaining the quality of our manufacturing workforce. As a leader in the development of photonic integration, our manufacturing processes have been developed over several years and are protected by a significant number of trade secrets. We believe that the trade secrets associated with the manufacturing and packaging of our PICs provide us with a significant competitive advantage.

We use both domestic and international manufacturing partners to manufacture certain components of our products. Our contract manufacturers manufacture our products based on our specifications and bill of materials. In addition, the lead times associated with certain components are lengthy and preclude rapid changes in product specifications or delivery schedules. Although we experienced some delays in late 2011 in connection with the floods in Thailand, to date, we have not experienced any significant delays or material unanticipated costs resulting from the use of these contract manufacturers; however, such a strategy involves certain risks, including the potential absence of adequate capacity, the unavailability of or interruptions in access to certain process technologies, and reduced control over delivery schedules, manufacturing yields, quality and costs. Despite outsourcing manufacturing operations for cost-effective scale and flexibility, we perform rigorous in-house quality control testing to ensure the reliability of our products. Our supply chain risk mitigation strategies are continuous and are institutionalized in our supply chain design for external manufacturing and for procurement of components. By design, we have three contract manufacturers in three different countries, in a low cost region (one in China), as well as the capability to redirect manufacturing to U.S. qualified factories of two electronic manufacturing services partners.

Shortages in components that we use in our products are possible and our ability to predict the availability of such components may be limited. Some of these components are available only from single or limited sources of supply. Our products include some components that are proprietary in nature and only available from a single source, as well as some components that are generally available from a number of suppliers. We have increased our reliance on third parties to develop and manufacture components for our products. In some cases, significant time would be required to establish relationships with alternate suppliers or providers of proprietary components. We do not have any long-term contracts with any component providers that guarantee supply of components or their manufacturing services. If we encounter difficulty continuing our relationship with a supplier, or if a supplier is unable to meet our needs, we may encounter manufacturing delays that could adversely affect our business. Our ability to timely deliver products to our customers would be materially adversely impacted if we needed to qualify replacements for any of a number of the components used in our products.

In 2011, we expanded our PIC fabrication ("PIC FAB") manufacturing facility in Sunnyvale, California in preparation for volume shipments of our 500 Gbps PICs, which commenced in the second quarter of 2012.

We believe that our current manufacturing facilities can accommodate an increase in capacity for PIC production sufficient for our current product offerings.

Backlog

As of December 29, 2012, our backlog was $58.4 million. These orders are subject to future events that could cause the amount or timing of the related revenue to change, and, in certain cases, may be cancelled without penalty. We do not believe that backlog should be viewed as an indicator of future performance. A backlogged order may not result in revenue in a particular period, and the actual revenue may not be equal to our backlog amounts. Our presentation of backlog may not be comparable with that of other companies in our industry.

Competition

The optical communications network equipment market is highly competitive. Competition in this market is based on any one or a combination of the following factors:

- price and other commercial terms;
- functionality;
- existing business and customer relationships;
- the ability of products and services to meet customers' immediate and future network requirements;
- installation capability;
- services;
- scalability; and
- manufacturing capability.

Competition in the optical networking market is dominated by a number of very large, multi-national companies. Many of our competitors have substantially greater name recognition and technical, financial, and marketing resources, and greater manufacturing capacity, as well as better established relationships with the incumbent carriers, than we do. Many of our competitors have more resources to develop or acquire, and more experience in developing or acquiring, new products and technologies and in creating market awareness for these products and technologies. In addition, many of our competitors have the financial resources to offer competitive products at below market pricing levels that could prevent us from competing effectively. Further, many of our competitors have built long-standing relationships with some of our prospective customers and a number of competitors have the ability to provide financing to customers and could, therefore, have an inherent advantage in selling products to those customers.

Our competitors include current WDM suppliers, such as Alcatel-Lucent, Ciena Corporation, Cisco Systems, Ericsson, Fujitsu Limited, Huawei Technologies Co. Ltd., NEC Corporation, Tellabs and ZTE Corporation. These companies have historically set the competitive benchmarks for price and functionality. There are also smaller companies, including startups, that have announced plans or developed products that would compete for long-haul and metro optical transport business. We also face additional competition in certain market segments from companies which offer one or more products that compete directly or indirectly with our products. In addition, we may compete with other companies as we expand into new markets or as other companies develop products that are competitive with us.

Intellectual Property

Our success as a company depends upon our ability to protect our core technology and intellectual property. To accomplish this, we rely on a combination of intellectual property rights, including patents, trade secrets, copyrights and trademarks, as well as customary contractual protections.

We rely primarily on trade secret protection for our PIC and PIC manufacturing processes, including design, fabrication and testing of our PICs. However, there can be no assurances that trade secrets will be sufficient to provide us with a competitive advantage or that others have not or will not reverse engineer our designs or discover, develop or disclose the same or similar designs and manufacturing processes.

As of December 29, 2012, we held 212 U.S. patents and 35 international patents expiring between 2021 and 2031, and held 168 U.S. and 74 foreign pending patent applications. We do not know whether any of our pending patent applications will result in the issuance of patents or whether the examination process will require us to narrow our claims.

We may not receive competitive advantages from the rights granted under our patents and other intellectual property. Any patents granted to us may be contested, circumvented or invalidated over the course of our business, and we may not be able to prevent third parties from infringing these patents. Therefore, the exact effect of the protection of these patents cannot be predicted with certainty.

We believe that the frequency of assertions of patent infringement is increasing as patent holders, including entities that are not in our industry and who purchase patents as an investment or to monetize such rights by obtaining royalties, use such actions as a competitive tactic as well as a source of additional revenue. We have been sued by Cheetah Omni LLC (“Cheetah”) and Cambrian Science Corporation (“Cambrian”) for alleged infringement of their patents. See the section set forth in Item 3. “Legal Proceedings” for additional information regarding these lawsuits. Any claim of infringement from a third party, even those without merit, could cause us to incur substantial costs defending against such claims, and could distract our management from running our business. Furthermore, a party making such a claim, if successful, could secure a judgment that requires us to pay substantial damages. A judgment could also include an injunction or other court order that could prevent us from selling our products. In addition, we might be required to seek a license for the use of such intellectual property, which may not be available on commercially reasonable terms or at all. Alternatively, we may be required to develop non-infringing technology, which would require significant effort and expense and may ultimately not be successful.

In addition to trade secret and patent protections, we generally control access to and the use of our proprietary software and other confidential information. This protection is accomplished through a combination of internal and external controls, including contractual protections with employees, contractors, customers, and partners, and through a combination of U.S. and international copyright laws. We incorporate a number of third-party software programs into our products pursuant to license agreements.

We license some of our software pursuant to agreements that impose restrictions on our customers’ ability to use such software, such as prohibiting reverse engineering and limiting the use of copies. We also seek to avoid disclosure of our intellectual property by relying on non-disclosure and assignment of intellectual property agreements with our employees and consultants that acknowledge our exclusive ownership of all intellectual property developed by the individual during the course of his or her work with us. The agreements also require that each person maintain the confidentiality of all proprietary information disclosed to them. Other parties may not comply with the terms of their agreements with us, and we may not be able to enforce our rights adequately against these parties. We also rely on contractual rights to establish and protect our proprietary rights in our products.

We incorporate open source software into our products. Although we monitor our use of open source software closely, the terms of many open source licenses have not been interpreted by U.S. courts, and there is a risk that such licenses could be construed in a manner that could impose unanticipated conditions or restrictions on our ability to commercialize our products. In such event, we could be required to seek licenses from third parties in order to continue offering our products, to re-engineer our products or to discontinue the sale of our products in the event re-engineering cannot be accomplished on a timely basis, any of which could adversely affect our business, operating results and financial condition.

Environmental Matters

Our business and operations are subject to environmental laws in various jurisdictions around the world including the Waste Electrical and Electronic Equipment and Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment regulations adopted by the European Union. We seek to operate our business in compliance with such laws. We are currently subject to laws relating to the materials and content of our products and certain requirements relating to product take back and recycling. Environmental regulation is increasing, particularly outside of the United States, and we expect that our international operations will be subject to additional environmental compliance requirements, which may expose us to additional costs. To date, our compliance costs relating to environmental regulations have not resulted in a material adverse effect on our business, results of operations or financial condition.

Business Segment Data and Our Foreign Operations

We operate in the single industry segment of optical networking systems. Information concerning revenues, results of operations and revenues by geographic area is set forth in Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and in Note 15, “Segment Information,” of Notes to Consolidated Financial Statements, both of which are incorporated herein by reference. Information concerning identifiable assets is also set forth in Note 15, “Segment Information,” of Notes to Consolidated Financial Statements. Information on risks attendant to our foreign operations is set forth below in Item 1A. “Risk Factors.”

Executive Officers and Directors

Our executive officers and directors, and their ages and positions as of December 29, 2012, are set forth below:

Name	Age	Position
Thomas J. Fallon	51	President, Chief Executive Officer and Director
David F. Welch, Ph.D.(3)	52	Co-founder, Executive Vice President, Chief Strategy Officer and Director
Ita M. Brennan	45	Chief Financial Officer
Ronald D. Martin	64	Senior Vice President, Worldwide Sales (effective January 31, 2013, Mr. Martin was no longer employed by the Company)
Michael O. McCarthy III	47	Chief Legal and Administrative Officer
Kambiz Y. Hooshmand(3)	51	Chairman of the Board
Kenneth A. Goldman(2)(4)	63	Director
Philip J. Koen(3)(4)	60	Director
Dan Maydan, Ph.D.(1)(2)	77	Director
Paul J. Milbury(2)(4)	64	Director
Carl Redfield(1)(2)	65	Director
Mark A. Wegleitner(1)(3)	62	Director

(1) Member of Nominating and Governance Committee
(2) Member of Compensation Committee
(3) Member of Technology and Acquisition Committee
(4) Member of Audit Committee

Thomas J. Fallon has served as our President and Chief Executive Officer since January 2010 and as a member of our board of directors since July 2009. Mr. Fallon served as our Chief Operating Officer from October 2006 to December 2009 and as our Vice President of Engineering and Operations from April 2004 to September 2006. From August 2003 to March 2004, Mr. Fallon was Vice President, Corporate Quality and Development Operations of Cisco Systems, Inc., a networking and telecommunications company. From May 2001 to August 2003, Mr. Fallon served as Cisco's General Manager of the Optical Transport Business Unit. Mr. Fallon is currently a member of the Engineering Advisory Board of the University of Texas at Austin. Mr. Fallon holds a B.S.M.E. and M.B.A. from the University of Texas at Austin.

David F. Welch, Ph.D. co-founded our company and has served as our Executive Vice President, Chief Strategy Officer since January 2004 and as a member of our board of directors since October 2010. Dr. Welch previously served as our Chief Development Officer/Chief Technology Officer from May 2001 to January 2005, as our Chief Marketing Officer from January 2005 to January 2009, as a member of our board of directors from May 2001 to November 2006. From February 2001 to April 2001, Dr. Welch served as Chief Technology Officer of the Transmission Products Group of JDS Uniphase Corporation, an optical component company. From January 1985 to February 2001, Dr. Welch served in various executive roles, including Chief Technology Officer and Vice President of Corporate Development of SDL Inc., an optical component company. Dr. Welch is the Founder and President of Students Matter, a non-profit organization focused on improving K-12 public education in California. Dr. Welch holds a B.S. in Electrical Engineering from the University of Delaware and a Ph.D. in Electrical Engineering from Cornell University. Dr. Welch holds over 130 patents, and has been awarded the Adolph Lomb Medal, Joseph Fraunhofer Award and the John Tyndall Award in recognition of his technical contributions to the optical industry. He is a Fellow of the Optical Society of America (OSA) and the Institute of Electrical and Electronics Engineers (IEEE).

Ita M. Brennan has served as our Chief Financial Officer since July 2010. Prior to becoming our Chief Financial Officer, Ms. Brennan served as our Vice President of Finance and Corporate Controller since July 2006. From September 1997 to July 2006, Ms. Brennan held various roles at Maxtor Corporation, an information storage solutions company, including Vice President of Finance of Worldwide Operations. Ms. Brennan is a chartered accountant and public accounting alumna of Deloitte and Touche, having worked at the firm in Ireland and the U.S.

Ronald D. Martin served as our Senior Vice President of Worldwide Sales from August 2009 to January 2013. From November 2007 to June 2009, Mr. Martin served as Chief Marketing and Strategy Officer and

President of ADVA Optical Networking's North American subsidiary, an optical networking company. From May 2001 to November 2007, Mr. Martin served as Vice President and General Manager of the optical business unit of Cisco Systems, Inc., a networking and telecommunications company. From May 1987 to May 2001, Mr. Martin served as Chief Operating Officer at Fujitsu Network Communications, a networking and telecommunications company. Mr. Martin holds an A.A. from Iowa Lakes College.

Michael O. McCarthy III has served as our Chief Legal and Administrative Officer since March 2010. From January 2008 to March 2010, Mr. McCarthy served as our Chief Legal Officer. From May 2003 to January 2008, Mr. McCarthy served as our Vice President and General Counsel. Prior to joining our Company, Mr. McCarthy served in various executive roles, including Senior Vice President of Worldwide Sales and Support and Senior Vice President and General Counsel, at Ciena Corporation, a communications equipment company. Prior to working at Ciena, Mr. McCarthy worked in the legal department at MCI Communications Corporation and practiced law at the law firms of Hogan and Lovells and Baker & Mckenzie where he concentrated his practice in the areas of technology law and corporate and securities law. Mr. McCarthy holds a B.A. in Mathematical Economics from Colgate University and a J.D. from Vanderbilt University's School of Law.

Kambiz Y. Hooshmand has been a member of our board of directors since December 2009 and has served as Chairman of our board of directors since October 2010. From March 2005 to May 2009, Mr. Hooshmand served as President and Chief Executive Officer of Applied Micro Circuits Corporation, a communications solutions company. From March 2000 to February 2002, Mr. Hooshmand served as Vice President and Division General Manager of the DSL Business Unit of Cisco. From February 2002 to March 2005, Mr. Hooshmand also served as Group Vice President and General Manager of Cisco. From June 1997 to February 2000, Mr. Hooshmand served as Cisco's Vice President of Engineering. From January 1992 to June 1997, Mr. Hooshmand served as Director of Engineering of StrataCom,Inc., a networking solutions company. Mr. Hooshmand holds a B.S. in Electrical Engineering and Computer Science from California State University, Chico and an M.S. in Engineering from Stanford University.

Kenneth A. Goldman has been a member of our board of directors since February 2005. Mr. Goldman is Chief Financial Officer of Yahoo!, responsible for Yahoo!'s global finance functions including financial planning and analysis, controllership, tax, treasury, and investor relations since October 2012. Mr. Goldman served as Senior Vice President, Finance and Administration, and Chief Financial Officer of Fortinet Inc., a provider of unified threat management solutions, from September 2007 to September 2012. From November 2006 to August 2007, Mr. Goldman served as Executive Vice President and Chief Financial Officer of Dexterra, Inc. From August 2000 until March 2006, Mr. Goldman served as Senior Vice President, Finance and Administration, and Chief Financial Officer of Siebel Systems, Inc., a supplier of customer software solutions and services. From December 1999 to December 2003, Mr. Goldman served as an advisory council member of the Financial Accounting Standards Board Advisory Council. Mr. Goldman serves on the board of directors of NXP Semiconductor N.V., a mixed signal and standards product semiconductor company. Mr. Goldman is currently on the board of trustees of Cornell University and was formerly a member of the Treasury Advisory Committee on the Auditing Profession, a public committee that made recommendations in September 2008 to encourage a more sustainable auditing profession. Mr. Goldman holds a B.S. in Electrical Engineering from Cornell University and an M.B.A. from the Harvard Business School.

Philip J. Koen has been a member of our board of directors since February 2010. Mr. Koen has been Chairman of the Board of Directors and Chief Executive Officer of Intermedia.net, Inc., a cloud-based provider of hosted Microsoft Exchange, collaboration and content management services since June 2011. Since October 2010, Mr. Koen has served as a member of the board of directors for Proofpoint, a cloud-based email security company. From February 2010 to May 2011, Mr. Koen served as the Chief Executive Officer of Montero Partners, an advisory services company. From March 2006 to January 2010, Mr. Koen served as Chief Executive Officer and Director of SAVVIS, Inc., a cloud infrastructure and hosted IT solutions provider. From July 1999 until February 2006, Mr. Koen was employed by Equinix, Inc., a provider of network neutral data centers and Internet exchange services, as President and Chief Operating Officer and as Chief Financial Officer. Mr. Koen is currently on the board of trustees of Webster University. Mr. Koen holds a B.A. in Economics from Claremont McKenna College and an M.B.A. from the University of Virginia.

Dan Maydan, Ph.D. has been a member of our board of directors since September 2001. From December 1993 to April 2003, Dr. Maydan served as President of Applied Materials Inc., a semiconductor equipment manufacturing company, and was appointed President Emeritus of Applied Materials from April 2003 to December

2012. Dr. Maydan was a member of the board of directors of Applied Materials from June 1992 until March 2006. Since 1996, Dr. Maydan has served on the board of directors of Electronics for Imaging, Inc., a digital imaging and print management solutions company. Dr. Maydan holds a B.S. and M.S. in Electrical Engineering from the Israel Institute of Technology and a Ph.D. in Physics from Edinburgh University of Scotland.

Paul J. Milbury has been a member of our board of directors since July 2010. Mr. Milbury served as Vice President of Operations and Chief Financial Officer of Starent Networks Corp., a provider of mobile network solutions, from January 2007 until its acquisition by Cisco in 2009. From December 2009 to July 2010, he played a key role in integrating Starent Networks into Cisco to create the Mobile Internet Technology Group. From December 2000 to March 2007, Mr. Milbury served as Vice President and Chief Financial Officer of Avid Technology, Inc., a digital media creation, management, and distribution solutions company. Mr. Milbury serves on the board of directors of Aerohive Networks, a wireless networking company in Sunnyvale, CA and Accedian Networks, a network performance assurance solutions provider in Montreal, Canada. Mr. Milbury holds a B.B.A. in Business and Economics and an M.B.A. from the University of Massachusetts, Amherst.

Carl Redfield has been a member of our board of directors since August 2006. From September 2004 to his retirement in May 2008, Mr. Redfield served as Senior Vice President, New England Development Center Executive Sponsor, of Cisco. From February 1997 through September 2004, Mr. Redfield served as Cisco's Senior Vice President, Manufacturing and Logistics. Mr. Redfield holds a B.S. in Materials Engineering from Rensselaer Polytechnic Institute and has completed post-graduate studies at the Harvard Business School.

Mark A. Wegleitner has been a member of our board of directors since May 2011. From April 2011, Mr. Wegleitner has served as President of Wegleitner Consulting, LLC, a privately owned telecommunications consulting company. From September 2007 until his retirement in July 2010, Mr. Wegleitner served as the Senior Vice President, Technology, for Verizon Communications Inc., a telecommunications company, where his responsibilities included technology assessment, network architecture, platform development and laboratory testing for wireline and wireless communications networks. From July 2000 to September 2007, he served as Chief Technology Officer for Verizon, with responsibility for wireline communications technologies. Prior to the creation of Verizon, Mr. Wegleitner held various positions in the Network Services division of Bell Atlantic, a telecommunications company, including Chief Technology Officer from January 1999 to July 2000. Prior to joining Bell Atlantic, he worked at Bell Laboratories and AT&T General Departments. Mr. Wegleitner holds a B.A. in Mathematics from St. John's University and an M.S. in Electrical Engineering and Computer Science from the University of California at Berkeley.

Our board of directors is currently composed of nine members. Messrs. Goldman, Hooshmand, Koen, Milbury, Redfield and Wegleitner and Dr. Maydan qualify as independent directors in accordance with the listing requirements of the NASDAQ Global Select Market ("NASDAQ"). The NASDAQ definition of independence includes a series of objective tests, such as that the director is not, and has not been for at least three years, one of our employees and that neither the director, nor any of his family members, has engaged in various types of business dealings with us. In addition, as further required by the NASDAQ rules, our board of directors has made a subjective determination as to each independent director that no relationships exist that, in the opinion of our board of directors, would interfere with his exercise of independent judgment in carrying out the responsibilities of a director. In making these determinations, our directors reviewed and discussed information provided by the directors and us with regard to each director's business and personal activities as they may relate to us and our management.

Available Information

Our website address is *http://www.infinera.com*. Information contained on our website is not incorporated by reference into this Form 10-K unless expressly noted. We file reports with the Securities and Exchange Commission ("SEC"), which we make available on our website free of charge. These reports include Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, current reports on Form 8-K and amendments to such reports, each of which is provided on our website as soon as reasonably practicable after we electronically file such materials with or furnish them to the SEC. You can also read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, DC 20549. You can obtain additional information about the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains a website (*http://www.sec.gov*) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, including us.

ITEM 1A. RISK FACTORS

Investing in our securities involves a high degree of risk. Set forth below and elsewhere in this Annual Report on Form 10-K, and in other documents we file with the SEC, are risks and uncertainties that could cause our actual results to differ materially from the results contemplated by the forward-looking statements contained in this Annual Report on Form 10-K. Because of the following factors, as well as other variables affecting our operating results, past financial performance should not be considered as a reliable indicator of future performance and investors should not use historical trends to anticipate results or trends in future periods.

We have a history of significant operating losses and may not achieve profitability on an annual basis in the future.

For the fiscal years ended December 29, 2012 and December 31, 2011, we recorded a net loss of $85.3 million and $81.7 million, respectively. As of December 29, 2012, our accumulated deficit was $572.4 million. We expect to continue to make significant expenditures related to the continued development of our business. These expenditures may include the addition of personnel related to the sales, marketing and research and development of our products and other costs related to the maintenance and expansion of our manufacturing facilities and research and development operations. We may therefore sustain significant operating losses and negative cash flows in the future. We will have to maintain significant increased revenue and product gross margins to achieve profitability on an annual basis.

Our revenue and operating results may fluctuate significantly, which could make our future results difficult to predict and could cause our operating results to fall below investor or analyst expectations.

Our revenue and operating results may fluctuate due to a variety of factors, many of which are outside of our control. Over the past four fiscal quarters, our revenue has ranged from $93.5 million to $128.1 million and our operating loss has ranged from $15.5 million to $29.4 million. As a result, comparing our operating results on a period-to-period basis may not be meaningful. Our budgeted expense levels are based, in large part, on our expectations of long-term future revenue and the development efforts associated with these future revenues. As a result, fluctuations in our revenue and gross margins will have a significant impact on our operating results. Given the relatively fixed nature of our operating costs including those relating to our personnel and facilities, particularly for our engineering personnel, any substantial adjustment to our expenses to account for lower levels of revenue will be difficult and may take time. Consequently, if our revenue does not meet projected levels in the short-term, our inventory levels and operating expenses would be high relative to revenue, resulting in additional operating losses.

In addition to other risks discussed in this section, factors that may contribute to fluctuations in our revenue and our operating results include:

- fluctuations in demand, sales cycles and prices for products and services, including discounts given in response to competitive pricing pressures;
- fluctuations in our product mix, including the mix of higher and lower margin products and significant mix changes resulting from new customer deployments;
- changes in customers' budgets for optical communications network equipment purchases and changes in their purchasing cycles;
- order cancellations or reductions or delays in delivery schedules by our customers;
- timeliness of our customers' payments for their purchases;
- our ability to control costs, including our operating expenses and the costs of components we purchase for our products;
- readiness of customer sites for installation of our products;
- the timing of product releases or upgrades by us or by our competitors. In particular, if we fail to achieve targeted release dates for our future products, or convert lab trials and field evaluations by potential customers into purchase orders, our revenue and operating results may be negatively impacted;

- any significant changes in the competitive dynamics of our market, including any new entrants, technological advances or substantial discounting of products;
- availability of third-party suppliers to provide contract engineering and installation services for us;
- the timing of recognizing revenue in any given quarter, including the impact of revenue recognition standards and any future changes in U.S. generally accepted accounting principles ("U.S. GAAP") or new interpretations of existing accounting rules; and
- general economic conditions in domestic and international markets.

Many factors affecting our results of operations are beyond our control and make it difficult to predict our results for a particular quarter or to accurately predict future revenues beyond a one-quarter time horizon. If our revenue or operating results fall below the expectations of investors or securities analysts or below any guidance we may in the future provide to the market, the price of our common stock may decline substantially.

Our gross margins may fluctuate from quarter-to-quarter and may be adversely affected by a number of factors, some of which are beyond our control.

Our gross margins fluctuate from period-to-period and vary by customer and by product specification. Over the past four fiscal quarters, our gross margins have ranged from 34% to 39%. Our gross margins are likely to continue to fluctuate and will be affected by a number of factors, including:

- the mix in any period of the customers purchasing our products and the product mix, including the relative mix of higher and lower margin products and services;
- significant new customer deployments, often with a higher portion of lower or negative margin common equipment;
- price discounts negotiated by our customers;
- introduction of new products, such as the DTN-X platform, with initial sales at relatively small volumes and higher product costs;
- sales volume from each customer during the period;
- the amount of equipment we sell or expect to sell for a loss in any given quarter;
- increased price competition, including competition from low-cost producers from China;
- charges for excess or obsolete inventory;
- changes in the price or availability of components for our products;
- changes in our manufacturing costs, including fluctuations in yields and production volumes; and
- increased warranty or repair costs.

It is likely that the average unit prices of our products will decrease over time in response to competitive pricing pressures, increased negotiated sales discounts, new product introductions by us or our competitors or other factors. In addition, some of our customer contracts contain annual technology discounts that require us to decrease the sales price of our products to these customers. In response, we will need to reduce the cost of our products through manufacturing efficiencies, design improvements and cost reductions. If these efforts are not successful or if we are unable to reduce our costs to a greater extent than the reduction in the price of our products, our revenue and gross margin will decline, causing our operating results to decline. Fluctuations in gross margin may make it difficult to manage our business and achieve or maintain profitability.

Aggressive business tactics by our competitors may harm our business.

The markets in which we compete are extremely competitive and have resulted in aggressive business tactics by our competitors, including:

- aggressively pricing their products, including offering significant one-time discounts and guaranteed future price decreases;

- providing financing, marketing and advertising assistance to customers;
- announcing competing products prior to market availability combined with extensive marketing efforts;
- influencing customer requirements to emphasize different product capabilities, such as greater minimum bandwidth requirements or higher transport speeds;
- offering to repurchase our equipment from existing customers; and
- asserting intellectual property rights.

The level of competition and pricing pressure tend to increase during periods of economic weakness or during periods when there are fewer network build-out projects. If we fail to compete successfully against our current and future competitors, or if our current or future competitors continue or expand aggressive business tactics, including those described above, demand for our products could decline, we could experience delays or cancellations of customer orders, or we could be required to reduce our prices or increase our expenses.

Our ability to increase our revenue will depend upon continued growth of demand by consumers and businesses for additional network capacity.

Our future success depends on factors that increase the amount of data transmitted over communications networks and the growth of optical communications networks to meet the increased demand for optical capacity. These factors include the growth of mobility, video, cloud-based services, increased broadband connectivity and the continuing adoption of high-capacity, revenue-generating services. If demand for such bandwidth does not continue, or slows down, the need for increased bandwidth across networks and the market for optical communications network products may not continue to grow and our product sales would be negatively impacted. In addition, if general economic conditions weaken, our customers and potential customers may slow or delay their purchase decisions, which would have an adverse effect on our business and financial condition.

Any delays in the development and introduction of our products, and any future delays in releasing new products or in releasing enhancements to our existing products may harm our business.

Because our products are based on complex technology, including, in some cases, the development of next-generation PICs and specialized ASICs, we may experience unanticipated delays in developing, improving, manufacturing or deploying these products. The development process for our PICs is lengthy, and any modifications to our PICs, including the development of our next-generation PICs, entail significant development cost and risks.

At any given time, various new product introductions and enhancements to our existing products, such as future products based on our next-generation PICs, are in the development phase and are not yet ready for commercial manufacturing or deployment. We rely on third parties, some of which are relatively early stage companies, to develop and manufacture components for our next-generation products, which can require custom development. The maturing process from laboratory prototype to customer trials, and subsequently to general availability, involves a significant number of simultaneous development efforts. These efforts often must be completed in a timely manner so that they may be introduced into the product development cycle for our systems, and include:

- completion of product development, including the completion of any associated PIC development, such as our next-generation PICs, and the completion of associated module development, including modules developed by third parties;
- the qualification and multiple sourcing of critical components;
- validation of manufacturing methods and processes;
- extensive quality assurance and reliability testing and staffing of testing infrastructure;
- validation of software; and
- establishment of systems integration and systems test validation requirements.

Each of these steps, in turn, presents risks of failure, rework or delay, any one of which could decrease the speed and scope of product introduction and marketplace acceptance of our products. New generations of our

PICs, specialized ASICs and intensive software testing are important to the timely introduction of new products and enhancements to our existing products, and are subject to these development risks. In addition, unexpected intellectual property disputes, failure of critical design elements, and a host of other development execution risks may delay, or even prevent, the introduction of new products or enhancements to our existing products. If we do not develop and successfully introduce or enhance products in a timely manner, our competitive position will suffer. In addition, if we do not develop and successfully introduce or enhance products in sufficient time so as to satisfy our customer's expectations, we may lose future business from such customers and harm our reputation and our customer relationships, either of which would harm our business and operating results.

The introduction of our DTN-X platform may adversely impact the timing of our revenues, our results of operations and our margins.

We began shipping our new DTN-X platform in the second quarter of 2012 and recognized initial revenues for the DTN-X platform in the third quarter of 2012. As a relatively new product, we face increased "product introduction" risks including risks associated with customer qualification and evaluation of the DTN-X platform, delays in the development or manufacturing of the DTN-X platform, reliability, quality or other defects, and delays in customer purchases. In addition, the DTN-X platform is subject to more significant cost variations and increased difficulty in predicting customer demand and effectively managing inventory levels so that they are in line with anticipated demand.

The introduction of the DTN-X platform, with similar, but enhanced functionality to the DTN platform, increases the risk that customers may forego purchases of the DTN platform in favor of the DTN-X platform. Accordingly, a portion of our DTN platform revenues will be impacted by this new product as some of our customers and prospects will choose to purchase the DTN-X platform in place of the DTN platform. In addition, the introduction of the DTN-X platform may put pressure on the price of our existing DTN platform. Because the DTN-X platform is a new product for which customers may require additional testing requirements prior to acceptance, initial revenue recognition for the DTN-X platform may take longer than for sales of the DTN platform. Any delay in our ability to convert lab trials and field evaluations by potential customers into purchase orders, or in our ability to recognize revenue from the DTN-X may adversely impact our quarterly revenue results. In addition, if we are required to write off or write down a significant amount of inventory, our results of operations for the period would be adversely affected.

We may be required to recognize costs and expenses for our DTN-X platform before we can recognize the related revenue. Accordingly, until we can ramp up the manufacture of our DTN-X platform, our margins related to the initial sales of the DTN-X platform will be negatively impacted. Such uncertainty related to the introduction and market acceptance of our DTN-X platform could have a material adverse effect on our business, financial condition, operating results and prospects.

The markets in which we compete are highly competitive and dominated by large corporations, and we may not be able to compete effectively.

Competition in the optical networking equipment market is intense, and we expect such competition to increase. A number of very large companies have historically dominated the optical communications network equipment industry. Our competitors include current wavelength division multiplexing suppliers, such as Alcatel-Lucent, Ciena Corporation, Cisco Systems, Ericsson, Fujitsu Limited, Huawei Technologies Co., NEC Corporation, Tellabs and ZTE Corporation. Competition in these markets is based on price, commercial terms, functionality, manufacturing capability, pre-existing installations, services, existing business and customer relationships, scalability and the ability of products and breadth and quality of services to meet our customers' immediate and future network requirements. Other companies have, or may in the future develop, products that are or could be competitive with our products. In particular, if a competitor develops a photonic integrated circuit with similar functionality to our PICs, our business could be harmed. Recent mergers from our competitors and any future acquisitions or combinations between or among our competitors may adversely affect our competitive position by strengthening our competitors.

Many of our competitors have substantially greater name recognition and technical, financial and marketing resources, greater manufacturing capacity and better established relationships with incumbent carriers and other potential customers than we have. Many of our competitors have more resources to develop or acquire, and more experience in developing or acquiring, new products and technologies and in creating market awareness for those products and technologies. In addition, many of our competitors have the financial resources to offer competitive products at aggressive pricing levels that could prevent us from competing effectively. Further, many of our competitors have built long-standing relationships with some of our prospective customers and have the ability to provide financing to customers and could, therefore, have an inherent advantage in selling products to those customers.

We compete with low-cost producers from China that can increase pricing pressure on us and a number of smaller companies that provide competition for a specific product, customer segment or geographic market. These competitors often base their products on the latest available technologies. Due to the narrower focus of their efforts, these competitors may achieve commercial availability of their products more quickly than we can and may provide attractive alternatives to our customers.

Our large customers have substantial negotiating leverage, which may require that we agree to terms and conditions that result in increased cost of sales, decreased revenue and lower average selling prices and gross margins, all of which would harm our operating results.

Substantial changes in the optical networking industry have occurred over the last few years. Many potential customers have confronted static or declining revenue. Many of our customers have substantial debt burdens, many have experienced financial distress, and some have gone out of business, been acquired by other service providers, or announced their withdrawal from segments of the business. Consolidation in the markets in which we compete has resulted in changes in the structure of the communications networking industry, with greater concentration of purchasing power in a small number of large service providers, cable operators, internet content providers and government agencies. The increased concentration among our customer base may also lead to increased competition for new network deployments and increased negotiating power for our customers. This may require us to decrease our average selling prices which would have an adverse impact on our operating results.

Further, many of our customers are large communications service providers that have substantial purchasing power and leverage in negotiating contractual arrangements with us. Our customers have and may continue to seek advantageous pricing, payment and other commercial terms and may require us to develop additional features in the products we sell to them. If we are required to develop additional features for our product for a customer, we may be required to defer some of our revenue for such a customer until we have developed and delivered such additional features. We have and may continue to be required to agree to unfavorable commercial terms with these customers, including reducing the average selling price of our products or agreeing to extended payment terms in response to these commercial requirements or competitive pricing pressures. To maintain acceptable operating results, we will need to comply with these commercial terms, develop and introduce new products and product enhancements on a timely basis and continue to reduce our costs.

We expect the factors described above to continue to affect our business and operating results for an indeterminate period, in several ways, including:

- overall capital expenditures by many of our customers or potential customers may be flat or reduced;
- we will continue to have only limited ability to forecast the volume and product mix of our sales;
- managing expenditures and inventory will be difficult in light of the uncertainties surrounding our business; and
- increased competition will enable customers to insist on more favorable terms and conditions for sales, including product discounts, extended payment terms or financing assistance, as a condition of procuring their business.

If we are unable to offset any reductions in our average selling prices with increased sales volumes and reduced production costs, or if we fail to develop and introduce new products and enhancements on a timely basis, or if we disagree on our interpretation and compliance with the commercial terms of our customer agreements, our relationships with our customers and our operating results would be harmed.

We must respond to rapid technological change and comply with evolving industry standards and requirements for our products to be successful.

The optical networking equipment market is characterized by rapid technological change, changes in customer requirements and evolving industry standards. We continually invest in research and development to sustain or enhance our existing products, but the introduction of new communications technologies and the emergence of new industry standards or requirements could render our products obsolete. Further, in developing our products, we have made, and will continue to make, assumptions with respect to which standards or requirements will be adopted by our customers and competitors. If the standards or requirements adopted by our prospective customers are different from those on which we have focused our efforts, market acceptance of our products would be reduced or delayed and our business would be harmed.

We are continuing to invest a significant portion of our research and development efforts in the development of our next-generation products. We expect our competitors to continue to improve the performance of their existing products and to introduce new products and technologies and to influence customers' buying criteria so as to emphasize product capabilities that we do not, or may not, possess. To be competitive, we must properly anticipate future customer requirements and we must continue to invest significant resources in research and development, sales and marketing and customer support. If we do not anticipate these future customer requirements and invest in the technologies necessary to enable us to have and to sell the appropriate solutions, it may limit our competitive position and future sales, which would have an adverse effect on our business and financial condition. We may not have sufficient resources to make these investments and we may not be able to make the technological advances necessary to be competitive.

We are dependent on sole source and limited source suppliers for several key components, and if we fail to obtain these components on a timely basis, we will not meet our customers' product delivery requirements.

We currently purchase several key components for our products from single or limited sources. In particular, we rely on our own production of certain components of our products, such as PICs, and on third parties as sole source suppliers for certain of the components of our products, including ASICs, field-programmable gate arrays, processors, and other semiconductor and optical components. We purchase these items on a purchase order basis and have no long-term contracts with many of these sole source suppliers. We have increased our reliance on third parties to develop and manufacture components for certain products (40 Gbps and 100 Gbps), some of which require custom development. For example, for the 40 Gbps application of our DTN platform, we purchase customized discrete components. If any of our sole or limited source suppliers suffer from capacity constraints, lower than expected yields, deployment delays, work stoppages or any other reduction or disruption in output, they may be unable to meet our delivery schedule which could result in lost revenue, additional product costs and deployment delays that could harm our business and customer relationships. Further, our suppliers could enter into exclusive arrangements with our competitors, refuse to sell their products or components to us at commercially reasonable prices or at all, go out of business or discontinue their relationships with us. We may be unable to develop alternative sources for these components.

The loss of a source of supply, or lack of sufficient availability of key components, could require us to redesign products that use such components, which could result in lost revenue, additional product costs and deployment delays that could harm our business and customer relationships. If we do not receive critical components for our products in a timely manner, we will be unable to deliver those components to our contract manufacturer in a timely manner and would, therefore, be unable to meet our prospective customers' product delivery requirements. In addition, the sourcing from new suppliers may require us to re-design our products, which could cause delays in the manufacturing and delivery of our products. In the past, we have experienced delivery delays because of lack of availability of components or reliability issues with components that we were purchasing. In addition, some of our suppliers have gone out of business, limited their supply of components to us, or indicated that they may be going out of business. Historically, we have seen a tightening of supply with a number of our suppliers and we have experienced longer than normal lead times and supply delays. We may in the future experience a shortage of certain components as a result of our own manufacturing issues, manufacturing issues at our suppliers or contract manufacturers, capacity problem experiences by our suppliers or contract manufacturers, or strong demand in the industry for such components. A return to growth in the economy is likely to continue to create pressure on us and our suppliers to accurately project overall component demand and manufacturing capacity. These supplier disruptions may continue to occur in the future, which could limit our ability to produce our products and cause us to fail to meet a customer's delivery requirements. Such events could harm our reputation and our customer relationships, either of which would harm our business and operating results.

If we fail to accurately forecast demand for our products, we may have excess or insufficient inventory, which may increase our operating costs, decrease our revenue and harm our business.

We are required to generate forecasts of future demands for our products several months prior to the scheduled delivery to our prospective customers. This requires us to make significant investments before we know if corresponding revenue will be recognized. Lead times for materials and components, including ASICs, that we need to order for the manufacture of our products vary significantly and depend on factors such as the specific supplier, contract terms and demand for each component at a given time. In the past, we have experienced lengthening in lead times for certain components. If the lead times for components are lengthened, we may be required to purchase increased levels of such components to satisfy our delivery commitments to our customers.

If we overestimate demand for our products or particular elements of our products and increase our inventory in anticipation of customer orders that do not materialize, we will have excess inventory, we will face a risk of obsolescence and significant inventory write-downs and our fixed costs will be spread across fewer units, raising our per unit costs. If we underestimate demand for our products, we will have inadequate inventory, which could slow down or interrupt the manufacturing of our products and result in delays in shipments and our ability to recognize revenue. If actual market conditions are less favorable than our internal projections, additional inventory write-offs may be required. In addition, we may be unable to meet our supply commitments to customers, which could result in a loss of certain customer opportunities or a breach of our customer agreements that requires payment of damages for delay.

If our contract manufacturers do not perform as we expect, our business may be harmed.

We rely on third-party contract manufacturers to perform a significant portion of the manufacturing of our products, and our future success will depend on our ability to have sufficient volumes of our products manufactured in a cost-effective and quality-controlled manner. We have engaged third parties to manufacture certain elements of our products at multiple contract manufacturing sites located around the world but do not have long-term agreements in place with some of our manufacturers and suppliers. There are a number of risks associated with our dependence on contract manufacturers, including:

- reduced control over delivery schedules, particularly for international contract manufacturing sites;
- reliance on the quality assurance procedures of third parties;
- potential uncertainty regarding manufacturing yields and costs;
- potential lack of adequate capacity during periods of high demand;
- potential uncertainty related to the use of international contract manufacturing sites;
- limited warranties on components supplied to us;
- potential misappropriation of our intellectual property; and
- potential manufacturing disruptions (including disruptions caused by geopolitical events, military actions or natural disasters).

Any of these risks could impair our ability to fulfill orders. Our contract manufacturers may not be able to meet the delivery requirements of our customers, which could decrease customer satisfaction and harm our product sales. We do not have long-term contracts or arrangements with our contract manufacturers that will guarantee product availability, or the continuation of particular pricing or payment terms. If our contract manufacturers are unable or unwilling to continue manufacturing our products or components of our products in required volumes or our relationship with any of our contract manufacturers is discontinued for any reason, we would be required to identify and qualify alternative manufacturers, which could cause us to be unable to meet our supply requirements to our customers and result in the breach of our customer agreements. Qualifying a new contract manufacturer and commencing volume production is expensive and time-consuming and if we are required to change or qualify a new contract manufacturer, we would likely lose sales revenue and damage our existing customer relationships.

We are dependent on a small number of key customers for a significant portion of our revenue and the loss of, or a significant reduction in, orders from one or more of our key customers would reduce our revenue and harm our operating results.

A relatively small number of customers account for a large percentage of our revenue. As a result, our business will be harmed if any of our key customers do not generate as much revenue as we forecast, stop purchasing from us, or substantially reduce their orders to us. In addition, our business will be harmed if we fail to maintain our competitive advantage with our key customers.

Our ability to continue to generate revenue from our key customers will depend on our ability to maintain strong relationships with these customers and introduce new products that are desirable to these customers at competitive prices, and we may not be successful at doing so. In most cases, our sales are made to these customers pursuant to standard purchase agreements rather than long-term purchase commitments, and orders may be cancelled or reduced readily. In the event of a cancellation or reduction of an order, we may not have enough time to reduce operating expenses to minimize the effect of the lost revenue on our business. Our operating results will continue to depend on our ability to sell our products to our key customers.

If we fail to expand sales of our products into international markets or to sell our products to new types of customers, such as U.S. regional Bell operating companies and international postal, telephone and telegraph companies, our revenue will be harmed.

We believe that, in order to grow our revenue and business and to build a large and diverse customer base, we must successfully sell our products in international markets and to new types of customers, such as U.S. regional Bell operating companies and international postal, telephone and telegraph companies. We have limited experience selling our products internationally and to U.S. regional Bell operating companies and international postal, telephone and telegraph companies. Sales cycles for these customers are often very lengthy and competition for these customers is intense. To succeed in these sales efforts, we believe we must hire additional sales personnel to develop our relationships with these potential customers and develop and manage new sales channels through resellers, distributors and systems integrators. If we do not succeed in our efforts to sell to these customers, the size of our total addressable market will be limited. This, in turn, would harm our ability to grow our customer base and revenue.

If we fail to protect our intellectual property rights, our competitive position could be harmed or we could incur significant expense to enforce our rights.

We depend on our ability to protect our proprietary technology. We rely on a combination of methods to protect our intellectual property, including limiting access to certain information, and utilizing trade secret, patent, copyright and trademark laws and confidentiality agreements with employees and third parties, all of which offer only limited protection. The steps we have taken to protect our proprietary rights may be inadequate to preclude misappropriation or unauthorized disclosure of our proprietary information or infringement of our intellectual property rights, and our ability to police such misappropriation, unauthorized disclosure or infringement is uncertain, particularly in countries outside of the United States. This is likely to become an increasingly important issue as we expand our operations and product development into countries that provide a lower level of intellectual property protection. We do not know whether any of our pending patent applications will result in the issuance of patents or whether the examination process will require us to narrow our claims, and even if patents are issued, they may be contested, circumvented or invalidated. Moreover, the rights granted under any issued patents may not provide us with a competitive advantage, and, as with any technology, competitors may be able to develop similar or superior technologies to our own now or in the future.

Protecting against the unauthorized use of our products, trademarks and other proprietary rights is expensive, difficult, time consuming and, in some cases, impossible. Litigation may be necessary in the future to enforce or defend our intellectual property rights, to protect our trade secrets or to determine the validity or scope of the proprietary rights of others. Such litigation could result in substantial cost and diversion of management resources, either of which could harm our business, financial condition and operating results. Furthermore, many of our current and potential competitors have the ability to dedicate substantially greater resources to enforce their intellectual property rights than we do. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property.

Claims by others that we infringe their intellectual property could harm our business.

Our industry is characterized by the existence of a large number of patents and frequent claims and related litigation regarding patent and other intellectual property rights. In particular, many leading companies in the optical networking industry, including our competitors, have extensive patent portfolios with respect to optical networking technology. We expect that infringement claims may increase as the number of products and competitors in our market increases and overlaps occur. From time to time, third parties may assert exclusive patent, copyright, trademark and other intellectual property rights to technologies and related standards that are important to our business or seek to invalidate the proprietary rights that we hold. Competitors or other third parties have, and may continue to assert claims or initiate litigation or other proceedings against us or our manufacturers, suppliers or customers alleging infringement of their proprietary rights, or seeking to invalidate our proprietary rights, with respect to our products and technology. In the event that we are unsuccessful in defending against any such claims, or any resulting lawsuit or proceedings, we could incur liability for damages and/or have valuable proprietary rights invalidated.

Any claim of infringement from a third party, even one without merit, could cause us to incur substantial costs defending against the claim, and could distract our management from running our business. Furthermore, a party making such a claim, if successful, could secure a judgment that requires us to pay substantial damages. A judgment could also include an injunction or other court order that could prevent us from offering our products. In addition, we might be required to seek a license for the use of such intellectual property, which may not be available on commercially reasonable terms or at all. Alternatively, we may be required to develop non-infringing technology, which would require significant effort and expense and may ultimately not be successful. Any of these events could harm our business, financial condition and operating results. Competitors and other third parties have and may continue to assert infringement claims against our customers and sales partners. Any of these claims would require us to initiate or defend potentially protracted and costly litigation on their behalf, regardless of the merits of these claims, because we generally indemnify our customers and sales partners from claims of infringement of proprietary rights of third parties. If any of these claims succeed, we may be forced to pay damages on behalf of our customers or sales partners, which could have an adverse effect on our business, financial condition and operating results.

We incorporate open source software into our products. Although we monitor our use of open source software closely, the terms of many open source licenses have not been interpreted by U.S. courts, and there is a risk that such licenses could be construed in a manner that could impose unanticipated conditions or restrictions on our ability to commercialize our products. In such event, we could be required to seek licenses from third parties in order to continue offering our products, to re-engineer our products or to discontinue the sale of our products in the event re-engineering cannot be accomplished on a timely basis, any of which could adversely affect our business, operating results and financial condition.

We are currently involved in litigation with Cheetah and Level 3 whereby Cheetah alleges that we and Level 3 infringe on two Cheetah patents. In addition, Cambrian has filed suit against us and seven of our customers alleging that the use of our DTN platform by our customers infringes upon a Cambrian patent. Information regarding these matters is set forth in Item 3. “Legal Proceedings” and is incorporated herein by reference. We believe these lawsuits are without merit and intend to defend ourselves vigorously, but are unable to predict the likelihood of an unfavorable outcome. We may enter into settlements or be subject to judgments that may, individually or in the aggregate, have a material adverse effect on our business, financial condition or operating results. Litigation can be expensive, lengthy and disruptive to normal business operations. Moreover, the results of litigation are inherently uncertain and may result in adverse rulings or decisions. In the event that Cheetah or Cambrian is successful in obtaining a judgment requiring us to pay damages, obtaining a judgment requiring us to indemnify our customers for damages imposed upon them, or obtaining an injunction preventing the sale of our products, our business and operating results could be harmed.

Our manufacturing process is very complex and the partial or complete loss of our manufacturing facility, or a reduction in yields or an inability to scale capacity to meet customer demands could harm our business.

The manufacturing process for certain components of our products, including our PICs, is technically challenging. In the event that any of these manufacturing facilities were fully or partially destroyed, as a result of fire, water damage, or otherwise, it would limit our ability to produce our products. Because of the complex nature of our manufacturing facilities, such loss would take a considerable amount of time to repair or rebuild. The partial or complete loss of any of our manufacturing facilities, or an event causing the interruption in our use of such facility for any extended period of time would cause our business, financial condition and operating results to be harmed.

Minor deviations in the PIC manufacturing process can cause substantial decreases in yields and, in some cases, cause production to be suspended. In the past, we have had significant variances in our PIC yields, including production interruptions and suspensions and may have continued yield variances, including additional interruptions or suspensions in the future. We expect our manufacturing yield for our next-generation PICs to be lower initially and increase as we achieve full production. Poor yields from our PIC manufacturing process or defects, integration issues or other performance problems in our products could limit our ability to satisfy customer demand requirements, and could cause us customer relations and business reputation problems, harming our business and operating results.

Our inability to obtain sufficient manufacturing capacity to meet demand, either in our own facilities or through foundry or similar arrangements with third parties, could harm our relationships with customers, our business and our operating results.

Upgrades to our internal business processes and systems, and problems with the design or implementation of these systems and processes, could interfere with, and therefore harm, our business, operations and ability to maintain effective internal control over financial reporting.

We implemented an enterprise resource planning (“ERP”) system during the third quarter of 2012, which resulted in a change to our system of internal control over financial reporting. Any disruptions or delays as a result of the implementation of the ERP system or processes, particularly any disruptions or delays that impact our operations, could adversely affect our ability to run our business. If the implementation adversely affects our ability to maintain effective internal control over financial reporting, our business, financial condition, and results of operations could be negatively impacted.

Unfavorable macroeconomic and market conditions may adversely affect our industry, business and gross margins.

Our business depends on the overall demand for additional bandwidth capacity and on the economic health and willingness of our customers and potential customers to make capital commitments to purchase our products and services. As a result of macroeconomic or market uncertainty, we may face new risks that we have not yet identified. In addition, a number of the risks associated with our business, which are disclosed in these risk factors, may increase in likelihood, magnitude or duration.

In the past, unfavorable macroeconomic and market conditions have resulted in sustained periods of decreased demand for optical communications products. These conditions may also result in the tightening of credit markets, which may limit or delay our customers’ ability to obtain necessary financing for their purchases of our products. A lack of liquidity in the capital markets or the continued uncertainty in the global economic environment may cause our customers to delay or cancel their purchases, increase the time they take to pay or default on their payment obligations, each of which would negatively affect our business and operating results. Continued weakness and uncertainty in the global economy could cause some of our customers to become illiquid, delay payments or adversely affect our collection of their accounts, which could result in a higher level of bad debt expense. In addition, currency fluctuations could negatively affect our international customers’ ability or desire to purchase our products.

Challenging economic conditions have from time to time contributed to slowdowns in the telecommunications industry in which we operate. Such slowdowns may result in:

- reduced demand for our products as a result of constraints on capital spending by our customers, particularly service providers;
- increased price competition for our products, not only from our competitors, but also as a result of our customer’s or potential customer’s utilization of inventoried or underutilized products, which could put additional downward pressure on our near term gross profits;
- risk of excess or obsolete inventories;

- excess manufacturing capacity and higher associated overhead costs as a percentage of revenue; and
- more limited ability to accurately forecast our business and future financial performance.

A lack of liquidity and economic uncertainty may adversely affect our suppliers or the terms on which we purchase products from these suppliers. It may also cause some of our suppliers to become illiquid. Any of these impacts could limit our ability to obtain components for our products from these suppliers and could adversely impact our supply chain or the delivery schedule to our customers. This also could require us to purchase more expensive components, or re-design our products, which could cause increases in the cost of our products and delays in the manufacturing and delivery of our products. Such events could harm our gross margins and harm our reputation and our customer relationships, either of which could harm our business and operating results.

Product performance problems, including undetected errors in our hardware or software, or deployment delays could harm our business and reputation.

The development and production of new products with high technology content is complicated and often involves problems with software, components and manufacturing methods. Complex hardware and software systems, such as our products, can often contain undetected errors when first introduced or as new versions are released. In addition, errors associated with components we purchase from third parties, including customized components, may be difficult to resolve. We have experienced errors in the past in connection with our DTN platform, including failures due to the receipt of faulty components from our suppliers. We suspect that errors, including potentially serious errors, will be found from time to time in our products. Our products may suffer degradation of performance and reliability over time.

If reliability, quality or network monitoring problems develop, a number of negative effects on our business could result, including:

- delays in our ability to recognize revenue;
- costs associated with fixing software or hardware defects or replacing products;
- high service and warranty expenses;
- delays in shipments;
- high inventory excess and obsolescence expense;
- high levels of product returns;
- diversion of our engineering personnel from our product development efforts;
- delays in collecting accounts receivable;
- payment of damages for performance failures;
- reduced orders from existing customers; and
- declining interest from potential customers.

Because we outsource the manufacturing of certain components of our products, we may also be subject to product performance problems as a result of the acts or omissions of third parties.

From time to time, we encounter interruptions or delays in the activation of our products at a customer's site. These interruptions or delays may result from product performance problems or from issues with installation and activation, some of which are outside our control. If we experience significant interruptions or delays that we cannot promptly resolve, the associated revenue for these installations may be delayed or confidence in our products could be undermined, which could cause us to lose customers and fail to add new customers.

If we lose key personnel or fail to attract and retain additional qualified personnel when needed, our business may be harmed.

Our success depends to a significant degree upon the continued contributions of our key management, engineering, sales and marketing, and finance personnel, many of whom would be difficult to replace. For example, senior members of our engineering team have unique technical experience that would be difficult to replace. We do not have long-term employment contracts or key person life insurance covering any of our key personnel. Because our products are complex, we must hire and retain a large number of highly trained customer service and support personnel to ensure that the deployment of our products do not result in network disruption for our customers. We believe our future success will depend in large part upon our ability to identify, attract and retain highly skilled managerial, engineering, sales, marketing, finance and customer service and support personnel. Competition for these individuals is intense in our industry, especially in the San Francisco Bay Area where we are headquartered. We may not succeed in identifying, attracting and retaining appropriate personnel. The loss of the services of any of our key personnel, the inability to identify, attract or retain qualified personnel in the future or delays in hiring qualified personnel, particularly engineers and sales personnel, could make it difficult for us to manage our business and meet key objectives, such as timely product introductions.

Our sales cycle can be long and unpredictable, which could result in an unexpected revenue shortfall in any given quarter.

Our products have a lengthy sales cycle, which can extend from six to twelve months and may take even longer for larger prospective customers such as U.S. regional Bell operating companies, international postal, telephone and telegraph companies and U.S. competitive local exchange carriers. Our prospective customers conduct significant evaluation, testing, implementation and acceptance procedures before they purchase our products. We incur substantial sales and marketing expenses and expend significant management effort during this time, regardless of whether we make a sale.

Because the purchase of our equipment involves substantial cost, most of our customers wait to purchase our equipment until they are ready to deploy it in their network. As a result, it is difficult for us to accurately predict the timing of future purchases by our customers. In addition, product purchases are often subject to budget constraints, multiple approvals and unplanned administrative processing and other delays. If sales expected from customers for a particular quarter are not realized in that quarter or at all, our revenue will be negatively impacted.

Our international sales and operations subject us to additional risks that may harm our operating results.

We market, sell and service our products globally. In 2012, 2011 and 2010, we derived approximately 32%, 30% and 25%, respectively, of our revenue from customers outside of the United States. We have sales and support personnel in numerous countries worldwide. In addition, we have a large group of development personnel located in Bangalore, India; Beijing, China; and Kanata, Canada. We expect that significant management attention and financial resources will be required for our international activities over the foreseeable future as we continue to expand our international presence. In some countries, our successes in selling our products will depend in part on our ability to form relationships with local partners. Our inability to identify appropriate partners or reach mutually satisfactory arrangements for international sales of our products could impact our ability to maintain or increase international market demand for our products.

Our international operations are subject to inherent risks, and our future results could be adversely affected by a variety of factors, many of which are outside of our control, including:

- greater difficulty in collecting accounts receivable and longer collection periods;
- difficulties of managing and staffing international offices, and the increased travel, infrastructure and legal compliance costs associated with multiple international locations;
- the impact of recessions in economies outside the United States;
- tariff and trade barriers and other regulatory requirements or contractual limitations on our ability to sell or develop our products in certain foreign markets;
- certification requirements;
- greater difficulty documenting and testing our internal controls;
- reduced protection for intellectual property rights in some countries;
- potentially adverse tax consequences;

- political and economic instability;
- effects of changes in currency exchange rates which could negatively affect our financial results and cash flows; and
- service provider and government spending patterns.

International customers may also require that we comply with certain testing or customization of our products to conform to local standards. The product development costs to test or customize our products could be extensive and a material expense for us.

As we continue to expand our business globally, our success will depend, in large part, on our ability to anticipate and effectively manage these and other risks associated with our international operations. Our failure to manage any of these risks could harm our international operations and reduce our international sales.

We may be adversely affected by fluctuations in currency exchange rates.

A portion of our sales are to countries outside of the United States, and are in currencies other than U.S. dollars, particularly the Euro. Accordingly, fluctuations in foreign currency rates, most notably the strengthening of the U.S. dollar against the Euro, could have a material impact on our revenue in future periods. We enter into foreign currency exchange forward contracts to reduce the impact of foreign currency fluctuations on accounts receivable denominated in Euro. These hedging programs reduce the impact of currency exchange rate movements on certain transactions, but do not cover all foreign-denominated transactions and therefore do not entirely eliminate the impact of fluctuations in exchange rates which could negatively affect our results of operations and financial condition.

If we fail to maintain effective internal control over financial reporting in the future, the accuracy and timing of our financial reporting may be adversely affected.

We are required to comply with Section 404 of the Sarbanes-Oxley Act of 2002. The provisions of the act require, among other things, that we maintain effective internal control over financial reporting and disclosure controls and procedures. Preparing our financial statements involves a number of complex processes, many of which are done manually and are dependent upon individual data input or review. These processes include, but are not limited to, calculating revenue, deferred revenue and inventory costs. While we continue to automate our processes and enhance our review and put in place controls to reduce the likelihood for errors, we expect that for the foreseeable future, many of our processes will remain manually intensive and thus subject to human error.

Any acquisitions we make could disrupt our business and harm our financial condition and operations.

We have made strategic acquisitions of businesses, technologies and other assets in the past. While we have no current agreements or commitments, we may in the future acquire businesses, product lines or technologies. In the event of any future acquisitions, we may not ultimately strengthen our competitive position or achieve our goals, or they may be viewed negatively by customers, financial markets or investors and we could:

- issue stock that would dilute our current stockholders' percentage ownership;
- incur debt and assume other liabilities; or
- incur amortization expenses related to goodwill and other intangible assets and/or incur large and immediate write-offs.

Acquisitions also involve numerous risks, including:

- problems integrating the acquired operations, technologies or products with our own;
- diversion of management's attention from our core business;
- assumption of unknown liabilities;
- adverse effects on existing business relationships with suppliers and customers;
- increased accounting compliance risk;

- risks associated with entering new markets; and
- potential loss of key employees.

We may not be able to successfully integrate any businesses, products, technologies or personnel that we might acquire in the future. Our failure to do so could have an adverse effect on our business, financial condition and operating results.

Our use and reliance upon development resources in India, China and Canada may expose us to unanticipated costs or liabilities.

We have established development centers in India, China and Canada and expect to continue to increase hiring of personnel for these facilities. There is no assurance that our reliance upon development resources in India, China or Canada will enable us to achieve meaningful cost reductions or greater resource efficiency. Further, our development efforts and other operations in these countries involve significant risks, including:

- difficulty hiring and retaining appropriate engineering resources due to intense competition for such resources and resulting wage inflation;
- the knowledge transfer related to our technology and exposure to misappropriation of intellectual property or confidential information, including information that is proprietary to us, our customers and other third parties;
- heightened exposure to changes in the economic, security and political conditions of India, China and Canada;
- fluctuation in currency exchange rates and tax risks associated with international operations; and
- development efforts that do not meet our requirements because of language, cultural or other differences associated with international operations, resulting in errors or delays.

Difficulties resulting from the factors above and other risks related to our operations in these countries could expose us to increased expense, impair our development efforts, harm our competitive position and damage our reputation.

Unforeseen health, safety and environmental costs could harm our business.

Our manufacturing operations use substances that are regulated by various federal, state and international laws governing health, safety and the environment, including the Waste Electrical and Electronic Equipment and Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment regulations adopted by the European Union. If we experience a problem with these substances, it could cause an interruption or delay in our manufacturing operations or could cause us to incur liabilities for any costs related to health, safety or environmental remediation. We could also be subject to liability if we do not handle these substances in compliance with safety standards for storage and transportation and applicable laws. If we experience a problem or fail to comply with such safety standards, our business, financial condition and operating results may be harmed.

We are subject to governmental import and export controls that could subject us to liability or impair our ability to compete in international markets.

We are subject to export control laws that limit which products we sell and where and to whom we sell our products. U.S. export control laws also limit our ability to conduct product development activities in certain countries. In addition, various countries regulate the import of certain technologies and have enacted laws that could limit our ability to distribute our products or could limit our customers' ability to implement our products in those countries. Changes in our products or changes in import and export regulations may create delays in the introduction of our products in international markets, prevent our customers with international operations from deploying our products throughout their global systems or, in some cases, prevent the import and export of our products to certain countries altogether. Any change in import and export regulations or related legislation, shift in approach to the enforcement or scope of existing regulations, or change in the countries, persons or technologies targeted by such regulations, could result in decreased use of our products by, or in our decreased ability to export or sell our products to, existing or potential customers with international operations. Failure to comply with these and similar laws on a timely basis, or at all, decreased use of our products or any limitation on our ability to export or sell our products would adversely affect our business, financial condition and operating results.

If we need additional capital in the future, it may not be available to us on favorable terms, or at all.

Our business requires significant capital. We have historically relied on significant outside debt and equity financing as well as cash flow from operations to fund our operations, capital expenditures and expansion. We may require additional capital from equity or debt financings in the future to fund our operations or respond to competitive pressures or strategic opportunities. We have a history of significant operating losses. For 2012, we had a net loss of $85.3 million. In the event that we require additional capital, we may not be able to secure timely additional financing on favorable terms, or at all. The terms of any additional financing may place limits on our financial and operating flexibility. If we raise additional funds through further issuances of equity, convertible debt securities or other securities convertible into equity, our existing stockholders could suffer dilution in their percentage ownership of our company, and any new securities we issue could have rights, preferences and privileges senior to those of holders of our common stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us, if and when we require it, our ability to grow or support our business and to respond to business challenges could be limited and our business will be harmed.

We are subject to government regulations that could adversely impact our business.

The Federal Communications Commission, or FCC, has jurisdiction over the entire U.S. communications industry and, as a result, our products and our U.S. customers are subject to FCC rules and regulations. Current and future FCC regulations affecting communications services, our products or our customers' businesses could negatively affect our business. In addition, international regulatory standards could impair our ability to develop products for international customers in the future. Moreover, many jurisdictions are evaluating or implementing regulations relating to cyber security, privacy and data protection, which can affect the market and requirements for networking and communications equipment. Delays caused by our compliance with regulatory requirements could result in postponements or cancellations of product orders. Further, we may not be successful in obtaining or maintaining any regulatory approvals that may, in the future, be required to operate our business. Any failure to obtain such approvals could harm our business and operating results.

Natural disasters, terrorist attacks or other catastrophic events could harm our operations.

Our headquarters and the majority of our infrastructure, including our PIC fabrication manufacturing facility, are located in Northern California, an area that is susceptible to earthquakes and other natural disasters. Further, a terrorist attack aimed at Northern California or at our nation's energy or telecommunications infrastructure could hinder or delay the development and sale of our products. In the event that an earthquake, terrorist attack or other catastrophe were to destroy any part of our facilities, or certain of our contract manufacturers' facilities, destroy or disrupt vital infrastructure systems or interrupt our operations for any extended period of time, our business, financial condition and operating results would be harmed.

Security incidents, such as data breaches and cyber-attacks, could compromise our intellectual property and proprietary or confidential information and cause significant damage to our business and reputation.

In the ordinary course of our business, we maintain sensitive data on our networks, including data related to our intellectual property and data related to our business and that of our customers and business partners that is considered proprietary or confidential information. We believe that companies in the technology industry have been increasingly subject to a wide variety of security incidents, cyber-attacks and other attempts to gain unauthorized access. While the secure maintenance of this information is critical to our business and reputation, our network and storage applications may be subject to unauthorized access by hackers or breached due to operator error, malfeasance or other system disruptions. It may be difficult to anticipate or immediately detect such security incidents or data breaches and the damage caused as a result. Accordingly, a data breach, cyber-attack, or unauthorized access or disclosure of our information, could compromise our intellectual property and reveal proprietary or confidential business information. In addition, these security incidents could also cause us to incur significant remediation costs and expenses, disrupt key business operations, subject us to liability and divert attention of management and key information technology resources, any of which could cause significant harm to our business and reputation.

The trading price of our common stock has been volatile and is likely to be volatile in the future.

The trading prices of our common stock and the securities of other technology companies have been and may continue to be highly volatile. Further, our common stock has limited prior trading history. Factors affecting the trading price of our common stock include:

- variations in our operating results;
- announcements of technological innovations, new services or service enhancements, strategic alliances or agreements by us or by our competitors;
- the gain or loss of customers;
- recruitment or departure of key personnel;
- changes in the estimates of our future operating results or external guidance on those results or changes in recommendations by any securities analysts that elect to follow our common stock;
- market conditions in our industry, the industries of our customers and the economy as a whole; and
- adoption or modification of regulations, policies, procedures or programs applicable to our business.

In addition, if the market for technology stocks or the stock market in general experiences loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, financial condition or operating results. The trading price of our common stock might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. Each of these factors, among others, could harm the value of your investment in our common stock. Some companies that have had volatile market prices for their securities have had securities class action lawsuits filed against them. If a suit were filed against us, regardless of its merits or outcome, it could result in substantial costs and divert management's attention and resources.

Anti-takeover provisions in our charter documents and Delaware law could discourage delay or prevent a change in control of our company and may affect the trading price of our common stock.

We are a Delaware corporation and the anti-takeover provisions of the Delaware General Corporation Law, which apply to us, may discourage, delay or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of three years after the person becomes an interested stockholder, even if a change of control would be beneficial to our existing stockholders. In addition, our amended and restated certificate of incorporation and amended and restated bylaws may discourage, delay or prevent a change in our management or control over us that stockholders may consider favorable. Our amended and restated certificate of incorporation and amended and restated bylaws:

- authorize the issuance of "blank check" convertible preferred stock that could be issued by our board of directors to thwart a takeover attempt;
- establish a classified board of directors, as a result of which the successors to the directors whose terms have expired will be elected to serve from the time of election and qualification until the third annual meeting following their election;
- require that directors only be removed from office for cause and only upon a supermajority stockholder vote;
- provide that vacancies on the board of directors, including newly-created directorships, may be filled only by a majority vote of directors then in office rather than by stockholders;
- prevent stockholders from calling special meetings; and
- prohibit stockholder action by written consent, requiring all actions to be taken at a meeting of the stockholders.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

Our headquarters are located in Sunnyvale, California. We lease facilities in North America and Asia. The following is a summary of the locations, functions and approximate square footage of those facilities as of December 29, 2012:

Location	Function	Square Footage
Sunnyvale, CA	Corporate headquarters and manufacturing	211,000
Allentown, PA	Manufacturing and research and development	44,000
Annapolis Junction, MD	Research and development, service and support	12,000
Bangalore, India	Research and development	51,000
Beijing, China	Research and development	22,000
Kanata, Canada	Research and development	6,000
Hong Kong, China	Sales, service and support	3,000
Tokyo, Japan	Sales and support	2,000

The above leases expire between 2013 and 2021. We intend to add new facilities and to expand existing facilities as we add employees, and we believe that suitable additional or substitute space will be available as needed to accommodate any such expansion of our operations. We believe that our existing facilities are adequate to meet our business needs through the next 12 months.

ITEM 3. LEGAL PROCEEDINGS

Cheetah Patent Infringement Litigation

On May 9, 2006, we and Level 3 were sued by Cheetah in the U.S. District Court for the Eastern District of Texas Texarkana Division for alleged infringement of patent no. 6,795,605 (the "'605 Patent"), and a continuation thereof. On May 16, 2006, Cheetah filed an amended complaint, which requested an order to enjoin the sale of our DTN platform and to recover all damages caused by the alleged willful infringement including any and all compensatory damages available by law, such as actual and punitive damages, attorneys' fees, associated interest and Cheetah's costs incurred in the lawsuit. Cheetah's complaint does not request a specific dollar amount for these compensatory damages. We are contractually obligated to indemnify Level 3 for damages suffered by Level 3 to the extent its product supplied by us is found to infringe, and we have assumed the defense of this matter. On July 20, 2006, we and Level 3 filed an amended response denying all infringement claims under the '605 Patent and asserting that the claims of the '605 Patent are invalid and that the DTN platform does not infringe the '605 Patent. On November 28, 2006, Cheetah filed a second amended complaint and added patent no. 7,142,347 (the "'347 Patent") to the lawsuit. On December 18, 2006, we and Level 3 filed responses to Cheetah's second amended complaint denying all infringement claims under the '347 Patent and we and Level 3 asserted counterclaims against Cheetah asserting that the claims are invalid and that the DTN platform does not infringe the patents.

On January 30, 2007, Cheetah filed a third amended complaint adding additional assertions of infringement for the two patents in suit. On February 16, 2007, we and Level 3 filed responses to Cheetah's third amended complaint denying all infringement claims, and we and Level 3 asserted counterclaims against Cheetah asserting that the claims of the patents are invalid and that the DTN platform does not infringe the patents.

On March 14, 2007, we submitted requests to the U.S. Patent and Trademark Office (the "U.S. PTO") for inter partes reexamination of the '605 Patent and the '347 Patent asking the U.S. PTO to reexamine the patents based on prior art in order to invalidate the patents or limit the scope of each patent's claims.

On April 12, 2007, the court granted the motion staying all proceedings in the lawsuit. On June 26, 2007, the U.S. PTO also ordered reexamination of the '605 Patent and on August 1, 2007, the U.S. PTO ordered reexamination of the '347 Patent. As a result, all proceedings in this lawsuit were stayed until the final resolution of these reexaminations.

In a communication we received from the U.S. PTO dated December 4, 2009, we were advised that various claims in the ‘347 Patent reexamination have been allowed, while other claims have been rejected. In a communication we received from the U.S. PTO dated June 22, 2010, we were advised that various claims in the ‘605 Patent reexamination have been allowed, while other claims have been rejected.

On March 30, 2012, the Board Patent Appeals Interferences (“BPAI”) affirmed the Examiner’s allowance of certain claims in the reexamination of the ‘347 Patent and ‘605 Patent. We filed a request for reconsideration of the BPAI’s decision on April 30, 2012, which was denied in a Decision on Request for Rehearing dated September 27, 2012. We have appealed the BPAI’s decision to the Court of Appeals of the Federal Circuit in a Notice of Appeal dated November 26, 2012. On November 9, 2012, Cheetah’s counsel filed another motion requesting the court to lift the stay. The court granted Cheetah’s motion and lifted the stay in an order dated January 8, 2013.

Based on the information available at this time, we concluded that the likelihood of a loss with respect to this suit is less than reasonably possible and therefore, a range of loss cannot be provided. As a result, we have made no provision for this lawsuit in our financial statements. Factors that we considered in the determination of the likelihood of a loss in respect to this matter included the merits of the case, the nature of the litigation (including the complex and technical nature of patent litigation), the length of time the matter has been pending, the status of the re-examination of the underlying patents at issue by the U.S. PTO, the status of the plaintiff as a non-operating entity, and the lack of any specific amount (or range of amounts) for the alleged damages sought in the complaint.

Cambrian Science Patent Infringement Litigation

On July 12, 2011, we were notified by Level 3 that Cambrian filed suit against Level 3 and six other defendants, including Cox Communications, Inc., XO Communications, LLC, Global Crossing Limited, 360Networks (USA), Inc., Integra Telecom, Inc. and IXC, Inc. dba Telekenex (collectively, the “Defendants”) in the U.S. District Court for the Central District of California alleging infringement of patent no. 6,775,312 (the “’312 Patent”) and requesting damages for such alleged infringement (the “Cambrian Claim”). The nature of the Cambrian Claim involves allegations of infringement of the ’312 Patent resulting from the Defendants’ use of certain products and systems in the Defendants’ networks, including our DTN platform. On August 24, 2011, Cambrian amended the complaint to name Infinera as a defendant. We assumed the defense of the Cambrian Claim and filed an answer to Cambrian’s complaint on September 21, 2011, in which we denied infringement of the ‘312 Patent and raised other defenses. Cambrian filed a second amended complaint on October 6, 2011, which included many of the same allegations as in the original complaint. We filed our answer to the second amended complaint on October 21, 2011, in which we maintained the same denials and defenses as in our initial answer. On December 23, 2011, we filed a motion requesting that the court stay the case with respect to each of the above-noted customer Defendants. Cambrian filed its opposition to our motion on December 30, 2011. Our request was denied in the court’s decision on March 7, 2012. We presented evidence on the appropriate meanings of relevant key words used in the patent claims during a claim construction hearing on November 20, 2012. We are awaiting the court’s decision on the meaning of various claim terms.

We may be subject to liability pursuant to the indemnification provisions of our agreements with our customers, including the Defendants, should the outcome of the Cambrian Claim be unfavorable to the Defendants. Based on the information available at this time, we concluded that the likelihood of a loss with respect to this suit is less than reasonably possible and therefore, a range of loss cannot be provided. As a result, we have made no provision for this lawsuit in our financial statements. Factors that we considered in the determination of the likelihood of a loss in respect to this matter included the merits of the case, the nature of the litigation (including the complex and technical nature of patent litigation), the length of time the matter has been pending, and the status of the plaintiff as a non-operating entity.

In addition to the matters described above, we are subject to various legal proceedings, claims and litigation arising in the ordinary course of business. While the outcome of these matters is currently not determinable, we do not expect that the ultimate costs to resolve these matters will have a material effect on our consolidated financial position, results of operations, or cash flows.

ITEM 4. MINE SAFETY DISCLOSURES

Not Applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is listed on the NASDAQ Global Select Market under the symbol "INFN." The following table sets forth, for the time periods indicated, the high and low sales prices of our common stock as reported on the NASDAQ Global Select Market.

	High	Low
Fourth Quarter 2012	$ 6.15	$4.33
Third Quarter 2012	$ 7.40	$5.29
Second Quarter 2012	$ 8.15	$6.02
First Quarter 2012	$ 8.90	$6.26
Fourth Quarter 2011	$ 8.61	$6.07
Third Quarter 2011	$ 8.97	$6.00
Second Quarter 2011	$ 8.75	$5.91
First Quarter 2011	$11.15	$7.13

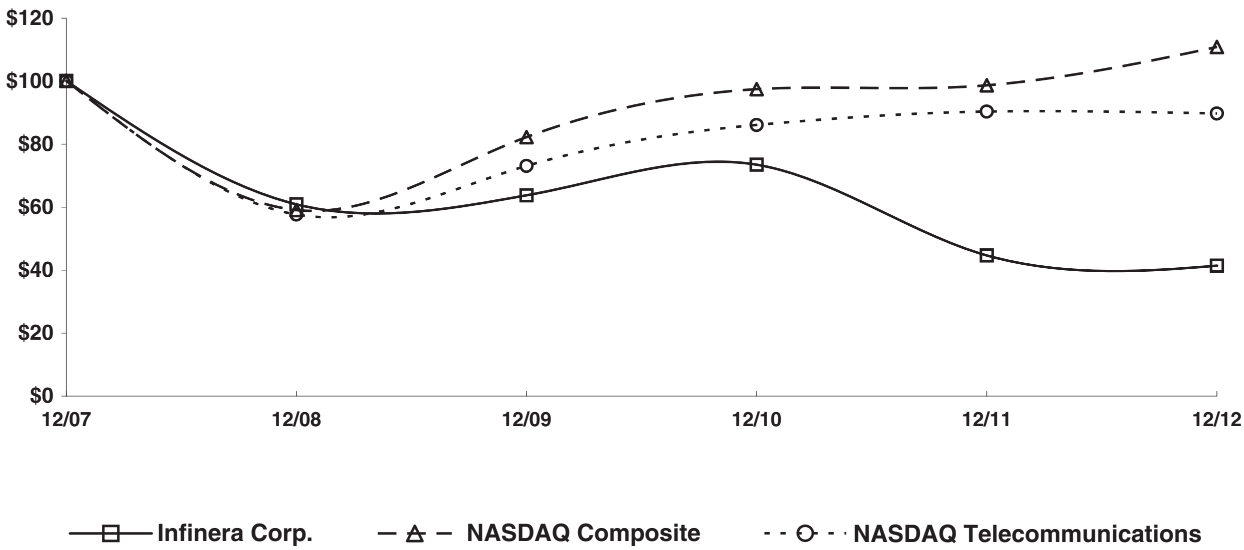
As of February 25, 2013, there were 132 registered holders of record of Infinera's common stock. A substantially greater number of holders of Infinera common stock are "street name" or beneficial holders, whose shares are held by banks, brokers and other financial institutions.

We have not paid any cash dividends on our common stock and do not intend to pay any cash dividends on common stock in the foreseeable future.

STOCK PERFORMANCE GRAPH

The following graph compares the cumulative 5-year total return provided stockholders on Infinera Corporation's common stock relative to the cumulative total returns of the NASDAQ Composite Index and the NASDAQ Telecommunications Index. An investment of $100 (with reinvestment of all dividends, if any) is assumed to have been made in our common stock and in each of the indexes on December 29, 2007 and its relative performance is tracked through December 29, 2012. The NASDAQ Telecommunications Index contains securities of NASDAQ-listed companies classified according to the Industry Classification Benchmark as Telecommunications and Telecommunications Equipment. They include providers of fixed-line and mobile telephone services, and makers and distributors of high-technology communication products. This graph is not deemed to be "filed" with the SEC or subject to the liabilities of Section 18 of the Securities Exchange Act of 1934, and the graph shall not be deemed to be incorporated by reference into any prior or subsequent filing by Infinera under the Securities Act of 1933 or the Exchange Act.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN*
Among Infinera Corp., the NASDAQ Composite Index,
and the NASDAQ Telecommunications Index



*$100 invested on 12/29/07 in stock or index, including reinvestment of dividends, if any.
Indexes calculated on month-end basis.

FORM 10-K

ITEM 6. SELECTED FINANCIAL DATA

You should read the following selected consolidated historical financial data below in conjunction with the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements, related notes and other financial information included elsewhere in this Annual Report on Form 10-K. The selected financial data in this section is not intended to replace the financial statements and is qualified in its entirety by the consolidated financial statements and related notes thereto included elsewhere in this Annual Report on Form 10-K.

We derived the statements of operations data for the years ended December 29, 2012, December 31, 2011 and December 25, 2010 and the balance sheet data as of December 29, 2012 and December 31, 2011 from our audited consolidated financial statements and related notes, which are included elsewhere in this Annual Report on Form 10-K. We derived the statements of operations data for the years ended December 26, 2009 and December 27, 2008 and the balance sheet data as of December 25, 2010, December 26, 2009 and December 27, 2008 from our audited consolidated financial statements and related notes which are not included in this Annual Report on Form 10-K. We have not declared or distributed any cash dividends.

	Years Ended				
	December 29, 2012	December 31, 2011	December 25, 2010	December 26, 2009	December 27, 2008
	(In thousands, except per share data)				
Revenue	$438,437	$404,877	$454,352	$309,101	$519,212
Gross profit	$157,569	$165,491	$206,189	$102,101	$233,555
Net income (loss)	$ (85,330)	$ (81,744)	$ (27,932)	$ (86,622)	$ 78,728
Net income (loss) per common share					
Basic	$ (0.77)	$ (0.78)	$ (0.28)	$ (0.91)	$ 0.85
Diluted	$ (0.77)	$ (0.78)	$ (0.28)	$ (0.91)	$ 0.81
Weighted average number of shares used in computing basic and diluted net income (loss) per common share					
Basic	110,739	105,432	99,380	95,468	92,427
Diluted	110,739	105,432	99,380	95,468	97,088
Total cash and cash equivalents, investments and restricted cash	$187,554	$253,116	$295,706	$275,477	$312,585
Total assets	$528,170	$531,704	$551,525	$491,945	$507,067
Common stock and additional paid-in capital	$930,730	$877,034	$817,302	$747,677	$699,799
Stockholders' equity	$356,136	$387,803	$410,749	$368,507	$405,463

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Annual Report on Form 10-K contains "forward-looking statements" that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Such forward-looking statements include any expectation of earnings, revenues, gross margins, expenses or other financial items; any statements of the plans, strategies and objectives of management for future operations and personnel; factors that may affect our operating results; statements concerning new products or services, including future PIC capacity and new product delivery and revenue dates; statements related to capital expenditures; statements related to future economic conditions, performance, market growth or our sales cycle; statements related to the liquidity of our auction rate securities; statements as to industry trends and other matters that do not relate strictly to historical facts or statements of assumptions underlying any of the foregoing. These statements are often identified by the use of words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," or "will," and similar expressions or variations. These statements are based on the beliefs and assumptions of our management based on information currently available to management. Such forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed in the section titled "Risk Factors" included in Item 1A of this Annual Report on Form 10-K. You should review these risk factors for a more complete understanding of the risks associated with an investment in our securities. Such forward-looking statements speak only as of the date of this report. We disclaim any obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements. The following discussion and analysis should be read in conjunction with our "Selected Consolidated Financial Data" and consolidated financial statements and notes thereto included elsewhere in this Annual Report on Form 10-K.

Background

Infinera was founded in December 2000 with a unique vision for optical networking. Prior to Infinera, communications service provider optical networks were built from fairly commoditized products, broadly known as wavelength division multiplexing ("WDM") systems. Recent growth in bandwidth demand has increased the need for the delivery of high-capacity low-cost bandwidth throughout the network. We believe that traditional point-to-point network architectures do not provide the required flexibility to meet this demand. It takes large amounts of low-cost bandwidth, pervasive Optical Transport Network ("OTN") switching, and the intelligence of bandwidth management to manage these larger networks and deliver high-capacity services quickly and cost-effectively. Infinera believes this can best be achieved with photonic integrated circuits ("PICs") and that only through photonic integration can network operators efficiently scale their network bandwidth without significant increases in space, power or operational workload.

We first introduced our Digital Optical Network architecture to the market in 2004. This architecture is based on our unique PICs and enables high-capacity, low-cost bandwidth in the cloud and distributed switching throughout the network. Since 2004, our strategy has been to extend the benefits of our Digital Optical Network throughout the optical networking market. We have made significant enhancements to our Digital Transport Node System ("DTN platform") during this time by increasing reach and fiber capacity for the long-haul market, adding the Infinera MTC, a 19-inch chassis option tailored for the metro core market, and adding a submarine version of the DTN platform for the Submarine Line Terminating Equipment market. In addition, we introduced our ATN metro access platform ("ATN platform"), extending Infinera's digital bandwidth management and intelligent network benefits to the network edge.

Traffic patterns in the optical network continue to grow to accommodate increased bandwidth from video, mobility and cloud computing with high-capacity networks migrating from 10 Gigabits per second ("Gbps") and 40 Gbps wavelength solutions to newly available 100 Gbps solutions. In order to meet the growing bandwidth demands of our customers, we introduced our 40 Gbps non-PIC based solution in the third quarter of 2011 and we launched our DTN-X platform, a 100 Gbps platform based on our 500 Gbps PICs with a 5 Terabit OTN switch in September 2011 and completed our first shipments for customer deployment in the second quarter of 2012. The DTN, DTN-X and ATN platforms are designed to operate as a tightly-integrated network with a single management system providing an end-to-end Digital Optical Network experience.

2012 Financial and Business Performance

2012 was an important year for Infinera. We commenced shipment of our next-generation DTN-X platform in the second quarter with first revenues recognized from the platform in the third quarter. The DTN-X platform has been well received by customers across many markets with purchase commitments received from 22 customers by the end of the year. While new deployments of high-capacity networks are now mostly occurring on the DTN-X platform, we continued to sell the DTN platform where appropriate, with nine new DTN platform customers added in 2012.

DTN-X market traction and the resulting growth in revenue contributed to an improvement in our overall financial performance in the second half of 2012. We had incurred significant DTN-X related manufacturing and research and development expenditures in 2011 and early 2012, in advance of generating revenues from the platform. This resulted in significant losses and cash consumption in those periods. In the second half of 2012, we experienced improved financial metrics with strong sequential quarterly revenue growth, reduced spending levels and improved income statement performance.

Our overall gross margin for 2012 was 36%, decreased from 41% in 2011. This decrease in gross margins in 2012 primarily reflects the impact of early product cycle production costs for the DTN-X platform, increased levels of lower margin network footprint sales and competitive pricing pressure. The industry typically experiences downward pressure on gross margins during network footprint deployments, with higher gross margins achieved as capacity is added to deployed networks.

In 2013, we intend to focus our efforts on leveraging the DTN-X platform to win new network footprint and gain market share. These efforts will be balanced with a focus on product cost improvements and overall prudent financial management. We believe that with sustained revenue growth, we can leverage our vertically-integrated manufacturing model, which combined with selling bandwidth capacity into deployed networks, can result in improved future profitability and cash flow.

Future Business and Industry Trends

Our goal is to be the leading provider of optical networking systems to communications service providers, internet content providers, cable operators, subsea network operators, and others. Our revenue growth will depend on the continued acceptance of our products, growth of communications traffic and the proliferation of next-generation bandwidth-intensive services, which are expected to drive the need for increased levels of bandwidth. Our ability to increase our revenue and achieve profitability will be directly affected by the level of acceptance of our products in the long-haul and metro WDM markets and by our ability to cost-effectively develop and sell innovative products that leverage our technology advantages on a time-to-market basis.

As of December 29, 2012, we have sold our products for deployment in the optical networks of 111 customers worldwide, including Colt, Cox Communications, Deutsche Telekom, Equinix, Interoute, KVH, TeliaSonera, Level 3, NTT, OTE, Pacnet and XO Communications. We do not have long-term sales commitments from our customers. To date, a few of our customers have accounted for a significant portion of our revenue. No customers accounted for over 10% of our revenue in 2012 or 2011. One customer accounted for over 10% of our revenue in 2010. Our business will be harmed if any of our key customers do not generate as much revenue as we forecast, stop purchasing from us, or substantially reduce their orders for our products.

We are headquartered in Sunnyvale, California, with employees located throughout the Americas, Europe, and the Asia Pacific region. We expect to continue to add some personnel in the United States and internationally to develop our products and provide additional geographic sales and technical support coverage. We primarily sell our products through our direct sales force, with a small portion sold indirectly through resellers. We derived 98%, 97% and 98% of our revenue from direct sales to customers for 2012, 2011 and 2010, respectively. We expect to continue generating a substantial majority of our revenue from direct sales in the future.

Our near-term year-over-year and quarter-over-quarter revenue will likely be volatile and may be impacted by several factors including general economic and market conditions, time-to-market development of new products, acquisitions of new customers and the timing of large product deployments.

We will continue to make significant investments in the business, and management currently believes that operating expenses for 2013 will range from $235 million to $245 million, including stock-based compensation expense of approximately $30 million to $35 million.

Results of Operations

Revenue

The following table sets forth, for periods presented, certain consolidated statements of operations information (in thousands, except %):

	Years Ended					
	December 29, 2012	% of total revenue	December 31, 2011	% of total revenue	December 25, 2010	% of total revenue
Revenue:						
Product	$378,138	86%	$349,468	86%	$401,578	89%
Ratable product and related support and services	1,897	1%	3,176	1%	6,155	1%
Services	58,402	13%	52,233	13%	46,619	10%
Total revenue	$438,437	100%	$404,877	100%	$454,352	100%
Cost of revenue:						
Product	$258,874	59%	$219,710	54%	$225,183	50%
Ratable product and related support and services	563	— %	1,096	— %	3,217	1%
Services	21,431	5%	18,580	5%	19,945	4%
Restructuring and other costs (credit) related to cost of revenue	—	— %	—	— %	(182)	— %
Total cost of revenue	$280,868	64%	$239,386	59%	$248,163	55%

The following table summarizes our revenue by geography and sales channel for the periods presented (in thousands, except %):

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Total revenue by geography			
Domestic	$296,849	$283,443	$342,461
International	141,588	121,434	111,891
	$438,437	$404,877	$454,352
% Revenue by geography			
Domestic	68%	70%	75%
International	32%	30%	25%
	100%	100%	100%
Total revenue by sales channel			
Direct	$428,734	$391,811	$444,168
Indirect	9,703	13,066	10,184
	$438,437	$404,877	$454,352
% Revenue by sales channel			
Direct	98%	97%	98%
Indirect	2%	3%	2%
	100%	100%	100%

2012 Compared to 2011. Total revenue increased to $438.4 million in 2012 from $404.9 million in 2011. Revenues were positively impacted by the recognition of revenues from sales of our new DTN-X platform during the second half of 2012. These revenues included sales to existing customers transitioning their higher-capacity network deployments to the DTN-X and new customers purchasing our Digital Optical Network solutions for the first time. While this increase in DTN-X revenues was somewhat offset by a reduction in sales of our DTN platform, we continued to deploy the DTN platform in lower capacity applications with nine new customers in 2012. Revenues for 2011 were negatively impacted when customers who required higher-capacity network solutions in advance of the availability of our 40 Gbps and 100 Gbps systems purchased competitor products for portions of their networks.

International revenue increased to 32% of total revenue in 2012 from 30% of total revenue in 2011. The increases were primarily due to an increased proportion of our sales occurring in Europe. While we expect international revenues to continue to grow in absolute dollars on a long-term basis as we increase our sales activities in Europe, Asia Pacific and other regions, this metric may fluctuate as a percentage of total revenue depending on the size and timing of deployments both internationally and in the United States.

Total product revenue increased to $378.1 million in 2012 from $349.5 million in 2011 reflecting increased sales of our DTN-X platform in the second half of 2012.

Product and related support services revenue that is recognized ratably includes sales of products and services that were deferred under previous accounting standards, prior to our adoption of ASU 2009-13 and ASU 2009-14, because vendor specific objective evidence of fair value had not been established for the undelivered elements. Total ratable revenue levels decreased to $1.9 million in 2012 from $3.2 million in 2011 due to an overall reduction in sales of products and services that were deferred following our adoption of ASU 2009-13 and ASU 2009-14. We have a limited number of software offerings and related support services that will continue to be accounted for under the software revenue recognition rules. We expect to continue to record a small amount of ratable revenue when arrangements include bundled services related to our software offerings for which vendor-specific objective evidence (“VSOE”) has not been established.

Total services revenue increased to $58.4 million in 2012 from $52.2 million in 2011 primarily reflecting the incremental recognition of $3.2 million related to deployment services revenue, $1.5 million related to our spares management service revenue, $1.4 million related to extended warranty service revenue, $0.4 million of first line management services revenue, $0.3 million of network management services revenue, and $0.3 million from training services revenue, offset by a decrease of $0.9 million related to our software subscription service revenue. The increase in deployment services in 2012 was primarily due to the introduction and deployment of new networks based on our DTN-X platform. In addition, we expect to continue to grow our extended hardware warranty and spares management services revenues in future periods as our installed base continues to grow.

2011 Compared to 2010. Total revenue decreased to $404.9 million in 2011 from $454.4 million in 2010. The decrease in revenue was primarily due to a reduction in demand from existing customers, reflecting increased customer demand for higher capacity solutions that we did not offer in 2011 and a reduction in overall demand from Level 3.

International revenue increased to 30% of total revenue in 2011 from 25% of total revenue in 2010. The increases were primarily due to an increased proportion of our sales occurring in Europe. While we expect international revenues to continue to grow in absolute dollars on a long-term basis as we increase our sales activities in Europe, Asia Pacific and other regions, this metric may fluctuate as a percentage of total revenue depending on the size and timing of deployments both internationally and in the United States.

Total product revenue decreased to $349.5 million in 2011 from $401.6 million in 2010. A reduction in demand from existing customers, including Level 3, combined with a competitive pricing environment during 2011, were the key drivers for the reduction in product revenues.

Product and related support services revenue that is recognized ratably includes sales of products and services that were deferred under previous accounting standards, prior to our adoption of ASU 2009-13 and ASU 2009-14, because vendor specific objective evidence of fair value had not been established for the undelivered elements. Total ratable revenue levels decreased to $3.2 million in 2011 from $6.2 million in 2010 due to an overall reduction in sales of products and services that were deferred following our adoption of ASU 2009-13 and ASU 2009-14. We have a limited number of software offerings and related support services that will continue to be accounted for under the software revenue recognition rules. We expect to continue to record a small amount of ratable revenue when arrangements include bundled services related to our software offerings for which VSOE has not been established.

Total services revenue increased to $52.2 million in 2011 from $46.6 million in 2010 primarily reflecting the incremental recognition of $5.4 million related to extended hardware warranty service revenue, $2.5 million related to our software subscription service revenue, $1.8 million related to our spares management service revenue, $0.4 million of network management services revenue, and $0.4 million of first line management services revenue, partially offset by decrease of $4.9 million related to deployment services revenue. As our installed customer base grows, we expect to continue to grow our extended hardware warranty and spares management services revenues in future periods.

Cost of Revenue and Gross Margin

2012 Compared to 2011. Gross margin decreased to 36% in 2012 from 41% in 2011. Gross margin in 2012 reflected the recognition of revenues from the initial sales of our DTN-X platform. These sales represented early production units and as such, had a higher product cost. The transition of a portion of our revenues from the DTN platform to these lower-margin initial DTN-X units contributed to a decline in gross margins in the second half of the year. In addition, costs for the first half of 2012 included pre-production costs associated with the DTN-X platform production ramp. We also experienced a higher level of lower margin network footprint sales in the second half of 2012, as we began DTN-X platform deployments. Competition for new 100 Gbps deployments has been strong, which has resulted in a highly-competitive pricing environment for new deployments during 2012.

2011 Compared to 2010. Gross margin decreased to 41% in 2011 from 45% in 2010. This decrease primarily reflected incremental costs associated with the expansion of our PIC fabrication ("PIC FAB") facility and new product introduction costs related to our next-generation products combined with reduced product shipments and the need for increased pricing discounts in order to remain competitive.

See Note 7, "Restructuring and Other Related Costs," to the Notes to Consolidated Financial Statements for more information on our restructuring plan under which we closed our Maryland-based semiconductor fabrication plant ("Maryland FAB").

Based on our current outlook, we expect downward pressure on gross margins to continue for the next several quarters as we focus on winning new network footprint and gaining market share, while continuing to drive cost reductions on the DTN-X platform. We do not have the visibility necessary to accurately predict quarterly gross margins beyond this time horizon, but believe that increased revenues and improved product mix can allow for some margin expansion later in 2013 and in future years.

Operating Expenses

The following table summarizes our operating expenses for the periods presented (in thousands, except %):

	Years Ended					
	December 29, 2012	% of total revenue	December 31, 2011	% of total revenue	December 25, 2010	% of total revenue
Research and development	$117,233	27%	$127,120	31%	$118,518	26%
Sales and marketing	75,862	17%	64,773	16%	58,103	13%
General and administrative	47,475	11%	54,375	14%	58,098	13%
Restructuring and other costs (credit)	—	— %	(129)	— %	159	— %
Total operating expenses	$240,570	55%	$246,139	61%	$234,878	52%

FORM 10-K

The following table summarizes the stock-based compensation expense included in our operating expenses (in thousands):

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Research and development	$13,306	$14,990	$14,301
Sales and marketing	10,450	8,818	7,896
General and administration	9,529	18,502	19,903
Total	$33,285	$42,310	$42,100

Research and Development Expenses

2012 Compared to 2011. Research and development expenses decreased $9.9 million in 2012 from 2011. This reduction was primarily due to $8.6 million of research and development resources redeployed to manufacturing in support of initial DTN-X production builds. In addition, prototype and other equipment spending decreased by $5.7 million in 2012, following the release of the DTN-X platform. These decreases were partially offset by $2.6 million of increased depreciation, $0.6 million increase in professional and outside services and $0.6 million increase in facilities and other costs, as compared to 2011. Total other personnel-related costs increased by $0.6 million. This increase was comprised of $2.3 million increase of cash compensation offset by $1.7 million decrease of stock-based compensation expense.

2011 Compared to 2010. Research and development expenses increased $8.6 million in 2011 from 2010 primarily due to increased headcount and personnel-related costs of $2.6 million primarily associated with next-generation product development. This was comprised of $1.9 million of cash compensation and $0.7 million of stock-based compensation expense. In addition, during 2011, we incurred $1.6 million of increased depreciation, $1.4 million increase in professional and outside services, $1.1 million in travel and entertainment expenses, $1.2 million increase in spending on equipment and software, and $0.7 million increase in facilities and other costs, as compared to 2010.

Sales and Marketing Expenses

2012 Compared to 2011. Sales and marketing expenses increased $11.1 million in 2012 from 2011 primarily due to $4.7 million related to increased expenses for customer lab trials, $3.7 million in compensation and personnel-related expenses due to increased headcount, $1.6 million of increased stock-based compensation expense, $0.7 million of increased travel and related expenses and $0.4 million of increased facilities and other costs. This increase in spending primarily reflects the ongoing impact of incremental sales resources to support the expansion of our addressable markets with the introduction of the DTN-X platform.

2011 Compared to 2010. Sales and marketing expenses increased $6.7 million in 2011 from 2010 primarily due to $2.7 million in compensation and personnel-related expenses due to increased headcount, $1.7 million of increased travel and related expenses, $1.2 million of increased marketing program expenses and trade show costs, $0.9 million of increased stock-based compensation expense, a $0.4 million increase related to outside professional services, $0.6 million of increased facilities and other costs, and $0.2 million related to increased expenses for customer lab trials. These increases were offset by $1.0 million in decreased sales commission expense.

General and Administrative Expenses

2012 Compared to 2011. General and administrative expenses decreased $6.9 million in 2012 from 2011 primarily due to $9.0 million of decreased stock-based compensation expense, which included the impact of reduced management bonuses and other changes in equity grant activity, and $0.2 million decrease in facilities and other costs. These decreases were partially offset by increased professional services costs of $1.6 million primarily related to implementation of our new enterprise resource planning system and related increased depreciation costs of $0.7 million.

2011 Compared to 2010. General and administrative expenses decreased $3.7 million in 2011 from 2010 primarily due to a $2.1 million decrease in cash compensation which included the impact of reduced management bonuses, $1.4 million of decreased stock-based compensation expense, and a $0.7 million decrease in facilities and other costs. These decreases were partially offset by increased depreciation costs of $0.4 million and increased professional services costs of $0.1 million.

Restructuring and Other Costs

In 2011, we recorded a credit of $0.1 million due to a change in estimates associated with facility-related costs. In 2010, we incurred $0.2 million of restructuring and other costs associated with the closure of our Maryland FAB. We completed our restructuring actions in 2010. For more information, see Note 7, "Restructuring and Other Related Costs," to the Notes to Consolidated Financial Statements.

Other Income (Expense), Net

	Years Ended		
	December 29, 2012	**December 31, 2011**	**December 25, 2010**
		(In thousands)	
Interest income	$ 911	$1,014	$1,390
Other gain (loss), net	(1,050)	(419)	(316)
Total other income (expense), net	$ (139)	$ 595	$1,074

2012 Compared to 2011. Interest income decreased $0.1 million in 2012 from 2011 mainly due to lower average investment balances. Other gain (loss), net for 2012 includes $1.5 million of unrealized and realized losses due to foreign currency exchange, partially offset by a gain of $0.5 million from ARS called at par value.

2011 Compared to 2010. Interest income decreased $0.4 million in 2011 from 2010 due to lower interest rates on investments and lower average investment balances. Other gain (loss), net for 2011 includes $1.0 million of unrealized and realized losses due to foreign currency exchange, a gain of $0.3 million from the sale of assets and a gain of $0.2 million related to an insurance claim settlement.

Income Tax Provision

We recognized income tax expense of approximately $2.2 million, $1.7 million and $0.3 million in each of fiscal years 2012, 2011, and 2010, on pre-tax book losses of $83.1 million, $80.1 million, and $27.6 million, respectively. The resulting effective tax rates of 2.6%, 2.1%, and 1.1% for 2012, 2011, and 2010, respectively, differs from the expected statutory rate of 35% based upon unbenefited U.S. losses, non-deductible stock compensation charges and foreign taxes provided on foreign subsidiary earnings. The increase in the 2012 and 2011 tax expense compared to the 2010 tax expense relates primarily to the expiration of the India tax holiday, as well as an increase in India transfer pricing reserves, in accordance to Accounting Standards Codification 740, Accounting for Uncertainty in Income Taxes. Our India subsidiary operated under a tax holiday, which expired on March 31, 2011, and the net impact of this tax holiday in prior years was to decrease our net loss by approximately $0.5 million in 2010, resulting in no earnings per share impact in that year. Further, the increase in tax expense in 2012 compared to 2011 relates to reductions of benefits from Canadian research credits.

During 2012, 2011 and 2010, income tax benefits of zero, $0.1 million and $0.3 million for each year were allocated to the tax provision from continuing operations, related to the tax effects of items credited directly to other comprehensive income ("OCI"). Generally, the amount of tax expense or benefit allocated to continuing operations is determined without regard to the tax effects of other categories of income or loss, such as OCI. However, an exception to the general rule is provided within the intra-period tax allocations rules when there is a pre-tax loss from continuing operations and there are items charged or credited to other categories, including OCI, in the current year. The intra-period tax allocation rules related to items charged or credited directly to OCI can result in disproportionate tax effects that remain in OCI until certain events occur.

The valuation allowance for deferred tax assets as of December 29, 2012 and December 31, 2011 was $213.4 million and $188.4 million, respectively. The net change in the valuation allowance was an increase of $25.1 million and $32.5 million for the years ended December 29, 2012 and December 31, 2011, respectively.

As of December 29, 2012, we had net operating loss carryforwards of approximately $338.4 million for federal tax purposes and $297.7 million for state tax purposes. If not utilized, these carryforwards will begin to expire in 2021 for federal tax purposes and 2015 for state tax purposes. Additionally, we have federal and California research and development credits available to reduce future income taxes payable of approximately $22.9 million, respectively. The federal research credits will begin to expire in the year 2021 if not utilized, while the California research credits have no expiration date.

We maintain net operating losses generated from excess tax benefits associated with the accumulated stock award attributes in a memo account, not included in the deferred tax inventory balances. The additional tax benefit associated with these stock award attributes, of which the net operating loss amounts are included in the carryforward amounts noted above, is not recognized until the deduction reduces cash taxes payable. At December 29, 2012, we had unbenefited stock option deductions for federal and California tax purposes of $36.8 million and $35.6 million, respectively. When utilized, the estimated tax benefits of approximately $14.7 million will result in a credit to stockholders' equity.

Under the Tax Reform Act of 1986, the amount of benefit from net operating loss and tax credit carryforwards may be impaired or limited in certain circumstances. Events which cause limitations in the amount of net operating losses that we may utilize in any one year include, but are not limited to, a cumulative ownership change of more than 50 percent as defined, over a three-year testing period. As of December 29, 2012, we had determined that ownership changes have occurred that would result in limitations on the current and future utilization of its net operating loss carryforwards. However, based on the work performed, the limitations are not significant enough to impact the future utilization of the tax attributes.

In determining future taxable income, we make assumptions to forecast federal, state and international operating income, the reversal of temporary differences, and the implementation of any feasible and prudent tax planning strategies. The assumptions require significant judgment regarding the forecasts of future taxable income, and are consistent with our income forecasts used to manage our business. We intend to maintain the remaining valuation allowance until sufficient further positive evidence exists to support a reversal of, or decrease, in the existing valuation allowance.

Liquidity and Capital Resources

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
		(In thousands)	
Net cash flow provided by (used in):			
Operating activities	$(49,466)	$ (1,965)	$ 30,537
Investing activities	$ 48,868	$(25,168)	$(45,722)
Financing activities	$ 10,698	$ 8,513	$ 18,985

	Years Ended	
	December 29, 2012	December 31, 2011
	(In thousands)	
Cash and cash equivalents	$104,666	$ 94,458
Short-term and long-term investments	79,020	155,611
Short-term and long-term restricted cash	3,868	3,047
	$187,554	$253,116

Cash, cash equivalents, short-term and long-term investments and short-term and long-term restricted cash consist of highly-liquid investments in certificates of deposits, money market funds, commercial paper, corporate bonds, U.S. agency notes and U.S. treasuries. As of December 29, 2012, long-term investments included

$3.1 million (par value) of available-for-sale auction rate securities ("ARS"). The restricted cash balance amounts are pledged as collateral for certain stand-by and commercial letters of credit.

Operating Activities

Net cash used in operating activities for 2012 was $49.5 million as compared to net cash used in operating activities of $2.0 million in 2011 and $30.5 million net cash provided by operating activities in 2010. Cash flow from operating activities consists of net income (loss), adjusted for non-cash charges, plus or minus working capital changes. Our working capital requirements can fluctuate significantly depending on the timing of deployments and the acceptance, billing and payment terms on those deployments. Additionally, our ability to manage inventory turns and our ability to negotiate favorable payment terms with our vendors may also impact our working capital requirements.

Net loss for 2012 was $85.3 million, which included non-cash charges of $67.2 million, compared to a net loss of $81.7 million in the corresponding period in 2011, including non-cash charges of $72.2 million. Net loss for 2010 was $27.9 million, which included non-cash charges of $69.2 million.

Net cash used to fund working capital was $31.3 million for 2012. This increase in working capital requirements was primarily related to the introduction of our DTN-X platform. Inventory levels increased by $40.6 million as we added inventory for the DTN-X platform while maintaining DTN levels. Accounts receivable increased by $26.5 million primarily due to the timing of acceptance and invoicing of DTN-X platform deployments during the second half of 2012. Accrued liabilities increased by $6.9 million primarily related to external services performed but not invoiced by vendors.

The deterioration in operating results in 2011 as compared to 2010 was the key driver for the significant change in cash flows for 2011. Net cash provided by working capital was $7.5 million for 2011. Working capital requirements for the fourth quarter of 2011 were impacted by the disruption of the supply chain due to flooding events in Thailand. The net effect of this event on cash provided by working capital was a usage of cash of $1.4 million. Included in prepaid expenses and other assets was an $11.1 million decrease in deferred tax assets which was offset by a corresponding decrease in deferred tax liabilities included in accrued liabilities and other expenses. Other working capital changes included a reduction of other receivables of $3.4 million, reduction of deferred inventory costs of $2.0 million and an increase in warranty accruals of $1.4 million.

The improved operating results in 2010 as compared to 2009 were the key driver for the improvement in cash flows for 2010. Net cash used to fund working capital was $10.8 million for 2010 primarily due to an increase in inventory of $13.1 million and an increase in accounts receivable of $6.8 million, offset by an increase in accrued liabilities of $9.2 million. We increased our inventory levels in early 2010 in response to industry supply chain constraints and expected increased customer demand for our products. However, revenues in the fourth quarter were lower than expected resulting in higher inventory levels exiting 2010. Accounts receivable increased primarily reflecting invoicing trends that were weighted towards the end of the period. Accrued liabilities and other expenses increased due to the timing and level of compensation related payments.

Investing Activities

Net cash provided by investing activities in 2012 was $48.9 million primarily reflecting net proceeds of $75.0 million from maturities, calls and sales of investments, net of purchases in the period, offset by $25.4 million of capital expenditures.

Net cash used in investing activities in 2011 was $25.2 million primarily reflecting $39.4 million of capital expenditures and net proceeds of $18.5 million from maturities, calls and sales of investments, net of purchases in the period. We also invested an additional $4.5 million in an existing cost-method equity investment.

Net cash used in investing activities in 2010 was $45.7 million primarily reflecting a net usage of cash of $20.8 million from purchases, net of maturities and calls of investments which also included proceeds of $24.5 million related to our exercise of the put rights associated with our UBS Financial Services, Inc. ARS. Additionally, we used $20.7 million related to capital expenditures during the year and we made a $4.5 million cost-method equity investment in the second quarter of 2010.

Financing Activities

Net proceeds from financing activities in 2012 were $10.7 million primarily related to $11.6 million in proceeds from the issuance of common stock under our Employee Stock Purchase Plan ("ESPP") and other equity plans. This was offset by $0.9 million related to the repurchase of shares from employees to satisfy minimum tax withholdings.

Net proceeds from financing activities in 2011 were $8.5 million primarily related to $10.0 million in proceeds from the issuance of common stock under our ESPP and other equity plans. This was offset by $1.2 million related to the repurchase of shares from employees to satisfy minimum tax withholdings and $0.3 million related to payments for purchase of assets under a financing arrangement.

Net proceeds from financing activities in 2010 were $19.0 million primarily related to $19.3 million in proceeds from the issuance of common stock under our ESPP and other equity plans. This was offset by $0.3 million related to payments for purchase of assets under a financing arrangement.

Liquidity

As of December 29, 2012, we held an A3 rated available-for-sale ARS at $3.1 million (par value) with a fair value of $2.9 million with one issuer. This ARS has a contractual maturity term of up to 33.0 years and it is not clear when we will be able to liquidate this investment. In 2009, we determined that the present value of the expected cash flows for this security was below its par value, and recorded an initial other-than-temporary impairment ("OTTI") of $2.7 million, equal to the difference between the fair value and the par value had occurred. During 2012, $0.2 million of this ARS was called at par value.

Failed auctions resulted in a lack of liquidity in the ARS, but did not affect the underlying collateral of the security. We do not anticipate that any potential lack of liquidity in our ARS, even for an extended period of time, will affect our ability to finance our operations, including our continued investments in research and development and planned capital expenditures. We continue to monitor efforts by the financial markets to find alternative means for restoring the liquidity of this investment. Our ARS investment is classified as a non-current asset until we have better visibility as to when its liquidity will be restored.

For 2013, capital expenditures are expected to be in the range of approximately $20 million to $25 million, primarily for product development.

We believe that our current cash and cash equivalents and investments will be sufficient to meet our anticipated cash needs for working capital and capital expenditures for at least 12 months. If these sources of cash are insufficient to satisfy our liquidity requirements beyond 12 months, we may require additional capital from equity or debt financings to fund our operations, to respond to competitive pressures or strategic opportunities, or otherwise. We may not be able to secure timely additional financing on favorable terms, or at all. The terms of any additional financing may place limits on our financial and operating flexibility. If we raise additional funds through further issuances of equity, convertible debt securities or other securities convertible into equity, our existing stockholders could suffer dilution in their percentage ownership of us, and any new securities we issue could have rights, preferences and privileges senior to those of holders of our common stock.

Contractual Obligations

The following is a summary of our contractual obligations as of December 29, 2012:

		Payments Due by Period			
	Total	Less than 1 year	1 - 3 years	3 - 5 years	More than 5 years
	(In thousands)				
Purchase obligations(1)	$52,667	$52,667	$ —	$ —	$ —
Operating leases(2)	37,312	5,790	9,708	8,551	13,263
Other contracts(3)	6,947	6,947	—	—	—
Total contractual obligations(4)	$96,926	$65,404	$9,708	$8,551	$13,263

(1) We have service agreements with our major production suppliers under which we are committed to purchase certain parts.

(2) We lease facilities under non-cancelable operating lease agreements. These leases have varying terms, predominantly no longer than ten years each and contain leasehold improvement incentives, rent holidays and escalation clauses that range from one to ten years. In addition, some of these leases have renewal options for up to five years. We also have contractual commitments to remove leasehold improvements and return certain properties to a specified condition when the leases terminate. At the inception of a lease with such conditions, we record an asset retirement obligation liability and a corresponding capital asset in an amount equal to the estimated fair value of the obligation. Leasehold improvements are amortized using the straight-line method over the shorter of the lease term or estimated useful life of the asset. An assumption of lease renewal where a renewal option exists is used only when the renewal has been determined to be reasonably assured. The estimated useful life of leasehold improvements is one to ten years.

(3) Other contracts are related to contractual obligations for non-recurring engineering costs.

(4) Tax liabilities of $1.8 million related to uncertain tax positions are not included in the table because we are unable to determine the timing of settlement if any, of these future payments with a reasonably reliable estimate.

We had $3.6 million of standby letters of credit outstanding as of December 29, 2012. These consisted of $1.5 million related to a value added tax license, $1.4 million related to a customer proposal guarantee, $0.7 million related to property leases and $0.3 million related to foreign payroll. We had $2.7 million of standby letters of credit outstanding as of December 29, 2011. These consisted of $1.4 million related to a customer proposal guarantee, $0.8 million related to a value added tax license and $0.5 million related to property leases.

Off-Balance Sheet Arrangements

As of December 29, 2012, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with United States generally accepted accounting principles (“U.S. GAAP”). These accounting principles require us to make certain estimates and judgments that can affect the reported amounts of assets and liabilities as of the date of the consolidated financial statements, as well as the reported amounts of revenue and expenses during the periods presented. Significant estimates and assumptions made by management include revenue recognition, stock-based compensation, inventory valuation, allowances for sales reserves, allowances for doubtful accounts, accrued warranty, cash equivalents, fair value measurement of investments, other-than-temporary impairments, derivative instruments and accounting for income taxes. By their nature, these estimates and judgments are subject to an inherent degree of uncertainty. We believe that the estimates and judgments upon which we rely are reasonable based upon information available to us at the time that these estimates and judgments are made. To the extent there are material differences between these estimates and actual results, our consolidated financial statements will be affected.

Revenue Recognition

Substantially all of our product sales are sold in combination with software support services comprised of either software warranty or software subscription services. We also periodically sell training, installation and deployment services, spares management and on-site hardware replacement services with our product sales. Training services include the right to a specified number of training classes and installation and deployment services may include customer site assessments, equipment installation and testing. Training and installation and deployment services are generally delivered over a 90-120 day period. Software warranty provides customers with maintenance releases and patches during the warranty support period. Software subscription also includes maintenance releases and patches and provides customers with rights to receive unspecified software product upgrades released during the support period. These support services are generally delivered over a one-year period. Spares management and on-site hardware replacement services include the replacement of defective units at customer sites in accordance with specified service level agreements and are generally delivered over a one-year period.

We recognize product revenue when all of the following have occurred: (1) we have entered into a legally binding arrangement with the customer; (2) delivery has occurred, which is when product title and risk of loss have transferred to the customer; (3) customer payment is deemed fixed or determinable; and (4) collectability is reasonably assured.

We allocate revenue to each element in our multiple-element arrangements based upon their relative selling prices. We determine the selling price for each deliverable based on a selling price hierarchy. The selling price for a deliverable is based on its VSOE if available, third party evidence (“TPE”) if VSOE is not available, or estimated selling price (“ESP”) if neither VSOE nor TPE is available. Revenue allocated to each element is then recognized when the basic revenue recognition criteria for that element has been met.

VSOE of selling price is used in the selling price allocation in all instances where it exists. VSOE of selling price for products and services is determined when a substantial majority of the selling prices fall within a reasonable range when sold separately. In certain instances, we are not able to establish VSOE for all deliverables in an arrangement with multiple elements. This mainly occurs where insufficient standalone sales transactions have occurred or where pricing for that element has not been consistent.

TPE of selling price can be established by evaluating largely interchangeable competitor products or services in standalone sales to similarly situated customers. As our products contain a significant element of proprietary technology and the solution offered differs substantially from that of competitors, it is typically difficult to obtain the reliable standalone competitive pricing necessary to establish TPE.

ESP represents the best estimate of the price at which we would transact a sale if the product or service was sold on a standalone basis. We determine ESP for a product or service by considering multiple factors including, but not limited to customer type, geography, market conditions, competitive landscape, gross margin objectives and pricing practices. The determination of ESP is made through formal approval by our management, taking into consideration the overall go-to-market pricing strategy.

As our go-to-market strategies evolve, we may modify our pricing practices in the future, which could result in changes in selling prices, including both VSOE and ESP. As a result, our future revenue recognition for multiple element arrangements could differ materially from that recorded in the current period. We regularly review VSOE, TPE, and ESP and maintain internal controls over the establishment and update of these inputs.

We limit the amount of revenue recognition for delivered elements to the amount that is not contingent on the future delivery of products or services, future performance obligations or subject to customer-specified return or refund privileges. We evaluate each deliverable in an arrangement to determine whether they represent separate units of accounting.

We have a limited number of software offerings which are not required to deliver the tangible product’s essential functionality and can be sold separately. Revenue from sales of these software products and related post-contract support will continue to be accounted for under software revenue recognition rules. Our multiple-element arrangements may therefore have a software deliverable that is subject to the existing software revenue recognition guidance. The revenue for these multiple-element arrangements is allocated to the software deliverable and the non-software deliverables based on the relative selling prices of all of the deliverables in the arrangement using the hierarchy in the new revenue recognition accounting guidance. Revenues related to these software offerings are not expected to be significant.

Revenue arrangements entered into prior to the first quarter of 2010 continue to be accounted for under our previous revenue recognition policy.

Services revenue includes software subscription services, training, installation and deployment services, spares management, on-site hardware replacement services and extended hardware warranty services. Revenue from software subscription, spares management, on-site hardware replacement services and extended hardware warranty contracts is deferred and is recognized ratably over the contractual support period, which is generally one year. Revenue related to training and installation and deployment services is recognized as the services are completed.

Contracts and customer purchase orders are generally used to determine the existence of an arrangement. In addition, shipping documents and customer acceptances, when applicable, are used to verify delivery and transfer of title. Revenue is recognized only when title and risk of loss pass to customers and when revenue recognition criteria has been met. In instances where acceptance of the product occurs upon formal written acceptance, revenue is deferred until such written acceptance has been received. We assess whether the fee is fixed or determinable based on the payment terms associated with the transaction. Payment terms to customers generally range from net 30 to 120 days from invoice, which are considered to be standard payment terms. However, payment terms greater than 120 days but less than or equal to one year from invoice may be considered standard if payment is supported by an irrevocable commercial letter of credit (“LOC”) issued by a creditworthy bank or if the LOC has been accepted and confirmed by a creditworthy bank. In the event payment terms are provided that differ from our standard business practices, the fees are deemed to not be fixed or determinable and, therefore, revenue is not recognized until the fees become fixed or determinable which we believe is when they are legally due and payable. We assess our ability to collect from our customers based primarily on the creditworthiness and past payment history of the customer.

For sales to resellers, the same revenue recognition criteria apply. It is our practice to identify an end-user prior to shipment to a reseller. We do not offer rights of return or price protection to our resellers.

Shipping charges billed to customers are included in product revenue and related shipping costs are included in product cost. We report revenue net of any required taxes collected from customers and remitted to government authorities, with the collected taxes recorded as current liabilities until remitted to the relevant government authority.

Stock-Based Compensation

Stock-based compensation cost is measured at the grant date based on the fair value of the award, and is recognized as expense over the requisite service period (generally the vesting period) under the straight-line amortization method.

We estimate the fair value of the stock options granted using the Black-Scholes option pricing formula and a single option award approach. For new-hire grants, options typically vest with respect to 25% of the shares one year after the option’s vesting commencement date and the remainder ratably on a monthly basis over three years, commencing one year after the vesting commencement date. For annual refresh grants, options typically vest ratably on a monthly basis over three, four or five years. In 2011, we granted performance-based stock options to executives as part of our annual refresh grant process. The performance-based stock options entitle our executive team to receive a number of options to purchase our common stock based on pre-established performance criteria over approximately one year. These performance metrics are classified as performance conditions, and we evaluate the performance status at the end of each period and record the expense when deemed probable. We make a number of estimates and assumptions in determining stock-based compensation related to options including the following:

- The expected forfeiture rate is estimated based on our historical forfeiture data and compensation costs are recognized only for those equity awards expected to vest. The estimation of the forfeiture rate requires judgment, and to the extent actual forfeitures differ from expectations, changes in estimate will be recorded as an adjustment in the period when such estimates are revised. Actual results may differ substantially from the estimates.
- Expected volatility of our stock is based on the weighted-average implied and historical volatility of Infinera and our peer group. The peer group is comprised of similar companies in the same industrial sector. As we gain more historical volatility data, the weighting of our own data in the expected volatility calculation associated with options will gradually increase.

We estimate the fair value of the rights to acquire stock under our ESPP using the Black-Scholes option pricing formula. Our ESPP typically provides for consecutive six-month offering periods and we use our own historical volatility data in the valuation of ESPP shares.

We account for the fair value of restricted stock units ("RSUs") using the closing market price of our common stock on the date of grant. For new-hire grants, RSUs typically vest ratably on an annual basis over four years. For annual refresh grants, RSUs typically vest ratably on an annual basis over three, four or five years. In 2009, we granted retention RSUs to executive officers which cliff vest after an approximate two-year period.

We grant performance share units ("PSUs") with market conditions and estimate the fair value of using a Monte Carlo simulation model. We granted PSUs to our executives in 2009 as part of our annual refresh grant process. These PSUs entitle our executive officers and members of our board of directors to receive a number of shares of our common stock based on our stock price performance over a three-year or four-year period as compared to the NASDAQ Composite Index ("NASDAQ") for the same period. The PSUs cliff vest after three or four years and the number of shares to be issued upon vesting ranges from 0.5 to 2.0 times the number of PSUs granted depending on the relative performance of our common stock price compared to NASDAQ. This performance metric is classified as a market condition.

The Monte Carlo simulation model is based on a discounted cash flow approach, with the simulation of a large number of possible stock price outcomes for our stock and NASDAQ. The use of the Monte Carlo simulation model requires the input of a number of assumptions including expected volatility of our stock price, expected volatility of NASDAQ, correlation between changes in our stock price and changes in NASDAQ, risk-free interest rate, and expected dividends. Expected volatility of our stock is based on the weighted-average implied and historical volatility of our peer group in the industry in which we do business. Expected volatility of NASDAQ is based on the historical and implied data. Correlation is based on the historical relationship between our peer group stock price and NASDAQ composite average. The risk-free interest rate is based upon the treasury zero-coupon yield appropriate for the term of the PSU as of the grant date. The expected dividend yield is zero for us as we do not expect to pay dividends in the future. The expected dividend yield for NASDAQ is the annual dividend yield expressed as a percentage of the composite average of NASDAQ on the grant date.

In 2012, we granted PSUs with performance conditions and estimated the fair value using the closing market price of our common stock on the date of grant. These PSUs entitle our executive officers to receive a number of shares of our common stock based on pre-established performance criteria over approximately two and a half years. The PSUs cliff vest at 50% upon achievement of specific revenue criteria and 50% will cliff vest upon achievement of specific operating profit criteria. This performance metric is classified as a performance condition.

Inventory Valuation

Inventories consist of raw materials, work-in-process and finished goods and are stated at standard cost adjusted to approximate the lower of actual cost (first-in, first-out method) or market. Market value is based upon an estimated selling price reduced by the estimated cost of disposal. The determination of market value involves numerous judgments including estimated average selling prices based upon recent sales volumes, industry trends, existing customer orders, current contract price, future demand and pricing and technological obsolescence of our products.

Inventory that is obsolete or in excess of our forecasted demand or is anticipated to be sold at a loss is written down to its estimated net realizable value based on historical usage and expected demand. As of December 29, 2012 and December 31, 2011, our inventory value had been reduced by $6.9 million and $6.3 million, respectively, for excess and obsolescence. In valuing our deferred inventory costs, we considered whether the utility of the products delivered or expected to be delivered at less than cost, primarily comprised of common equipment, had declined. We concluded that, in the instances where the utility of the products delivered or expected to be delivered was less than cost, it was appropriate to value the inventory costs and deferred inventory costs at cost or market, whichever is lower, thereby recognizing the cost of the reduction in utility in the period in which the reduction occurred or can be reasonably estimated. We have, therefore, recognized inventory write-downs as necessary in each period in order to reflect inventory at the lower of cost or market ("LCM"). As of December 29, 2012 and December 31, 2011, our inventory value had been reduced by $7.5 million and $7.3 million, respectively, for LCM adjustments.

We considered whether we should accrue losses on firm purchase commitments related to inventory items. Given that the expected selling price of common equipment in the future remains below-cost, we have also recorded losses on these firm purchase commitments in the period in which the commitment is made. When the inventory parts related to these firm purchase commitments are received, that inventory is recorded at the purchase price less the accrual for the loss on the purchase commitment.

If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

Accounts Receivable and Allowances for Doubtful Accounts

Accounts receivable consist of trade receivables recorded upon recognition of revenue for product and services revenues, reduced by reserves for estimated bad debts and returns. Trade accounts receivable are recorded at the invoiced amount and do not bear interest. Credit is extended based on evaluation of the customer's financial condition. We record our accounts receivable at the invoiced value. We make judgments as to our ability to collect outstanding receivables and provide allowances for a portion of receivables when collection becomes doubtful. Provisions are made based upon a review of all significant outstanding invoices. At December 29, 2012 and December 31, 2011, our allowance for doubtful accounts was $0.1 million and zero, respectively.

Allowances for Sales Returns

Customer product returns are approved on a case by case basis. Specific reserve provisions are made based upon a specific review of all the approved product returns, where the customer has yet to return the products to generate the related sales return credit at the end of a period. Estimated sales returns are provided for as a reduction to revenue in 2009, 2010 and 2011. These were insignificant for any period presented on our consolidated financial statements. At December 29, 2012 and December 31, 2011, revenue reserves recorded for potential sales returns were $1.3 million and $0.2 million, respectively.

Accrued Warranty

We warrant that our products will operate substantially in conformity with product specifications. Upon delivery of our products, we provide for the estimated cost to repair or replace products or the related components that may be returned under warranty. Our hardware warranty periods range from one to five years from date of acceptance for hardware and 90 days for software warranty. The hardware warranty accrual is based on actual historical returns experience and the application of those historical return rates to our in-warranty installed base. We periodically assess the adequacy of our recorded warranty liabilities and adjust the amounts as necessary. We have software warranty support obligations to a small number of our customers and the costs associated with providing these software warranties have been insignificant to our consolidated financial statements to date.

Cash, Cash Equivalents and Short-term and Long-term Investments

We consider all highly liquid instruments with an original maturity at the date of purchase of 90 days or less to be cash equivalents. We maintain our cash in bank deposit accounts which, at times, may exceed federally insured limits. We have not experienced any losses in such accounts.

Marketable securities consist of certificates of deposit, commercial paper, corporate bonds, U.S. agency notes, U.S. treasuries and ARS. We consider all debt instruments with original maturities at the date of purchase greater than 90 days and remaining time to maturity of one year or less to be short-term investments. We classify debt instruments with remaining maturities greater than one year as long-term investments, unless we intend to settle our holdings within one year or less and in such case it is considered to be short-term investments. We determine the appropriate classification of our marketable securities at the time of purchase and re-evaluate such designations as of each balance sheet date.

Available-for-sale investments are stated at fair market value with unrealized gains and losses recorded in Accumulated other comprehensive income (loss) in the accompanying consolidated balance sheets and Other income (expense), net in the accompanying consolidated statements of operations. We evaluate our available-for-sale marketable debt securities for other-than-temporary impairments as discussed below and record any credit loss portion in Other income (expense), net in our consolidated statements of operations. The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity and for any credit losses incurred on these securities. Gains and losses are recognized when realized in the consolidated statements of operations under the specific identification method. Trading securities investments are stated at fair value with unrealized gains and losses reported in Other income (expense), net in the consolidated statements of operations, consisting of ARS trading securities and related put rights.

Fair Value Measurement of Investments

Pursuant to the accounting guidance for fair value measurements and its subsequent updates, fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities required or permitted to be recorded at fair value, we consider the principal or most advantageous market in which it would transact and it considers assumptions that market participants would use when pricing the asset or liability.

Valuation techniques used by us are based upon observable and unobservable inputs. Observable or market inputs reflect market data obtained from independent sources, while unobservable inputs reflect our assumptions about market participant assumptions based on best information available. Observable inputs are the preferred source of values. These two types of inputs create the following fair value hierarchy:

Level 1 – Quoted prices in active markets for identical assets or liabilities.

Level 2 – Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 – Prices or valuations that require management inputs that are both significant to the fair value measurement and unobservable.

We measure our cash equivalents, derivative instruments and debt securities at fair value and classify our securities in accordance with the fair value hierarchy. Our money market funds and U.S. treasuries are classified within Level 1 of the fair value hierarchy and are valued based on quoted prices in active markets for identical securities.

We classify our certificates of deposit, commercial paper, corporate bonds, U.S. agency notes and foreign currency exchange forward contracts within Level 2 of the fair value hierarchy as follows:

Certificates of Deposit

We review market pricing and other observable market inputs for the same or similar securities obtained from a number of industry standard data providers. In the event that a transaction is observed for the same or similar security in the marketplace, the price on that transaction reflects the market price and fair value on that day. In the absence of any observable market transactions for a particular security, the fair market value at period end would be equal to the par value. These inputs represent quoted prices for similar assets or these inputs have been derived from observable market data, and result in the classification of these securities as Level 2 of the fair value hierarchy.

Commercial Paper

We review market pricing and other observable market inputs for the same or similar securities obtained from a number of industry standard data providers. In the event that a transaction is observed for the same or similar security in the marketplace, the price on that transaction reflects the market price and fair value on that day and then follows a revised accretion schedule to determine the fair market value at period end. In the absence of any observable market transactions for a particular security, the fair market value at period end is derived by accreting from the last observable market price. These inputs represent quoted prices for similar assets or these inputs have been derived from observable market data accreted mathematically to par, and result in the classification of these securities as Level 2 of the fair value hierarchy.

Corporate Bonds

We review trading activity and pricing for each of the corporate bond securities in its portfolio as of the measurement date and determines if pricing data of sufficient frequency and volume in an active market exists in order to support Level 1 classification of these securities. Since sufficient quoted pricing for identical securities is not available, we obtain market pricing and other observable market inputs for similar securities from a number of industry standard data providers. In instances where multiple prices exist for similar securities, these prices are used as inputs into a distribution-curve to determine the fair market value at period end. As a result, we classify our corporate bonds as Level 2 of the fair value hierarchy.

Foreign Currency Exchange Forward Contracts

As discussed in Note 5, “Derivative Instruments,” to the Notes to Consolidated Financial Statements, we mainly hold non-speculative foreign exchange forward contracts to hedge certain foreign currency exchange exposures. We estimate the fair values of derivatives based on quoted market prices or pricing models using current market rates. Where applicable, these models project future cash flows and discount the future amounts to a present value using market-based observable inputs including interest rate curves, credit risk, foreign exchange rates, and forward and spot prices for currencies. As a result, we classify our derivative instruments as Level 2 of the fair value hierarchy.

We classify our ARS within Level 3 of the fair value hierarchy.

Our ARS are classified within Level 3 because they are valued, in part, by using inputs that are unobservable in the market and are significant to the valuation. These ARS represent approximately 2% of our total investment portfolio as of December 29, 2012. Uncertainties in the credit markets have affected all of our ARS and auctions for these securities have failed to settle on their respective settlement dates. In light of these developments, to determine the fair value for our ARS, we used a combination of the market approach and income approach. The market approach uses pricing based on transactions in an inactive secondary market for similar or comparable securities. In addition, we performed our own discounted cash flow analysis. Management determined that it was most appropriate to value the ARS using the market approach and income approach equally given the facts and circumstances as of December 29, 2012, and therefore incorporated both valuations in our fair value measurement.

The significant unobservable inputs and assumptions used in the discounted cash flow model to determine the fair value of our ARS, as of December 29, 2012, are as follows:

- *Contractual cash flow*

The model assumed that the principal amount or par value for these securities will be repaid at the end of the estimated workout period. In addition, future interest payments were estimated as described in each individual prospectus and based on the then-current U.S. Treasury Bill rate adjusted for a failed auction premium of 150 basis points (“bps”).

- *ARS discount rate*

The model incorporated a discount rate equal to an estimate of the LIBOR rates commensurate with the estimated workout period of the securities. As of the measurement date, these rates were then adjusted by a factor that ranged from 204 bps, representing an estimate of the market student loan spread and a discount factor to reflect the lack of liquidity and credit risk associated with these securities. As of December 29, 2012, we held $3.1 million (par value) of A3 rated securities. Our ARS are mostly collateralized by student loans guaranteed by the U.S. government under the Federal Family Education Loan Program. The discount rate does, however, include a discount factor to reflect the issuer’s credit risk and its potential inability to perform its obligations under the terms of the ARS agreements. Our valuation analysis indicates that the estimated credit risk element included in the discount rate was 209 bps.

- *Estimated maturity*

We estimated the workout period of our ARS as the weighted-average life of the underlying trust loan portfolio where this information was available from servicing and other trust reports. In a small number of instances where this information was not available, we used the weighted-average life of the loan portfolio of a similar trust. The estimated time to maturity of the securities as of the measurement date was 6.7 years.

Other-Than-Temporary Impairments

We review our available-for-sale marketable debt securities on a regular basis to evaluate whether or not a security has experienced an other-than-temporary decline in fair value. If a debt security's market value is below amortized cost and we either intend to sell the security or it is more likely than not that we will be required to sell the security before our anticipated recovery, we record an OTTI charge to earnings for the entire amount of the impairment.

When we do not intend to sell an impaired security and it is not more likely than not that we will be required to sell prior to recovery of its amortized cost basis, we separate the OTTI into credit and non-credit loss portions. The amount representing the credit loss is recognized in Other income (expense), net, and the amount related to all other factors is recognized in Accumulated other comprehensive loss.

In determining if a credit loss has occurred, it is our policy to isolate the credit loss related portion of the discount rate used to derive the fair market value of the security and apply this to the expected cash flows in order to determine the portion of the OTTI that is credit loss related. This credit related portion of the discount rate is based on the financial condition of the issuer, changes in rating agency credit ratings for the security or increases in credit related yield spreads on similar securities offered by the same issuer.

Once a credit impairment loss has been recognized in our consolidated statements of operations, the amortized cost basis of that available-for-sale security is reduced by the amount of the credit impairment loss, resulting in a new cost basis for the security. Any non-credit related unrealized gains and losses are recorded in Accumulated other comprehensive loss in our consolidated balance sheets. We will continue to monitor the security's credit rating and credit spread and will accrete any reduction in the credit impairment loss to interest income over the expected life of the security.

Derivative Instruments

As discussed in Note 5, "Derivative Instruments," to the Notes to Consolidated Financial Statements, we mainly hold non-speculative foreign exchange forward contracts to hedge certain foreign currency exchange exposures. We estimate the fair values of derivatives based on quoted market prices or pricing models using current market rates. Where applicable, these models project future cash flows and discount the future amounts to a present value using market-based observable inputs including interest rate curves, credit risk, foreign exchange rates, and forward and spot prices for currencies. As a result, we classify our derivative instruments as Level II of the fair value hierarchy.

Accounting for Income Taxes

As part of the process of preparing our consolidated financial statements, we are required to estimate our taxes in each of the jurisdictions in which we operate. We estimate actual current tax expense together with assessing temporary differences resulting from different treatment of items, such as accruals and allowances not currently deductible for tax purposes. These differences result in deferred tax assets and liabilities, which are included in our consolidated balance sheets. In general, deferred tax assets represent future tax benefits to be received when certain expenses previously recognized in our consolidated statements of operations become deductible expenses under applicable income tax laws or loss or credit carryforwards are utilized. Accordingly, realization of our deferred tax assets is dependent on future taxable income within the respective jurisdictions against which these deductions, losses and credits can be utilized within the applicable future periods.

We must assess the likelihood that some portion or all of our deferred tax assets will be recovered from future taxable income within the respective jurisdictions, and to the extent we believe that recovery does not meet the "more-likely-than-not" standard, we must establish a valuation allowance. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities and any valuation allowance recorded against our net deferred tax assets. At December 29, 2012 and December 31, 2011, our domestic net deferred tax assets were fully reserved with a valuation allowance because, based on the available evidence, we believed at that time it was more likely than not that we would not be able to utilize those deferred tax assets in the future. We intend to maintain a valuation allowance until sufficient evidence exists to support the reversal of the valuation allowance. We make estimates and judgments about our future taxable income, by jurisdiction, based on assumptions that are consistent with our plans and estimates. Should the actual amounts differ from our estimates, the amount of our valuation allowance could be materially impacted.

Recent Accounting Pronouncements

See Note 2, "Significant Accounting Policies," to the Notes to Consolidated Financial Statements for a full description of recent accounting pronouncements including the respective expected dates of adoptions and effects on us.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Currency Risk

A majority of our revenue, expense and capital purchasing activities are transacted in U.S. dollars. However, we do incur some insignificant operating costs in other currencies. In addition, certain of our sales contracts are priced in Euros and, therefore, a portion of our revenue is subject to foreign currency risks. Our operating expenses and cash flows are subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the India Rupee, Chinese Yuan, British pound and the Euro.

The effect of an immediate 10% adverse change in exchange rates on foreign denominated transactions as of December 29, 2012 and December 31, 2011 would result in a loss of approximately $2.3 million and $1.0 million, respectively for the year then ended. Beginning in the second quarter of 2009, we established a foreign currency risk management program to help protect against the impact of foreign currency exchange rate movements on our operating results. We enter into foreign currency exchange forward contracts to reduce the impact of foreign currency fluctuations on accounts receivable denominated in currencies other than our functional currency, which is the U.S. dollar. As a result, we do not expect a significant impact to our results from a change in exchange rates on foreign denominated accounts receivable balances in the near-term. Fluctuations in our currency exchange rates could impact our business in the future.

Interest Rate Sensitivity

We had cash and cash equivalents, short-term and long-term investments and short-term and long-term restricted cash totaling $187.6 million and $253.1 million as of December 29, 2012 and December 31, 2011, respectively. As of December 29, 2012, we invested in certificates of deposit, money market funds, commercial paper, corporate bonds, U.S. treasuries and ARS. The unrestricted cash and cash equivalents are held for working capital purposes. We do not enter into investments for speculative purposes. We believe that we do not have any material exposure to changes in the fair value as a result of changes in interest rates. Declines in interest rates, however, will reduce future investment income. If overall interest rates fell by 10% in 2012 and 2011, our interest income would have declined approximately $0.1 million and $0.1 million for such years, assuming consistent investment levels.

As of December 29, 2012 and December 31, 2011, we had no debt outstanding.

Auction Rate Securities

As of December 29, 2012, we held an A3 rated available-for-sale ARS of $3.1 million (par value) with a fair value of $2.9 million with one issuer. This ARS has a contractual maturity term of up to 33.0 years and it is not clear when we will be able to liquidate this investment. In 2009, we determined that the present value of the expected cash flows for this security was below its par value, and recorded an initial OTTI of $2.7 million, equal to the difference between the fair value and the par value had occurred. During 2012, $0.2 million of this A3 rated ARS was called at par value.

Failed auctions resulted in a lack of liquidity in the ARS but do not affect the underlying collateral of the securities. We do not anticipate that any potential lack of liquidity in our ARS, even for an extended period of time, will affect our ability to finance our operations, including our continued investments in research and development and planned capital expenditures. We continue to monitor efforts by the financial markets to find alternative means for restoring the liquidity of these investments. Our ARS investment is classified as a non-current asset until we have better visibility as to when its liquidity will be restored.

See Note 3, “Fair Value Measurements and Other-Than-Temporary Impairment,” to the Notes to Consolidated Financial Statements for further information.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Ernst & Young LLP, Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Infinera Corporation

We have audited the accompanying consolidated balance sheets of Infinera Corporation as of December 29, 2012 and December 31, 2011, and the related consolidated statements of operations, comprehensive loss, stockholders' equity and cash flows for each of the three years in the period ended December 29, 2012. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Infinera Corporation at December 29, 2012 and December 31, 2011, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 29, 2012, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, present fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Infinera Corporation's internal control over financial reporting as of December 29, 2012, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 5, 2013 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Jose, California
March 5, 2013

Report of Ernst & Young LLP, Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Infinera Corporation

We have audited Infinera Corporation's internal control over financial reporting as of December 29, 2012, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Infinera Corporation's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Infinera Corporation maintained, in all material respects, effective internal control over financial reporting as of December 29, 2012, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Infinera Corporation as of December 29, 2012 and December 31, 2011, and the related consolidated statements of operations, comprehensive loss, stockholders' equity and cash flows for each of the three years in the period ended December 29, 2012 of Infinera Corporation and our report dated March 5, 2013 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Jose, California
March 5, 2013

INFINERA CORPORATION

CONSOLIDATED BALANCE SHEETS
(In thousands, except par values)

	December 29, 2012	December 31, 2011
ASSETS		
Current assets:		
Cash and cash equivalents	$ 104,666	$ 94,458
Short-term investments	76,146	101,296
Accounts receivable, net of allowance for doubtful accounts of $94 in 2012 and $0 in 2011	107,039	80,616
Other receivables	2,909	1,346
Inventory	127,809	88,996
Deferred inventory costs	1,029	5,987
Prepaid expenses and other current assets	9,899	10,532
Total current assets	429,497	383,231
Property, plant and equipment, net	80,343	76,753
Deferred inventory costs, non-current	100	1,020
Long-term investments	2,874	54,315
Cost-method investment	9,000	9,000
Long-term restricted cash	3,868	3,047
Deferred tax asset	805	822
Other non-current assets	1,683	3,516
Total assets	$ 528,170	$ 531,704
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 61,428	$ 48,838
Accrued expenses	25,483	22,421
Accrued compensation and related benefits	22,325	18,966
Accrued warranty	7,262	5,692
Deferred revenue	26,744	22,781
Deferred tax liability	805	767
Total current liabilities	144,047	119,465
Accrued warranty, non-current	9,220	7,173
Deferred revenue, non-current	3,210	3,410
Other long-term liabilities	15,557	13,853
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Preferred stock, $0.001 par value Authorized shares—25,000 and no shares issued and outstanding	—	—
Common stock, $0.001 par value Authorized shares—500,000 in 2012 and 2011 Issued and outstanding shares—112,461 in 2012 and 106,976 in 2011	112	107
Additional paid-in capital	930,618	876,927
Accumulated other comprehensive loss	(2,228)	(2,195)
Accumulated deficit	(572,366)	(487,036)
Total stockholders' equity	356,136	387,803
Total liabilities and stockholders' equity	$ 528,170	$ 531,704

The accompanying notes are an integral part of these consolidated financial statements.

INFINERA CORPORATION

CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share data)

	Years Ended December 29, 2012	Years Ended December 31, 2011	Years Ended December 25, 2010
Revenue:			
Product	$378,138	$349,468	$401,578
Ratable product and related support and services	1,897	3,176	6,155
Services	58,402	52,233	46,619
Total revenue	438,437	404,877	454,352
Cost of revenue:			
Cost of product	258,874	219,710	225,183
Cost of ratable product and related support and services	563	1,096	3,217
Cost of services	21,431	18,580	19,945
Restructuring and other costs (credit) related to cost of revenue	—	—	(182)
Total cost of revenue	280,868	239,386	248,163
Gross profit	157,569	165,491	206,189
Operating expenses:			
Research and development	117,233	127,120	118,518
Sales and marketing	75,862	64,773	58,103
General and administrative	47,475	54,375	58,098
Restructuring and other costs (credit)	—	(129)	159
Total operating expenses	240,570	246,139	234,878
Loss from operations	(83,001)	(80,648)	(28,689)
Other income (expense), net:			
Interest income	911	1,014	1,390
Other gain (loss), net	(1,050)	(419)	(316)
Total other income (expense), net	(139)	595	1,074
Loss before income taxes	(83,140)	(80,053)	(27,615)
Provision for income taxes	2,190	1,691	317
Net loss	$ (85,330)	$ (81,744)	$ (27,932)
Net loss per common share:			
Basic	$ (0.77)	$ (0.78)	$ (0.28)
Diluted	$ (0.77)	$ (0.78)	$ (0.28)
Weighted average shares used in computing net loss per common share:			
Basic	110,739	105,432	99,380
Diluted	110,739	105,432	99,380

The accompanying notes are an integral part of these consolidated financial statements.

INFINERA CORPORATION

CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands)

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Net loss	$(85,330)	$(81,744)	$(27,932)
Other comprehensive loss:			
Unrealized gain (loss) on auction rate securities classified as available-for-sale investments	(141)	410	820
Unrealized gain (loss) on all other available-for-sale investments	158	(105)	(30)
Foreign currency translation adjustment	(43)	(1,117)	75
Tax effect on items related to available-for-sale investment	(7)	(122)	(316)
Net change in accumulated other comprehensive loss	(33)	(934)	549
Comprehensive loss	$(85,363)	$(82,678)	$(27,383)

FORM 10-K

INFINERA CORPORATION

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
For the Years Ended December 25, 2010, December 31, 2011 and December 29, 2012
(In thousands, except per share data)

	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
Balance at December 26, 2009	96,874	$ 97	$747,580	$(1,810)	$(377,360)	$368,507
Stock options exercised	3,094	3	11,847	—	—	11,850
ESPP shares purchased	1,205	1	7,561	—	—	7,562
Common stock repurchased	(3)	—	(14)	—	—	(14)
Reclassification of options exercised but not vested	—	—	200	—	—	200
Restricted stock units released	1,322	1	(13)	—	—	(12)
Stock-based compensation	—	—	50,039	—	—	50,039
Comprehensive loss:						
Unrealized gain on auction rate securities classified as available-for-sale investments	—	—	—	820	—	820
Unrealized gain on all other available-for-sale investments	—	—	—	(30)	—	(30)
Foreign currency translation adjustment	—	—	—	75	—	75
Tax effect on items related to available-for-sale investment	—	—	—	(316)	—	(316)
Net loss	—	—	—	—	(27,932)	(27,932)
Total comprehensive loss						(27,383)
Balance at December 25, 2010	102,492	$102	$817,200	$(1,261)	$(405,292)	$410,749
Stock options exercised	378	1	1,449	—	—	1,450
ESPP shares purchased	1,309	1	8,461	—	—	8,462
Common stock repurchased	(140)	—	(1,248)	—	—	(1,248)
Reclassification of options exercised but not vested	—	—	1	—	—	1
Restricted stock units released	2,937	3	(3)	—	—	—
Stock-based compensation	—	—	51,067	—	—	51,067
Comprehensive loss:						
Unrealized gain on auction rate securities classified as available-for-sale investments	—	—	—	410	—	410
Unrealized gain on all other available-for-sale investments	—	—	—	(105)	—	(105)
Foreign currency translation adjustment	—	—	—	(1,117)	—	(1,117)
Tax effect on items related to available-for-sale investment	—	—	—	(122)	—	(122)
Net loss	—	—	—	—	(81,744)	(81,744)
Total comprehensive loss						(82,678)
Balance at December 31, 2011	106,976	$107	$876,927	$(2,195)	$(487,036)	$387,803

The accompanying notes are an integral part of these consolidated financial statements.

INFINERA CORPORATION

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
For the Years Ended December 25, 2010, December 31, 2011 and December 29, 2012— (Continued)
(In thousands, except per share data)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
	Shares	Amount				
Balance at December 31, 2011	106,976	$107	$876,927	$(2,195)	$(487,036)	$387,803
Stock options exercised	582	1	2,552	—	—	2,553
ESPP shares purchased	1,653	1	9,029	—	—	9,030
Common stock repurchased	(128)	—	(882)	—	—	(882)
Reclassification of options exercised but not vested	—	—	—	—	—	—
Restricted stock units released	3,378	3	(3)	—	—	—
Stock-based compensation	—	—	42,995	—	—	42,995
Comprehensive loss:						
Unrealized gain on auction rate securities classified as available-for-sale investments	—	—	—	(141)	—	(141)
Unrealized gain on all other available-for-sale investments	—	—	—	158	—	158
Foreign currency translation adjustment	—	—	—	(43)	—	(43)
Tax effect on items related to available-for-sale investment	—	—	—	(7)	—	(7)
Net loss	—	—	—	—	(85,330)	(85,330)
Total comprehensive loss						(85,363)
Balance at December 29, 2012	112,461	$112	$930,618	$(2,228)	$(572,366)	$356,136

The accompanying notes are an integral part of these consolidated financial statements.

INFINERA CORPORATION

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Cash Flows from Operating Activities:			
Net loss	$ (85,330)	$ (81,744)	$ (27,932)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	23,661	17,859	15,619
Non-cash restructuring and other costs (credit)	—	(129)	100
Provision for other receivables	—	563	—
Provision for doubtful accounts	94	—	—
Amortization of premium on investments	2,068	4,215	3,761
Stock-based compensation expense	41,819	50,157	50,335
Unrealized loss on Put Rights	—	—	1,696
Unrealized holding gain for trading securities	—	—	(1,696)
Non-cash tax benefit	(7)	(95)	(316)
Other gain	(475)	(335)	(275)
Changes in assets and liabilities:			
Accounts receivable	(26,517)	(4,686)	(6,448)
Other receivables	(1,894)	3,440	(307)
Inventory	(40,623)	(6,007)	(13,143)
Prepaid expenses and other assets	2,293	12,695	(2,640)
Deferred inventory costs	5,741	1,999	928
Accounts payable	15,410	9,342	1,161
Accrued liabilities and other expenses	6,915	(10,282)	9,196
Deferred revenue	3,763	(401)	216
Accrued warranty	3,616	1,444	282
Net cash provided by (used in) operating activities	(49,466)	(1,965)	30,537
Cash Flows from Investing Activities:			
Purchase of available-for-sale investments	(54,150)	(273,334)	(253,130)
Purchase of cost-method investment	—	(4,500)	(4,500)
Proceeds from sales of available-for-sale investments	11,584	4,072	—
Proceeds from maturities and calls of investments, and exercise of Put Rights	117,605	287,781	232,333
Proceeds from disposal of assets	1	262	324
Purchase of property and equipment	(25,395)	(39,382)	(20,672)
Advance to secure manufacturing capacity	—	(1,500)	—
Reimbursement of manufacturing capacity advance	50	450	—
Change in restricted cash	(827)	983	(77)
Net cash provided by (used in) investing activities	48,868	(25,168)	(45,722)
Cash Flows from Financing Activities:			
Proceeds from issuance of common stock	11,580	10,023	19,348
Repurchase of common stock	(882)	(1,248)	(14)
Payments for purchase of assets under financing arrangement	—	(262)	(349)
Net cash provided by financing activities	10,698	8,513	18,985
Effect of exchange rate changes on cash	108	(571)	(10)
Net change in cash and cash equivalents	10,208	(19,191)	3,790
Cash and cash equivalents at beginning of period	94,458	113,649	109,859
Cash and cash equivalents at end of period	$104,666	$ 94,458	$ 113,649
Supplemental disclosures of cash flow information:			
Cash paid for income taxes	$ 923	$ 1,487	$ 739
Supplemental schedule of non-cash financing activities			
Non-cash settlement for manufacturing capacity advance	$ 275	$ —	$ —

The accompanying notes are an integral part of these consolidated financial statements.

1. Organization and Basis of Presentation

Infinera Corporation (“Infinera” or the “Company”), headquartered in Sunnyvale, California, was founded in December 2000 and incorporated in the State of Delaware. Infinera specializes in Digital Optical Networking systems that are designed to continually improve the economics of optical networking by combining the speed of optics with the simplicity of digital. Infinera is unique in its use of breakthrough semiconductor technology: Large Scale Photonic Integrated Circuit (PIC). Infinera’s systems leverage PIC technology to provide customers with a service-ready architecture that enables faster time-to-revenue and greater profitability through network efficiency and the ability to rapidly deliver differentiated services without reengineering their optical infrastructure.

The Company operates and reports financial results on a fiscal year of 52 or 53 weeks ending on the last Saturday of December in each year. Accordingly, fiscal year 2012 was a 52-week year that ended on December 29, 2012. Fiscal years 2011 and 2010 were a 53-week and 52-week years that ended on December 31, 2011 and December 25, 2010, respectively. The next 53-week year will end on December 31, 2016.

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated. The Company reclassified certain amounts reported in previous periods to conform to the current presentation.

2. Significant Accounting Policies

Use of Estimates

The consolidated financial statements are prepared in accordance with United States generally accepted accounting principles (“U.S. GAAP”). These accounting principles require the Company to make certain estimates, assumptions and judgments that can affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the consolidated financial statements, as well as the reported amounts of revenue and expenses during the periods presented. Significant estimates, assumptions and judgments made by management include revenue recognition, stock-based compensation, inventory valuation, allowances for sales returns, allowances for doubtful accounts, accrued warranty, cash equivalents, fair value measurement of investments, other-than-temporary impairments, derivative instruments and accounting for income taxes. Management believes that the estimates and judgments upon which they rely are reasonable based upon information available to them at the time that these estimates and judgments are made. To the extent there are material differences between these estimates and actual results, the Company’s consolidated financial statements will be affected.

Revenue Recognition

Substantially all of the Company’s product sales are sold in combination with software support services comprised of either software warranty or software subscription services. The Company also periodically sells training, installation and deployment services, spares management and on-site hardware replacement services with its product sales. Training services include the right to a specified number of training classes and installation and deployment services may include customer site assessments, equipment installation and testing. Training and installation and deployment services are generally delivered over a 90-120 day period. Software warranty provides customers with maintenance releases and patches during the warranty support period. Software subscription also includes maintenance releases and patches and provides customers with rights to receive unspecified software product upgrades released during the support period. These support services are generally delivered over a one-year period. Spares management and on-site hardware replacement services include the replacement of defective units at customer sites in accordance with specified service level agreements and are generally delivered over a one-year period.

The Company recognizes product revenue when all of the following have occurred: (1) it has entered into a legally binding arrangement with the customer; (2) delivery has occurred, which is when product title and risk of loss have transferred to the customer; (3) customer payment is deemed fixed or determinable; and (4) collectability is reasonably assured.

The Company allocates revenue to each element in its multiple-element arrangements based upon their relative selling prices. The Company determines the selling price for each deliverable based on a selling price hierarchy. The selling price for a deliverable is based on its vendor specific objective evidence ("VSOE") if available, third party evidence ("TPE") if VSOE is not available, or estimated selling price ("ESP") if neither VSOE nor TPE is available. Revenue allocated to each element is then recognized when the basic revenue recognition criteria for that element has been met.

VSOE of selling price is used in the selling price allocation in all instances where it exists. VSOE of selling price for products and services is determined when a substantial majority of the selling prices fall within a reasonable range when sold separately. In certain instances, the Company is not able to establish VSOE for all deliverables in an arrangement with multiple elements. This mainly occurs where insufficient standalone sales transactions have occurred or where pricing for that element has not been consistent.

TPE of selling price can be established by evaluating largely interchangeable competitor products or services in standalone sales to similarly situated customers. As the Company's products contain a significant element of proprietary technology and the solution offered differs substantially from that of competitors, it is typically difficult to obtain the reliable standalone competitive pricing necessary to establish TPE.

ESP represents the best estimate of the price at which the Company would transact a sale if the product or service was sold on a standalone basis. The Company determines ESP for a product or service by considering multiple factors including, but not limited to customer type, geography, market conditions, competitive landscape, gross margin objectives and pricing practices. The determination of ESP is made through formal approval by the Company's management, taking into consideration the overall go-to-market pricing strategy.

As the Company's go-to-market strategies evolve, the Company may modify its pricing practices in the future, which could result in changes in selling prices, including both VSOE and ESP. As a result, the Company's future revenue recognition for multiple element arrangements could differ materially from that recorded in the current period. The Company regularly reviews VSOE, TPE and ESP and maintains internal controls over the establishment and update of these inputs.

The Company limits the amount of revenue recognition for delivered elements to the amount that is not contingent on the future delivery of products or services, future performance obligations or subject to customer-specified return or refund privileges. The Company evaluates each deliverable in an arrangement to determine whether they represent separate units of accounting.

The Company has a limited number of software offerings which are not required to deliver the tangible product's essential functionality and can be sold separately. Revenue from sales of these software products and related post-contract support will continue to be accounted for under software revenue recognition rules. The Company's multiple-element arrangements may therefore have a software deliverable that is subject to the existing software revenue recognition guidance. The revenue for these multiple-element arrangements is allocated to the software deliverable and the non-software deliverables based on the relative selling prices of all of the deliverables in the arrangement using the hierarchy in the new revenue recognition accounting guidance. Revenues related to these software offerings are not expected to be significant.

Revenue arrangements entered into prior to the first quarter of 2010 continue to be accounted for under the Company's previous revenue recognition policy.

Services revenue includes software subscription services, training, installation and deployment services, spares management, on-site hardware replacement services and extended hardware warranty services. Revenue from software subscription, spares management, on-site hardware replacement services and extended hardware warranty contracts is deferred and is recognized ratably over the contractual support period, which is generally one year. Revenue related to training and installation and deployment services is recognized as the services are completed.

Contracts and customer purchase orders are generally used to determine the existence of an arrangement. In addition, shipping documents and customer acceptances, when applicable, are used to verify delivery and transfer of title. Revenue is recognized only when title and risk of loss pass to customers and when revenue recognition criteria has been met. In instances where acceptance of the product occurs upon formal written acceptance, revenue is deferred until such written acceptance has been received. The Company assesses whether the fee is fixed or determinable based on the payment terms associated with the transaction. Payment terms to customers generally range from net 30 to 120 days from invoice, which are considered to be standard payment terms. However, payment terms greater than 120 days but less than or equal to one year from invoice may be considered standard if payment is supported by an irrevocable commercial letter of credit ("LOC") issued by a creditworthy bank or the LOC has been accepted and confirmed by a creditworthy bank. In the event payment terms are provided that differ from the Company's standard business practices, the fees are deemed to not be fixed or determinable and, therefore, revenue is not recognized until the fees become fixed or determinable which the Company believes is when they are legally due and payable. The Company assesses its ability to collect from its customers based primarily on the creditworthiness and past payment history of the customer.

For sales to resellers, the same revenue recognition criteria apply. It is the Company's practice to identify an end-user prior to shipment to a reseller. The Company does not offer rights of return or price protection to its resellers.

Shipping charges billed to customers are included in product revenue and related shipping costs are included in product cost. The Company reports revenue net of any required taxes collected from customers and remitted to government authorities, with the collected taxes recorded as current liabilities until remitted to the relevant government authority.

Stock-Based Compensation

Stock-based compensation cost is measured at the grant date based on the fair value of the award, and is recognized as expense over the requisite service period (generally the vesting period) under the straight-line amortization method.

The Company estimates the fair value of the stock options granted using the Black-Scholes option pricing formula and a single option award approach. For new-hire grants, options typically vest with respect to 25% of the shares one year after the option's vesting commencement date and the remainder ratably on a monthly basis over three years, commencing one year after the vesting commencement date. For annual refresh grants, options typically vest ratably on a monthly basis over three, four or five years. In 2011, the Company granted performance-based stock options to executives as part of the Company's annual refresh grant process. The performance-based stock options entitle the Company's executive team to receive a number of options to purchase the Company's common stock based on pre-established performance criteria over approximately one year. These performance metrics are classified as performance conditions, and the Company evaluates the performance status at the end of each period and records the expense when deemed probable. The Company makes a number of estimates and assumptions in determining stock-based compensation related to options including the following:

- The expected forfeiture rate is estimated based on the Company's historical forfeiture data and compensation costs are recognized only for those equity awards expected to vest. The estimation of the forfeiture rate requires judgment, and to the extent actual forfeitures differ from expectations, changes in estimate will be recorded as an adjustment in the period when such estimates are revised. Actual results may differ substantially from the estimates.
- Expected volatility of the Company's stock is based on the weighted-average implied and historical volatility of Infinera and its peer group. The peer group is comprised of similar companies in the same industrial sector. As the Company gains more historical volatility data, the weighting of its own data in the expected volatility calculation associated with options will gradually increase.

The Company estimates the fair value of the rights to acquire stock under its Employee Stock Purchase Plan ("ESPP") using the Black-Scholes option pricing formula. The Company's ESPP typically provides for consecutive six-month offering periods and the Company uses its own historical volatility data in the valuation of ESPP shares.

The Company accounts for the fair value of restricted stock units ("RSUs") using the closing market price of the Company's common stock on the date of grant. For new-hire grants, RSUs typically vest ratably on an annual basis over four years. For annual refresh grants, RSUs typically vest ratably on an annual basis over three, four or five years. In 2009, the Company also granted retention RSUs to executive officers which cliff vest after an approximate two-year period.

The Company grants PSUs with market conditions and estimates the fair value using a Monte Carlo simulation model. The Company granted PSUs in 2009 as part of the Company's annual refresh grant process. These PSUs entitle the Company's executive officers and members of its board of directors to receive a number of shares of the Company's common stock based on the Company's stock price performance over a three-year or four-year period as compared to the NASDAQ Composite Index ("NASDAQ") for the same period. The PSUs cliff vest after three or four years and the number of shares to be issued upon vesting ranges from 0.5 to 2.0 times the number of PSUs granted depending on the relative performance of the Company's common stock price compared to NASDAQ. This performance metric is classified as a market condition.

The Monte Carlo simulation model is based on a discounted cash flow approach, with the simulation of a large number of possible stock price outcomes for the Company's stock and NASDAQ. The use of the Monte Carlo simulation model requires the input of a number of assumptions including expected volatility of the Company's stock price, expected volatility of NASDAQ, correlation between changes in the Company's stock price and changes in NASDAQ, risk-free interest rate, and expected dividends. Expected volatility of the Company's stock is based on the weighted-average implied and historical volatility of the Company's peer group in the industry in which the Company does business. Expected volatility of NASDAQ is based on the historical and implied data. Correlation is based on the historical relationship between the Company's peer group stock price and NASDAQ composite average. The risk-free interest rate is based upon the treasury zero-coupon yield appropriate for the term of the PSU as of the grant date. The expected dividend yield is zero for the Company as it does not expect to pay dividends in the future. The expected dividend yield for NASDAQ is the annual dividend yield expressed as a percentage of the composite average of NASDAQ on the grant date.

In 2012, the Company granted PSUs with performance conditions and estimated the fair value using the closing market price of the Company's common stock on the date of grant. These PSUs entitle the Company's executive officers to receive a number of shares of the Company's common stock based on pre-established performance criteria over approximately two and a half years. The PSUs cliff vest at 50% upon achievement of specific revenue criteria and 50% will cliff vest upon achievement of specific operating profit criteria. This performance metric is classified as a performance condition.

Inventory Valuation

Inventories consist of raw materials, work-in-process and finished goods and are stated at standard cost adjusted to approximate the lower of actual cost (first-in, first-out method) or market. Market value is based upon an estimated selling price reduced by the estimated cost of disposal. The determination of market value involves numerous judgments including estimated average selling prices based upon recent sales volumes, industry trends, existing customer orders, current contract price, future demand and pricing and technological obsolescence of the Company's products.

Inventory that is obsolete or in excess of the Company's forecasted demand or is anticipated to be sold at a loss is written down to its estimated net realizable value based on historical usage and expected demand. As of December 29, 2012 and December 31, 2011, the Company's inventory value had been reduced by $6.9 million and $6.3 million, respectively, for excess and obsolescence. In valuing its deferred inventory costs, the Company considered whether the utility of the products delivered or expected to be delivered at less than cost, primarily comprised of common equipment, had declined. The Company concluded that, in the instances where the utility of the products delivered or expected to be delivered was less than cost, it was appropriate to value the inventory costs and deferred inventory costs at cost or market, whichever is lower, thereby recognizing the cost of the reduction in utility in the period in which the reduction occurred or can be reasonably estimated. The Company has, therefore, recognized inventory write-downs as necessary in each period in order to reflect inventory at the lower of cost or market ("LCM"). As of December 29, 2012 and December 31, 2011, the Company's inventory value had been reduced by $7.5 million and $7.3 million, respectively, for LCM adjustments.

The Company considered whether it should accrue losses on firm purchase commitments related to inventory items. Given that the expected selling price of common equipment in the future remains below-cost, the Company has also recorded losses on these firm purchase commitments in the period in which the commitment is made. When the inventory parts related to these firm purchase commitments are received, that inventory is recorded at the purchase price less the accrual for the loss on the purchase commitment.

If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

Accounts Receivable and Allowances for Doubtful Accounts

Accounts receivable consist of trade receivables recorded upon recognition of revenue for product and services revenues, reduced by reserves for estimated bad debts and returns. Trade accounts receivable are recorded at the invoiced amount and do not bear interest. Credit is extended based on evaluation of the customer's financial condition. The Company records its accounts receivable at the invoiced value. Management makes judgments as to its ability to collect outstanding receivables and provides allowances for a portion of receivables when collection becomes doubtful. Provisions are made based upon a review of all significant outstanding invoices. At December 29, 2012 and December 31, 2011, the Company's allowance for doubtful accounts was $0.1 million and zero, respectively.

Allowances for Sales Returns

Customer product returns are approved on a case by case basis. Specific reserve provisions are made based upon a specific review of all the approved product returns, where the customer has yet to return the products to generate the related sales return credit at the end of a period. Estimated sales returns are provided for as a reduction to revenue in 2010, 2011 and 2012. These were insignificant for any period presented on the Company's consolidated financial statements. At December 29, 2012 and December 31, 2011, revenue reserves recorded for potential sales returns were $1.3 million and $0.2 million, respectively.

Accrued Warranty

The Company warrants that its products will operate substantially in conformity with product specifications. Upon delivery of the Company's products, the Company provides for the estimated cost to repair or replace products or the related components that may be returned under warranty. The Company's hardware warranty periods range from one to five years from date of acceptance for hardware and 90 days for software warranty. The hardware warranty accrual is based on actual historical returns experience and the application of those historical return rates to the Company's in-warranty installed base. The Company periodically assesses the adequacy of its recorded warranty liabilities and adjusts the amounts as necessary. The Company has software warranty support obligations to a small number of its customers and the costs associated with providing these software warranties have been insignificant to the Company's consolidated financial statements to date.

Cash, Cash Equivalents and Short-term and Long-term Investments

The Company considers all highly liquid instruments with an original maturity at the date of purchase of 90 days or less to be cash equivalents. These instruments may include cash, money market funds and commercial paper. The Company maintains its cash in bank deposit accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts.

Marketable securities consist of certificates of deposit, commercial paper, corporate bonds, U.S. agency notes, U.S. treasuries and auction rate securities ("ARS"). The Company considers all debt instruments with original maturities at the date of purchase greater than 90 days and remaining time to maturity of one year or less to be short-term investments. The Company classifies debt instruments with remaining maturities greater than one year as long-term investments, unless the Company intends to settle its holdings within one year or less and in such case it is considered to be short-term investments. The Company determines the appropriate classification of its marketable securities at the time of purchase and re-evaluates such designations as of each balance sheet date.

Available-for-sale investments are stated at fair market value with unrealized gains and losses recorded in Accumulated other comprehensive loss in the Company's consolidated balance sheets and Other income (expense), net in the Company's consolidated statements of operations. The Company evaluates its available-for-sale marketable debt securities for other-than-temporary impairments as discussed below and records any credit loss portion in Other income (expense), net in the Company's consolidated statements of operations. The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity and for any credit losses incurred on these securities. Gains and losses are recognized when realized in the Company's consolidated statements of operations under the specific identification method. Trading securities investments are stated at fair value with unrealized gains and losses reported in Other income (expense), net in the Company's consolidated statements of operations, consisting of ARS trading securities and related put rights.

Fair Value Measurement of Investments

Pursuant to the accounting guidance for fair value measurements and its subsequent updates, fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities required or permitted to be recorded at fair value, the Company considers the principal or most advantageous market in which it would transact and it considers assumptions that market participants would use when pricing the asset or liability.

Valuation techniques used by the Company are based upon observable and unobservable inputs. Observable or market inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's assumptions about market participant assumptions based on best information available. Observable inputs are the preferred source of values. These two types of inputs create the following fair value hierarchy:

Level 1 — Quoted prices in active markets for identical assets or liabilities.

Level 2 — Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 — Prices or valuations that require management inputs that are both significant to the fair value measurement and unobservable.

The Company measures its cash equivalents, derivative instruments and debt securities at fair value and classifies its securities in accordance with the fair value hierarchy. The Company's money market funds and U.S. treasuries are classified within Level 1 of the fair value hierarchy and are valued based on quoted prices in active markets for identical securities.

The Company classifies its certificates of deposit, commercial paper, corporate bonds, and foreign currency exchange forward contracts within Level 2 of the fair value hierarchy as follows:

Certificates of Deposit

The Company reviews market pricing and other observable market inputs for the same or similar securities obtained from a number of industry standard data providers. In the event that a transaction is observed for the same or similar security in the marketplace, the price on that transaction reflects the market price and fair value on that day. In the absence of any observable market transactions for a particular security, the fair market value at period end would be equal to the par value. These inputs represent quoted prices for similar assets or these inputs have been derived from observable market data, and result in the classification of these securities as Level 2 of the fair value hierarchy.

Commercial Paper

The Company reviews market pricing and other observable market inputs for the same or similar securities obtained from a number of industry standard data providers. In the event that a transaction is observed for the same or similar security in the marketplace, the price on that transaction reflects the market price and fair value on that day and then follows a revised accretion schedule to determine the fair market value at period end. In the absence of any observable market transactions for a particular security, the fair market value at period end is derived by accreting from the last observable market price. These inputs represent quoted prices for similar assets or these inputs have been derived from observable market data accreted mathematically to par, and result in the classification of these securities as Level 2 of the fair value hierarchy.

Corporate Bonds

The Company reviews trading activity and pricing for each of the corporate bond securities in its portfolio as of the measurement date and determines if pricing data of sufficient frequency and volume in an active market exists in order to support Level 1 classification of these securities. Since sufficient quoted pricing for identical securities is not available, the Company obtains market pricing and other observable market inputs for similar securities from a number of industry standard data providers. In instances where multiple prices exist for similar securities, these prices are used as inputs into a distribution-curve to determine the fair market value at period end. As a result, the Company classifies its corporate bonds as Level 2 of the fair value hierarchy.

Foreign Currency Exchange Forward Contracts

As discussed in Note 5, “Derivative Instruments,” to the Notes to Consolidated Financial Statements, the Company mainly holds non-speculative foreign exchange forward contracts to hedge certain foreign currency exchange exposures. The Company estimates the fair values of derivatives based on quoted market prices or pricing models using current market rates. Where applicable, these models project future cash flows and discount the future amounts to a present value using market-based observable inputs including interest rate curves, credit risk, foreign exchange rates, and forward and spot prices for currencies. As a result, the Company classifies its derivative instruments as Level 2 of the fair value hierarchy.

The Company classifies its ARS within Level 3 of the fair value hierarchy.

The Company’s ARS are classified within Level 3 because they are valued, in part, by using inputs that are unobservable in the market and are significant to the valuation. These ARS represent approximately 2% of the Company’s total investment portfolio as of December 29, 2012. Uncertainties in the credit markets have affected all of the Company’s ARS and auctions for these securities have failed to settle on their respective settlement dates. In light of these developments, to determine the fair value for the Company’s ARS, the Company used a combination of the market approach and income approach. The market approach uses pricing based on transactions in an inactive secondary market for similar or comparable securities. In addition, the Company performed its own discounted cash flow analysis. Management determined that it was most appropriate to value the ARS using the market approach and income approach equally given the facts and circumstances as of December 29, 2012, and therefore incorporated both valuations in the Company's fair value measurement.

The significant unobservable inputs and assumptions used in the discounted cash flow model to determine the fair value of the Company's ARS, as of December 29, 2012, are as follows:

- *Contractual cash flow*

The model assumed that the principal amount or par value for these securities will be repaid at the end of the estimated workout period. In addition, future interest payments were estimated as described in each individual prospectus and based on the then-current U.S. Treasury Bill rate adjusted for a failed auction premium of 150 basis points ("bps").

- *ARS discount rate*

The model incorporated a discount rate equal to an estimate of the LIBOR rates commensurate with the estimated workout period of the securities. As of the measurement date, these rates were then adjusted by a factor of 204 bps, representing an estimate of the market student loan spread and a discount factor to reflect the lack of liquidity and credit risk associated with these securities. As of December 29, 2012, the Company held $3.1 million (par value) of A3 rated securities. The Company's ARS are mostly collateralized by student loans guaranteed by the U.S. government under the Federal Family Education Loan Program. The discount rate does, however, include a discount factor to reflect the issuer's credit risk and its potential inability to perform its obligations under the terms of the ARS agreements. The Company's valuation analysis indicates that the estimated credit risk element included in the discount rate was 209 bps.

- *Estimated maturity*

The Company estimated the workout period of its ARS as the weighted-average life of the underlying trust loan portfolio where this information was available from servicing and other trust reports. In a small number of instances where this information was not available, the Company used the weighted-average life of the loan portfolio of a similar trust. The estimated time to maturity of the securities as of the measurement date was 6.7 years.

Other-Than-Temporary Impairments

The Company reviews its available-for-sale marketable debt securities on a regular basis to evaluate whether or not a security has experienced an other-than-temporary decline in fair value. If a debt security's market value is below amortized cost and the Company either intends to sell the security or it is more likely than not that the Company will be required to sell the security before its anticipated recovery, the Company records an other-than-temporary impairment ("OTTI") charge to earnings for the entire amount of the impairment.

When the Company does not intend to sell an impaired security and it is not more likely than not that the Company will be required to sell prior to recovery of its amortized cost basis, the Company separates the OTTI into credit and non-credit loss portions. The amount representing the credit loss is recognized in Other income (expense), net, and the amount related to all other factors is recognized in Accumulated other comprehensive loss.

In determining if a credit loss has occurred, it is the Company's policy to isolate the credit loss related portion of the discount rate used to derive the fair market value of the security and apply this to the expected cash flows in order to determine the portion of the OTTI that is credit loss related. This credit related portion of the discount rate is based on the financial condition of the issuer, changes in rating agency credit ratings for the security or increases in credit related yield spreads on similar securities offered by the same issuer.

Once a credit impairment loss has been recognized in the Company's consolidated statements of operations, the amortized cost basis of that available-for-sale security is reduced by the amount of the credit impairment loss, resulting in a new cost basis for the security. Any non-credit related unrealized gains and losses are recorded in Accumulated other comprehensive loss in the Company's consolidated balance sheets. The Company will continue to monitor the security's credit rating and credit spread and will accrete any reduction in the credit impairment loss to interest income over the expected life of the security.

Property, Plant and Equipment

Property, plant and equipment are stated at cost. This includes enterprise-level business software that the Company customizes to meets its specific operational needs. Depreciation is calculated using the straight-line method over the estimated useful lives of the respective assets. Leasehold improvements are amortized using the straight-line method over the shorter of the lease term or estimated useful life of the asset. An assumption of lease renewal where a renewal option exists is used only when the renewal has been determined to be reasonably assured. Repair and maintenance costs are expensed as incurred. The estimated useful life for each asset category is as follows:

	Estimated Useful lives
Laboratory and manufacturing equipment	1.5 to 10 years
Furniture and fixtures	3 to 5 years
Computer hardware and software	1.5 to 3 years
Enterprise-level software	up to 7 years
Leasehold improvements	1 to 10 years

The Company regularly reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable or that the useful life is shorter than originally estimated. If impairment indicators are present and the projected future undiscounted cash flows are less than the carrying value of the assets, the carrying values are reduced to the estimated fair value. If assets are determined to be recoverable, but the useful lives are shorter than originally estimated, the carrying value of the assets is depreciated over the newly determined remaining useful lives.

Deferred Inventory Costs

When the Company's products have been delivered and ownership (typically defined as title and risk of loss) has transferred to the customer, but the product revenue associated with the arrangement has been deferred as a result of not meeting the revenue recognition criteria or the costs are related to product sales bundled with training, software warranty or product support services where the revenue is deferred and recognized ratably, the Company also defers the related inventory costs for the delivered items and recognizes the inventory costs either ratably or when the related revenue meets the revenue recognition criteria.

Accounting for Income Taxes

As part of the process of preparing the Company's consolidated financial statements, the Company is required to estimate its taxes in each of the jurisdictions in which it operates. The Company estimates actual current tax expense together with assessing temporary differences resulting from different treatment of items, such as accruals and allowances not currently deductible for tax purposes. These differences result in deferred tax assets and liabilities, which are included in the Company's consolidated balance sheets. In general, deferred tax assets represent future tax benefits to be received when certain expenses previously recognized in the Company's consolidated statements of operations become deductible expenses under applicable income tax laws or loss or credit carryforwards are utilized. Accordingly, realization of the Company's deferred tax assets is dependent on future taxable income within the respective jurisdictions against which these deductions, losses and credits can be utilized within the applicable future periods.

The Company must assess the likelihood that some portion or all of its deferred tax assets will be recovered from future taxable income within the respective jurisdictions, and to the extent the Company believes that recovery does not meet the "more-likely-than-not" standard, the Company must establish a valuation allowance. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management judgment is required in determining the Company's provision for income taxes, the Company's deferred tax assets and liabilities and any valuation allowance recorded against its net deferred tax assets. At December 29, 2012 and December 31, 2011, the Company's domestic net deferred tax assets were fully reserved with a valuation allowance because, based on the available evidence, the Company believed at that time it was more likely than not that it would not be able to utilize those deferred tax assets in the future. The Company intends to maintain a valuation allowance until sufficient evidence exists to support the reversal of the valuation allowance. The Company makes estimates and judgments about its future taxable income, by jurisdiction, based on assumptions that are consistent with its plans and estimates. Should the actual amounts differ from the Company's estimates, the amount of its valuation allowance could be materially impacted.

Concentration of Risk

Financial instruments that are potentially subject to concentrations of credit risk consist primarily of cash equivalents, short-term investments, long-term investments, cost-method investments and accounts receivable. Investment policies have been implemented that limit investments to investment-grade securities.

As of December 29, 2012, the Company held $3.1 million (par value) of investments comprised of ARS, which are variable-rate debt securities and have a long-term maturity with the interest rate being reset through auctions that are typically held every 7 to 35 days. These securities have historically traded at par value and are callable at par value at the option of the issuer. Interest is typically paid at the end of each auction period or semiannually. Since February 2008, most of the auctions for these ARS have failed and there is no assurance that future auctions will succeed. As a result, the Company's ability to liquidate its investment in the near term may be limited. These ARS were purchased from a single broker, who to date, has not offered to repurchase these remaining ARS from the Company. All of these ARS (par value) are A3 rated, and are mostly collateralized by student loans guaranteed by the U.S. government under the Federal Family Education Loan Program.

As of December 29, 2012, the Company has invested $9.0 million in a privately-held company. This investment has been accounted for as a cost-basis investment, as the Company owns less than 20% of the voting securities and does not have the ability to exercise significant influence over operating and financial policies of the entity. See Note 4, "Cost-method Investment," to the Notes to Consolidated Financial Statements for more information.

The risk with respect to accounts receivable is mitigated by ongoing credit evaluations that the Company performs on its customers. As the Company expands its sales internationally, it may experience increased levels of customer credit risk associated with those regions. Collateral is generally not required for accounts receivable but may be used in the future to mitigate credit risk associated with customers located in certain geographical regions.

As of December 29, 2012, no customer accounted for more than 10% of the Company's accounts receivable balance. As of December 31, 2011, the Company had amounts due from one customer that represented approximately 10% of the Company's accounts receivable balance.

To date, a few of the Company's customers have accounted for a significant portion of its revenue. In 2012 and 2011 no customer represented over 10% of the Company's revenue.

The Company depends on a single or limited number of suppliers for components and raw materials. The Company generally purchases these single or limited source components and materials through standard purchase orders and does not have long-term contracts with many of these limited-source suppliers. While the Company seeks to maintain sufficient reserve stock of such components and materials, the Company's business and results of operations could be adversely affected by a stoppage or delay in receiving such components and materials, the receipt of defective parts, an increase in the price of such components and materials or the Company's inability to obtain reduced pricing from its suppliers in response to competitive pressures.

Derivative Instruments

The Company is exposed to foreign currency exchange rate fluctuations in the normal course of its business. As part of its risk management strategy, the Company uses derivative instruments, specifically forward contracts, to reduce the impact of foreign exchange fluctuations on earnings. The forward contracts are with one high-quality institution and the Company monitors the creditworthiness of the counter party consistently. The Company's objective is to offset gains and losses resulting from these exposures with losses and gains on the derivative contracts used to hedge them, thereby reducing volatility of earnings or protecting fair values of assets. None of the Company's derivative instruments contain credit-risk related contingent features, any rights to reclaim cash collateral or any obligation to return cash collateral. The Company does not have any leveraged derivatives. The Company does not use derivative contracts for trading or speculative purposes.

The Company enters into foreign currency exchange forward contracts to manage its exposure to fluctuations in foreign exchange rates that arise primarily from its Euro denominated receivables and Euro denominated restricted cash balance amounts that are pledged as collateral for certain stand-by and commercial letters of credit. Gains and losses on these contracts are intended to offset the impact of foreign exchange rate changes on the underlying foreign currency denominated accounts receivables and restricted cash, and therefore, do not subject the Company to material balance sheet risk. The forward contracts are with one high-quality institution and the Company consistently monitors the creditworthiness of the counterparty. The forward contracts entered into during 2012 were denominated in Euros and typically had maturities of no more than 30 days. The contracts are settled for U.S. dollars at maturity at rates agreed to at inception of the contracts.

From time to time, the Company also uses foreign currency exchange forward contracts to hedge exposures related to forecasted sales denominated in Euro. These contracts are designated as cash flow hedges and would match the underlying forecasted transactions in duration. The contracts would be carried on the balance sheet at fair value, and the effective portion of the contracts' gains and losses would be recorded as Accumulated other comprehensive loss until the forecasted transaction occurs. For foreign currency exchange forward contracts designated as cash flow hedges, the Company evaluates and calculates the effectiveness of each hedge quarterly, using the critical terms match method. When the forecasted transaction occurs, the Company reclassifies the related gain or loss on the cash flow hedge to revenue. If it is determined that a hedged forecasted transaction is unlikely to occur, the Company discontinues its cash flow hedges and any gains or losses on the foreign currency exchange forward contracts would be reclassified from other comprehensive income into earnings.

Foreign Currency Translation and Transactions

The Company considers the functional currencies of its foreign subsidiaries to be the local currency. Assets and liabilities recorded in foreign currencies are translated at the exchange rate as of the balance sheet date, and costs and expenses are translated at average exchange rates in effect during the period. Equity transactions are translated using historical exchange rates. The effects of foreign currency translation adjustments are recorded as a separate component of Accumulated Comprehensive Loss in the accompanying consolidated balance sheets.

For all non-functional currency account balances, the re-measurement of such balances to the functional currency will result in either a foreign exchange transaction gain or loss which is recorded to Other gain (loss), net in the same period that the re-measurement occurred. Aggregate foreign currency transaction loss recorded in 2012 were insignificant. Aggregate foreign currency transaction loss recorded in 2011 and 2010 were, $1.0 million and $0.7 million, respectively.

The Company entered into foreign currency exchange forward contracts to reduce the impact of foreign exchange fluctuations on earnings from accounts receivable balances beginning in 2009, and restricted cash beginning in the third quarter of 2011, both accounts receivable and restricted cash are primarily denominated in Euro. The foreign currency transactions on these forward contracts amounted to a loss of $1.4 million in 2012, a loss of $1.3 million in 2011, and a gain of $0.9 million in 2010, and substantially offset the transaction gains and losses from the re-measurement of the related accounts receivable.

Advertising

All advertising costs are expensed as incurred. Advertising expenses in 2012, 2011 and 2010 were $1.6 million, $1.5 million and $1.1 million, respectively.

Research and Development

All costs to develop the Company’s hardware products are expensed as incurred. Software development costs are capitalized beginning when a product’s technological feasibility has been established and ending when a product is available for general release to customers. Generally, the Company’s software products are released soon after technological feasibility has been established. As a result, costs subsequent to achieving technological feasibility have not been significant and all software development costs have been expensed as incurred.

Recent Accounting Pronouncements

In May 2011, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update No. 2011-04, Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and International Financial Reporting Standards (Topic 820)—Fair Value Measurement (ASU 2011-04), to provide a consistent definition of fair value and ensure that the fair value measurement and disclosure requirements are similar between U.S. GAAP and International Financial Reporting Standards. ASU 2011-04 changes certain fair value measurement principles and enhances the disclosure requirements particularly for Level 3 fair value measurements. The Company adopted the amended disclosure requirements beginning in its fiscal quarter ended March 31, 2012. The adoption of the amended disclosure requirements did not have an impact on the Company’s financial position, results of operations or cash flow.

In June 2011, the FASB issued Accounting Standards Update No. 2011-05, Comprehensive Income (Topic 220)—Presentation of Comprehensive Income (ASU 2011-05), to require an entity to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. ASU 2011-05 eliminates the option to present the components of other comprehensive income as part of the statement of equity. In December 2011, the FASB issued Accounting Standards Update No. 2011-12, Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05 (ASU 2011-12), to defer the effective date of the specific requirement to present items that are reclassified out of accumulated other comprehensive income to net income alongside their respective components of net income and other comprehensive income. The Company adopted the guidance for ASU 2011-05 and ASU 2011-12 beginning in its fiscal quarter ended March 31, 2012. The adoption of the guidance resulted in a change in the format of certain presentation but did not have an impact on the Company’s financial position, results of operations or cash flow.

In February 2013, the FASB issued Accounting Standards Update 2013-02, Comprehensive Income (Topic 220)—Reporting of Amounts Reclassified Out of Accumulated Other Comprehensive Income (“ASU 2013-02”). ASU 2013-02 requires an entity to report the effect of significant reclassifications out of accumulated other comprehensive income on the respective line items in net income if the amount being reclassified is required under U.S. GAAP to be reclassified in its entirety to net income. For other amounts that are not required under U.S GAAP to be reclassified in their entirety to net income in the same reporting period, an entity is required to cross-reference other disclosures required under U.S. GAAP that provide additional detail about those amounts. This accounting update will be applicable to the Company beginning in the first quarter of fiscal year 2013. Other than requiring additional disclosures, the Company does not anticipate material impacts on its financial statements upon adoption.

3. Fair Value Measurements and Other-Than-Temporary Impairments

Fair Value Measurements

The following tables represent the Company's fair value hierarchy for its marketable securities measured at fair value on a recurring basis (in thousands):

	As of December 29, 2012				As of December 31, 2011			
	Fair Value Measured Using				Fair Value Measured Using			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets								
Money market funds	$25,560	$ —	$ —	$ 25,560	$53,208	$ —	$ —	$ 53,208
Certificates of deposit	—	2,160	—	2,160	—	16,778	—	16,778
Commercial paper	—	14,843	—	14,843	—	5,888	—	5,888
Corporate bonds	—	57,467	—	57,467	—	87,694	—	87,694
U.S. agency notes	—	—	—	—	—	9,999	—	9,999
U.S. treasuries	15,020	—	—	15,020	27,577	—	—	27,577
ARS	—	—	2,873	2,873	—	—	7,675	7,675
Total assets	$40,580	$74,470	$2,873	$117,923	$80,785	$120,359	$7,675	$208,819
Liabilities								
Foreign currency exchange forward contracts	$ —	$ 112	$ —	$ 112	$ —	$ 82	$ —	$ 82

During 2012 and 2011, there were no transfers of assets or liabilities between Level I and Level II and there were no transfers into or out of Level III financial assets.

The following tables present a reconciliation of all assets and liabilities measured at fair value on a recurring basis using significant unobservable (Level III) inputs (in thousands):

	December 31, 2011	Total Net Gains Included in Other Comprehensive Income	Calls	December 29, 2012
ARS—available-for-sale	$7,675	$146(1)	$(4,948)(2)	$2,873

	December 25, 2010	Total Net Gains Included in Other Comprehensive Income	Calls	December 31, 2011
ARS—available-for-sale	$7,790	$403(1)	$(518)(2)	$7,675

		Total Net Gains (Losses) Included In			
	December 26, 2009	Other Income (Expense), Net	Other Comprehensive Income	Calls	December 25, 2010
ARS—available-for-sale	$ 7,671	$ —	$763 (1)	$ (644)(3)	$7,790
ARS—trading securities	49,911	1,696(4)	—	(51,607)(3)	—
Put Rights	10,864	(1,696)(5)	—	(9,168)(3)	—
Total	$68,446	$ —	$763	$(61,419)	$7,790

(1) Amount represents the change in the non-credit gain related other-than-temporary impairments ("OTTI") recorded in Accumulated other comprehensive loss in the accompanying consolidated balance sheets.

(2) Amount represents the fair market value of the securities called. Realized gains on these calls were $0.5 million in 2012 and insignificant for 2011.

(3) Amount represents the fair market value of the securities called and related put rights. Realized gains on these calls were insignificant.
(4) Unrealized holding gains for ARS trading securities were included in Other gain (loss), net in the accompanying consolidated statements of operations.
(5) Amount represents the decrease in the fair value of the put rights recorded as Other gain (loss), net in the accompanying consolidated statements of operations.

Investments were as follows (in thousands):

	December 29, 2012			
	Adjusted Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Money market funds	$ 25,560	$—	$—	$ 25,560
Certificates of deposit	2,160	—	—	2,160
Commercial paper	14,848	—	(5)	14,843
Corporate bonds	57,451	22	(6)	57,467
U.S. treasuries	15,015	5	—	15,020
ARS	2,707 (1)	166	—	2,873
Total available-for-sale investments	$117,741	$193	$(11)	$117,923

	December 31, 2011			
	Adjusted Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Money market funds	$ 53,208	$—	$ —	$ 53,208
Certificates of deposit	16,797	—	(19)	16,778
Commercial paper	5,898	—	(10)	5,888
Corporate bonds	87,808	7	(121)	87,694
U.S. agency notes	9,998	2	(1)	9,999
U.S. treasuries	27,577	5	(5)	27,577
ARS	7,368 (2)	307	—	7,675
Total available-for-sale investments	$208,654	$321	$(156)	$208,819

(1) Amount represents the par value less $0.4 million of credit-related OTTI recognized through earnings in prior years.
(2) Amount represents the par value less $0.9 million of credit-related OTTI recognized through earnings in prior years.

As of December 29, 2012, the Company's available-for-sale investments in certificates of deposit, commercial paper, corporate bonds, and U.S. treasuries have a contractual maturity term of up to 12 months, and ARS have contractual maturity terms of up to 33.0 years. Proceeds from sales, maturities and calls of available-for-sale investments were $129.2 million, $291.9 million and $232.3 million in 2012, 2011 and 2010, respectively. Gross realized gains (losses) on short-term and long-term investments were insignificant for these periods. The specific identification method is used to account for gains and losses on available-for-sale investments.

Other-Than-Temporary Impairments

During the second quarter of 2009, the Company determined that it did not intend to sell its ARS and did not believe that it was more likely than not that it would be required to sell the securities before recovery of their par value. However, given that the present value of the expected cash flows for these securities was below their par value, as of June 27, 2009, an initial OTTI of $2.7 million, equal to the difference between the fair value and the amortized cost basis, had occurred. This OTTI write-down was separated into an amount representing credit loss, which was recognized as Other gain (loss), net in the Company's consolidated statements of operations, and an amount related to all other factors, which was recorded in Accumulated other comprehensive loss in the Company's consolidated balance sheets. In determining if a credit loss had occurred, the Company isolated the credit loss related portion of the discount rate used to derive the fair market value of the securities and applied this to the expected cash flows in order to determine the portion of the OTTI that was credit loss related. This credit loss related portion of the discount rate is based on the financial condition of the issuer, rating agency credit ratings for the security and credit related yield spreads on similar securities offered by the same issuer.

During 2012, $5.0 million of AAA rated ARS and $0.2 million A3 rated ARS were called at par value. During 2011, $0.6 million of A3 rated ARS were called at par value. Realized gains for these ARS for 2012 and 2011 were $0.5 million and zero, respectively.

As of December 29, 2012, the Company held $3.1 million (par value) of A3 rated available-for-sale ARS. These remaining ARS had an insignificant net increase in fair value for 2012. This change was recognized in Accumulated other comprehensive loss in the Company's consolidated balance sheets. The Company did not recognize any additional OTTI credit loss on any of its securities during 2012.

A roll-forward of amortized cost, cumulative OTTI recognized in earnings and Accumulated other comprehensive loss is as follows (in thousands):

	Amortized Cost	Cumulative OTTI in Earnings	Unrealized Gain	OTTI Loss in Accumulated Other Comprehensive Loss	Accumulated Other Comprehensive Income (Loss)
Balance at December 31, 2011	$ 7,367	$(884)	$1,619	$(1,312)	$307
Unrealized gain	—	—	146	—	146
Call on investments	(4,660)	490	(981)	694	(287)
Balance at December 29, 2012	$ 2,707	$(394)	$ 784	$ (618)	$166

The Company believes that the credit risk associated with its available-for-sale ARS could change significantly in the future based on market conditions and continued uncertainties in the financial markets. The ARS student loan credit spread may be subject to significant volatility and it is difficult to predict future fluctuations. A 10% deterioration in the ARS student loan credit spread would not result in a significant amount in the credit loss related portion of the OTTI for 2012.

4. Cost-method Investment

As of December 29, 2012, the Company's investment in a privately-held company was $9.0 million. This investment is accounted for as a cost-basis investment as the Company owns less than 20% of the voting securities and does not have the ability to exercise significant influence over operating and financial policies of the entity. The Company's investment is in an entity that is not publicly traded and, therefore, no established market for the securities exists. The Company's cost-method investment is carried at historical cost in its consolidated financial statements and measured at fair value on a nonrecurring basis when indicators of impairment exists. If the Company believes that the carrying value of the cost basis investment is in excess of estimated fair value, the

Company's policy is to record an impairment charge in Other income (expense), net in the accompanying consolidated statements of operations to adjust the carrying value to estimated fair value, when the impairment is deemed other-than-temporary. The Company regularly evaluates the carrying value of this cost-method investment for impairment. As of December 29, 2012, no event had occurred that would adversely affect the carrying value of this investment, therefore, the fair value of the cost-method investment is not estimated. The Company did not record any impairment charges for this cost-method investment during 2012, 2011 and 2010.

5. Derivative Instruments

Foreign Currency Exchange Forward Contracts

The Company enters into foreign currency exchange forward contracts to manage its exposure to fluctuations in foreign exchange rates that arise primarily from its Euro denominated receivables and Euro denominated restricted cash balance amounts that are pledged as collateral for certain stand-by and commercial letters of credit. Gains and losses on these contracts are intended to offset the impact of foreign exchange rate changes on the underlying foreign currency denominated accounts receivables and restricted cash, and therefore, do not subject the Company to material balance sheet risk. The forward contracts are with one high-quality institution and the Company consistently monitors the creditworthiness of the counterparty. None of the Company's derivative instruments contain credit-risk related contingent features, any rights to reclaim cash collateral or any obligation to return cash collateral. The forward contracts entered into during 2012 were denominated in Euros and typically had maturities of no more than 30 days. The contracts are settled for U.S. dollars at maturity at rates agreed to at inception of the contracts.

As of December 29, 2012, the Company did not designate foreign currency exchange forward contracts related to Euro denominated receivables and restricted cash as hedges for accounting purposes, and, accordingly, changes in the fair value of these instruments are included in Other gain (loss), net in the accompanying consolidated statements of operations. The before-tax effect of foreign currency exchange forward contracts for Euro denominated receivables and restricted cash not designated as hedging instruments was a loss of $1.4 million for 2012, a loss of $1.3 million for 2011, and a gain of $0.9 million in 2010, included in Other gain (loss), net in the consolidated statements of operations.

The fair value of derivative instruments not designated as hedging instruments in the Company's consolidated balance sheets was as follows (in thousands):

	As of December 29, 2012		As of December 31, 2011	
	Gross Notional[(1)]	Other Accrued Liabilities	Gross Notional[(1)]	Other Accrued Liabilities
Foreign currency exchange forward contracts				
Related to Euro denominated receivables	$22,882	$(105)	$9,437	$(71)
Related to restricted cash	$ 1,495	$ (7)	$1,455	$(11)

(1) Represents the face amounts of forward contracts that were outstanding as of the period noted.

6. Balance Sheet Details

Restricted Cash

The Company's restricted cash balance is primarily comprised of certificates of deposit, of which the majority are not insured by the Federal Deposit Insurance Corporation. These amounts primarily collateralize the Company's issuances of stand-by and commercial letters of credit. Additionally, the Company's restricted cash balance includes a leave encashment fund for India employees.

The following table provides details of selected balance sheet items (in thousands):

	December 29, 2012	December 31, 2011
Inventory:		
Raw materials	$ 13,003	$ 12,081
Work in process	57,281	37,007
Finished goods[1]	57,525	39,908
Total	$ 127,809	$ 88,996
Property, plant and equipment, net:		
Computer hardware	$ 9,024	$ 8,311
Computer software[2]	15,834	7,584
Laboratory and manufacturing equipment	120,543	101,228
Furniture and fixtures	1,285	1,107
Leasehold improvements	33,370	26,736
Construction in progress	17,513	25,843
Subtotal	$ 197,569	$170,809
Less accumulated depreciation and amortization[3]	(117,226)	(94,056)
Total	$ 80,343	$ 76,753
Accrued expenses:		
Loss contingency related to non-cancelable purchase commitments	$ 5,401	$ 5,705
Professional and other consulting fees	3,703	2,005
Taxes payable	3,588	3,111
Royalties	1,516	1,309
Accrued rebate and customer prepay liability	1,284	4,078
Other accrued expenses	9,991	6,213
Total	$ 25,483	$ 22,421

(1) Included in finished goods inventory at December 29, 2012 and December 31, 2011 were $15.6 million and $8.9 million, respectively, of inventory at customer locations for which product acceptance had not occurred.

(2) Included in computer software at December 29, 2012 was $7.5 million related to an enterprise resource planning ("ERP") system that the Company implemented during the third quarter of 2012.

(3) Depreciation expense was $23.5 million (which includes amortization of capitalized ERP costs of $0.4 million), $17.7 million and $15.4 million for 2012, 2011 and 2010, respectively.

7. Restructuring and Other Related Costs

In July 2009, the Company announced a restructuring plan under which it closed its Maryland-based semiconductor fabrication plant and consolidated these activities into its primary fabrication plant located in Sunnyvale, California. This consolidation of activities into one location was expected to facilitate collaboration across integration platforms in support of the Company's next-generation products. As a result, during 2009, the Company recorded $3.9 million of restructuring and other related costs including severance and related expenses, equipment and facilities-related costs, operating lease termination costs, and other exit costs. Equipment and facilities-related costs consist of increased depreciation expense related to restructured assets caused by shortening the useful life or updating the salvage value of depreciable fixed assets to coincide with the end of production under the approved restructuring plan. The Company completed its restructuring actions in 2010. Cumulative restructuring and other related costs through December 31, 2011 totaled $3.7 million. No remaining accrual existed at the end of 2011.

The types of restructuring and other related costs recorded were as follows (in thousands):

	Years Ended			
	December 31, 2011		December 25, 2010	
	Cost of Revenue	Operating Expenses	Cost of Revenue	Operating Expenses
Severance and related expenses (credits)	$ —	$ —	$(144)	$ 55
Equipment and facilities-related credits	—	(129)	(38)	—
Lease termination	—	—	—	104
Other	—	—	—	—
Total	$ —	$(129)	$(182)	$159

8. Comprehensive Loss

Total comprehensive loss consists of other comprehensive loss and net loss. Other comprehensive loss includes certain changes in equity that are excluded from net loss. Specifically, cumulative foreign currency translation adjustments and unrealized holding gains (losses) on available-for-sale investments are included in Accumulated other comprehensive loss in the consolidated balance sheets.

The components of accumulated other comprehensive loss are as follows (in thousands):

	December 29, 2012	December 31, 2011	December 25, 2010
Accumulated unrealized gain (loss) on auction rate securities classified as available-for-sale investments	$ 166	$ 307	$ (103)
Accumulated unrealized holding gain (loss) on all other available-for-sale investments	16	(142)	(37)
Accumulated net unrealized loss on foreign currency translation adjustment	(1,650)	(1,607)	(490)
Accumulated tax effect on items related to available-for-sale investments	(760)	(753)	(631)
Total accumulated other comprehensive loss	$(2,228)	$(2,195)	$(1,261)

9. Basic and Diluted Net Loss Per Common Share

Basic net loss per common share is computed by dividing net loss by the weighted average number of vested common shares outstanding during the period. Diluted net loss per common share is computed using net loss and the weighted average number of common shares outstanding plus potentially dilutive common shares outstanding during the period. Under the treasury stock method, potentially dilutive common shares include the assumed exercise of outstanding stock options, assumed vesting of outstanding restricted stock units (“RSUs”) and performance stock units (“PSUs”), assumed exercise of outstanding warrants, and assumed issuance of stock under the Company’s employee stock purchase plan (“ESPP”).

The following table sets forth the computation of net loss per common share—basic and diluted (in thousands, except per share amounts):

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Net loss	$ (85,330)	$ (81,744)	$(27,932)
Weighted average common shares outstanding	110,739	105,432	99,380
Net loss per common share - basic and diluted	$ (0.77)	$ (0.78)	$ (0.28)

The Company incurred net losses for the years ended December 29, 2012, December 31, 2011 and December 25, 2010, and as a result, before the application of the treasury stock method, potential common shares from options, stock awards, employee stock purchase plan shares and warrants totaling 18.3 million shares, 19.5 million shares and 18.0 million shares, respectively, were not included in the net loss per common share calculation, as their inclusion would have been anti-dilutive.

The Company had the following equity awards outstanding that could potentially dilute basic net loss per common share in the future, but were excluded from the computation of diluted loss per common share in the periods presented as their effect would have been anti-dilutive (in thousands):

	As of		
	December 29, 2012	December 31, 2011	December 25, 2010
Stock options outstanding	9,008	9,873	7,815
Restricted stock units	6,703	5,957	6,783
Performance stock units	1,368	2,595	2,682
Employee stock purchase plan shares	1,100	943	636
Warrants to purchase common stock	93	93	124
Total	18,272	19,461	18,040

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10. Commitments and Contingencies

Operating Leases

The Company leases facilities under non-cancelable operating lease agreements. These leases have varying terms that range from one to ten years, predominantly no longer than ten years each and contain leasehold improvement incentives, rent holidays and escalation clauses. In addition, some of these leases have renewal options for up to five years. The Company also has contractual commitments to remove leasehold improvements and return certain properties to a specified condition when the leases terminate. At the inception of a lease with such conditions, the Company records an asset retirement obligation liability and a corresponding capital asset in an amount equal to the estimated fair value of the obligation. Asset retirement obligations were $3.0 million and $3.0 million as of December 29, 2012 and December 31, 2011, respectively. These obligations are classified as other long-term liabilities on the accompanying consolidated balance sheets. The Company recorded an insignificant amount and $1.9 million of asset retirement obligation liabilities in 2012 and 2011, respectively.

The Company recognizes rent expense on a straight-line basis over the lease period factoring in leasehold improvement incentives, rent holidays and escalation clauses, and has accrued for rent expense incurred but not paid. Rent expense for all leases was $6.7 million, $6.1 million and $5.1 million for 2012, 2011 and 2010, respectively. The Company did not have any sublease rental income for 2012, 2011 and 2010.

Future annual minimum operating lease payments at December 29, 2012 were as follows (in thousands):

	2013	2014	2015	2016	2017	Thereafter	Total
Operating lease payments	$5,790	$4,900	$4,808	$4,339	$4,212	$13,263	$37,312

Purchase Commitments

The Company has service agreements with its major production suppliers, where the Company is committed to purchase certain parts. These obligations are typically less than the Company's purchases. As of December 29, 2012, December 31, 2011 and December 25, 2010, these non-cancelable purchase commitments were $52.7 million, $58.8 million and $39.4 million, respectively. Other contracts are related to contractual obligations for non-recurring engineering costs. As of December 29, 2012, December 31, 2011 and December 25, 2010, these other contracts were $6.3 million, $6.2 million and $5.4 million, respectively.

Future purchase commitments at December 29, 2012 were as follows (in thousands):

	2013	2014	2015	2016	2017	Thereafter	Total
Purchase obligations	$52,667	$ —	$ —	$ —	$ —	$ —	$52,667
Other contracts	$ 6,947	$ —	$ —	$ —	$ —	$ —	$ 6,947

The contractual obligation tables above exclude tax liabilities of $1.8 million related to uncertain tax positions because the Company is unable to determine the timing of settlement if any, of these future payments with a reasonably reliable estimate.

Indemnification Obligations

From time to time, the Company enters into certain types of contracts that contingently require it to indemnify parties against third-party claims. These contracts primarily relate to: (i) certain real estate leases under which the Company may be required to indemnify property owners for environmental and other liabilities, and other claims arising from the Company's use of the applicable premises; (ii) certain agreements with the Company's officers, directors and certain key employees, under which the Company may be required to indemnify such persons for liabilities; and (iii) certain provisions in the Company's customer agreements that may require the Company to indemnify their customers and their affiliated parties against certain liabilities, including if the Company's products infringe a third party's intellectual property rights.

The terms of such indemnification obligations vary. Because the maximum obligated amounts under these agreements generally are not explicitly stated, the maximum potential amount of future payments the Company could be required to make under these indemnification agreements is generally unlimited.

To date, the Company has not incurred any material costs as a result of the indemnification obligations and has not accrued any liabilities related to such obligations in the Company's consolidated financial statements. The Company has agreed to indemnify Level 3 in connection with the lawsuit filed by Cheetah Omni LLC ("Cheetah") on May 9, 2006 (see Note 12, "Legal Matters," to the Notes to Consolidated Financial Statements). The Company is contractually obligated to indemnify Level 3 for damages suffered by Level 3 to the extent the Company's product is found to infringe the two Cheetah patents at issue (Patent Nos. 6,795,605 and 7,142,347), and the Company has assumed the defense of this matter. In addition, the Company may be obligated to indemnify the defendants in connection with the lawsuit filed by Cambrian Science Corporation ("Cambrian") on July 7, 2011, to the extent the Company's product is found to infringe the Cambrian patent at issue (Patent No. 6,775,312) (see Note 12, "Legal Matters," to the Notes to Consolidated Financial Statements).

As permitted under Delaware law and the Company's charter and bylaws, the Company has agreements whereby it indemnifies certain of its officers and each of its directors for certain events or occurrences while the officer or director is, or was, serving at the Company's request in such capacity. The term of the indemnification period is for the officer's or director's lifetime. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has a Director and Officer insurance policy that may reduce its exposure and enable it to recover all or a portion of any future amounts paid. As a result of its insurance policy coverage, the Company believes the estimated fair value of these indemnification agreements is minimal. The Company has no liabilities recorded for these agreements as of December 29, 2012 and December 31, 2011, as this liability is not reasonably estimable even though liability under these agreements is not remote.

11. Guarantees

Product Warranties

Upon delivery of products, the Company provides for the estimated cost to repair or replace products or the related components that may be returned under hardware warranties. In general, hardware warranty periods range from one to five years. Hardware warranties provide the purchaser with protection in the event that the product does not perform to product specifications. During the warranty period, the purchaser's sole and exclusive remedy in the event of such defect or failure to perform is limited to the correction of the defect or failure by repair, refurbishment or replacement, at the Company's sole option and expense. The Company estimates its hardware warranty obligations based on the Company's historical experience of known product failure rates, use of materials to repair or replace defective products, and service delivery costs incurred in correcting product failures. In addition, from time to time, specific hardware warranty accruals may be made if unforeseen technical problems arise with specific products. Management periodically assesses the adequacy of the Company's recorded warranty liabilities and adjusts the amounts as necessary.

Activity related to product warranty was as follows (in thousands):

	December 29, 2012	December 31, 2011
Beginning balance	$12,865	$11,422
Charges to operations	15,116	9,776
Utilization	(7,701)	(7,242)
Change in estimate[1]	(3,798)	(1,091)
Balance at the end of the period	$16,482	$12,865

(1) The Company records hardware warranty liabilities based on the latest quality and cost information available as of that date. The favorable changes in estimate shown here are due to continued improvements in overall actual failure rates and the impact of these improvements on the Company's estimate of expected future returns and changes in the estimated cost of replacing failed units using either repaired or new units.

Letters of Credit

The Company had $3.6 million of standby letters of credit outstanding as of December 29, 2012. These consisted of $1.5 million related to a value added tax license, $1.4 million related to a customer proposal guarantee and $0.7 million related to property leases. The Company had $2.7 million of standby letters of credit outstanding as of December 31, 2011. These consisted of $1.4 million related to a customer proposal guarantee, $0.8 million related to a value added tax license and $0.5 million related to property leases.

12. Legal Matters

Cheetah Patent Infringement Litigation

On May 9, 2006, the Company and Level 3 were sued by Cheetah in the U.S. District Court for the Eastern District of Texas Texarkana Division for alleged infringement of patent no. 6,795,605 (the "'605 Patent"), and a continuation thereof. On May 16, 2006, Cheetah filed an amended complaint, which requested an order to enjoin the sale of the Company's DTN platform and to recover all damages caused by the alleged willful infringement including any and all compensatory damages available by law, such as actual and punitive damages, attorneys' fees, associated interest and Cheetah's costs incurred in the lawsuit. Cheetah's complaint does not request a specific dollar amount for these compensatory damages. The Company is contractually obligated to indemnify Level 3 for damages suffered by Level 3 to the extent its product supplied by the Company is found to infringe, and the Company has assumed the defense of this matter. On July 20, 2006, the Company and Level 3 filed an amended response denying all infringement claims under the '605 Patent and asserting that the claims of the '605 Patent are invalid and that the DTN platform does not infringe the '605 Patent. On November 28, 2006, Cheetah filed a second amended complaint and added patent no. 7,142,347 (the "'347 Patent") to the lawsuit. On December 18, 2006, the Company and Level 3 filed responses to Cheetah's second amended complaint denying all infringement claims under the '347 Patent and the Company and Level 3 asserted counterclaims against Cheetah asserting that the claims are invalid and that the DTN platform does not infringe the patents.

On January 30, 2007, Cheetah filed a third amended complaint adding additional assertions of infringement for the two patents in suit. On February 16, 2007, the Company and Level 3 filed responses to Cheetah's third amended complaint denying all infringement claims, and the Company and Level 3 asserted counterclaims against Cheetah asserting that the claims of the patents are invalid and that the DTN platform does not infringe the patents.

On March 14, 2007, the Company submitted requests to the U.S. Patent and Trademark Office (the "U.S. PTO") for inter partes reexamination of the '605 Patent and the '347 Patent asking the U.S. PTO to reexamine the patents based on prior art in order to invalidate the patents or limit the scope of each patent's claims.

On April 12, 2007, the court granted the motion staying all proceedings in the lawsuit. On June 26, 2007, the U.S. PTO also ordered reexamination of the '605 Patent and on August 1, 2007, the U.S. PTO ordered reexamination of the '347 Patent. As a result, all proceedings in this lawsuit were stayed until the final resolution of these reexaminations.

In a communication the Company received from the U.S. PTO dated December 4, 2009, the Company was advised that various claims in the '347 Patent reexamination have been allowed, while other claims have been rejected. In a communication the Company received from the U.S. PTO dated June 22, 2010, the Company was advised that various claims in the '605 Patent reexamination have been allowed, while other claims have been rejected.

On March 30, 2012, the Board Patent Appeals Interferences ("BPAI") affirmed the Examiner's allowance of certain claims in the reexamination of the '347 Patent and '605 Patent. The Company filed a request for reconsideration of the BPAI's decision on April 30, 2012, which was denied in a Decision on Request for Rehearing dated September 27, 2012. The Company has appealed the BPAI's decision to the Court of Appeals of the Federal Circuit in a Notice of Appeal dated November 26, 2012. On November 9, 2012, Cheetah's counsel filed another motion requesting the court to lift the stay. The court granted Cheetah's motion and lifted the stay in an order dated January 8, 2013.

Based on the information available at this time, the Company concluded that the likelihood of a loss with respect to this suit is less than reasonably possible and therefore, a range of loss cannot be provided. As a result, the Company has made no provision for this lawsuit in its financial statements. Factors that the Company considered in the determination of the likelihood of a loss in respect to this matter included the merits of the case, the nature of the litigation (including the complex and technical nature of patent litigation), the length of time the matter has been pending, the status of the re-examination of the underlying patents at issue by the U.S. Patent and Trademark Office, the status of the plaintiff as a non-operating entity, and the lack of any specific amount (or range of amounts) for the alleged damages sought in the complaint.

Cambrian Science Patent Infringement Litigation

On July 12, 2011, the Company was notified by Level 3 that Cambrian filed suit against Level 3 and six other defendants, including Cox Communications, Inc., XO Communications, LLC, Global Crossing Limited, 360Networks (USA), Inc., Integra Telecom, Inc. and IXC, Inc. dba Telekenex (collectively, the "Defendants") in the U.S. District Court for the Central District of California alleging infringement of patent no. 6,775,312 (the "'312 Patent") and requesting damages for such alleged infringement (the "Cambrian Claim"). The nature of the Cambrian Claim involves allegations of infringement of the '312 Patent resulting from the Defendants' use of certain products and systems in the Defendants' networks, including the Company's DTN platform. On August 24, 2011, Cambrian amended the complaint to name the Company as a defendant. The Company assumed the defense of the Cambrian Claim and filed an answer to Cambrian's complaint on September 21, 2011, in which the Company denied infringement of the '312 Patent and raised other defenses. Cambrian filed a second amended complaint on October 6, 2011, which included many of the same allegations as in the original complaint. The Company filed an answer to the second amended complaint on October 21, 2011, in which the Company maintained the same denials and defenses as in its initial answer. On December 23, 2011, the Company filed a motion requesting that the court stay the case with respect to each of the above-noted customer Defendants. Cambrian filed its opposition to the Company's motion on December 30, 2011. The Company's request was denied in the court's decision on March 7, 2012. The Company presented evidence on the appropriate meanings of relevant key words used in the patent claims during a claim construction hearing on November 20, 2012. The Company is awaiting the court's decision on the meaning of various claim terms.

Based on the information available at this time, the Company concluded that the likelihood of a loss with respect to this suit is less than reasonably possible and therefore, a range of loss cannot be provided. As a result, the Company has made no provision for this lawsuit in its financial statements. Factors that the Company considered in the determination of the likelihood of a loss in respect to this matter included the merits of the case, the nature of the litigation (including the complex and technical nature of patent litigation), the length of time the matter has been pending, and the status of the plaintiff as a non-operating entity.

Loss Contingencies

The Company is subject to the possibility of various losses arising in the ordinary course of business. These may relate to disputes, litigation and other legal actions. In preparation of its quarterly and annual financial statements, the Company considers the likelihood of loss or the incurrence of a liability, including whether it is probable, reasonably possible or remote that a liability has been incurred, as well as the Company's ability to reasonably estimate the amount of loss, in determining loss contingencies. In accordance with U.S. GAAP, an estimated loss contingency is accrued when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. The Company regularly evaluates current information to determine whether any accruals should be adjusted and whether new accruals are required. As of December 29, 2012, the Company has not accrued or recorded any such material liabilities.

13. Stockholders' Equity

2000 Stock Plan, 2007 Equity Incentive Plan and Employee Stock Purchase Plan

In December 2000, the Company adopted the 2000 Stock Plan ("2000 Plan"). Under the 2000 Plan, as amended, the Company had reserved an aggregate of 14.2 million shares of its common stock for issuance. As of December 29, 2012, options to purchase 1.7 million shares of the Company's common stock were outstanding under the 2000 Plan. The Company's board of directors decided not to grant any additional options or other awards under the 2000 Plan following the Company's IPO in 2007. The 2000 Plan expired on December 6, 2010. However, the 2000 Plan will continue to govern the terms and conditions of the outstanding options previously granted under the plan.

In February 2007, the Company's board of directors adopted the 2007 Equity Incentive Plan ("2007 Plan") and the Company's stockholders approved the 2007 Plan in May 2007. As of December 29, 2012, the Company reserved a total of 38.2 million shares of common stock for issuance of options, RSUs and PSUs to employees, non-employees and members of the Company's board of directors, pursuant to the 2007 Plan. The 2007 Plan has a maximum term of 10 years from the date of adoption, or it can be earlier terminated by the Company's board of directors.

Additionally, in February 2007, the Company's board of directors adopted, and in May 2007, its stockholders approved the Company's ESPP. The ESPP has a 20-year term, and as of December 29, 2012, the Company had authorized the issuance of approximately 6.7 million shares of common stock.

Stock Option Exchange Program

On June 11, 2009, the Company's stockholders approved a one-time stock option exchange program (the "Option Exchange Program"), and on January 25, 2010, the Company launched the Option Exchange Program pursuant to which eligible employees were able to exchange certain outstanding stock options under the Company's 2007 Plan with an exercise price greater than or equal to $8.16 per share and a grant date on or before January 25, 2009, for a lesser amount of new RSUs or, for new stock options for senior executives. The Option Exchange Program was approved by the Company's stockholders in June 2009 and was available for employees of the Company residing in the U.S., India and U.K. who held eligible shares. The Option Exchange Program expired on February 22, 2010, and there were 4,926,790 shares tendered for exchange. All surrendered options were cancelled effective as of the expiration of the Option Exchange Program, and immediately thereafter, the Company granted (i) new options with an exercise price of $7.61 per share to purchase an aggregate of 1,564,727 shares of Infinera common stock and (ii) RSUs representing 814,017 shares of Infinera common stock. The Option Exchange Program was an expense neutral exchange and it did not result in any significant incremental stock-based compensation expense.

Equity Incentive Plans

The Company's stock-based compensation plans include stock options, RSUs, PSUs and employee stock purchases under the Company's ESPP. As December 29, 2012, there were a total of 13.4 million shares available for grant under the Company's 2007 Plan. The following tables summarize the Company's equity award activity and related information (in thousands, except per share data):

	Number of Options	Weighted-Average Exercise Price Per Share	Aggregate Intrinsic Value
Outstanding at December 26, 2009	**14,568**	**$ 8.25**	**$35,462**
Options granted	836	$ 8.19	
Options granted in connection with the stock option exchange program	1,565	$ 7.61	
Options exercised	(3,094)	$ 3.85	$17,538
Options canceled in connection with the stock option exchange program	(4,927)	$13.53	
Options canceled	(1,133)	$ 8.28	
Outstanding at December 25, 2010	**7,815**	**$ 6.52**	**$30,923**
Options granted	2,571	$ 8.17	
Options exercised	(378)	$ 3.81	$ 1,691
Options canceled	(135)	$ 8.63	
Outstanding at December 31, 2011	**9,873**	**$ 7.03**	**$ 7,924**
Options granted	127	$ 7.18	
Options exercised	(582)	$ 4.39	$ 1,484
Options canceled	(410)	$ 8.50	
Outstanding at December 29, 2012	**9,008**	**$ 7.13**	**$ 5,726**
Vested and expected to vest as of December 29, 2012	**8,980**		**$ 5,726**
Exercisable at December 29, 2012	**7,920**	**$ 7.01**	**$ 5,726**

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	Number of Restricted Stock Units	Weighted-Average Grant Date Fair Value Per Share	Aggregate Intrinsic Value
Outstanding at December 26, 2009	**5,066**	**$9.44**	**$45,287**
RSUs granted	2,828	$8.92	
RSUs granted in connection with the stock option exchange program	814	$7.61	
RSUs released	(1,322)	$9.59	$12,681
RSUs canceled	(603)	$9.10	
Outstanding at December 25, 2010	**6,783**	**$9.03**	**$69,927**
RSUs granted	2,490	$8.18	
RSUs released	(2,937)	$8.84	$25,968
RSUs canceled	(379)	$8.91	
Outstanding at December 31, 2011	**5,957**	**$8.77**	**$37,407**
RSUs granted	3,620	$7.51	
RSUs released	(2,495)	$9.07	$17,742
RSUs canceled	(379)	$8.27	
Outstanding at December 29, 2012	**6,703**	**$8.01**	**$38,873**
Expected to vest as of December 29, 2012	**6,529**		**$37,868**

	Number of Performance Stock Units	Weighted-Average Grant Date Fair Value Per Share	Aggregate Intrinsic Value
Outstanding at December 26, 2009	**3,304**	**$10.51**	**$29,541**
PSUs granted	—	$ —	
PSUs released	—	$ —	
PSUs canceled	(622)	$10.51	
Outstanding at December 25, 2010	**2,682**	**$10.51**	**$27,660**
PSUs granted	—	$ —	
PSUs released	—	$ —	
PSUs canceled	(87)	$10.43	
Outstanding at December 31, 2011	**2,595**	**$10.51**	**$16,304**
PSUs granted	515	$ 7.85	
PSUs released	(883)	$ 9.40	$ 5,448
PSUs canceled	(859)	$10.04	
Outstanding at December 29, 2012	**1,368**	**$10.53**	**$ 7,933**
Expected to vest as of December 29, 2012	**681**		**$ 3,950**

The aggregate intrinsic value of unexercised options, unreleased RSUs and PSUs is calculated as the difference between the closing price of the Company's common stock of $5.80 at December 28, 2012 and the exercise prices of the underlying equity awards. The aggregate intrinsic value of the options which have been exercised and RSUs released is calculated as the difference between the fair market value of the common stock at the date of exercise or release and the exercise price of the underlying equity awards. The aggregate intrinsic value of the options which have been exercised and RSUs released is calculated as the difference between the fair market value of the common stock at the date of exercise or release and the exercise price of the underlying equity awards.

The following table presents total stock-based compensation cost granted but not yet amortized, net of estimated forfeitures, of the Company's equity compensation plans as of December 29, 2012, which is expected to be amortized on a straight-line basis over the following weighted-average periods (in thousands, except for weighted-average period):

	Unrecognized Compensation Expense, Net	Weighted-Average Period (in years)
Stock options	$ 3,886	1.4
RSUs	$30,652	1.9
PSUs	$ 477	0.2

The following table summarizes information about options outstanding at December 29, 2012.

	Options Outstanding			Vested and Exercisable Options	
Exercise Price	**Number of Shares**	**Weighted-Average Remaining Contractual Life**	**Weighted-Average Exercise Price**	**Number of Shares**	**Weighted-Average Exercise Price**
	(In thousands)	(In years)		(In thousands)	
$0.76 - $ 4.04	1,570	3.18	$ 2.15	1,571	$ 2.15
$6.30 - $ 7.25	1,498	6.88	$ 6.86	1,282	$ 6.87
$7.45 - $ 7.61	1,615	5.37	$ 7.53	1,469	$ 7.52
$7.68 - $ 8.19	1,850	5.79	$ 8.09	1,488	$ 8.12
$8.39 - $ 8.61	1,587	7.95	$ 8.58	1,321	$ 8.58
$8.85 - $ 22.36	888	5.87	$11.08	789	$11.22
	9,008	5.83	$ 7.13	7,920	$ 7.01

Employee Stock Options

In February 2012, the Compensation Committee of the Company's board of directors shortened the maximum term of future option grants under the 2007 Plan from 10 years to 7 years. During 2012, the Company granted options to employees and members of the Company's board of directors to purchase an aggregate of 0.1 million shares of common stock at a weighted-average price of $7.18 per share. These options have exercise prices equal to the closing market prices of the Company's common stock on the dates these options were granted. The weighted-average remaining contractual term of options exercisable was 5.6 years as of December 29, 2012. Total fair value of stock options granted to employees and directors that vested during 2012 and 2011 was approximately $10.0 million and $9.0 million, respectively, based on the grant date fair value.

Excluding options granted in connection with the Company's one-time stock option exchange program, which occurred in fiscal 2010, the ranges of estimated values of stock options and performance-based stock options granted, as well as ranges of assumptions used in calculating these values were based on estimates as follows:

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Volatility	65% - 68%	58% - 62%	56% - 61%
Risk-free interest rate	0.7% - 1.0%	1.7% - 2.6%	1.4% - 2.9%
Expected life	4.0 - 5.3 years	4.6 - 5.5 years	4.8 - 5.4 years
Estimated fair value	$3.75 - $3.76	$3.47 - $4.63	$3.32 - $5.72
Total stock-based compensation expense (in thousands)	$8,436	$12,590	$14,904

Employee Stock Purchase Plan

The fair value of the ESPP shares was estimated at the date of grant using the following assumptions:

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Volatility	54% - 57%	51% - 66%	45% - 55%
Risk-free interest rate	0.16% - 0.17%	0.12% - 0.20%	0.20% - 0.23%
Expected life	0.5 years	0.5 years	0.5 years
Estimated fair value	\$1.73 - \$2.63	\$2.09 - \$2.70	\$2.13 - \$2.58

The Company's ESPP activity for the following periods was as follows (in thousands):

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Stock-based compensation expense	\$3,586	\$3,561	\$2,802
Employee contributions	\$9,030	\$8,459	\$7,562
Shares purchased	1,653	1,309	1,207

As of December 29, 2012, there were approximately 0.5 million shares available for grant under the ESPP.

Restricted Stock Units

During 2012 , 2011 and 2010, the Company granted RSUs to employees and members of the Company's board of directors to receive an aggregate of 3.6 million, 2.5 million and 3.6 million shares of the Company's common stock, respectively, at no cost. Included in the RSUs granted in 2010 are 0.8 million shares granted in connection with the Option Exchange Program. The Company accounted for the fair value of the RSUs using the closing market price of the Company's common stock on the date of grant. Amortization of RSU stock-based compensation in 2012, 2011 and 2010 was approximately \$27.9 million, \$25.5 million and \$23.8 million, respectively.

Performance Stock Units

During 2009, the Company granted PSUs primarily to members of the Company's board of directors and executive officers. The number of shares to be issued upon vesting of PSUs range from 0.5 to 2.0 times the number of PSUs granted depending on the relative performance of the Company's common stock price compared to the NASDAQ Composite Index over a three-year or four-year period. During 2012, the Company released 0.7 million of PSUs based on a payout of 0.5 of the target number of PSUs. As of December 29, 2012, 0.9 million PSUs granted in 2009 remained outstanding and were scheduled to vest on December 31, 2012, subject to the performance criteria set forth above.

Pursuant to the Company's 2007 Equity Incentive Plan, during 2012, the Company granted 0.5 million PSUs to certain of the Company's executive officers. These PSUs will only vest upon the achievement of certain specific revenue and operating profit criteria and are subject to each named executive officer's continued service to the Company. If the financial performance metrics are not met within the time limits specified in the award agreements, the PSUs will be cancelled.

Amortization of stock-based compensation related to PSUs in 2012, 2011 and 2010 was approximately \$3.3 million, \$9.2 million and \$7.6 million, respectively.

Common Stock Warrants

As of December 29, 2012, there were warrants to purchase 92,592 shares of common stock outstanding with an exercise price of \$5.40 per share and an expiration date of July 13, 2013.

Stock-based Compensation Expense

The following tables summarize the effects of stock-based compensation on the Company's consolidated balance sheets and statements of operations for the periods presented (in thousands):

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Stock-based compensation effects in inventory	$ 4,891	$ 3,479	$ 2,497
Stock-based compensation effects in deferred inventory cost	$ 42	$ 179	$ 287
Stock-based compensation effects in fixed assets	$ 146	$ 36	$ —
Stock-based compensation effects in net loss before income taxes			
Cost of revenue	$ 2,710	$ 2,923	$ 2,598
Research and development	13,306	14,990	14,301
Sales and marketing	10,450	8,818	7,896
General and administrative	9,529	18,502	19,903
	35,995	45,233	44,698
Cost of revenue—amortization from balance sheet [1]	5,824	4,924	5,637
Total stock-based compensation expense	$41,819	$50,157	$50,335

(1) Represents stock-based compensation expense deferred to inventory and deferred inventory costs in prior periods and recognized in the current period.

Shares Reserved for Future Issuances

Common stock reserved for future issuance was as follows (in thousands):

	December 29, 2012
Outstanding stock options and awards	17,079
Reserved for future option and award grants	13,372
Reserved for future ESPP	531
Total common stock reserved for stock options and awards	30,982
Warrants to purchase common stock	93
Total common stock reserved for future issuances	31,075

14. Income Taxes

The following is a geographic breakdown of the provision for (benefit from) income taxes (in thousands):

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Current:			
Federal	$ (133)	$ (107)	$(264)
State	22	213	(17)
Foreign	2,169	1,841	790
Total current	$2,058	$1,947	$ 509
Deferred:			
Federal	$ —	$ —	$(200)
State	—	—	—
Foreign	132	(256)	8
Total deferred	$ 132	$ (256)	$(192)
Total provision	$2,190	$1,691	$ 317

Income before provision for income taxes from international operations was $5.5 million, $5.3 million and $3.5 million for the years ended December 29, 2012, December 31, 2011 and December 25, 2010, respectively.

The provisions for income taxes differ from the amount computed by applying the statutory federal income tax rates as follows:

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Expected tax benefit at federal statutory rate	35.0%	35.0%	35.0%
State taxes, net of federal benefit	0.0%	(0.1)%	(0.1)%
Research credits	0.0%	2.9%	9.4%
Stock-based compensation	(3.9)%	(4.1)%	(7.5)%
Change in valuation allowance	(33.5)%	(36.1)%	(40.6)%
Other	(0.2)%	0.3%	2.7%
Effective tax rate	(2.6)%	(2.1)%	(1.1)%

The Company recognized income tax expense of approximately $2.2 million, $1.7 million and $0.3 million in each of fiscal years 2012, 2011, and 2010, on pre-tax book losses of $83.1 million, $80.1 million, and $27.6 million, respectively. The resulting effective tax rates of 2.6%, 2.1%, and 1.1% for 2012, 2011, and 2010, respectively, differs from the expected statutory rate of 35% based upon unbenefited U.S. losses, non-deductible stock compensation charges and foreign taxes provided on foreign subsidiary earnings. The increase in the 2012 and 2011 tax expense compared to the 2010 tax expense relates primarily to the expiration of the India tax holiday as well as an increase in India transfer pricing reserves, in accordance to Accounting Standards Codification 740, Accounting for Uncertainty in Income Taxes. The Company's India subsidiary operated under a tax holiday which expired on March 31, 2011 and the net impact of this tax holiday in prior years was to decrease the Company's net loss by approximately $0.5 million in 2010, resulting in no earnings per share impact in that year. Further, the increase in tax expense in 2012 compared to 2011 relates to reductions of benefits from Canadian research credits.

During 2012, 2011 and 2010, income tax benefits of zero, $0.1 million and $0.3 million for each year were allocated to the tax provision from continuing operations, related to the tax effects of items credited directly to other comprehensive income (“OCI”). Generally, the amount of tax expense or benefit allocated to continuing operations is determined without regard to the tax effects of other categories of income or loss, such as OCI. However, an exception to the general rule is provided within the intra-period tax allocations rules when there is a pre-tax loss from continuing operations and there are items charged or credited to other categories, including OCI, in the current year. The intra-period tax allocation rules related to items charged or credited directly to OCI can result in disproportionate tax effects that remain in OCI until certain events occur.

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company’s deferred tax assets are as follows (in thousands):

	Years Ended	
	December 29, 2012	December 31, 2011
Deferred tax assets:		
Net operating losses	$ 120,022	$ 92,951
Research credits	29,092	26,326
Nondeductible accruals	31,354	29,836
Property, plant and equipment	3,226	2,007
Intangible assets	4,871	9,453
Stock-based compensation	25,040	27,949
Total deferred tax assets	$ 213,605	$ 188,522
Valuation allowance	(213,449)	(188,351)
Net deferred tax assets	$ 156	$ 171
Deferred tax liabilities:		
Depreciation	(117)	—
Total deferred tax liabilities	$ (117)	$ —
Net deferred tax assets	$ 39	$ 171

The realization of tax benefits of deferred tax assets is dependent upon future levels of taxable income, of an appropriate character, in the periods the items are scheduled to be deductible or taxable. Based on the available objective evidence, management believes it is more likely than not that the domestic net deferred tax assets will not be realizable. Accordingly, the Company has provided a full valuation allowance against its domestic deferred tax assets, net of deferred tax liabilities, as of December 29, 2012 and December 31, 2011. The valuation allowance for deferred tax assets as of December 29, 2012 and December 31, 2011 was $213.4 million and $188.4 million, respectively. The net change in the valuation allowance was an increase of $25.1 million and $32.5 million for the years ended December 29, 2012 and December 31, 2011, respectively.

As of December 29, 2012, the Company has net operating loss carryforwards of approximately $338.4 million for federal tax purposes and $297.7 million for state tax purposes. If not utilized, these carryforwards will begin to expire in 2021 for federal tax purposes and 2015 for state tax purposes. Additionally, the Company has federal and California research and development credits available to reduce future income taxes payable of approximately $22.9 million, respectively. The federal research credits will begin to expire in the year 2021 if not utilized, while the California research credits have no expiration date.

The Company maintains net operating losses generated from excess tax benefits associated with the accumulated stock award attributes in a memo account, not included in the deferred tax inventory balances. The additional tax benefit associated with these stock award attributes, of which the net operating loss amounts are included in the carryforward amounts noted above, is not recognized until the deduction reduces cash taxes payable. At December 29, 2012, the Company had unbenefited stock option deductions for federal and California tax purposes of $36.8 million and $35.6 million, respectively. When utilized, the estimated tax benefits of approximately $14.7 million will result in a credit to stockholders’ equity.

Under the Tax Reform Act of 1986, the amount of benefit from net operating loss and tax credit carryforwards may be impaired or limited in certain circumstances. Events which cause limitations in the amount of net operating losses that the Company may utilize in any one year include, but are not limited to, a cumulative ownership change of more than 50 percent as defined, over a three-year testing period. As of December 29, 2012, the Company has determined that ownership changes have occurred that would result in limitations on the current and future utilization of its net operating loss carryforwards. However, based on the work performed, the limitations are not significant enough to impact the future utilization of the tax attributes.

The Company's policy with respect to its undistributed foreign subsidiaries' earnings is to consider those earnings to be indefinitely reinvested and, accordingly, no related provision for U.S. federal and state income taxes has been provided. Upon distribution of those earnings in the form of dividends or otherwise, the Company may be subject to both U.S. income taxes (subject to an adjustment for foreign tax credits) and withholding taxes in the various foreign countries. At December 29, 2012, the undistributed earnings approximated $15.6 million. The future tax consequence of the remittance of these earnings is negligible because of the significant net operating loss carryforwards for U.S. and state purposes and full valuation allowance provided against such carryforwards.

The aggregate changes in the balance of gross unrecognized tax benefits were as follows (in thousands):

	December 29, 2012	December 31, 2011	December 25, 2010
Beginning balance	$13,066	$ 8,970	$8,295
Tax position related to current year:			
Additions	1,437	2,759	1,055
Tax positions related to prior years			
Additions	75	1,810	55
Reductions	(580)	(210)	(402)
Lapses of statute of limitations	(96)	(263)	(33)
Ending balance	$13,902	$13,066	$8,970

As of December 29, 2012, the cumulative unrecognized tax benefit was $13.9 million, of which $12.3 million was netted against deferred tax assets, which would have otherwise been subjected with a full valuation allowance. Of the total unrecognized tax benefit as of December 29, 2012, approximately $1.6 million, if recognized, would impact the Company's effective tax rate.

As of December 29, 2012, December 31, 2011 and December 25, 2010, the Company had $0.2 million each year of accrued interest or penalties related to unrecognized tax benefits, respectively, of which less than $0.1 million was included in the Company's provision for income taxes each for the years ended December 29, 2012, December 31, 2011 and December 25, 2010.

The Company's policy is to include interest and penalties related to unrecognized tax benefits within the Company's provision for income taxes.

The Company is potentially subject to examination by the Internal Revenue Service and the relevant state income taxing authorities under the statute of limitations for years 2001 and forward.

The Company has received assessments of tax resulting from a transfer pricing examinations in India for fiscal years ending March 31, 2005 through March 31, 2008. The Company is appealing the assessment and does not expect a significant adjustment to unrecognized tax benefits as a result of this inquiry. Fiscal years subsequent to March 2008 remain open to examination in India.

The Company does not currently believe there to be a reasonable possibility of a significant change in total unrecognized tax benefits that would occur within the next 12 months and, as such, amounts are classified as other long-term liabilities on the accompanying consolidated balance sheets as of December 29, 2012.

15. Segment Information

Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker, or decision making group, in deciding how to allocate resources and in assessing performance. The Company's chief operating decision maker is the Company's chief executive officer. The Company's chief executive officer reviews financial information presented on a consolidated basis, accompanied by information about revenue by geographic region for purposes of allocating resources and evaluating financial performance. The Company has one business activity, and there are no segment managers who are held accountable for operations, operating results and plans for levels or components below the consolidated unit level. Accordingly, the Company is considered to be in a single reporting segment and operating unit structure.

Revenue by geographic region is based on the shipping address of the customer. The following tables set forth revenue and long-lived assets by geographic region (in thousands):

Revenue

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
Americas:			
United States	$296,849	$283,443	$342,461
Other Americas	11,811	11,543	16,162
	$308,660	$294,986	$358,623
Europe, Middle East and Africa	116,663	93,428	84,786
Asia Pacific	13,114	16,463	10,943
Total revenue	$438,437	$404,877	$454,352

Property, plant and equipment, net

	December 29, 2012	December 31, 2011
United States	$78,309	$74,340
Other Americas	222	230
Asia Pacific	1,812	2,183
Total property, plant and equipment, net	$80,343	$76,753

16. Employee Benefit Plan

In July 2001, the Company's board of directors approved the adoption of a savings plan under Section 401(k) of the Internal Revenue Code (the "Plan"). As allowed under Section 401(k) of the Internal Revenue Code, the Plan provides tax-deferred salary contributions for eligible U.S. employees. Employee contributions are limited to a maximum annual amount as set periodically by the Internal Revenue Code. Expenses related to the Company's 401(k) plan were insignificant for 2012, 2011 and 2010.

17. Financial Information by Quarter (Unaudited)

The following table sets forth the Company's unaudited quarterly consolidated statements of operations data for each of the eight quarters ended December 29, 2012. The data has been prepared on the same basis as the audited consolidated financial statements and related notes included in this report and you should read the following table in conjunction with such financial statements. The table includes all necessary adjustments, consisting only of normal recurring adjustments that the Company considers necessary for a fair presentation of this data. The results of historical periods are not necessarily indicative of the results of operations for a full year or any future period.

	For the Three Months Ended (Unaudited)							
	2012				2011			
	Dec. 29	Sep. 29	Jun. 30	Mar. 31	Dec. 31	Sep. 24	Jun. 25	Mar. 26
	(In thousands, except per share data)							
Revenue:								
Product	$109,051	$ 98,853	$ 77,843	$ 92,391	$ 93,025	$ 89,554	$ 84,361	$ 82,528
Ratable product and related support and services	393	450	523	531	593	847	814	922
Services	18,620	12,911	15,092	11,779	18,391	13,621	10,781	9,440
Total revenue	128,064	112,214	93,458	104,701	112,009	104,022	95,956	92,890
Cost of revenue:								
Cost of product	77,023	66,510	56,017	59,324	61,103	57,449	54,540	46,618
Cost of ratable product and related support and services	104	102	166	191	250	167	294	385
Cost of services	7,669	4,102	4,901	4,759	5,972	5,757	3,708	3,143
Total cost of revenue	84,796	70,714	61,084	64,274	67,325	63,373	58,542	50,146
Gross profit	43,268	41,500	32,374	40,427	44,684	40,649	37,414	42,744
Operating expenses	58,781	59,705	61,773	60,311	63,544	62,351	61,491	58,753
Loss from operations	(15,513)	(18,205)	(29,399)	(19,884)	(18,860)	(21,702)	(24,077)	(16,009)
Other income (expense), net	75	(442)	377	(149)	56	393	245	(99)
Loss before income taxes	(15,438)	(18,647)	(29,022)	(20,033)	(18,804)	(21,309)	(23,832)	(16,108)
Provision for income taxes	650	434	527	579	546	497	362	286
Net loss	$ (16,088)	$ (19,081)	$(29,549)	$(20,612)	$(19,350)	$(21,806)	$(24,194)	$(16,394)
Net loss per common share								
Basic	$ (0.14)	$ (0.17)	$ (0.27)	$ (0.19)	$ (0.18)	$ (0.21)	$ (0.23)	$ (0.16)
Diluted	$ (0.14)	$ (0.17)	$ (0.27)	$ (0.19)	$ (0.18)	$ (0.21)	$ (0.23)	$ (0.16)

The Company's operating results may fluctuate due to a variety of factors, many of which are outside of the Company's control. As a result, comparing the Company's operating results on a period-to-period basis may not be meaningful. You should not rely on the Company's past results as an indication of its future performance.

The Company operates and reports financial results on a fiscal year of 52 or 53 weeks ending on the last Saturday of December in each year. Accordingly, fiscal year 2012 was a 52-week year that ended on December 29, 2012. The quarters ended March 31, June 30, September 29, and December 29, 2012 were 13-week quarters. Fiscal year 2011 was a 53-week year that ended on December 31, 2011. The quarters ended March 26, June 25, and September 24, 2011 were 13-week quarters and the quarter ended December 31, 2011 was a 14-week quarter.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Attached as exhibits to this Form 10-K are certifications of our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), which are required in accordance with Rule 13a-14 of the Securities Exchange Act of 1934, as amended ("the Exchange Act"). This "Controls and Procedures" section includes information concerning the internal controls and controls evaluation referred to in the certifications.

Evaluation of Disclosure Controls and Procedures

An evaluation was performed by management, with the participation of our chief executive officer ("CEO") and our chief financial officer ("CFO"), of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d -15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")). Disclosure controls and procedures are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Based on this evaluation, our CEO and CFO have concluded that, as of the end of the fiscal period covered by this annual report on Form 10-K, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the SEC's rules and forms and that such information is accumulated and communicated to management, including the CEO and CFO, as appropriate, to allow timely decisions regarding required disclosures.

Changes in Internal Control over Financial Reporting

We maintain a system of internal control over financial reporting that is designed to provide reasonable assurance that our books and records accurately reflect transactions and that established policies and procedures are followed. We implemented an enterprise resource planning ("ERP") system during the third quarter of 2012, which resulted in a change to our system of internal control over financial reporting.

We have implemented the ERP system to improve standardization and automation, and not in response to a deficiency in our internal control over financial reporting. We believe that the implementation of the ERP system and related changes to internal controls will enhance our internal controls over financial reporting while providing the ability to scale our business. We have taken the necessary steps to monitor and maintain appropriate internal controls over financial reporting during this period of change and will continue to evaluate the operating effectiveness of related key controls during subsequent periods.

Except as described above, there were no changes in our internal control over financial reporting that occurred during the most recently completed fiscal year ended December 29, 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Management's Annual Report on Internal Control Over Financial Reporting

Our management, including our CEO and CFO, is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles.

Management assessed the effectiveness of our internal control over financial reporting as of December 29, 2012, the end of our fiscal year. Management based its assessment on the framework established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Management's assessment included evaluation of such elements such as the design and operating effectiveness of key financial reporting controls, process documentation, accounting policies, and our overall control environment. This assessment is supported by testing and monitoring performed by our internal audit and finance personnel.

Based on our assessment, management has concluded that our internal control over financial reporting was effective as of December 29, 2012, the end of the Company's fiscal year, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

Our independent registered public accounting firm, Ernst & Young LLP, has issued an audit report on our internal control over financial reporting, which appears in Part II, Item 8 of this Annual Report on Form 10-K.

Inherent Limitations of Internal Controls

Our management, including our CEO and CFO, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within us have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this item with respect to our directors and executive officers is incorporated by reference to the information set forth in our proxy statement for the 2013 Annual Meeting of Stockholders to be filed with the Commission within 120 days after the end of Infinera's fiscal year ended December 29, 2012. For information pertaining to our executive offers and directors, refer to the "Executive Officers and Directors" section of Part 1, Item 1 of this Annual Report on Form 10-K.

As part of our system of corporate governance, our board of directors has adopted a code of business conduct and ethics. The code applies to all of our employees, officers (including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions), agents and representatives, including our independent directors and consultants, who are not employees of Infinera, with regard to their Infinera-related activities. The full text of our code of business conduct and ethics is posted on our web site at *http://www.infinera.com* . We intend to disclose future amendments to certain provisions of our code of business conduct and ethics, or waivers of such provisions, applicable to any principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions or our directors on our web site identified above. The inclusion of our web site address in this report does not include or incorporate by reference the information on our web site into this report.

ITEM 11. EXECUTIVE COMPENSATION

Information responsive to this item is incorporated herein by reference to our definitive proxy statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information responsive to this item is incorporated herein by reference to our definitive proxy statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information responsive to this item is incorporated herein by reference to our definitive proxy statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Information responsive to this item is incorporated herein by reference to our definitive proxy statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a)(1) *Consolidated Financial Statements*

This Annual Report on Form 10-K contains the following financial statements which appear under Part II, Item 8 of this Form 10-K on the pages noted below:

(a)(2) *Financial Statement Schedule*

Schedule II: Valuation and Qualifying Accounts

	Years Ended		
	December 29, 2012	December 31, 2011	December 25, 2010
		(In thousands)	
Deferred tax asset, valuation allowance			
Beginning balance	$188,351	$155,847	$142,420
Additions	25,098	32,504	13,427
Reductions	—	—	—
Ending balance	$213,449	$188,351	$155,847
Allowance for doubtful accounts			
Beginning balance	$ —	$ —	$ —
Additions	94	—	—
Reductions	—	—	—
Ending balance	$ 94	$ —	$ —
Provision for other receivables			
Beginning balance	$ 563	$ —	$ —
Additions	—	563	—
Reductions	(563)	—	—
Ending balance	$ —	$ 563	$ —

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the consolidated financial statements or notes thereto.

(a)(3) *Exhibits.*

See Index to Exhibits. The Exhibits listed in the accompanying Index to Exhibits are filed or incorporated by reference as part of this Annual Report on Form 10-K.

INDEX TO EXHIBITS

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation. (1)
3.2	Amended and Restated Bylaws. (2)
4.1	Form of Common Stock Certificate. (3)
10.1*	Form of Indemnification Agreement between Registrant and each of its directors and executive officers. (4)
10.2*	2000 Stock Plan, as amended, and forms of stock option agreements thereunder. (4)
10.3*	2007 Equity Incentive Plan. (4)
10.4*	2007 Employee Stock Purchase Plan. (4)
10.5*	Bonus Plan. (5)
10.6*	Form of Section 16 Officer Restricted Stock Unit Agreement under the 2007 Equity Incentive Plan. (6)
10.7*	Form of Section 16 Officer Performance Share Agreement under the 2007 Equity Incentive Plan. (6)
10.8*	Form of Stock Option Agreement under the 2007 Equity Incentive Plan. (7)
10.9*	Form of Annual Performance Share Agreement for the Board of Directors under the 2007 Equity Incentive Plan. (8)
10.10*	Form of CEO Amended and Restated Change of Control Severance Agreement.
10.11*	Form of Section 16 Officer Amended and Restated Change of Control Severance Agreement.
14.1	Code of Ethics. (9)
21.1	Subsidiaries.
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS***	XBRL Instance Document
101.SCH***	XBRL Taxonomy Extension Schema Document
101.CAL***	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF***	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB***	XBRL Taxonomy Extension Label Linkbase Document
101.PRE***	XBRL Taxonomy Extension Presentation Linkbase Document

* Management contracts or compensation plans or arrangements in which directors or executive officers are eligible to participate.

** This exhibit shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filings under the Securities Act of 1933 or the Securities Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in any filings.

*** XBRL information is furnished and not filed for purposes of Sections 11 and 12 of the Securities Act of 1933 and Section 18 of the Securities Exchange Act of 1934, and is not subject to liability under those sections, is not part of any registration statement or prospectus to which it relates and is not incorporated or deemed to be incorporated by reference into any registration statement, prospectus or other document.

(1) Incorporated by reference to exhibit filed with Registrant's Current Report on Form 8-K (No. 001-33486), filed with the SEC on June 12, 2007.

(2) Incorporated by reference to exhibit filed with Registrant's Current Report on Form 8-K (No. 001-33486), filed with the SEC on February 17, 2009.

(3) Incorporated by reference to exhibit filed with Registrant's Form S-1/A (No. 333-140876), filed with the SEC on April 27, 2007.

(4) Incorporated by reference to exhibit filed with Registrant's Form S-1 (No. 333-140876), filed with the SEC on February 26, 2007.

(5) Incorporated by reference to exhibit filed with Registrant's Current Report on 8-K (No. 001-33486), filed with the SEC on February 14, 2011.

(6) Incorporated by reference to exhibit filed with Registrant's Quarterly Report on Form 10-Q (No. 001-33486), filed with the SEC on November 2, 2010.

(7) Incorporated by reference to exhibit filed with Registrant's Quarterly Report on Form 10-Q (No. 001-33486), filed with the SEC on May 5, 2010.

(8) Incorporated by reference to exhibit filed with Registrant's Quarterly Report on Form 10-Q (No. 001-33486), filed with the SEC on May 7, 2009.

(9) Incorporated by reference to exhibit filed with Registrant's Annual Report on Form 10-K (No. 001-33486), filed with the SEC on February 19, 2008.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: March 5, 2013

Infinera Corporation
Registrant

By: /s/ ITA M. BRENNAN

Ita M. Brennan
Chief Financial Officer
Principal Financial and Accounting Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

/s/ THOMAS J. FALLON **Thomas J. Fallon** **President, Chief Executive Officer and Director and Principal Executive Officer** **March 5, 2013**	/s/ KAMBIZ Y. HOOSHMAND **Kambiz Y. Hooshmand** **Chairman of the Board** **March 5, 2013**
/s/ ITA M. BRENNAN **Ita M. Brennan** **Chief Financial Officer, Principal Financial and Accounting Officer** **March 5, 2013**	/s/ KENNETH A. GOLDMAN **Kenneth A. Goldman** **Director** **March 5, 2013**
/s/ DAVID F. WELCH, PH.D. **David F. Welch, Ph.D.** **Co-founder, Executive Vice President, Chief Strategy Officer and Director** **March 5, 2013**	/s/ DAN MAYDAN, PH.D. **Dan Maydan, Ph.D.** **Director** **March 5, 2013**
/s/ PHILIP J. KOEN **Philip J. Koen** **Director** **March 5, 2013**	/s/ PAUL J. MILBURY **Paul J. Milbury** **Director** **March 5, 2013**
/s/ CARL REDFIELD **Carl Redfield** **Director** **March 5, 2013**	/s/ MARK A. WEGLEITNER **Mark A. Wegleitner** **Director** **March 5, 2013**

EXHIBIT 31.1

CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Thomas J. Fallon, certify that:

1. I have reviewed this Annual Report on Form 10-K of Infinera Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 5, 2013

By: /s/ Thomas J. Fallon

Thomas J. Fallon
President and Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Ita M. Brennan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Infinera Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 5, 2013

By: /s/ ITA M. BRENNAN

Ita M. Brennan
Chief Financial Officer
(Principal Financial and Accounting Officer)

EXHIBIT 32.1

INFINERA CORPORATION
Written Statement of Chief Executive Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, Thomas J. Fallon, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that, to my knowledge on the date hereof:

(a) the Annual Report on Form 10-K of Infinera Corporation for the year ended December 29, 2012 (the “Annual Report”) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(b) the information contained in the Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Infinera Corporation.

Date: March 5, 2013

/s/ THOMAS J. FALLON

Thomas J. Fallon
President and Chief Executive Officer
(Principal Executive Officer)

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to Infinera Corporation and will be retained by Infinera Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

This certification “accompanies” the Annual Report on Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Annual Report on Form 10-K), irrespective of any general incorporation language contained in such filing.

EXHIBIT 32.2

INFINERA CORPORATION
Written Statement of Chief Financial Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, Ita M. Brennan, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that, to my knowledge on the date hereof:

(a) that the Annual Report on Form 10-K of Infinera Corporation for the year ended December 29, 2012 (the “Annual Report”) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(b) the information contained in the Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Infinera Corporation.

Date: March 5, 2013

/s/ ITA M. BRENNAN

Ita M. Brennan
Chief Financial Officer
(Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to Infinera Corporation and will be retained by Infinera Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

This certification “accompanies” the Annual Report on Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Annual Report on Form 10-K), irrespective of any general incorporation language contained in such filing.

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