

EGAIN COMMUNICATIONS CORP

Form 10-K/A

October 03, 2006

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A

AMENDMENT NO. 1

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended June 30, 2006

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: 0-30260

eGain Communications Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0466366
(I.R.S. Employer
Identification No.)

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345 E. Middlefield Road, Mountain View, California 94043

(650)230-7500

(Address of principal executive offices, including zip code)

(Registrant's telephone number, including area code)

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

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

Common Stock, par value \$0.001 per share

Indicate by check mark if registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities 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 if registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No .

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K 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, or non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act (check one).

Large accelerated filer Accelerated filer Non-accelerated filer .

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 voting and non-voting common equity held by non-affiliates, on the OTC Bulletin Board on December 31, 2005 (the last business day of registrant's second quarter of fiscal 2006), was approximately \$4,037,224. For purposes of the foregoing calculation only, the registrant has included in the shares owned by affiliates the beneficial ownership of voting and non-voting common equity of officers and directors, and affiliated entities, of the registrant and members of their families. Such inclusion shall not be construed as an admission that any such person is an affiliate for any other purpose.

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

| Class | Outstanding at September 22, 2006 |
|--------------------------------|-----------------------------------|
| Common Stock \$0.001 par value | 15,314,393 |

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eGAIN COMMUNICATIONS CORPORATION

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EXPLANATORY NOTE

This Amendment No. 1 to the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2006 is being filed solely to (i) correct the date upon which eGain performs its annual goodwill impairment review (the correct date of April 1 was incorrectly stated as June 30 in the original filing) and (ii) correct the date of the report of BDO Seidman, LLP included with eGain's consolidated financial statements (the correct date of August 31, 2006 was incorrectly stated as August 17, 2006 in the original filing). Additionally, in connection with the filing of this amendment and pursuant to SEC rules, eGain is including currently dated certifications. This amendment does not otherwise update any exhibits as originally filed and does not otherwise reflect events occurring after the original filing date of the Annual Report on Form 10-K for the year ended June 30, 2006.

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

Impairment of Long Lived Assets

In connection with the transitional goodwill impairment evaluation provisions of SFAS No. 142, *Goodwill and Other Intangible Assets*, (SFAS 142) we performed an annual goodwill impairment review at April 1 every year, and we found no impairment in the last three years.

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders

eGain Communications Corporation

Mountain View, California

We have audited the accompanying consolidated balance sheets of eGain Communications Corporation as of June 30, 2006 and 2005 and the related consolidated statements of operations, stockholders' equity (deficit) and comprehensive loss, and cash flows for each of the three years in the period ended June 30, 2006. We have also audited the schedule listed in the accompanying index. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements 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. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, 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 consolidated financial statements referred to above present fairly, in all material respects, the financial position of eGain Communications at June 30, 2006 and 2005, and the results of its operations and its cash flows for each of the three years in the period ended June 30, 2006, in conformity with accounting principles generally accepted in the United States of America.

Also in our opinion, the schedule presents fairly in all material respects, the information set forth there in.

(Signed BDO Seidman, LLP)

San Francisco, California

August 31, 2006

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ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

3. Exhibits

| Exhibit No. | Description of Exhibits |
|--------------------|---|
| 31.1 | Rule 13a-15(e)/15d-15(e) Certification of Chief Executive Officer. |
| 31.2 | Rule 13a-15(e)/15d-15(e) Certification of Chief Financial Officer. |
| 32.1 | Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes Oxley Act of 2002 of Ashutosh Roy, Chief Executive Officer.* |
| 32.2 | Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes Oxley Act of 2002 of Eric Smit, Chief Financial Officer.* |

* The material contained in this exhibit 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 or the Securities Exchange Act of 1934, whether made before or after date hereof and irrespective of any general incorporation language contained in such filing.

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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 on October 3, 2006.

eGAIN COMMUNICATIONS CORPORATION

By: */s/ ASHUTOSH ROY*
Ashutosh Roy

Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| Name | Title | Date |
|--------------------------------|--------------------------------------|-----------------|
| <i>/s/ ASHUTOSH ROY</i> | Chief Executive Officer and Director | October 3, 2006 |
| Ashutosh Roy | (Principal Executive Officer) | |
| <i>/s/ ERIC N. SMIT</i> | Chief Financial Officer | October 3, 2006 |
| Eric N. Smit | (Principal Financial Officer) | |
| * | | October 3, 2006 |
| Mark A. Wolfson | Director | |
| * | | October 3, 2006 |
| David Brown | Director | |
| * | | October 3, 2006 |
| Gunjan Sinha | Director | |
| * | | October 3, 2006 |
| Phiroz P. Darukhanavala | Director | |

*By: */s/ ASHUTOSH ROY*
Ashutosh Roy
Attorney-in-Fact