

Edgar Filing: DATA CRITICAL CORP - Form SC 13D

DATA CRITICAL CORP
Form SC 13D
July 27, 2001

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

SCHEDULE 13D
(Rule 13d-101)

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT
TO RULE 13d-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO
RULE 13d-2(a)

Data Critical Corporation

(Name of Issuer)

Common Stock (\$.001 par value per share)

(Title of Class of Securities)

237622 10 5

(CUSIP Number)

Robert E. Healing
Corporate Counsel
General Electric Company
3135 Easton Turnpike
Fairfield, Connecticut 06431-0001
Telephone: (202) 373-2243

(Name, Address and Telephone Number of Person Authorized
to Receive Notices and Communications)

Copy to:
Dennis V. Osimitz
Sidley Austin Brown & Wood
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000

July 19, 2001

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box / /.

(Continued on following pages)

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SCHEDULE 13D

13D

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1	NAME OF REPORTING PERSONS: General Electric Company I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): 14-0689340
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF GROUP (a) ☐ (b) ☒
3	SEC USE ONLY
4	SOURCE OF FUNDS WC
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(D) OR 2(E) ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION New York
7	NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH SOLE VOTING POWER Approximately 9,094,884 shares (See Item 4)*
8	SHARED VOTING POWER -0-
9	SOLE DISPOSITIVE POWER Approximately 9,094,884 shares (See Item 4)*
10	SHARED DISPOSITIVE POWER -0-
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON Approximately 9,094,884 shares (See Item 4)*
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES ☐

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13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 44.3% of the Shares issued and outstanding assuming exercise of the option to purchase Shares granted under the Stock Option Agreement described in Item 4 of this Statement.
14	TYPE OF REPORTING PERSON CO

*Reporting Person disclaims legal and beneficial ownership of all shares.

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ITEM 1. SECURITY AND ISSUER.

This statement relates to the common stock, \$.001 par value (the "Shares"), of Data Critical Corporation ("Data Critical"). Data Critical's principal executive offices are located at 19820 North Creek Parkway, Suite 100, Bothell, Washington 98011.

ITEM 2. IDENTITY AND BACKGROUND.

This statement is filed by General Electric Company, a New York corporation ("GE"). GE is one of the largest and most diversified industrial corporations in the world. GE has engaged in developing, manufacturing and marketing a wide variety of products for the generation, transmission, distribution, control and utilization of electricity since its incorporation in 1892. Over the years, GE has developed or acquired new technologies and services that have broadened considerably the scope of its activities. GE's products include major appliances; lighting products; industrial automation products; medical diagnostic imaging equipment; motors; electrical distribution and control equipment; locomotives; power generation and delivery products; nuclear power support services and fuel assemblies; commercial and military aircraft jet engines; and engineered materials, such as plastics, silicones and superabrasive industrial diamonds. GE's services include product services; electrical product supply houses; electrical apparatus installation, engineering, repair and rebuilding services; and computer-related information services. Through its affiliate, the National Broadcasting Company, Inc., GE delivers network television services, operates television stations, and provides cable programming and distribution services. Through another affiliate, General Electric Capital Services, Inc., GE offers a broad array of financial and other services including consumer financing, commercial and industrial financing, real estate financing, asset management and leasing, mortgage services, consumer savings and insurance services, specialty insurance and reinsurance, and satellite communications.

GE operates in more than 100 countries around the world, including 280 manufacturing plants in 26 different nations. GE's principal executive offices are located at 3135 Easton Turnpike, Fairfield, CT 06431 (telephone (203) 373-2211).

GE has not and, to the best of GE's knowledge, none of its respective executive officers or directors has been, convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors), or has been a party to a

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civil proceeding of a judicial or administrative body of competent jurisdiction resulting in a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

The name, business address and present principal occupation (including the name and address of the corporation or organization in which such employment is conducted) of each executive officer and director of GE is set forth in Schedule A to this Schedule 13D and is specifically incorporated herein by reference in its entirety.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

The Stockholder Agreements described in Item 4 of this Statement were entered into by GE and the Stockholders (as defined below) listed in Item 4 as an inducement to GE and Ether Merger Corp., a Delaware corporation and an indirect, wholly owned subsidiary of GE ("Ether"), to enter into the Agreement and Plan of Merger among GE, Ether and Data Critical, dated as of July 19, 2001 (the "Merger Agreement"). The Stock Option Agreement described in Item 4 of this statement was entered into by GE and Data Critical as an inducement to GE and Ether to enter into the Merger Agreement. Except as set forth in the preceding sentence, neither GE nor Ether has paid consideration in connection with entering into the Stockholder Agreements or the Stock Option Agreement.

ITEM 4. PURPOSE OF TRANSACTION.

On July 19, 2001, GE, Ether and Data Critical entered into the Merger Agreement, providing for the merger of Ether with and into Data Critical (the "Merger") for the consideration specified therein, with Data Critical surviving the Merger and becoming an indirect, wholly owned subsidiary of GE (the "Surviving Corporation"). Pursuant to the Merger Agreement, in the Merger each outstanding Share (other than Shares that are held in the treasury of Data Critical, Shares owned by GE or by any wholly owned subsidiary of GE and Shares held by stockholders who properly perfect appraisal rights under the Delaware General Corporation Law) will be converted into the right to receive the consideration specified in the Merger Agreement.

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Pursuant to the Merger Agreement, at the effective time of the Merger, the Certificate of Incorporation of Data Critical shall be amended as set forth in Exhibit C to the Merger Agreement and the Bylaws of Ether shall be the Bylaws of the Surviving Corporation; the directors of Ether shall become the directors of the Surviving Corporation and the officers of Data Critical shall remain the officers of the Surviving Corporation. It is anticipated that, following the consummation of the Merger, the Shares will be terminated from registration pursuant to Section 12(g)(4) of the Securities Exchange Act of 1934, as amended. A copy of the Merger Agreement is included as Exhibit 1 hereto and the description of the Merger Agreement contained herein is qualified in its entirety by reference to Exhibit 1, which is incorporated herein by reference.

Concurrently with the execution of the Merger Agreement, in order to induce GE and Ether to enter into the Merger Agreement, Kimberlin Family Partners, Oshkim Limited Partners, David E. Albert, Aether Systems, Inc., Apex Investment Fund II, L.P. and Warburg, Pincus Ventures, L.P. (collectively, the

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"Stockholders") who own an aggregate of 5,688,354 (approximately 33.2%) of the outstanding Shares, entered into stockholder agreements (the "Stockholder Agreements"), each dated as of July 19, 2001, with GE.

Pursuant to the Stockholder Agreements, each Stockholder has agreed that (a) the Stockholder will vote the Shares held by such Stockholder in favor of the Merger and the Merger Agreement; (b) the Stockholder will vote his or her Shares against (i) any other merger agreement or merger, consolidation, combination, sale of substantial assets, reorganization, recapitalization, dissolution, liquidation or winding up of or by Data Critical or any other Takeover Proposal (as defined in the Merger Agreement) or (ii) any amendment of Data Critical's Certificate of Incorporation or Bylaws or other proposal or transaction involving Data Critical, which amendment or other proposal or transaction would in any manner impede, frustrate, prevent or nullify the Merger, the Merger Agreement or any of the other transactions contemplated by the Merger Agreement; (c) the Stockholder will not (i) sell, transfer, pledge, assign or otherwise dispose of, or enter into any contract, option or other arrangement (including any profit sharing arrangement) with respect to the sale, transfer, pledge, assignment or other disposition of, his or her Shares to any person or (ii) enter into any voting arrangement, whether by proxy, voting agreement or otherwise, in connection with his or her Shares; (d) the Stockholder will not, and will not permit any investment banker, attorney or other adviser or representative of such Stockholder to, (i) directly or indirectly solicit, initiate or encourage the submission of, any Takeover Proposal or (ii) directly or indirectly participate in any discussions or negotiations regarding, or furnish to any person any information with respect to, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Takeover Proposal; and (e) the Stockholder will use the Stockholder's best efforts to support, consummate and make effective the Merger and the other transactions contemplated by the Merger Agreement.

The Stockholder Agreements terminate upon the earlier of (i) the effective time of the Merger and (ii) six months after the termination of the Merger Agreement (except in certain circumstances, upon termination of the Merger Agreement as set forth in the Stockholder Agreements).

In addition to the Stockholder Agreements, GE and Data Critical entered into a Stock Option Agreement, dated as of July 19, 2001 (the "Stock Option Agreement"), pursuant to which Data Critical has granted GE an option to purchase (the "Option") from time to time 3,406,530 Shares, which as of July 19, 2001, represented approximately 19.9% of the aggregate Shares then outstanding, at a price of \$3.75 per Share. If Data Critical issues additional Shares, the number of Shares exercisable under the Option will be increased so that the Shares to be issued under the Option represent 19.9% of the Shares then issued and outstanding.

The description of the Stockholder Agreements and the Stock Option Agreement contained herein is qualified in its entirety by reference to the copies of the form of Stockholder Agreements included as Exhibit 2 and the Stock Option Agreement included as Exhibit 4 hereto, which are incorporated herein by reference.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER.

(a) - (c) By reason of the Stockholder Agreements and the Stock Option Agreement described in Item 4, GE may be deemed to be the beneficial owner of, in the aggregate, 9,094,884 Shares. Such Shares represent approximately 44.3% of the outstanding Shares, based upon the number of Shares outstanding as of July 19, 2001. By virtue of the limited nature of the Stockholder Agreements and Stock Option Agreement, GE expressly disclaims beneficial ownership of such Shares. Except as described in

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this Schedule 13D, neither GE nor, to the best knowledge of GE, any of the persons listed in Item 2 above, beneficially owns or has acquired or disposed of any Shares during the past 60 days.

(d) Not applicable.

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(e) Not applicable.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.

As described in Item 4, GE anticipates that it will acquire the entire equity interest in Data Critical pursuant to the Merger Agreement.

Other than the Merger Agreement, the Stock Option Agreement and the Stockholder Agreements described in Item 4 to this Statement, to the best knowledge of GE, there are no contracts, arrangements, understandings or relationships (legal or otherwise) between the persons listed in Item 2 of this Statement and any person with respect to the Shares.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS.

1. Agreement and Plan of Merger, dated as of July 19, 2001, among GE, Ether and Data Critical (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K of Data Critical filed on July 23, 2001).
2. Form of Stockholder Agreement, dated as of July 19, 2001, between GE and certain stockholders of Data Critical (incorporated by reference to Exhibit 2.3 to the Current Report on Form 8-K of Data Critical filed on July 23, 2001).
3. Schedule listing each stockholder and the number of shares owned by such stockholder as set forth in the Stockholder Agreement, dated as of July 19, 2001, entered into by such stockholder and GE.
4. Stock Option Agreement, dated as of July 19, 2001, between GE and Data Critical (incorporated by reference to Exhibit 2.2 to the Current Report on Form 8-K of Data Critical filed on July 23, 2001).

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SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

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Dated as of July 27, 2001.

GENERAL ELECTRIC COMPANY

By: /s/ Eliza Fraser

Name: Eliza Fraser

Title: Associate Corporate Counsel

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EXHIBIT INDEX

Exhibit No.	Description
1	Agreement and Plan of Merger, dated as of July 19, 2001, among GE, Ether and Data Critical (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K of Data Critical filed on July 23, 2001).
2	Form of Stockholder Agreement, dated as of July 19, 2001, between GE and certain stockholders of Data Critical (incorporated by reference to Exhibit 2.3 to the Current Report on Form 8-K of Data Critical filed on July 23, 2001).
3	Schedule listing each stockholder and the number of shares owned by such stockholder as set forth in the Stockholder Agreement, dated as of July 19, 2001, entered into by such stockholder and GE.
4	Stock Option Agreement, dated as of July 19, 2001, between GE and Data Critical (incorporated by reference to Exhibit 2.2 to the Current Report on Form 8-K of Data Critical filed on July 23, 2001).

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EXHIBIT 3

SCHEDULE OF STOCKHOLDERS

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Stockholder -----	Shares -----
Kimberlin Family Partners	582,906
Oshkim Limited Partners	257,937
David E. Albert	525,937
Aether Systems Inc.	1,230,770
Apex Investment Fund II, L.P.	663,392
Warburg, Pincus Ventures, L.P.	2,427,412

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SCHEDULE A

GENERAL ELECTRIC COMPANY

DIRECTORS

NAME ----	PRESENT BUSINESS ADDRESS -----	PRESENT PRINCIPAL OCCUPATION -----
J.I.Cash, Jr.	Harvard Business School Morgan Hall Soldiers Field Road Boston, MA 02163	Professor of Business Administration-Graduate School of Business Administration, Harvard University
S.S. Cathcart	222 Wisconsin Avenue Suite 103 Lake Forest, IL 60045	Retired Chairman, Illinois Tool Works
D.D. Dammerman	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Vice Chairman of the Board and Executive Officer, General Electric Company; Chairman, General Electric Capital Services, Inc.
P. Fresco	Fiat SpA via Nizza 250 10126 Torino, Italy	Chairman of the Board, Fiat SpA

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A. M. Fudge
4 Lowlyn Road
Westport, CT 06880

C.X. Gonzalez
Kimberly-Clark de Mexico,
S.A. de C.V.
Jose Luis Lagrange 103,
Tercero Piso
Colonia Los Morales
Mexico, D.F. 11510, Mexico

Chairman of the Board
and Chief Executive Officer,
Kimberly-Clark de Mexico,
S.A. de C.V.

J.R. Immelt
General Electric Company
3135 Easton Turnpike
Fairfield, CT 06431

President
General Electric Company

A. Jung
Avon Products, Inc.
1345 Avenue of the Americas
New York, NY 10105

President and Chief
Executive Officer,
Avon Products, Inc.

K.G. Langone
Invemed Associates, Inc.
375 Park Avenue
New York, NY 10152

Chairman, President and Chief
Executive Officer,
Invemed Associates, Inc.

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GENERAL ELECTRIC COMPANY DIRECTORS (Continued)

NAME

PRESENT
BUSINESS ADDRESS

PRESENT
PRINCIPAL OCCUPATION

R.B. Lazarus
Ogilvy & Mather Worldwide
309 West 49th Street Executive Officer
New York, NY 10019-7316

Chairman and Chief

S.G. McNealy
Sun Microsystems, Inc.
901 San Antonio Road
Palo Alto, CA 94303-4900

Chairman, President and Chief
Executive Officer,
Sun Microsystems, Inc.

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G.G. Michelson	Federated Department Stores 151 West 34th Street New York, NY 10001	Former Member of the Board of Directors, Federated Department Stores
S. Nunn	King & Spalding 191 Peachtree Street, N.E. Atlanta, Georgia 30303	Partner, King & Spalding
R.S. Penske	Penske Corporation 13400 Outer Drive, West Detroit, MI 48239-4001	Chairman of the Board and President, Penske Corporation
F.H.T. Rhodes	Cornell University 3104 Snee Building Ithaca, NY 14853	President Emeritus, Cornell University
G. L. Rogers	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Vice Chairman of the Board and Executive Officer, General Electric Company
A.C. Sigler	Champion International Corporation 1 Champion Plaza Stamford, CT 06921	Retired Chairman of the Board and CEO and former Director, Champion International Corporation
D.A. Warner III	J. P. Morgan Chase & Co., The Chase Manhattan Bank and Morgan Guaranty Trust Co. of New York 270 Park Avenue New York, NY 10017-2070	Chairman of the Board
J.F. Welch, Jr.	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Chairman of the Board and Chief Executive Officer, General Electric Company

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GENERAL ELECTRIC COMPANY DIRECTORS (Continued)

NAME ----	PRESENT BUSINESS ADDRESS -----	PRESENT PRINCIPAL OCCUPATION -----
R. C. Wright	National Broadcasting Company, Inc. 30 Rockefeller Plaza New York, NY 10112	Vice Chairman of the Board and Executive Officer, General Electric Company; Chairman and Chief Executive Officer, National Broadcasting Company, Inc.

Citizenship -----

P. Fresco	Italy
C. X. Gonzalez	Mexico
Andrea Jung	Canada
All Others	U.S.A.

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GENERAL ELECTRIC COMPANY EXECUTIVE OFFICERS

NAME ----	PRESENT BUSINESS ADDRESS -----	PRESENT PRINCIPAL OCCUPATION -----
J.F. Welch, Jr.	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Chairman of the Board and Chief Executive Officer
J.R. Immelt	General Electric Company 3135 Easton Turnpike	President General Electric Company

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Fairfield, CT 06431

P.D. Ameen	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Vice President and Comptroller
J.R. Bunt	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Vice President and Treasurer
D.C. Calhoun	General Electric Company 1 Neumann Way Cincinnati, OH 05215	Senior Vice President - GE Aircraft Engines
J.P. Campbell	General Electric Company Appliance Park Louisville, KY 40225	Vice President - GE Appliances
W.J. Conaty	General Electric Company 3135 Easton Turnpike Human Resources Fairfield, CT 06431	Senior Vice President -
D.D. Dammerman	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Vice Chairman of the Board and Executive Officer, General Electric Company; Chairman, General Electric Capital Services, Inc.
S. C. Donnelly	General Electric Company One Research Circle Corporate Niskayuna 12309	Senior Vice President - Research and Development
M. J. Espe	General Electric Company Nela Park Cleveland, OH 44112	Senior Vice President - GE Lighting
Y. Fujimori	General Electric Company 1 Plastics Avenue Pittsfield, MA 01201	Senior Vice President - GE Plastics

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GENERAL ELECTRIC COMPANY EXECUTIVE OFFICERS (Continued)

NAME	PRESENT BUSINESS ADDRESS	PRESENT PRINCIPAL OCCUPATION
B.W. Heineman, Jr.	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Senior Vice President - General Counsel and Secretary
J.M. Hogan	General Electric Company P.O. Box 414 Milwaukee, WI 53201	Senior Vice President - GE Medical Systems
J. Krenicki, Jr.	General Electric Company 2901 East Lake Road Erie, PA 16531	Vice President - GE Transportation Systems
R.W. Nelson	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Vice President - Corporate Financial Planning and Analysis
G.M. Reiner	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Senior Vice President - Chief Information Officer
J. G. Rice	General Electric Company 1 River Road Schenectady, NY 12345	Senior Vice President - GE Power Systems
G.L. Rogers	General Electric Company 3135 Easton Turnpike Fairfield, CT 06431	Vice Chairman of the Board and Executive Officer
K.S. Sherin	General Electric Company	Senior Vice President - Finance

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3135 Easton Turnpike
Fairfield, CT 06431

and Chief Financial Officer

L.G. Trotter

General Electric Company
41 Woodford Avenue
Plainville, CT 06062

Senior Vice President -
GE Industrial Systems

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GENERAL ELECTRIC COMPANY EXECUTIVE OFFICERS (Continued)

NAME -----	PRESENT BUSINESS ADDRESS -----	PRESENT PRINCIPAL OCCUPATION -----
W. A. Woodburn	General Electric Company 41 Woodford Avenue Plainville, CT 06062	Senior Vice President - GE Specialty Chemicals
R. C. Wright	National Broadcasting Company, Inc. 30 Rockefeller Plaza New York, NY 10112	Vice Chairman of the Board and Executive Officer, General Electric Company; Chairman and Chief Executive Officer, National Broadcasting Company, Inc.

Citizenship of All Executive Officers

U.S.A.