SECURITIES AND EXCHANGE COMMISSION

FORM 10-K

Annual report pursuant to section 13 and 15(d)

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SECURITIES AND EXCHANGE COMMISSION

Washington, DC 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 September 30, 2003

OR

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

Commission File Number 001-15951

AVAYA INC.

A DELAWARE CORPORATION	**I.R.S. EMPLOYER NO. 22-3713430**

211 Mount Airy Road, Basking Ridge, New Jersey 07920
Telephone Number 908-953-6000

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

Title of each class	Exchange on which registered
Common Stock, par value $.01 per share	New York Stock Exchange
Series A Junior Participating Preferred Stock Purchase Rights	New York Stock Exchange
Liquid Yield Option™ Notes due 2021	New York Stock Exchange

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

None

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 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. ☐

At November 28, 2003, the aggregate market value of the voting common equity held by non-affiliates was approximately $5.2 billion.

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At November 28, 2003, 420,704,608 common shares were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the 2003 Annual Report to Shareholders	Parts I, II and IV
Portions of the Proxy Statement for the 2004 Annual Meeting of Shareholders	Part III

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All market share data is based on the most recently available information from independent industry analysts.

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PART I

Item 1. *Business.*

Overview

Avaya Inc. is a leading provider of communications systems, applications and services for enterprises, including businesses, government agencies and other organizations. Our product offerings include

- Internet Protocol, or IP, telephony systems that converge voice, data and other traffic across a single unified network,
- traditional voice communications systems,
- contact center infrastructure and applications in support of customer relationship management,
- unified communications applications, which include voice and multimedia messaging, and
- structured cabling products.

We support our broad customer base with comprehensive global service offerings that help our customers plan, design, implement and manage their communications networks. We believe our global service organization is an important consideration for customers purchasing our products and applications and is a source of significant revenue for us, primarily from maintenance contracts.

Our revenue has declined significantly during the past several years. Revenue for the fiscal years ended September 30, 2001, 2002 and 2003 was $6,793 million, $4,956 million and $4,338 million, respectively. The decline in revenue is attributable primarily to declines in the market for our traditional business, enterprise voice communications systems, and the effect of general economic conditions on our customers' willingness to spend on enterprise communications technology during the last several years. The decline in revenue has contributed to our net losses for the fiscal years ended September 30, 2001, 2002 and 2003 of $352 million, $666 million and $88 million, respectively, and our accumulated deficit, in the amount of $1,270 million as of September 30, 2003. Although revenue has declined over this three year period, the quarterly revenue trend in fiscal 2003 generally stabilized. The stabilization of revenue can be attributed to our products and services that support converged communications. Specifically, revenue from the sale of our IP telephony systems increased throughout fiscal 2003, mitigating the decline in sales of our traditional voice systems.

Notwithstanding the quarterly revenue trend in fiscal 2003, we believe that enterprises continue to be concerned about their ability to increase revenues and thereby increase their profitability. Accordingly, they have tried to maintain or improve profitability through cost reduction and reduced capital spending. Because we believe that enterprises may continue to be reluctant to increase spending on enterprise communications technology significantly in the near term, we expect continued pressure on our ability to generate revenue.

We were incorporated under the laws of the State of Delaware under the name "Lucent EN Corp." on February 16, 2000, as a wholly owned subsidiary of Lucent Technologies Inc. As of June 27, 2000, our name was changed to "Avaya Inc." On September 30, 2000, Lucent contributed its enterprise networking business to us and distributed all of the outstanding shares of our capital stock to its shareowners. We refer to these transactions in this Annual Report on Form 10-K as the "distribution." Prior to the distribution, we had no material assets or activities as a separate corporate entity. Following the distribution, we became an independent public company, and Lucent has no continuing stock ownership interest in us.

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In October 2003, we agreed to sell certain assets and liabilities of our Connectivity Solutions business, a global leader in structured cabling products, to CommScope, Inc. Under the terms of the agreement, we will receive a purchase price of $263 million, subject to adjustment, consisting of approximately $210 million of cash, a note in the amount of $18 million that is convertible into CommScope common stock one year after the closing, and CommScope common stock having a market value, at the time of the agreement, of $35 million. In addition, CommScope assumed approximately $75 million of primarily employee-related liabilities of Connectivity Solutions. The waiting period applicable to the sale under the Hart-Scott-Rodino Antitrust Improvements Act, as

amended, has expired. We expect the sale of Connectivity Solutions to close no later than the second quarter of fiscal 2004. Because the products offered by Connectivity Solutions do not fit strategically with the rest of our product portfolio, we believe the sale will enable us to strengthen our focus on our core product offerings.

In November 2003, we acquired substantially all of the assets and assumed certain liabilities of Expanets, Inc., a subsidiary of NorthWestern Corporation. Expanets is a nationwide provider of networked communications and data products and services to small and mid-sized businesses and, prior to the acquisition, one of our largest dealers. Under the terms of the asset purchase agreement, we paid NorthWestern approximately $55 million in cash. In addition, we paid approximately $39 million to creditors of Expanets to satisfy certain debt obligations of Expanets and deposited approximately $13.5 million into an escrow account to satisfy certain liabilities of Expanets. The purchase price is subject to adjustment within 90 days after the closing.

Operating Segments

We offer a broad array of communications systems, applications and services that enable enterprises to communicate with their customers, suppliers, partners and employees through voice, Web, electronic mail, facsimile, Web chat sessions and other forms of communication, across an array of devices. These devices include telephones, computers, cell phones and personal digital assistants.

Our broad portfolio of products includes:

- products we have developed internally,
- products we have obtained through acquisitions,
- products manufactured by third parties that we resell,
- products and software provided to us by third parties as components of our offerings, and
- products we have developed through our strategic alliances with other technology leaders.

Our products range from systems designed for multinational enterprises with multiple locations worldwide, thousands of employees and advanced communications requirements to systems designed for businesses with less than ten employees.

For the fiscal year ended September 30, 2003, revenue from our Enterprise Communications Group, Small and Medium Business Solutions, Services and Connectivity Solutions segments were 40.1%, 5.2%, 42.2% and 12.5%, respectively, of our total revenue. The performance of our two largest segments, Enterprise Communications Group and Services, typically has the greatest impact on our consolidated operating results. Because many of our customers who purchase products and applications from our Enterprise Communications Group segment purchase contracts to service those products and applications from our Services segment, the performance of our Services segment is related to the performance of our Enterprise Communications Group segment. Our Small and Medium Business Solutions segment

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currently represents a small portion of our total revenue and in October 2003 we agreed to sell our Connectivity Solutions segment so that we can strengthen our focus on our other offerings. Please see Note 16 to our Consolidated Financial Statements for the year ended September 30, 2003, which is incorporated by reference from our 2003 Annual Report to Shareholders, for financial information regarding our operating segments.

Historically, sales of our traditional enterprise voice communication systems represented a significant portion of our revenue. Revenue generated by these systems has been declining, however, and as described more fully under "Enterprise Communications Group," we are focused on the migration of our customers' networks from traditional voice communications systems to IP telephony systems. If we are successful in implementing our strategy, sales of IP telephony systems will become a larger component of our total revenue in the future, as adoption of IP telephony by enterprises becomes more widespread. Our Enterprise Communications Group segment markets traditional voice

and IP telephony systems to large enterprises and our Small and Medium Business Solutions segment markets these products to small and medium sized enterprises. Sales of maintenance contracts to service enterprise voice communications systems are a significant component of revenue generated by our Services segment.

For the fiscal years ended September 30, 2003, 2002 and 2001, the percentage of total revenue contributed by a class of similar products, applications or services which accounted for 10% or more of our consolidated revenue is as follows:

	Percentage of Consolidated Revenue		
	2003	**2002**	**2001**
Enterprise Communications Group:			
Converged systems (including traditional voice communications systems and IP telephony systems)	20%	23%	23%
Applications	12%	12%	12%
Services:			
Management services	31%	31%	26%
Connectivity Solutions			
SYSTIMAX® structured cabling products	10%	8%	10%

Enterprise Communications Group Segment

Our Enterprise Communications Group segment is focused on the sale of communications systems, products and applications to our large enterprise customers. Our primary offerings for this segment include IP telephony systems and traditional voice communications systems, contact center offerings, a core component of customer relationship management, unified communications applications and appliances, such as telephone sets. A critical component of our strategy is our focus on the migration of our customers' traditional voice communications systems to a converged network that provides for the integration of voice, data, video and other application traffic on a single unified network containing both wired and wireless elements. IP telephony systems integrate voice and data communications traffic for transmission across a single network infrastructure based on IP technology. Internet protocol is a type of protocol, or set of standardized procedures, for the formatting and timing of transmission of communications traffic between two pieces of equipment.

We believe the implementation of a converged network can provide significant benefits to an enterprise in a number of ways. These benefits include:

- reduced costs through the use of a single unified network;

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- simplified administration and lower costs for moves, adds and changes;
- least cost routing techniques for call processing;
- increased worker productivity resulting from enhanced wired and wireless network access to all communication channels, such as voice, e-mail and fax, from any device, including computer, telephone, cell phone, fax machine and personal digital assistant; and
- enhanced business performance through the integration of IP telephony with other communications applications, such as voice messaging, e-mail, unified communications and contact centers, and third-party business applications, such as those that facilitate supply chain management and work flow processes.

Converged Systems. We are a worldwide leader in traditional voice telephony, IP telephony and enterprise telephony, which we define as the market for traditional voice telephony and IP telephony in the aggregate. Sales of telephony products and systems by our Enterprise Communications Group and

Small and Medium Business Solutions segments are combined for purposes of these market leadership calculations.

Our suite of IP telephony offerings includes:

- Avaya Communication Manager, our voice application software that manages call processing, facilitates secure customer interactions across a variety of media and supports a range of Avaya and third-party applications;
- our media servers, which put voice applications such as call processing on the customer's local area network;
- our media gateways, which support traffic routing between traditional voice and IP telephony systems, providing enterprises with the flexibility to implement a new IP telephony system or to "IP-enable" their existing voice communications system, thereby helping to preserve existing communications technology investments;
- Avaya Integrated Management, a Web-based comprehensive set of tools that manages complex voice and data network infrastructures; and
- our Avaya™ Extension to Cellular solution, which transparently bridges any cell phone to any Avaya communications server.

In November 2003, we announced a strategic alliance agreement with Extreme Networks Inc. to jointly develop and market converged communications solutions. Under the alliance, we will resell Extreme's data networking products on a stand-alone basis and as part of our suite of IP telephony offerings. Extreme will also provide planning, design, implementation and management services support to our Services organization. We will continue to offer our own line of data networking products and related services and support in addition to Extreme's portfolio. Extreme will also continue to sell its data networking products through its multinational distribution channels.

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We also offer traditional voice communications systems, although the market for these systems is declining and we are focused on the migration of our customers' traditional voice communications systems to IP telephony systems.

Communications Applications. Our Communications Applications organization is focused on applications that facilitate and enhance interaction in an enterprise with customers, partners, suppliers and employees. This organization is currently focused on infrastructure and applications for multi-media contact centers and unified communications.

Contact Centers. Our contact center product offerings are software and hardware systems and software applications for customer contact centers (including call centers) which are the foundation of many CRM offerings. We use the term call centers to refer to applications that primarily manage an enterprise's interactions with customers via the telephone, and the term contact centers to refer to applications that allow customers to interact with an enterprise using multiple mediums of communication, including electronic mail, access from a Web site, Web chat and collaboration, voice self-service, telephone calls and facsimiles. We are the leading provider of call center systems in North America and Western Europe. Our strategy is to leverage this leadership position to market a broader suite of CRM applications.

Our Avaya™ Contact Center Solutions® offer a suite of intelligent call routing alternatives that can accommodate single call centers or multiple call centers through "virtual" routing over a converged network. Calls can be routed to customer care agents or self-service applications based on a variety of criteria, or business rules, including call volume, workload, agent language or other expertise or across time zones or countries and in each case, routing is transparent to the customer. Our contact center offerings include Avaya™ Interaction Center, which manages interactions across a variety of communication channels, including Web, e-mail and advanced telephony systems.

Unified Communication. We define Unified Communication as a family of applications that allow individuals to collaborate and communicate more effectively and to navigate more quickly in a networked infrastructure through a variety of communications devices, including telephones, computers or personal digital assistants. Our Unified Communication offerings include our voice messaging and unified messaging products, our IP-based unified communication solution and other multimedia collaboration tools. Unified messaging is an advanced messaging solution that delivers the convenience and benefits of combining the storage of more than one type of message, including voice, facsimile and email.

We are the worldwide leader in sales of voice messaging and unified messaging. Our messaging systems are configured both as stand-alone servers or as embedded software or hardware in communications servers. Many of our messaging systems are compatible with the voice communications systems of other vendors so that an enterprise may choose our messaging system as the standard for all its locations.

We offer a wide variety of voice messaging and unified messaging applications designed to serve the telephone call answering, facsimile, voice and unified messaging communications needs of enterprises. Unified messaging facilitates access to messages through the most convenient device, including Internet browsers, LAN-based personal computers and wireline or wireless telephones, using text-to-speech technology for telephonic e-mail retrieval. These products are marketed under a number of brands, including our primary brands, Octel® Messaging and INTUITY™ AUDIX® Messaging. a single system. In addition, our Avaya Unified Messenger system for Microsoft® Exchange is a unified messaging system software solution that stores voice and facsimile messages directly in a user's Microsoft Exchange electronic mailbox and enables user access to this mailbox by telephone or fax machine or a Microsoft Exchange interface on the user's personal computer. The Avaya Unified Messenger® Solution−IBM Lotus Domino Version application enhances the functionality of a user's Lotus Domino e-mail messaging by providing the user with one mailbox for their voice, e-mail and fax messages.

Our unified communication offering, Avaya™ Unified Communication Center, provides a user with ability to

access voice, fax and e-mail messages from an array of communication devices;

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connect to enterprise databases from a variety of media, including computers, telephones and personal digital assistants; and

utilize personalized information filtering to prioritize communication interactions and screen calls or route them to voice mail.

Communications Appliances. We recently formed a new division within our Enterprise Communications Group segment referred to as Communications Appliances. Communications Appliances consists mainly of hardware such as telephone sets and software that resides on alternative endpoints, such as our IP Softphone, which provides the functionality of a digital telephone on a personal computer or handheld device. To date, our appliances have typically been sold as components of a larger sale of a converged system.

Small and Medium Business Solutions Segment

Our Small and Medium Business Solutions segment develops, markets and sells communications products and applications, including IP telephony, traditional voice systems and unified communication and contact center applications for small and medium-sized businesses.

Avaya™ IP Office, our IP telephony solution for small and medium-sized enterprises, can be deployed for enterprises with 2 to 256 stations and features full voice and data remote access, call distribution and alternate call routing for low cost and highest voice quality. In addition, the IP Office

applications suite offers voice mail, unified messaging, wireless capability and an array of contact center management tools designed for the small and medium-sized enterprise.

Traditional voice communications systems designed for small and medium-sized businesses are also knows as Key and hybrid telephony systems. Our Key and hybrid voice communications systems are our Merlin MAGIX system, which offers telephony, messaging, wireless and call center capability to enterprises with up to 200 stations and our Partner ACS system, which offers telephony, messaging and wireless to smaller enterprises with up to 40 stations. Our Avaya INDeX system is marketed primarily in Europe, Australia and Japan and can accommodate up to 1,088 stations. All of these systems can be IP enabled.

Services Segment

Our Services organization provides standard and customized services to enterprises in the following areas:

network planning and design−including planning, design and assessment of an enterprise's data network, its readiness and optimization for the implementation of IP telephony, network consulting and design in supporting business continuity and a comprehensive suite of security services for separate voice and data networks as well as converged networks;

network implementation−including solution preparation, design, deployment and installation;

management and operations−offering enterprises and service providers an opportunity to outsource their communications systems;

professional services in support of our communications applications; and

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maintenance and support−providing maintenance of our customer's networks.

We are the leading U.S. provider of maintenance services for enterprise voice communications systems.

We deliver our service offerings through our Network Consulting Services, Managed Services, Data Services, Professional Services, Technical Services and Field Services organizations. Our Network Consulting team offers network planning and design services. Our Managed Services organization helps enterprises focus on core competencies by managing their internal voice communications systems and helps service providers grow revenues by providing end-to-end messaging and unified communication applications. Our Data Services team can assist the enterprise with the design, implementation, installation, maintenance and management of its data network. Installation and repair of our products are performed primarily by our Field Services organization. Our Professional Services team provides custom implementation of our communications applications to meet indivicual customer needs. Technical support and maintenance under contracts for our voice communications products are provided by our Technical Services and Field Services organizations.

Connectivity Solutions Segment

We are the worldwide leader in sales of structured cabling systems for enterprises. We market these products primarily for enterprises of various sizes for wiring phones, workstations, personal computers and local area networks through their buildings or across their campuses under the brand name SYSTIMAX. Our SYSTIMAX cabling systems provide a single cabling solution for a network that integrates voice, video, data and building controls on one network through an infrastructure of copper or fiber cabling and associated connecting apparatus. The SYSTIMAX copper and fiber apparatus products can be customized to fit a customer's needs.

We sell our ExchangeMAX® structured cabling systems primarily to central offices of service providers such as telephone companies, original equipment manufacturers and third-party engineering, furnish and install vendors. Central offices are locations that house switches to serve the subscribers of a service provider. Our ExchangeMAX systems are used to connect transmission and switching within

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the central office environment to the public telephone network and include coaxial and fiber cable used for voice frequency and digital and fiber distribution networks.

We sell our electronic cabinets mostly to service providers to protect wireless access equipment, switching equipment and broadband electronic equipment. An electronic cabinet is a sturdy environmental enclosure designed to house electronics devices and passive equipment, both in the outside plant and inside buildings.

Customers, Sales and Distribution

Customers

Our customers include a broad set of enterprises ranging from large, multinational enterprises to small and mid-sized enterprises to governments and schools. We have thousands of customers, and no single customer represented more than 10% of our revenue for fiscal 2003 and 2002. For fiscal 2001, sales to Expanets were approximately 10% of our revenue.

Sales and Distribution

Our distribution strategy is to serve our customers through our direct sales forces and our indirect sales channel, which consists of our global network of distributors, dealers, value-added resellers and system integrators.

Enterprise Communications Group. We sell our Enterprise Communications Group products and applications worldwide to enterprise customers through our direct sales channel and our global network of distributors, dealers, and systems integrators.

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Small and Medium Business Solutions. We serve our Small and Medium Business Solutions customers primarily through our network of dealers and value-added resellers as well as through service providers. We will utilize a direct sales presence in support of the smaller offices of our larger enterprise customers and for our largest dealers and service providers.

Services. Our Services segment serves customers through our direct sales force and indirect channel partners, including alliance partners, service providers, distributors and resellers. In addition, sales opportunities for our Services segment will frequently arise from sales of our products and applications through our Enterprise Communications Group and Small and Medium Business Solutions segments.

Connectivity Solutions. Our SYSTIMAX structured cabling systems are sold primarily indirectly through a worldwide network of distributors. Our ExchangeMAX structured cabling systems and electronic cabinets are sold to service providers, original equipment manufacturers and distributors.

Research and Development

We invested $363 million, or approximately 8.4% of our total revenue, in fiscal 2003 and $459 million, or approximately 9.3% of our total revenue, in fiscal 2002, in research and development. Each of our operating segments has an independent product development organization. In addition, the research and development efforts of our operating segments are supported by Avaya Labs Research, a world-class applied research organization of approximately 60 professionals focused on technologies that will result in innovative products and services. The primary focus of Avaya Labs Research is the development of technologies and products for our Enterprise Communications Group segment and, to a lesser extent, our Services segment.

We plan on using our substantial investment in research and development to develop new systems and software related to communications applications, multi-media contact center innovations, messaging applications, personalized information portals, business infrastructure and architectures, Web centers, hosted offerings, data networks and services for Avaya's customers. These new systems and software will augment our current product offerings so that, together with our strategic alliances and services, we can offer our customers comprehensive advanced communications products and applications. We are also developing self-service interfaces and tools for use by our customers and indirect channel partners. Avaya Labs Research will continue to seek opportunities to work with technology leaders from other companies and educational and research institutions to develop uniform technological standards as the building blocks for future communications and related enterprise systems.

Manufacturing and Supplies

We have outsourced all of the manufacturing operations related to our Enterprise Communications Group and Small and Medium Business Solutions segments. Substantially all of these operations have been outsourced to Celestica Inc. Our outsourcing agreement with Celestica expires in May 2005. The agreement may be renewed by Celestica for one year after expiration of the term and thereafter, will automatically renew for successive one-year terms unless either party elects to terminate the agreement by giving notice to the other party six months prior to the expiration of the renewal term. The remaining portions of our manufacturing operations, other than the manufacturing of our Connectivity Solutions product offerings, are outsourced to a number of other contract manufacturers. Currently, we are engaged in the manufacturing of our Connectivity Solutions product offerings in three facilities located in the United States, Australia and Ireland as well as in a facility in China operated by a joint venture in which we own a 60% interest. These facilities and the interest in the joint venture in China will be transferred to CommScope upon the closing of the sale of Connectivity Solutions.

The success of our manufacturing initiative depends on the willingness and ability of contract manufacturers to produce our products. We may experience significant disruption to our operations by outsourcing so much of our manufacturing. If our contract manufacturers terminate their relationships with us or are unable to fill our orders on a timely basis, we may be unable to deliver our products to meet our customers' orders, which could delay or decrease our revenue.

We believe we have adequate sources for the supply of the components of our products and for the finished products that we purchase from third parties.

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Competition

The market for communications systems, applications and services is quickly evolving, highly competitive and subject to rapid technological change. Because we offer a wide range of systems, applications and services for several types of enterprises, we have a broad range of competitors. Many of our competitors are substantially larger than we are and have significantly greater financial, sales, marketing, distribution, technical, manufacturing and other resources. Competition for our Enterprise Communications Group offerings include products manufactured or marketed by a number of large communications equipment suppliers, including Nortel Networks Corporation, Cisco Systems, Inc., Siemens Aktiengesellschaft, Alcatel S.A. and NEC Corporation, as well as by a number of other companies, some of which focus on particular segments of the market such as customer relationship management. Some of the other competitors of our Enterprise Communications Group offerings include Aspect Communication Corporation and Captaris Inc. Our Small and Medium Business Solutions segments has many competitors, including Cisco, Nortel, Alcatel, NEC, Matsushita Electric Corporation of America, Inter-Tel, Incorporate and 3Com Corp., although the market for these products is fragmented. Our structured cabling systems' primary competitors are ADC Telecommunications, Inc., General Cable, Corning Inc., Marconi plc, Nordx/CDT and Belden Inc. Our Services segment competes primarily with NextiraOne, LLC, Norstan, Inc., Siemens Aktiengesellschaft,

Ericsson, Ameritech Corporation and Verizon Communications Inc as well as many consulting firms. We expect to face increasing competitive pressures from both current and future competitors in the markets we serve.

Technological developments and consolidation within the communications industry result in frequent changes to our group of competitors. The principal competitive factors applicable to our products include:

- product features and reliability;
- customer service and technical support;
- relationships with distributors, value-added resellers and systems integrators;
- an installed base of similar or related products;
- relationships with buyers and decision makers;
- price;
- the financial condition of the communications technology provider;
- brand recognition;

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the ability to integrate various products into a customer's existing networks, including the ability of a provider's products to interoperate with other providers' communications product; and

the ability to be among the first to introduce new products.

Patents, Trademarks and Other Intellectual Property

In connection with the distribution, Lucent assigned to us its rights to a number of patents, trademarks, copyrights, trade secrets and other intellectual property directly related to and important to our business. In addition, Lucent and its subsidiaries have also granted rights and licenses to those of their patents, trademarks, copyrights, trade secrets and other intellectual property which enable us to manufacture, market and sell all our products. Further, Lucent has conveyed to us numerous sublicenses under patents of third parties.

We currently hold approximately 1,700 U.S. patents and patent applications as a result of patents and patent applications assigned to us by Lucent in connection with the distribution, together with patents issued and patent applications we have filed since the distribution and have obtained through acquisitions. After the completion of the sale of Connectivity Solutions, we will hold approximately 1,150 U.S. patents and patent applications. In addition, we hold corresponding non-U.S. patents and patent applications, as well as numerous trademarks, both in the United States and in foreign countries. There are no time restrictions applicable to the patents assigned to us by Lucent. We have entered into a cross license with Lucent in connection with these patents.

Our intellectual property policy is to protect our products and processes by asserting our intellectual property rights where appropriate and prudent. We will also obtain patents, copyrights, and other intellectual property rights used in connection with our business when practicable and appropriate.

Employees

As of September 30, 2003, we employed approximately 16,900 full-time employees, of which approximately 10,500 are management and non-union-represented employees and approximately 6,400 are U.S. union-represented employees covered by collective bargaining agreements. Approximately 940 of our union-represented employees are variable workers under the arrangement described below.

Effective June 1, 2003, we renewed our collective bargaining agreements with the Communications Workers of America and the International Brotherhood of Electrical Workers. The renewed agreements are for a term of three years, ending May 31, 2006. The agreements provide for a 3% per year wage increase for employees during the duration of the agreements, and a 3% increase per year to employees' pension benefits for the duration of the agreements. The agreements also included additional cost sharing by employees and retirees for certain medical health benefit co-payments.

The renewed collective bargaining agreements continue our variable workforce arrangement that gives eligible employees who retired from Lucent as of September 30, 2000 the ability to continue working as on-call support service technicians at Avaya. This arrangement is intended to give us the flexibility to match our workforce needs with our customers' cyclical service demands for the design, installation and maintenance of their communications systems.

We believe that we generally have a good relationship with our employees and the unions that represent them.

Backlog

Our backlog for product sales generated by our direct sales channel, which represents the aggregate of the sales price of orders received from customers, but not yet recognized as revenue, was approximately $76 million and $88 million on September 30, 2003 and September 30,

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2002, respectively. The majority of these orders are fulfilled within two months. However, all orders are subject to possible rescheduling by customers. Although we believe that the orders included in the backlog are firm, some orders may be cancelled by the customer without penalty, and we may elect to permit cancellation of orders without penalty where management believes it is in our best interests to do so.

Environmental, Health and Safety Matters

We are subject to a wide range of governmental requirements relating to employee safety and health and to the handling and emission into the environment of various substances used in our operations. We are subject to certain provisions of environmental laws, particularly in the United States, governing the cleanup of soil and groundwater contamination. Such provisions impose liability for the costs of investigating and remediating releases of hazardous materials at currently or formerly owned or operated sites. In certain circumstances, this liability may also include the cost of cleaning up historical contamination, whether or not caused by us. We are currently conducting investigation and/or cleanup of known contamination at approximately seven of our facilities either voluntarily or pursuant to government directives. None of the sites is reasonably likely to generate environmental costs that will be individually material nor will environmental costs for all sites in the aggregate be material. There are no known third parties who may be responsible for investigation and/or cleanup at these sites and therefore, for purposes of assessing the adequacy of financial reserves for these liabilities, we have not assumed that we will recover amounts from any third party, including under any insurance coverage or indemnification arrangement. Although we do not separately track recurring costs of managing hazardous substances and pollutants in ongoing operations, we do not believe them to be material.

It is often difficult to estimate the future impact of environmental matters, including potential liabilities. We have established financial reserves to cover environmental liabilities where they are probable and reasonably estimable. Reserves for estimated losses from environmental matters are undiscounted and consist primarily of estimated remediation and monitoring costs and are, depending on the site, based primarily upon internal or third-party environmental studies and the extent of contamination and the type of required cleanup. We are not aware of, and have not included in reserves any provision for, any unasserted environmental claims.

The reliability and precision of estimates of our environmental costs may be affected by a variety of factors, including whether the remediation treatment will be effective, contamination sources have

been accurately identified and assumptions regarding the movement of contaminants are accurate. In addition, estimates of environmental costs may be affected by changes in law and regulation, including the willingness of regulatory authorities to conclude that remediation and/or monitoring performed by us is adequate.

We assess the adequacy of environmental reserves on a quarterly basis. For the fiscal years ended September 30, 2003 and 2002, respectively, no amounts were charged to our Statements of Operations for environmental costs as reserves were deemed to be adequate. Expenditures for environmental matters for the fiscal years ended September 30, 2003 and 2002 were not material to our financial position, results of operations or cash flows. Payment for the environmental costs covered by the reserves may be made over a 30-year period.

Contribution and Distribution Agreement Between Lucent and Our Company

The Contribution and Distribution Agreement sets forth the agreements between us and Lucent with respect to the principal corporate transactions required to effect the distribution, and other agreements governing the relationship between Lucent and us.

The Contribution and the Distribution

To effect the contribution, Lucent transferred or caused its subsidiaries to transfer, the assets of its enterprise networking businesses. In general, we assumed all of the liabilities of the contributed businesses in accordance with their respective terms. Pursuant to the Contribution and Distribution Agreement, the distribution was effected as of 11:59 p.m. on September 30, 2000.

Releases and Indemnification

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The Contribution and Distribution Agreement provides for a full and complete release and discharge of all liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed on or before the date of the Contribution and Distribution Agreement, between or among us or any of our subsidiaries or affiliates, on the one hand, and Lucent or any of its subsidiaries or affiliates other than us, on the other hand, except as expressly set forth in the Contribution and Distribution Agreement.

We have agreed to indemnify, hold harmless and defend Lucent, each of its affiliates and each of their respective directors, officers and employees, from and against certain liabilities relating to, arising out of or resulting from the contribution and the distribution or any material breach by us of the Contribution and Distribution Agreement or any of the ancillary agreements. Lucent has agreed to indemnify, hold harmless and defend us, each of our affiliates and each of our respective directors, officers and employees from and against all liabilities related to Lucent's businesses other than the contributed businesses and any material breach by Lucent of the agreement or any of the ancillary agreements. Also, each party has indemnified the other party and its affiliates, subject to limited exceptions, against any claims of patent, copyright or trademark infringement or trade secret misappropriation with respect to any product, software or other material provided by or ordered from such party.

Contingent Liabilities and Contingent Gains

The Contribution and Distribution Agreement provides for liability sharing by us and Lucent with respect to contingencies primarily relating to our respective businesses or otherwise assigned to each of us. The Contribution and Distribution Agreement requires Lucent to bear 50% of all losses in excess of $50 million incurred by us in connection with a contingent liability primarily related to our businesses.

In addition, we are required to bear 10% of all losses in excess of $50 million incurred by Lucent in connection with a contingent liability primarily related to Lucent's businesses.

The Contribution and Distribution Agreement also provides that we will bear 10% and Lucent will bear 90% of all losses incurred in connection with shared contingent liabilities, which are defined as:

- any contingent liabilities that are not primarily contingent liabilities of Lucent or contingent liabilities associated with the contributed businesses;

- some specifically identified liabilities, including liabilities relating to terminated, divested or discontinued businesses or operations; and

- shared contingent liabilities within the meaning of the 1996 separation and distribution agreement among Lucent, AT&T Corp. and NCR Corporation.

Lucent will assume the defense of, and may seek to settle or compromise, any third party claim that is a shared contingent liability, and those costs and expenses will be included in the amount to be shared by us and Lucent.

The Contribution and Distribution Agreement provides that we and Lucent will have the exclusive right to any benefit received with respect to any contingent gain that primarily relates to the business of, or that is expressly assigned to, us or Lucent, respectively.

Please see "Legal Proceedings" for a description of certain matters involving Lucent for which we have assumed responsibility under the Contribution and Distribution Agreement.

Tax Sharing Agreement

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In addition, in connection with the distribution, we and Lucent entered into a Tax Sharing Agreement which governs Lucent's and our respective rights, responsibilities and obligations after the distribution with respect to taxes for the periods ending on or before the distribution. Generally, pre-distribution taxes that are clearly attributable to the business of one party will be borne solely by that party, and other pre-distribution taxes will be shared by the parties based on a formula set forth in the Tax Sharing Agreement. In addition, the Tax Sharing Agreement addresses the allocation of liability for taxes that are incurred as a result of restructuring activities undertaken to implement the distribution. If the distribution fails to qualify as a tax-free distribution under Section 355 of the Internal Revenue Code because of an acquisition of our stock or assets, or some other actions of ours, then we will be solely liable for any resulting corporate taxes.

Forward Looking Statements

(Cautionary Statements Under the Private Securities Litigation Reform Act of 1995)

Our disclosure and analysis in this report and in our 2003 Annual Report to Shareholders contain some forward-looking statements. Forward-looking statements give our current expectations or forecasts of future events. You can identify these statements by the fact that they do not relate strictly to historical or current facts. They use words such as "anticipate," "estimate," "expect," "project," "intend," "plan," "believe," and other words and terms of similar meaning in connection with any discussion of future operating or financial performance. From time to time, we also may provide oral or written forward-looking statements in other materials we release to the public.

Any or all of our forward-looking statements in this report, in the 2003 Annual Report to Shareholders and in any other public statements we make *may turn out to be wrong*. They can be affected by inaccurate assumptions we might make or by known or unknown risks and uncertainties. Many factors mentioned in the discussion below will be important in determining future results.

Consequently, no forward-looking statement can be guaranteed. Actual future results may vary materially.

Except as may be required under the federal securities laws, we undertake no obligation to publicly update forward-looking statements, whether as a result of new information, future events or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our Form 10-Q and 8-K reports to the SEC. Also note that we provide the following cautionary discussion of risks, uncertainties and possibly inaccurate assumptions relevant to our businesses. These are factors that we think could cause our actual results to differ materially from expected and historical results. Other factors besides those listed here could also adversely affect us. This discussion is provided as permitted by the Private Securities Litigation Reform Act of 1995.

The risks and uncertainties referred to above include, but are not limited to:

- price and product competition,
- rapid technological development,
- dependence on new product development,
- the mix of our products and services,
- customer demand for our products and services,

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- risks related to inventory, including warranty costs, obsolescence charges, excess capacity and material and labor costs,
- the ability to successfully integrate acquired companies,
- the ability to attract and retain qualified employees,
- control of costs and expenses,
- the ability to form and implement alliances,
- the economic, political and other risks associated with international sales and operations,
- U.S. and non-U.S. government regulation, and
- general industry and market conditions and growth rates and general domestic and international economic conditions including interest rate and currency exchange rate fluctuations

Set forth below is a detailed discussion of certain of these risks and other risks affecting our business. The categorization of risks set forth below is meant to help you better understand the risks facing our business and is not intended to limit your consideration of the possible effects of these risks to the listed categories. Any adverse effects related to the risks discussed below may, and likely will, adversely affect many aspects of our business.

Risks Related To Our Revenue and Business Strategy

Our revenue has declined significantly during the past several years and if business capital spending, particularly for enterprise communications products, applications and services, does not improve or deteriorates, our revenue may continue to decline and our operating results may be adversely affected.

Our revenue for the fiscal years ended September 30, 2000, 2001, 2002 and 2003 was $7,732 million, $6,793 million, $4,956 million and $4,338 million, respectively. The decline in revenue is attributable to, among other things, declines in the market for our traditional business, enterprise voice communications systems, and the effect of general economic conditions on our customers' willingness to spend on enterprise communications technology during the last several years. The decline in revenue has contributed to our net losses for the fiscal years ended September 30, 2000, 2001, 2002 and 2003 of $375 million, $352 million, $666 million and $88 million, respectively, and our accumulated deficit in the amount of $1,270 million as of September 30, 2003.

Our operating results are significantly affected by the impact of economic conditions on the willingness of enterprises to make capital investments, particularly in enterprise communications technology and related services. Although general economic conditions have shown some signs of improvement recently and our quarterly revenue trend in fiscal 2003 generally stabilized, we believe that enterprises continue to be concerned about their ability to increase revenues and thereby increase their profitability. Accordingly, they have tried to maintain or improve profitability through cost reduction and reduced capital spending. Because we believe that enterprises may continue to be reluctant to

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increase spending on enterprise communications technology significantly in the near term, we expect continued pressure on our ability to generate revenue.

To the extent that enterprise communications spending does not improve or deteriorates, our revenue will continue to be adversely affected.

In addition, because our product sales and sales of maintenance contracts for those products were significantly higher in prior years, the aggregate value of maintenance contracts and the related revenue for our Services segment that are subject to renewal in fiscal 2004 are larger than in prior years. If we are unable to renew a significant portion of these contracts, our revenue will be adversely affected.

If these or other conditions cause our revenue to decline and we cannot reduce costs on a timely basis or at all, our operating results will be adversely affected.

Revenue generated by our traditional business, enterprise voice communications systems, has been declining for the last several years and if we do not successfully implement our strategy to expand our sales in market segments with higher growth rates, our revenue and operating results may continue to be adversely affected.

We have been experiencing declines in revenue from our traditional business, enterprise voice communications systems. We expect, based on various industry reports, the market segments for these traditional systems to continue to decline. We are implementing a strategy to capitalize on the higher growth opportunities in our market, including IP telephony systems, multimedia contact center applications and unified communication applications. This strategy requires us to make a significant change in the direction and operations of our company to focus on the development and sales of these products and applications.

Our traditional enterprise voice communications systems and the advanced communications products and applications described above are a part of our Enterprise Communications Group and Small and Medium Business Solutions segments. If we are unsuccessful in implementing our strategy, the contribution to our results from these segments may decline, reducing our overall operating results and thereby requiring a greater need for external capital resources. Our Services segment may also be adversely affected to the extent that Services revenues are related to sales of these products and applications.

We may not be able to successfully integrate the assets we recently acquired from Expanets and even if we are successful, such integration will likely require significant resources and management attention.

In November 2003, we acquired substantially all of the assets and assumed certain liabilities of Expanets, a subsidiary of NorthWestern and, prior to the acquisition, one of our largest dealers. We are currently in the process of integrating the Expanets assets into our businesses. We expect this integration to be extremely complex for several reasons, including the following:

- because we purchased the Expanets assets as part of an auction process, our ability to conduct a comprehensive due diligence investigation of Expanets' businesses, systems, assets and properties prior to the acquisition was extremely limited;

- since its formation in 1997, Expanets has completed more than 25 acquisitions and has not fully integrated the systems and processes for these acquired companies, most of whom resell communications products of providers other than us; and

- issues related to Expanets' accounting and internal control systems, as disclosed in NorthWestern's SEC filings, including

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- restatements of NorthWestern's financial statements for fiscal 2002 and each of the three fiscal quarters in 2002, due in part to restatements of Expanets' accounts;

- the identification of material weaknesses in NorthWestern's internal controls by NorthWestern's external auditors, in part due to significant internal control deficiencies at Expanets; and

- significant asset impairment charges and charges related to Expanets' billing and collection system in 2002.

As a result of these factors, we may not successfully integrate Expanets' businesses into ours. Even if we are successful, the integration will require significant resources and management attention, which may, during the integration period, divert our attention from our existing businesses or otherwise adversely affect our revenue and operating results, including the revenue and operating results of the businesses we acquired from Expanets. In addition, these factors may make it difficult to complete the audits of Expanets financial statements required under Regulation S-X within the required timeframe. Failure to file the audited financial statements within the required time period could jeopardize our eligibility to use Form S-3 thereby inhibiting our ability to access the capital markets on a timely basis.

In addition, none of the manufacturers that previously supplied communications products to the more than 25 businesses acquired by Expanets have given their consent to the transfer to us from Expanets of the supply contracts with those manufacturers. Because we will not have a source of product supply for these businesses, we will not generate revenue from these businesses and accordingly, expect to either sell or shut down these businesses. The failure to generate revenue from these businesses will likely cause the amount of revenue generated by the assets we acquired from Expanets to be less than the amount of revenue historically reported by Expanets. In addition, if we are unable to sell or shut down these businesses in a timely manner, we may incur significant costs and our operating results may be adversely affected.

We are significantly changing the focus of our company in order to concentrate on the development and marketing of advanced communications products and applications, including IP

telephony systems, and this change in focus may not be successful or may adversely affect our business.

We are making a significant change in the direction and strategy of our company to focus on the development and sales of IP telephony systems and other advanced communications products and applications. In order to implement this change, we must:

- retrain our sales staff and distribution partners to sell new types of products, applications and services and improve our marketing of such products, applications and services;

- research and develop more IP telephony systems and other products and applications using communications media other than voice traffic, which has historically been our core area of expertise;

- retrain our Services employees to service the new products and applications;

- develop relationships with new types of distribution partners;

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- build credibility among customers that we are capable of delivering advanced communications products and applications beyond our historic product lines; and

- expand our current customer base by selling our advanced communications products and applications to enterprises that have not previously purchased our products and applications.

If we do not successfully implement this change in focus, our operating results may be adversely affected. Moreover, even if we successfully address these challenges, our operating results may still be adversely affected if the market opportunity for advanced communications products and applications, including converged voice and data network products, does not develop in the ways that we anticipate. Because this market opportunity is in its early stages, we cannot predict whether:

- the demand for advanced communications products and applications, including IP telephony systems, will grow as fast as we anticipate;

- new technologies or new competitors will cause the market to evolve in a manner different than we expect; or

- we will be able to maintain a leadership or profitable position as this opportunity develops.

We face intense competition from our historical competitors and recent entrants into the enterprise communications market.

Historically, our product businesses other than Connectivity Solutions have competed against other providers of enterprise voice communications systems such as Nortel Networks Corporation, Siemens Aktiengesellschaft, Alcatel S.A. and NEC Corporation. As we change the focus of our company to concentrate on the development and marketing of advanced communications systems, such as IP telephony systems that converge voice, data and other traffic across a single unified network, we face intense competition from these providers of voice communications systems as well as from data networking companies such as Cisco Systems, Inc. and 3Com Corp. In addition, because the market for our products is subject to rapid technological change, as the market evolves we may face competition in the future from companies that do not currently compete in the enterprise communications market.

Several of these existing competitors have, and many of our future competitors may have, greater financial, personnel and capacity resources than we and as a result, these competitors may be in a stronger position to respond quickly to potential acquisitions and other market opportunities, new or emerging technologies and changes in client requirements. Competitors with greater financial resources also may be able to offer lower prices, additional products or services or other incentives that we cannot match or do not offer.

Risks Related to Our Liquidity and Capital Resources.

We may not have adequate or cost-effective liquidity or capital resources.

Our cash needs include making payments on and refinancing our indebtedness and funding working capital, capital expenditures, strategic acquisitions, business restructuring liabilities, employee benefit obligations and for general corporate purposes. Our ability to satisfy our cash needs depends on our ability to generate cash from operations and access the financial markets, both of which are subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control, including the risks described in this Form 10-K.

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Our ability to generate cash from operations is affected by the terms of our credit agreement, the indenture governing our LYONs, and the indenture governing our Senior Secured Notes. These instruments impose, and any future indebtedness may impose, various restrictions and covenants, including financial covenants, that may limit our ability to respond to market conditions, provide for unanticipated capital investments, make strategic acquisitions or take advantage of business opportunities.

If we do not generate sufficient cash from operations, we will need to access the financial markets. External financing may not be available to us on acceptable terms or at all. Under the terms of any external financing, we may incur higher than expected financing expenses, and become subject to additional restrictions and covenants. In addition, our ability to obtain external financing is affected by the terms of our debt agreements. Our existing debt agreements include covenants that limit our ability to incur additional indebtedness. In addition, our credit facility requires us to comply with certain financial covenants. In February 2002, September 2002 and April 2003, we amended our credit facility in order to ensure our compliance with the financial covenants. If we are unable to comply with our financial covenants and cannot amend or obtain a waiver of those covenants, an event of default under the credit facility would occur. If a default occurs, the lenders under our credit facility could accelerate the maturity of our debt obligations and terminate their commitments to lend to us. If such a default occurs when our debt obligations under the credit facility exceed $100 million, our debt obligations in respect of the LYONs and the Senior Secured Notes could be accelerated. Currently there are no funds drawn under our credit facility.

Our ability to obtain external financing and, in particular, debt financing, is also affected by our debt ratings, which are periodically reviewed by the major credit rating agencies. Our corporate credit is rated B+ and our long-term senior unsecured debt is rated B by Standard & Poor's, each with a stable outlook, and our long-term senior unsecured debt is rated B3 by Moody's with a negative outlook. Any increase in our level of indebtedness or deterioration of our operating results may cause a further reduction in our current debt ratings. These downgrades, among other factors, could impair our ability to secure additional financing on acceptable terms, and we cannot assure you that we will be successful in raising any of the new financing on acceptable terms.

Our substantial amount of debt could limit our ability to obtain additional financing, limit our ability to react to changes in business conditions and require us to divert financial resources from investments in our business to servicing our debt.

We have a substantial amount of debt. At September 30, 2003, we had approximately $1,192 million in cash and $953 million of debt outstanding on a consolidated basis and $250 million available under our credit agreement.

Our substantial amount of debt and other obligations could have important consequences to you. For example, it could:

- increase our vulnerability to general adverse economic and industry conditions;

- limit our ability to obtain additional financing for future working capital, capital expenditures, acquisitions and other general corporate requirements;

- increase our vulnerability to interest rate fluctuations because our credit agreement provides for interest at variable rates;

- require us to dedicate a substantial portion of our cash flow from operations to payments on our debt and other obligations thereby reducing the availability of our cash flow from operations for other purposes;

- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate; and

- place us at a competitive disadvantage compared to our competitors that have less debt.

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The agreements governing our debt limit, but do not prohibit, us from incurring additional debt, and we may incur a significant amount of additional debt in the future. If new debt is added to our current debt levels, these related risks could increase.

Our ability to make scheduled payments on or to refinance our debt and other obligations will depend on our financial and operating performance, which, in turn, is subject to prevailing economic conditions and to certain financial, business and other factors beyond our control. If our cash flow and capital resources are insufficient to fund our debt service and other obligations, we may be forced to reduce or delay scheduled expansion plans and capital expenditures, sell material assets or operations, obtain additional capital or restructure our debt. We cannot assure you that our operating performance, cash flow and capital resources will be sufficient to pay our debt obligations when they become due. In the event that we are required to dispose of material assets or operations or restructure our debt or other obligations, we cannot assure you as to the terms of any such transactions or how soon any such transaction could be completed.

Risks Related to Our Operating Results

Disruption of, or changes in the mix of, our product distribution model or customer base could affect our revenues and gross margins.

If we fail to manage distribution of our products and services properly, or if our distributors' financial condition or operations weaken, our revenues and gross margins could be adversely affected. Furthermore, a change in mix of direct sales and indirect sales could adversely affect our revenues and gross margins.

We use a variety of channels to bring our products to customers, including direct sales, distributors, dealers, value-added resellers and system integrators. Since each distribution channel has a distinct profile, the failure to achieve the most advantageous balance in the delivery model for our products and services could adversely affect our gross margins and operating results.

We must manage inventory effectively, particularly with respect to sales to distributors. Distributors may increase orders during periods of product shortages, cancel orders if their inventory is too high, or delay orders in anticipation of new products. Distributors also may adjust their orders in response to the supply of our products and the products of our competitors that are available to the distributor and to seasonal fluctuations in end-user demand. If we have excess inventory, we may have to reduce our prices and write down inventory, which in turn could result in lower gross margins. In addition, if sales through indirect channels increase, this may lead to greater difficulty in forecasting the mix of our products, and to a certain degree, the timing of orders from our customers.

Changes in the geographical mix of earnings or the recording of increased deferred tax asset valuation allowances in the future could affect our operating results.

Our effective tax rates in the future could be adversely affected by earnings being lower or losses being higher than anticipated in countries where we have tax rates that are lower than the U.S. statutory rate and earnings being higher or losses lower than anticipated in countries where we have tax rates that are higher than the U.S. statutory tax rate, changes in our net deferred tax assets valuation allowance, or by changes in tax laws or interpretations thereof.

If the geographic distribution of our earnings and losses are unfavorable in the future, our effective tax rate could be adversely affected. In addition, based on our assessment of our deferred tax assets as of September 30, 2003, we determined, based on certain available tax planning strategies, that $439 million of our deferred tax assets will more likely than not be realized in the future and no valuation allowance is currently required for this portion of our deferred tax assets. Should we determine in the future that it is no longer more likely than not that these assets will be realized, we will be required to record an additional valuation allowance in connection with these deferred tax assets and our operating results would be adversely affected in the period such determination is made.

Risks Related To Our Operations

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We depend on contract manufacturers to produce most of our products and if these manufacturers are unable to fill our orders on a timely and reliable basis, we will likely be unable to deliver our products to meet customer orders or satisfy their requirements.

We have outsourced all of the manufacturing operations related to our Enterprise Communications Group and Small and Medium Business Solutions segments. Substantially all of these operations have been outsourced to Celestica Inc. Our ability to realize the intended benefits of our manufacturing outsourcing initiative depends on the willingness and ability of Celestica and our other contract manufacturers to produce our products. We may experience significant disruption to our operations by outsourcing so much of our manufacturing. If Celestica or the other contract manufacturers terminate their relationships with us or are unable to fill our orders on a timely basis, we may be unable to deliver our products to meet our customers' orders, which could delay or decrease our revenue or otherwise have an adverse effect on our operations.

The termination of strategic alliances or the failure to form additional strategic alliances could limit our access to customers and harm our reputation with customers.

Our strategic alliances are important to our success because they provide us the ability to offer comprehensive advanced communications products and applications, reach a broader customer base and strengthen brand awareness. We may not be successful in creating new strategic alliances on acceptable terms or at all. In addition, most of our current strategic alliances can be terminated under various circumstances, some of which may be beyond our control. Further, our alliances are generally non-exclusive, which means our partners may develop alliances with some of our competitors. We may rely more on strategic alliances in the future, which would increase the risk to our business of losing these alliances.

If we are unable to protect our proprietary rights, our business and future prospects may be harmed.

Although we attempt to protect our intellectual property through patents, trademarks, trade secrets, copyrights, confidentiality and nondisclosure agreements and other measures, intellectual property is difficult to protect and these measures may not provide adequate protection for our proprietary rights. Patent filings by third parties, whether made before or after the date of our filings, could render our intellectual property less valuable. Competitors may misappropriate our intellectual property, disputes as to ownership of intellectual property may arise and our intellectual property may otherwise become known or independently developed by competitors. The failure to protect our intellectual property could seriously harm our business and future prospects because we believe that

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developing new products and technology that are unique to us is critical to our success. If we do not obtain sufficient international protection for our intellectual property, our competitiveness in international markets could be significantly impaired, which would limit our growth and future revenue.

In addition, we rely on the security of our information systems, among other things, to protect our proprietary information and information of our customers. If we do not maintain adequate security procedures over our information systems, we may be susceptible to computer hacking, cyberterrorism or other unauthorized attempts by third parties to access our proprietary information or that of our customers. The failure to protect our proprietary information could seriously harm our business and future prospects or expose us to claims by our customers that we did not adequately protect their proprietary information.

Risks Related to Contingent Liabilities

We may incur liabilities as a result of our obligation to indemnify, and to share certain liabilities with, Lucent Technologies Inc. in connection with our spin-off from Lucent in September 2000.

Pursuant to the Contribution and Distribution Agreement, Lucent contributed to us substantially all of the assets, liabilities and operations associated with its enterprise networking businesses and distributed all of the outstanding shares of our common stock to its stockholders. The Contribution and Distribution Agreement, among other things, provides that, in general, we will indemnify Lucent for all liabilities including

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certain pre-distribution tax obligations of Lucent relating to our businesses and all contingent liabilities primarily relating to our businesses or otherwise assigned to us. In addition, the Contribution and Distribution Agreement provides that certain contingent liabilities not directly identifiable with one of the parties will be shared in the proportion of 90% by Lucent and 10% by us. The Contribution and Distribution Agreement also provides that contingent liabilities in excess of $50 million that are primarily related to Lucent's businesses shall be borne 90% by Lucent and 10% by us and contingent liabilities in excess of $50 million that are primarily related to our businesses shall be borne equally by the parties.

Please see "Legal Proceedings" for a description of certain matters involving Lucent for which we have assumed responsibility under the Contribution and Distribution Agreement and a description of other matters for which we are or may be obligated to indemnify or share the cost with Lucent. In March 2003, Lucent announced that it had entered into a $420 million settlement of all pending shareholder and related litigation described under "Legal Proceedings-Lucent Securities Litigation." Certain cases which are the subject of the settlement are shared contingent liabilities under the Contribution and Distribution Agreement and accordingly, we are responsible for 10% of the liabilities attributable to those cases, including 10% of the legal costs associated with the portion of the litigation for which we share liability. In the second quarter of fiscal 2003, we recorded a charge of $25 million representing our estimate of our liability in this matter. We recently reached agreement with Lucent to pay $24 million in shares of our common stock in full satisfaction of our obligations under the settlement. The terms of the settlement will be subject to a fairness hearing scheduled for December 2003.

We cannot assure you we will not have to make other indemnification or cost sharing payments to Lucent in connection with these matters or that Lucent will not submit a claim for indemnification or cost sharing to us in connection with any future matter. In addition, our ability to assess the impact of matters for which we may have to indemnify or share the cost with Lucent is made more difficult by the fact that we do not control the defense of these matters.

We may be subject to litigation and infringement claims, which could cause us to incur significant expenses or prevent us from selling our products or services.

We cannot assure you that others will not claim that our proprietary or licensed products, systems and software are infringing their intellectual property rights or that we do not in fact infringe those intellectual property rights. We may be unaware of intellectual property rights of others that may cover some of our technology. If someone claimed that our proprietary or licensed systems and software infringed their intellectual property rights, any resulting litigation could be costly and time consuming and would divert the attention of management and key personnel from other business issues. The complexity of the technology involved and the uncertainty of intellectual property litigation increase these risks. Claims of intellectual property infringement also might require us to enter into costly royalty or license agreements. However, we may be unable to obtain royalty or license agreements on terms acceptable to us or at all. We also may be subject to significant damages or an injunction against us or our proprietary or licensed systems. A successful claim of patent or other intellectual property infringement against us could materially adversely affect our operating results.

In addition, third parties may claim that a customer's use of our products, systems or software infringes the third party's intellectual property rights. Under certain circumstances, we may be required to indemnify our customers for some of the costs and damages related to such an infringement claim. Any indemnification requirement could have a material adverse effect on our business and our operating results.

If the distribution does not qualify for tax-free treatment, we could be required to pay Lucent or the Internal Revenue Service a substantial amount of money.

Lucent has received a private letter ruling from the Internal Revenue Service stating, based on certain assumptions and representations, that the distribution would not be taxable to Lucent. Nevertheless, Lucent could incur a significant tax liability if the distribution did not qualify for tax-free treatment because any of those assumptions or representations were not correct.

Although any U.S. federal income taxes imposed in connection with the distribution generally would be imposed on Lucent, we could be liable for all or a portion of any taxes owed for the reasons described below. First, as part of the distribution, we and Lucent entered into a tax

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sharing agreement. This agreement generally allocates between Lucent and us the taxes and liabilities relating to the failure of the distribution to be tax-free. Under the tax sharing agreement, if the distribution fails to qualify as a tax-free distribution to Lucent under Section 355 of the Internal Revenue Code because of an issuance or an acquisition of our stock or an acquisition of our assets, or some other actions of ours, then we will be solely liable for any resulting taxes to Lucent.

Second, aside from the tax sharing agreement, under U.S. federal income tax laws, we and Lucent are jointly and severally liable for Lucent's U.S. federal income taxes resulting from the distribution being taxable. This means that even if we do not have to indemnify Lucent under the tax sharing agreement, we may still be liable to the Internal Revenue Service for all or part of these taxes if Lucent fails to pay them. These liabilities of Lucent could arise from actions taken by Lucent over which we have no control, including an issuance or acquisition of stock (or acquisition of assets) of Lucent.

Item 2. *Properties.*

As of September 30, 2003, we operated manufacturing facilities in Omaha, Nebraska, Bray, Ireland and Pinkenba, Australia and a warehouse facility in Singapore. We also have 544 offices, including 150 storage locations, located in 51 countries and 19 research and development facilities located in Australia, India, Israel, Singapore, the United Kingdom and the United States. We also have a 25.5% interest in a joint venture located in Gandhinagar, India and a 60% interest in a joint venture in China. Both of these joint ventures are predominantly on leased property. Our real property portfolio consists of aggregate floor space of approximately 9.7 million square feet, of which approximately 4.7 million square feet is owned and approximately 5 million square feet is leased. Our lease terms range from

monthly leases to 17 years. We believe that all of our facilities and equipment are in good condition and are well maintained.

Item 3. *Legal Proceedings.*

From time to time we are involved in legal proceedings arising in the ordinary course of business. Other than as described below, we believe there is no litigation pending against us that could have, individually or in the aggregate, a material adverse effect on our financial position, results of operations or cash flows.

Year 2000 Actions

Three separate purported class action lawsuits are pending against Lucent, our former parent, one in state court in West Virginia, one in federal court in the Southern District of New York and another in federal court in the Southern District of California. The case in New York was filed in January 1999 and, after being dismissed, was refiled in September 2000. The case in West Virginia was filed in April 1999 and the case in California was filed in June 1999, and amended in 2000 to include us as a defendant. We may also be named a party to the other actions and, in any event, have assumed the obligations of Lucent for all of these cases under the Contribution and Distribution Agreement. All three actions are based upon claims that Lucent sold products that were not Year 2000 compliant, meaning that the products were designed and developed without considering the possible impact of the change in the calendar from December 31, 1999 to January 1, 2000. The complaints allege that the sale of these products violated statutory consumer protection laws and constituted breaches of implied warranties.

A class has been certified in the West Virginia state court matter. The certified class in the West Virginia matter includes those persons or entities that purchased, leased or financed the products in question. In addition, the court also certified as a subclass all class members who had service protection plans or other service or extended warranty contracts with Lucent in effect as of April 1, 1998, as to which Lucent failed to offer a free Year 2000-compliant solution. The Fourth Circuit Court of Appeals recently denied the defendant's attempt to have the Federal District Court in West Virginia retain jurisdiction in this matter. This matter is now in West Virginia state court. The federal court in the New York action has issued a decision and order denying class certification, dismissing all but certain fraud claims by one representative plaintiff. No class claims remain in this case at this time. The federal court in the California action has issued an opinion and order granting class certification. The class includes any entities that purchased or leased certain products on or after January 1, 1990, excluding those entities who did not have a New Jersey choice of law provision in their contracts and those who did not purchase equipment directly from

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defendants. The federal court in the California action has issued an order staying the action pending the outcome of the West Virginia matter. The complaints seek, among other remedies, compensatory damages, punitive damages and counsel fees in amounts that have not yet been specified. At this time, we cannot determine whether the outcome of these actions will have a material adverse effect on our financial position, results of operations or cash flows. These cases have required in the past, and may require in the future, expenditure of significant legal costs related to their defense.

Lucent Securities Litigation

In November 2000, three purported class actions were filed against Lucent in the Federal District Court for the District of New Jersey alleging violations of the federal securities laws as a result of the facts disclosed in Lucent's announcement on November 21, 2000 that it had identified a revenue recognition issue affecting its financial results for the fourth quarter of fiscal 2000. The actions purport to be filed on behalf of purchasers of Lucent common stock during the period from October 10, 2000 (the date Lucent originally reported these financial results) through November 21, 2000.

The above actions have been consolidated with other purported class actions filed against Lucent on behalf of its stockholders in January 2000 and are pending in the Federal District Court for the District of New Jersey. The consolidated cases were initially filed on behalf of stockholders of Lucent who bought Lucent common stock between October 26, 1999 and January 6, 2000, but the consolidated complaint was amended to include purported class members who purchased Lucent common stock up to December 20, 2000. A class has not yet been certified in the consolidated actions. The plaintiffs in all these stockholder class actions seek compensatory damages plus interest and attorneys' fees.

In March 2003, Lucent announced that it had entered into a $420 million settlement of all pending shareholder and related litigation. Certain cases which are the subject of the settlement are shared contingent liabilities under the Contribution and Distribution Agreement and accordingly, we are responsible for 10% of the liabilities attributable to those cases, including 10% of the legal costs associated with the portion of the litigation for which we share liability. In the second quarter of fiscal 2003, we recorded a charge of $25 million representing our estimate of our liability in this matter. We recently reached agreement with Lucent to pay $24 million in shares of our common stock in full satisfaction of our obligations under the settlement. The terms of the settlement will be subject to a fairness hearing scheduled for December 2003.

Commissions Arbitration Demand

In July 2002, Communications Development Corporation, or CDC, a British Virgin Islands corporation, made formal demand for arbitration for alleged unpaid commissions in an amount in excess of $10 million, stemming from the sale of products from our businesses that were formerly owned by Lucent involving the Ministry of Russian Railways. In April 2003, CDC initiated the arbitration before the American Arbitration Association. The plaintiff alleges that as a result of agreements entered into between the plaintiff and us, it is owed commissions on sales by us to the Ministry of Russian Railways on a continuing basis. We believe that the agreements relating to their claim have expired or do not apply to the products in question. As the sales of products continue, CDC may likely increase its commission demand. The parties are in the process of selecting arbitrators.

Lucent Consumer Products Class Actions

In several class action cases (the first of which was filed on June 24, 1996), plaintiffs claim that AT&T and Lucent engaged in fraud and deceit in continuing to lease residential telephones to consumers without adequate notice that the consumers would pay well in excess of the purchase price of a telephone by continuing to lease. The cases were removed and consolidated in federal court in Alabama, and were subsequently remanded to their respective state courts (Illinois, Alabama, New Jersey, New York and California). In July 2001, the Illinois state court certified a nationwide class of plaintiffs. The case in Illinois was scheduled for trial on August 5, 2002. Prior to commencement of trial, however, the parties agreed to a settlement of the claims on a class-wide basis. The settlement was approved by the court on November 4, 2002. Claims from Class members were required to be filed on or about January 15, 2003.

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Any liability incurred by Lucent in connection with these class action cases will be considered an exclusive Lucent liability under the Contribution and Distribution Agreement between Lucent and us and, as a result, we are responsible for 10% of any such liability in excess of $50 million. We recently agreed with Lucent to pay $6 million in satisfaction of our liability in this matter, although Lucent has notified us that we may be responsible for some additional costs that may be incurred in connection with the conclusion of the claims administration. Based on our discussions with Lucent, we do not expect those additional costs to be material.

Patent Infringement Claim

AudioFAX IP, LLC recently filed an action against us in the U.S. District Court for the Northern District of Georgia alleging that we have infringed five of its patents relating to facsimile products in violation of federal patent laws. This matter is in the early stages of litigation and we cannot determine whether the outcome of this action will have a material adverse effect on our financial position, results of operations or cash flows.

Item 4. ***Submission of Matters to a Vote of Security-Holders.***

During the fourth quarter of the fiscal year covered by this Annual Report on Form 10-K, no matter was submitted to a vote of security-holders.

PART II

Item 5. ***Market For Registrant's Common Equity and Related Stockholder Matters.***

Information required by this item is incorporated by reference from Note 19 to the Consolidated Financial Statements included in our 2003 Annual Report.

Item 6. ***Selected Financial Data.***

Information required by this item is incorporated by reference from *Selected Financial Data* included in our 2003 Annual Report.

Item 7. ***Management's Discussion and Analysis of Financial Condition and Results of Operations.***

Information required by this item is incorporated by reference from *Management's Discussion and Analysis of Financial Condition and Results of Operations* included in our 2003 Annual Report.

Item 7A. ***Quantitative and Qualitative Disclosures About Market Risk.***

Information required by this item is incorporated by reference from the discussion under the heading *"Financial Instruments"* in *Management's Discussion and Analysis of Financial Condition and Results of Operations* included in our 2003 Annual Report.

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Item 8. ***Financial Statements and Supplementary Data.***

Information required by this item is incorporated by reference from the *Report of Independent Auditors* and from our consolidated financial statements and related notes included in our 2003 Annual Report.

Item 9. ***Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.***

None.

Item 9A. ***Controls and Procedures.***

We have established disclosure controls and procedures to ensure that material information relating to us, including our consolidated subsidiaries, is made known to the officers who certify our reports and to other members of senior management and the Board of Directors.

Based on their evaluation as of the end of the period covered by this Annual Report on Form 10-K, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) are effective to ensure that the information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms.

There were no significant changes in our internal control over financial reporting during our fourth fiscal quarter that have materially affected, or are reasonably likely to materially affect our ability to record, process, summarize and report financial information.

PART III

Item 10. ***Directors and Executive Officers of the Registrant.***

The following table sets forth information as of September 30, 2003 as to persons who serve as our executive officers.

Name	Age	Position
Donald K. Peterson	54	Chairman and Chief Executive Officer
Stephan Clark	50	Group Vice President, Connectivity Solutions
Pamela F. Craven	49	Senior Vice President, General Counsel and Secretary
Louis J. D'Ambrosio	39	Group Vice President, Avaya Global Services
Maryanne DiMarzo	52	Senior Vice President, Human Resources
David P. Johnson	43	Group Vice President, Small and Medium Business Solutions
Thomas A. Lesica	44	Group Vice President, Global IT and Business Operations
Garry K. McGuire, Sr.	56	Chief Financial Officer and Senior Vice President, Corporate Development
Michael Thurk	50	Group Vice President, Enterprise Communications Group

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Information about our Directors, including Mr. Peterson, is incorporated by reference from the discussion under Proposal 1 set forth in our Proxy Statement for the 2004 Annual Meeting of Shareholders.

Stephan Clark has been our Group Vice President, Connectivity Solutions since August 1, 2002. From September 30, 2000 until July 31, 2002, Mr. Clark was our Vice President, Connectivity Solutions. From January 2000 until September 30, 2000, he was responsible for global management of Lucent Technologies Inc.'s ("Lucent") Connectivity Solutions business. From 1994 to 1999, Mr. Clark served as Sales and Marketing Vice President for Lucent's Power Systems business.

Pamela F. Craven has been our Senior Vice President, General Counsel and Secretary since August 1, 2002. From September 30, 2000 until July 31, 2002, Mrs. Craven was our Vice President, General Counsel and Secretary. Mrs. Craven was a director of Avaya from its inception until September 30, 2000 and was Vice President, General Counsel and Secretary of Lucent Technologies Inc.'s ("Lucent") Enterprise Networks Group from March 2000 until September 30, 2000. Mrs. Craven served as Vice President, Law for Lucent from November 1995 to April 2000 and was also Secretary of Lucent from February 1, 1999 until April 2000.

Louis J. D'Ambrosio has been our Group Vice President, Avaya Global Services, since December 19, 2002. Prior to December 19, 2002, Mr. D'Ambrosio served in a number of executive positions with International Business Machines Corporation, including most recently as Vice President of Worldwide, Sales and Global Operations-Software Business. Mr. D'Ambrosio joined IBM in 1987.

Maryanne DiMarzo has been our Senior Vice President, Human Resources since August 1, 2002. Ms. DiMarzo was our Vice President, Human Resources from September 30, 2000 until July 31, 2002. Ms. DiMarzo was Vice President, Human Resources, for Lucent Technologies Inc.'s ("Lucent") Enterprise Networks Group from April 2000 until September 30, 2000. From 1997 until March 2000, Ms. DiMarzo was Human Resources Vice President of the Corporate Centers at Lucent.

David P. Johnson has been our Group Vice President, Small and Medium Business Solutions since August 1, 2002. Mr. Johnson was our Vice President of Worldwide Sales from September 30, 2000 until July 31, 2002. Mr. Johnson was Vice President of Worldwide Sales for Lucent Technologies Inc.'s

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("Lucent") Enterprise Networks Group from April 2000 until September 30, 2000. He joined AT&T Corp. in 1982 and moved to Lucent following its spin-off in 1996. Mr. Johnson has held various positions at Lucent, including International President of Enterprise Networks and Regional President of Asia/Pacific Region.

Thomas A. Lesica has been our Group Vice President, Global IT and Business Operations since June, 2003. From May 2000 until June 2003, Mr. Lesica was the Chief Operations Officer and Chief Technology Officer of New Roads, Inc. From January 1999 to May 2000, he was the Senior Vice President and Chief Information Officer of J. Crew Inc. From January 1997 to January 1999, he was the Chief Information Officer of Pepsi-Cola Company.

Garry K. McGuire, Sr. has been our Chief Financial Officer since September 30, 2000 and our Senior Vice President, Corporate Development, since June 2003. Mr. McGuire was Chief Financial Officer for Lucent Technologies Inc.'s ("Lucent") Enterprise Networks Group from May 2000 until September 30, 2000. Mr. McGuire was a consultant to Kleiner, Perkins, Caufield and Byers/Broadband Office from August 1999 to December 1999. He was President and Chief Executive Officer of Williams Communications Solutions, LLC, from April 1997 to July 1999, and was President of Nortel Communications Systems, LLC ("Nortel"), from September 1995 until April 1997.

Michael Thurk has been our Group Vice President, Enterprise Communications Group since August 1, 2002. Mr. Thurk was our Group Vice President, Systems, from January 2002 until July 31, 2002. From June 1998 until December 2001, Mr. Thurk held various positions at Ericsson Datacom Inc., including President and Executive Vice President, Division Data Backbone and Optical Networks. Mr. Thurk was President of Xyplex Networks from June 1996 until June 1998.

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Item 11. ***Executive Compensation***

Information required by this item is incorporated by reference from the discussion under the heading *Executive Compensation and Other Information* in our Proxy Statement for the 2004 Annual Meeting of Shareholders.

Item 12. ***Security Ownership of Certain Beneficial Owners and Management.***

Information required by this item is incorporated by reference from the discussion under the heading *Security Ownership of Certain Beneficial Owners and Management* and under the heading *Executive Compensation and Other Information- Equity Compensation Plan Information as of September 30, 2003*in our Proxy Statement for the 2004 Annual Meeting of Shareholders.

Item 13. ***Certain Relationships and Related Transactions.***

Information required by this item is incorporated by reference from the discussion under the heading *Corporate Governance and Related Matters, Certain Relationships and Related Party Transactions* in our Proxy Statement for the 2004 Annual Meeting of Shareholders.

Item 14. ***Principal Accounting Fees and Services.***

Information required by this item is incorporated by reference from the discussion under the heading *Audit Committee Information* in our Proxy Statement for the 2004 Annual Meeting of Shareholders.

PART IV

Item 15. ***Exhibits, Financial Statement Schedules, and Reports on Form 8-K.***

(a) Documents filed as a part of this Annual Report on Form 10-K:

(1) Financial Statements:

		Page(s) in Exhibit 13 2003 Annual Report to Shareholders
(i)	Consolidated Statements of Operations	49
(ii)	Consolidated Balance Sheets	50
(iii)	Consolidated Statements of Changes in Stockholders' Equity and of Comprehensive Loss	51
(iv)	Consolidated Statements of Cash Flows	52
(v)	Notes to Consolidated Financial Statements	53

(2) Financial Statement Schedules:

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(i)	Schedule II−Valuation and Qualifying Accounts	Page 34 of this Annual Report on Form 10-K

REPORT OF INDEPENDENT AUDITORS ON FINANCIAL STATEMENT SCHEDULE

To the Board of Directors of Avaya Inc.:

Our audits of the consolidated financial statements referred to in our report dated October 21, 2003, except for Note 20, as to which the date is December 11, 2003, appearing in the 2003 Annual Report to Shareholders of Avaya Inc. (which report and consolidated financial statements are incorporated by reference in this Annual Report on Form 10-K) also included an audit of the financial statement schedule listed in Item 15(a)(2) of this Form 10-K. In our opinion, this financial statement schedule presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements.

/s/ PRICEWATERHOUSECOOPERS LLP

PricewaterhouseCoopers LLP
Florham Park, New Jersey
October 21, 2003

Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons are omitted since no such entity constitutes a "significant subsidiary" pursuant to the provisions of Regulation S-X, Article 3-09.

(3) Exhibits:

The following documents are filed as Exhibits to this Annual Report on Form 10-K or incorporated by reference herein:

Exhibit Number	
2.1	Contribution and Distribution Agreement+
2.2	Asset Purchase Agreement by and among Avaya Inc., CommScope, Inc. and SS Holdings, LLC, dated October 26, 2003*
2.3	Asset Purchase and Sale Agreement, dated as of October 29, 2003 (the "Expanets Agreement"), among Expanets, Inc., NorthWestern Corporation, NorthWestern Growth Corporation, NorthWestern Capital Corporation and Avaya Inc.(15)
2.4	Amendment No. 1 to the Expanets Agreement(15)
2.5	Amendment No. 2 to the Expanets Agreement(15)
3.1	Restated Certificate of Incorporation of Avaya Inc.+

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3.2	Amended and Restated By-laws of Avaya Inc., as amended on July 18, 2002(4)
4.1	Specimen Common Stock certificate+
4.2	Restated Certificate of Incorporation of Avaya Inc. (incorporated by reference as Exhibit 3.1 hereto)+
4.3	Amended and Restated By-laws of Avaya Inc. (filed as Exhibit 3.2 hereto)(4)
4.4	Rights Agreement between Avaya Inc. and The Bank of New York, as Rights Agent+
4.5	Amendment No. 1 to Rights Agreement between Avaya Inc. and the Bank of New York as Rights Agent(5)

4.6	Form of Certificate of Designations of Series A Junior Participating Preferred Stock (attached as Exhibit A to the Rights Agreement filed as Exhibit 4.4 hereto)+
4.7	Form of Right Certificate (attached as Exhibit B to the Rights Agreement incorporated by reference as Exhibit 4.4 hereto)+
4.8	Preferred Stock Certificate(1)
4.9	Series A Warrant(1)
4.10	Series B Warrant(1)
4.11	Form of Indenture between Avaya Inc. and The Bank of New York, as Trustee(1)
4.12	Form of Supplemental Indenture between the Company and The Bank of New York, as Trustee, relating to the Liquid Yield Options Notes due 2021 (Zero Coupon-Senior)(3)
4.13	Series C Warrant(13)
4.14	Second Supplemental Indenture, dated as of March 28, 2002, between the Company and The Bank of New York, as Trustee(6)
4.15	Form of Global Note(6)
10.1	Contribution and Distribution Agreement (incorporated by reference as Exhibit 2 hereto)+
10.2	Interim Services and Systems Replication Agreement+
10.3	Employee Benefits Agreement+
10.4	Tax Sharing Agreement+
10.5	Avaya Inc. Short Term Incentive Plan+

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10.6	Avaya Inc. 2000 Long Term Incentive Plan+
10.7	Avaya Inc. 2000 Long Term Incentive Plan Restricted Stock Unit Award Agreement+
10.8	Avaya Inc. 2000 Long Term Incentive Plan Nonstatutory Stock Option Agreement+
10.9	Avaya Inc. Deferred Compensation Plan+
10.10	Employment Agreement of Mr. Peterson, dated August 8, 1995+
10.11	Avaya Inc. Supplemental Pension Plan+
10.12	Avaya Inc. 2000 Stock Compensation Plan for Non-Employee Directors+
10.13	Trademark License Agreement+
10.14	Patent and Technology License Agreement+
10.15	Technology Assignment and Joint Ownership Agreement+
10.16	Development Project Agreement+
10.17	Preferred Stock and Warrant Purchase Agreement+
10.18	Certificate of Designations, Preferences and Rights of Series B Convertible Participating Preferred Stock of Avaya Inc. (attached as Exhibit A to the Preferred Stock and Warrant Purchase Agreement incorporated by reference as Exhibit 10.17 hereto)+

10.20	364-Day Competitive Advance and Revolving Credit Facility Agreement, dated as of August 28, 2001 among Avaya Inc., Citibank, N.A., as Agent, Salomon Smith Barney, as Lead Arranger, The Chase Manhattan Bank and Deutsche Bank AG New York Branch and Credit Suisse First Boston, as Co-Syndication Agents, and the Lenders party thereto(7)
10.24	Five Year Competitive Advance and Revolving Credit Facility Agreement, dated as of September 25, 2000 among Lucent Technologies Inc., Avaya Inc., Citibank, N.A., as Agent, Salomon Smith Barney, as Lead Arranger, Bank One, NA, The Chase Manhattan Bank and Deutsche Bank AG New York and/or Cayman Islands Branches, as Co-Syndication Agents and Co-Arrangers, Commerzbank AG, as Co-Arranger and the Lenders party thereto(8)
10.25	Letter Amendment No. 1, dated as of August 10, 2001, to the Five Year Credit Agreement by and among Avaya Inc., Citibank, N.A., As Agent and the Lenders party thereto(2)
10.26	Severance Agreement, dated as of September 1, 2001, between the Company and Donald K. Peterson(9)
10.27	Stock Purchase Agreement by and among the Company and the Warburg Entities, dated as of March 10, 2002(10)
10.28	Conversion Agreement by and among the Company and the Warburg Entities, dated as of March 10, 2002(10)

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10.29	Security Agreement, dated as of March 25, 2002, among the Company, certain subsidiaries of the Company and The Bank of New York, as Collateral Trustee.(6)
10.30	Collateral Agreement, dated as of March 25, 2002, among the Company, certain subsidiaries of the Company and The Bank of New York, as Collateral Trustee.(6)
10.31	Avaya Involuntary Separation Plan for Senior Officers(11)
10.32	Amended and Restated Five Year Competitive Advance and Revolving Credit Facility Agreement, dated as of September 3, 2002 among Avaya Inc., the lenders party to the Credit Agreement and Citibank, N.A., as Agent for such lenders(12)
10.33	Backstop Agreement, by and among the Company and the Warburg Entities, dated as of December 28, 2002(13)
10.34	Amended and Restated Five Year Revolving Credit Facility Agreement, dated as of April 30, 2003, among Avaya Inc., as Borrower, the Lenders party thereto, Citibank, N.A., as Agent, Citigroup Global Markets, Inc., as Lead Arranger, Bank One, NA, JPMorgan Chase Bank and Deutsche Bank AG New York Branch, as Co-Syndication Agents and Co-Arrangers and Commerzbank AG, New York Branch as Co-Arranger*
10.35	Avaya Inc. Deferred Compensation Plan, as amended as of October 31, 2003*
10.36	Severance Agreement, dated as of September 1, 2003, between the Company and Donald K. Peterson*
10.37	Avaya Inc. 2000 Long Term Incentive Plan, as amended as of November 1, 2003*
10.38	Avaya Inc. Long Term Incentive Plan for Management Employees, as amended as of November 1, 2003*
13	The 2003 Annual Report to Shareholders, which, except for those portions incorporated by reference, is furnished solely for the information of the Commission and is not deemed "filed."*

21	List of Subsidiaries of Avaya Inc.*
23	Consent of PricewaterhouseCoopers LLP*
24	Power of Attorney*
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sabranes-Oxley Act of 2002.*
32.1	Certification of Donald K. Peterson pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*
32.2	Certification of Garry K. McGuire Sr. pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*

+ Incorporated by reference from Avaya's Registration Statement on Form 10 (Reg. No. 1-15951), declared effective by the Securities and Exchange Commission on September 15, 2000.

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* Filed herewith

(1) Incorporated by reference from Avaya's Registration Statement on Form S-3 (Reg. No. 333-57962), declared effective by the Commission on May 24, 2001.

(2) Incorporated by reference from Avaya's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001.

(3) Incorporated by reference from Avaya's Registration Statement on Form 8-A dated October 30, 2001.

(4) Incorporated by reference from Avaya's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.

(5) Incorporated by reference from Avaya's Current Report on Form 8-K dated February 27, 2002.

(6) Incorporated by reference from Avaya's Current Report on Form 8-K dated March 28, 2002.

(7) Incorporated by reference from Avaya's Annual Report on Form 10-K for the year ended September 30, 2001.

(8) Incorporated by reference from Avaya's Annual Report on Form 10-K for the year ended September 30, 2000.

(9) Incorporated by reference from Avaya's Quarterly Report on Form 10-Q for the quarter ended December 31, 2001.

(10) Incorporated by reference from Avaya's Current Report on Form 8-K dated March 11, 2002.

(11) Incorporated by reference from Avaya's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.

(12) Incorporated by reference from Avaya's Quarterly Report on Form 8-K dated September 4, 2002.

(13) Incorporated by reference from Avaya's Registration Statement on Form S-4 filed on December 23, 2002.

(14) Incorporated by reference from Avaya's Annual Report on Form 10-K for the year ended September 30, 2002, filed December 23, 2002.

(15) Incorporated by reference from Avaya's Current Report on Form 8-K dated November 25, 2003, filed December 10, 2003.

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(b) Reports on Form 8-K during the last quarter of the fiscal year covered by this Report:

1. July 24, 2003−Item 9. Regulation FD Disclosure−Avaya furnished a press release reporting financial results for the fiscal quarter ended June 30, 2003 and held a public webcast in connection with the issuance of the press release.

2. August 12, 2003−Item 9. Regulation FD Disclosure−Avaya filed Amendment No. 1 to its Annual Report on Form 10-K/A for the fiscal year ended September 30, 2002 to amend certain items in its Annual Report on Form 10-K for the fiscal year ended September 30, 2002, which was originally filed with the Securities and Exchange Commission on December 23, 2002.

3. September 9, 2003−Item 5. Other Events−Avaya announced sale of a term loan due from Expanets Inc. of approximately $27 million to a third party financial institution for a purchase price of approximately $26 million.

AVAYA INC. AND SUBSIDIARIES

SCHEDULE II−VALUATION AND QUALIFYING ACCOUNTS

(dollars in millions)

Column A	Column B	Column C	Column D	Column E	
	Balance at Beginning of Period	Additions Charged to Costs & Expenses	Charged to Other Accounts	Deductions	Balance at End of Period
Year 2003					
Allowance for doubtful accounts	$ 27	$ 10	$ −	$ 24	$ 13
Deferred tax asset valuation allowance	612	118	93	9	814
Year 2002					
Allowance for doubtful accounts	$ 68	$ 53	$ −	$ 94	$ 27
Deferred tax asset valuation allowance	49	364	202	3	612
Year 2001					
Allowance for doubtful accounts	$ 62	$ 53	$ −	$ 47	$ 68
Deferred tax asset valuation allowance	49	−	−	−	49

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.

AVAYA INC.

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By: /s/ GARRY K. MCGUIRE SR.

Garry K. McGuire Sr.

Chief Financial Officer and Senior Vice President, Corporate Development

December 12, 2003

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

Signature	Title	Date
Principal Executive Officer:		
* Donald K. Peterson	Chairman and Chief Executive Officer	December 12, 2003
Principal Financial Officer:		
/s/ GARRY K. MCGUIRE SR. Garry K. McGuire Sr.	Chief Financial Officer and Senior Vice President, Corporate Development	December 12, 2003
Principal Accounting Officer:		
/s/ AMARNATH K. PAI Amarnath K. Pai	Vice President, Finance Operations and Controller	December 12, 2003
Directors:		
* Bruce Bond	Director	December 12, 2003
* Joseph P. Landy	Director	December 12, 2003

* Mark Leslie	Director	December 12, 2003
* Philip Odeen	Director	December 12, 2003
* Daniel C. Stanzione	Director	December 12, 2003
* Paula Stern	Director	December 12, 2003

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* Anthony Terracciano	Director	December 12, 2003
* Ronald Zarrella	Director	December 12, 2003

*By: /s/ GARRY K. MCGUIRE SR.
Garry K. McGuire Sr.
Attorney-in-Fact

EXHIBIT INDEX

Exhibit Number		Page Number
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2.3	Asset Purchase and Sale Agreement, dated as of October 29, 2003 (the "Expanets Agreement"), among Expanets, Inc., NorthWestern Corporation, NorthWestern Growth Corporation, NorthWestern Capital Corporation and Avaya Inc.(15)	
2.4	Amendment No. 1 to the Expanets Agreement(15)	
2.5	Amendment No. 2 to the Expanets Agreement(15)	
3.1	Restated Certificate of Incorporation of Avaya Inc.+	
3.2	Amended and Restated By-laws of Avaya Inc., as amended on July 18, 2002(4)	
4.1	Specimen Common Stock certificate+	
4.2	Restated Certificate of Incorporation of Avaya Inc. (incorporated by reference as Exhibit 3.1 hereto)+	
4.3	Amended and Restated By-laws of Avaya Inc. (filed as Exhibit 3.2 hereto)(4)	
4.4	Rights Agreement between Avaya Inc. and The Bank of New York, as Rights Agent+	
4.5	Amendment No. 1 to Rights Agreement between Avaya Inc. and the Bank of New York as Rights Agent(5)	
4.6	Form of Certificate of Designations of Series A Junior Participating Preferred Stock (attached as Exhibit A to the Rights Agreement filed as Exhibit 4.4 hereto)+	

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4.7	Form of Right Certificate (attached as Exhibit B to the Rights Agreement incorporated by reference as Exhibit 4.4 hereto)+
4.8	Preferred Stock Certificate(1)
4.9	Series A Warrant(1)
4.10	Series B Warrant(1)
4.11	Form of Indenture between Avaya Inc. and The Bank of New York, as Trustee(1)
4.12	Form of Supplemental Indenture between the Company and The Bank of New York, as Trustee, relating to the Liquid Yield Options Notes due 2021 (Zero Coupon-Senior)(3)
4.13	Series C Warrant (13)
10.22	Second Supplemental Indenture, dated as of March 28, 2002, between the Company and The Bank of New York, as Trustee(6)
10.23	Form of Global Note(6)
10.1	Contribution and Distribution Agreement (incorporated by reference as Exhibit 2 hereto)?
10.2	Interim Services and Systems Replication Agreement?
10.3	Employee Benefits Agreement+

10.4	Tax Sharing Agreement+
10.5	Avaya Inc. Short Term Incentive Plan+
10.6	Avaya Inc. 2000 Long Term Incentive Plan+
10.7	Avaya Inc. 2000 Long Term Incentive Plan Restricted Stock Unit Award Agreement+
10.8	Avaya Inc. 2000 Long Term Incentive Plan Nonstatutory Stock Option Agreement+
10.9	Avaya Inc. Deferred Compensation Plan+
10.10	Employment Agreement of Mr. Peterson, dated August 8, 1995+
10.11	Avaya Inc. Supplemental Pension Plan+
10.12	Avaya Inc. 2000 Stock Compensation Plan for Non-Employee Directors+
10.13	Trademark License Agreement+
10.14	Patent and Technology License Agreement+

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10.15	Technology Assignment and Joint Ownership Agreement+
10.16	Development Project Agreement+
10.17	Preferred Stock and Warrant Purchase Agreement+
10.18	Certificate of Designations, Preferences and Rights of Series B Convertible Participating Preferred Stock of Avaya Inc. (attached as Exhibit A to the Preferred Stock and Warrant Purchase Agreement incorporated by reference as Exhibit 10.17 hereto)+
10.20	364-Day Competitive Advance and Revolving credit facility Agreement, dated as of August 28, 2001 among Avaya Inc., Citibank, N.A., as Agent, Salomon Smith Barney, as Lead Arranger, The Chase Manhattan Bank and Deutsche Bank AG New York Branch and Credit Suisse First Boston, as Co-Syndication Agents, and the Lenders party thereto(7)
10.24	Five Year Competitive Advance and Revolving credit facility Agreement, dated as of September 25, 2000 among Lucent Technologies Inc., Avaya Inc., Citibank, N.A., as Agent, Salomon Smith Barney, as Lead Arranger, Bank One, NA, The Chase Manhattan Bank and Deutsche Bank AG New York and/or Cayman Islands Branches, as Co-Syndication Agents and Co-Arrangers, Commerzbank AG, as Co-Arranger and the Lenders party thereto(8)
10.25	Letter Amendment No. 1, dated as of August 10, 2001, to the Five Year Credit Agreement by and among Avaya Inc., Citibank, N.A., As Agent and the Lenders party thereto(2)
10.26	Severance Agreement, dated as of September 1, 2001, between the Company and Donald K. Peterson(9)
10.27	Stock Purchase Agreement by and among the Company and the Warburg Entities, dated as of March 10, 2002(10)
10.28	Conversion Agreement by and among the Company and the Warburg Entities, dated as of March 10, 2002(10)
10.29	Security Agreement, dated as of March 25, 2002, among the Company, certain subsidiaries of the Company and The Bank of New York, as Collateral Trustee.(6)

10.30	Collateral Agreement, dated as of March 25, 2002, among the Company, certain subsidiaries of the Company and The Bank of New York, as Collateral Trustee.(6)
10.31	Avaya Involuntary Separation Plan for Senior Officers(11)
10.32	Amended and Restated Five Year Competitive Advance and Revolving Credit Facility Agreement, dated as of September 3, 2002 among Avaya Inc., the lenders party to the Credit Agreement and Citibank, N.A., as Agent for such lenders(12)

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10.33	Backstop Agreement, by and among the Company and the Warburg Entities, dated as of December 28, 2002(13)
10.34	Amended and Restated Five Year Revolving Credit Facility Agreement, dated as of April 30, 2003, among Avaya Inc., as Borrower, the Lenders party thereto, Citibank, N.A., as Agent, Citigroup Global Markets, Inc., as Lead Arranger, Bank One, NA, JPMorgan Chase Bank and Deutsche Bank AG New York Branch, as Co-Syndication Agents and Co-Arrangers and Commerzbank AG, New York Branch as Co-Arranger*
10.35	Avaya Inc. Deferred Compensation Plan, as amended as of October 31, 2003*
10.36	Severance Agreement, dated as of September 1, 2003, between the Company and Donald K. Peterson*
10.37	Avaya Inc. 2000 Long Term Incentive Plan, as amended as of November 1, 2003*
10.38	Avaya Inc. Long Term Incentive Plan for Management Employees, as amended as of November 1, 2003*
13	The 2002 Annual Report to Shareholders, which, except for those portions incorporated by reference, is furnished solely for the information of the Commission and is not deemed "filed."*
21	List of Subsidiaries of Avaya Inc.*
23	Consent of PricewaterhouseCoopers LLP*
24	Power of Attorney*
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
31.2	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
32.1	Certification of Donald K. Peterson pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*
32.2	Certification of Garry K. McGuire Sr. pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*

+ Incorporated by reference from Avaya's Registration Statement on Form 10 (Reg. No. 1-15951), declared effective by the Securities and Exchange Commission on September 15, 2000.

* Filed herewith

(1) Incorporated by reference from Avaya's Registration Statement on Form S-3 (Reg. No. 333-57962), declared effective by the Commission on May 24, 2001.

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(2) Incorporated by reference from Avaya's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001.

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(3) Incorporated by reference from Avaya's Registration Statement on Form 8-A dated October 30, 2001.

(4) Incorporated by reference from Avaya's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.

(5) Incorporated by reference from Avaya's Current Report on Form 8-K dated February 27, 2002.

(6) Incorporated by reference from Avaya's Current Report on Form 8-K dated March 28, 2002.

(7) Incorporated by reference from Avaya's Annual Report on Form 10-K for the year ended September 30, 2001.

(8) Incorporated by reference from Avaya's Annual Report on Form 10-K for the year ended September 30, 2000.

(9) Incorporated by reference from Avaya's Quarterly Report on Form 10-Q for the quarter ended December 31, 2001.

(10) Incorporated by reference from Avaya's Current Report on Form 8-K dated March 11, 2002.

(11) Incorporated by reference from Avaya's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.

(12) Incorporated by reference from Avaya's Quarterly Report on Form 8-K dated September 4, 2002.

(13) Incorporated by reference from Avaya's Registration Statement on Form S-4 filed on December 23, 2002.

(14) Incorporated by reference from Avaya's Annual Report on Form 10-K for the year ended September 30, 2002, filed December 23, 2002.

(15) Incorporated by reference from Avaya's Current Report on Form 8-K dated November 25, 2003, filed December 10, 2003.

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Exhibit 2.2

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "*Purchase Agreement*") is made as of October 26, 2003, by and between Avaya Inc., a Delaware corporation ("*Seller*" or "*Avaya*"), CommScope, Inc., a Delaware corporation ("*Parent*"), and SS Holdings, LLC, a Delaware limited liability company and wholly-owned subsidiary of Parent ("*Buyer*" or "*SS Holdings*").

R E C I T A L S

A. WHEREAS, Seller and the Seller Subsidiaries (as hereinafter defined) are, among other things, engaged, through Seller's Connectivity Solutions group, in the worldwide design, development, manufacture, marketing and sales of (i) physical layer end-to-end structured cabling solutions, systems and related hardware, including components thereof, supporting telecommunications applications, including network applications, local, wide and storage area networks, private and public switched telephone networks and central offices of telecommunications service providers (the "*Structured Cabling Solutions*"); (ii) software used in the development, design, creation, testing, installation, operation and maintenance of Structured Cabling Solutions; and (iii) integrated cabinet solutions which provide enclosures for telecommunications and other electronic equipment (collectively, the "*Business*");

B. WHEREAS, the Business is composed of certain assets and liabilities that are currently owned by Seller and the Seller Subsidiaries or with respect to which Seller and the Seller Subsidiaries are currently obligated, as the case may be;

C. WHEREAS, Seller and the Seller Subsidiaries desire to sell, transfer and assign to Buyer, and Buyer desires to purchase from Seller and the Seller Subsidiaries, the Purchased Assets (as hereinafter defined), and Buyer is willing to assume, the Assumed Liabilities (as hereinafter defined), in each case as more fully described and upon the terms and subject to the conditions set forth herein; and

D. WHEREAS, Seller and/or one or more of the Seller Subsidiaries and Buyer desire to enter into each Assignment and Bill of Sale, each Assumption Agreement, the Intellectual Property Agreements, the Transition Services Agreement, each Lease Assignment, each Real Estate Deed, the Registration Rights Agreement, the Convertible Note, the Environmental Remediation License Agreement, the Standstill Agreement, SMP Letter Agreement and the Full Financing Side Letter (each as hereinafter defined and collectively, the "*Collateral Agreements*").

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 *Defined Terms.* For the purposes of this Purchase Agreement, the following terms shall have the following meanings:

"*Affiliate*" of any Person means any Person that controls, is controlled by, or is under common control with such Person. As used herein, the term "*control*" (including the terms "*controlling*", "*controlled by*" and "*under common control with*") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or other interests, by contract or otherwise.

"*Agreement*" means any written or oral contract, commitment, lease, sublease, license, sublicense or other agreement.

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"*Assignment and Bill of Sale*" means each assignment and bill of sale in customary form, including as to a particular jurisdiction, as reasonably agreed by Buyer and Seller prior to Closing.

"*Assumed Leases*" means the Leases with respect to the Leased Premises, other than a Lease to which Avaya Tianjin is a party.

"*Assumption Agreement*" means each assumption agreement in customary form, including as to a particular jurisdiction, as reasonably agreed by Buyer and Seller prior to Closing.

"*Avaya Tianjin*" means Avaya Tianjin Cable Company, Ltd.

"*Avaya Tianjin Joint Venture Agreement*" means the Joint Venture Contract dated as of August 1, 1993, between Tianjin Electric Wire and Cable Company and AT&T International, Inc., as amended.

"*Belden Contract*" means that certain Sales Incentive Agreement dated September 26, 1997, by and between Lucent Technologies, Inc. (predecessor to Avaya) and Cables Systems International, Inc. (predecessor to Belden Inc.), as amended.

"*Business Day*" means a day that is not a Saturday, a Sunday or a statutory or civic holiday in the State of New York.

"*Business Employees*" means the employees, consultants, independent contractors and agents (who in all cases are individuals) of Seller or the Seller Subsidiaries who are primarily employed in, or otherwise primarily providing services to, the Business. "Business Employees" shall also include any employee of Avaya Tianjin.

"*Business Records*" means all books, records, ledgers, documents and files, or other similar information (in any form or medium, including data stored in electronic form) used or held for use primarily in the operation or conduct of the Business or otherwise primarily related to the Purchased Assets, including price lists, customer lists, vendor lists, correspondence, mailing lists, warranty information, catalogs, sales promotion literature, sales records, invoices, credit records, advertising materials, brochures, records of operation, standard forms of documents, manuals of operations or business procedures, photographs, production data, purchasing materials and records, personnel records, manufacturing and quality control records and procedures, research and development files and materials (to the extent assigned to Buyer pursuant to the Intellectual Property Agreements), data and laboratory books (if related to the Intellectual Property, to the extent assigned to Buyer pursuant to the Intellectual Property Agreements), invention disclosures (to the extent assigned to Buyer pursuant to the Intellectual Property Agreements), litigation files, plans, specifications, as built drawings and product testing reports required by any Governmental Body, but excluding any such items to the extent (i) they are included in, or primarily related to, the Excluded Assets or Excluded Liabilities, (ii) any applicable Law prohibits their transfer or (iii) they are confidential personnel records relating to employees other than the Transferred Employees or confidential medical information relating to the Transferred Employees for which Buyer has no ongoing need.

"*CERCLA*" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*, as amended.

"*Closing*" means the closing of the transactions described in *Article VII*.

"*Closing Date*" means the date of the Closing as determined pursuant to *Section 7.3*.

"*Code*" means the U.S. Internal Revenue Code of 1986, as amended.

"*Collective Bargaining Agreements*" means the collective bargaining agreements between Seller and the Unions governing the employment and employee benefits of certain represented Business Employees, as the same exist as of the date of this Purchase Agreement and as they may be amended, modified or superseded, each of which is identified on *Schedule 2.1(m)*.

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"*Company Plan*" means each plan, program, policy, payroll practice, contract, agreement, commitment or other arrangement providing for bonus, profit sharing, deferred compensation, incentive

compensation, stock ownership, stock option, stock purchase, phantom stock, retirement, savings, excess benefit, supplemental unemployment, paid time off, educational assistance, vacation, sick leave, severance, disability, death benefit, medical, dental, or life insurance, whether formal or informal, funded or unfunded, written or oral and whether or not legally binding, and including, without limitation, each "employee benefit plan," within the meaning of Section 3(3) of ERISA and each Multi-Employer Plan (other than an Employee Agreement) which is now or previously has been sponsored, maintained or contributed to, or required to be maintained or contributed to, by Seller or any of the Seller Subsidiaries or Avaya Tianjin for the benefit of any Business Employee; *provided*, *however*, that Company Plan shall not include the Collective Bargaining Agreements or Non-U.S. Collective Bargaining Agreements.

"*Competition Laws*" means Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade and includes the HSR Act and, to the extent applicable, equivalent Laws of any other jurisdiction (including, for the avoidance of doubt, the European Union or the member states thereof).

"*Confidentiality Agreement*" means the agreement between Seller and Parent dated March 7, 2002, as amended July 25, 2003.

"*Contracts*" means all Third-Party Agreements, supply contracts, purchase orders, sales orders and instruments used or held for use primarily in the operation or conduct of the Business, and to which Seller or any Seller Subsidiary is a party (i) for the lease of the Leased Equipment, (ii) for the provision by a Third Party of goods or services to the Business, (iii) for the sale by the Business of goods or the performance by the Business of services, and (iv) for the sale and distribution of products of the Business, but the term "*Contracts*" shall exclude the Licenses, Leases, Company Plans, Employee Agreements and Excluded Agreements.

"*Domestic Subsidiary*" means any Seller Subsidiary organized under the laws of any jurisdiction within the United States of America.

"*Early Retiree*" means any represented Business Employee who accepted the Early Retirement Program.

"*Early Retirement Program*" means that certain offer under the Collective Bargaining Agreements that provided certain benefits to any represented Business Employee who submitted an intention to retire between August 1 and August 14, 2003, inclusive, and who retired on or prior to August 31, 2003.

"*Employee Agreement*" means each management, employment, bonus, change in control, retention, severance or similar Agreement between the Seller, any Seller Subsidiary or Avaya Tianjin and any Business Employee, except for any such Agreement under any Company Plan.

"*Encumbrance*" means any lien (statutory or other), claim, hypothecation, assignment, deposit arrangement, encumbrance, charge or other security interest, mortgage, pledge, easement, title exception, right of first refusal, right of first offer, put right, restrictive covenant or other adverse claim of any kind or nature whatsoever (including any conditional sale or other title retention agreement) or other similar restriction or Third-Party right.

"*Environmental Law*" means any applicable Law that governs the existence of or provides a remedy for Release of Hazardous Substances, the protection of natural resources or the environment, the management of Hazardous Substances, health, safety or other activities involving Hazardous Substances including under CERCLA or any other similar Law, in each case as is or may become effective on, or prior to, the Closing Date.

"*Environmental Remediation License Agreement*" means the agreement in substantially the form set forth as *Exhibit A*.

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"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended.

"*ERISA Affiliate*" means each business or entity which is a member of a "controlled group of corporations," under "common control" or an "affiliated service group" with the Seller within the meaning of Section 414(b), (c) or (m) of the Code, or required to be aggregated with the Seller under Section 414(o) of the Code, or is under "common control" with the Seller, within the meaning of Section 4001(a)(14) of ERISA.

"*Excluded Agreements*" means (i) Agreements identified in *Schedule 2.2(e)*, (ii) Agreements that constitute General Purchase Agreements, (iii) Agreements that relate primarily to Excluded Assets or Excluded Liabilities and (iv) this Purchase Agreement.

"*Excluded Taxes*" means any Liability for any Taxes arising out of or relating to the Business or the Purchased Assets for any Pre-Closing Tax Period (other than any (i) Liability for Taxes of Avaya Tianjin and (ii) Liabilities pursuant to *Section 2.10* of this Purchase Agreement which shall be governed solely by such section); *provided, however*, in the case of any taxable period that includes (but does not end on) the Closing Date (a "*Straddle Period*"):

(a) real, personal and intangible property Taxes ("*Property Taxes*") relating to the Purchased Assets allocable to the Pre-Closing Tax Period shall be equal to the amount of such Property Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of days in the Straddle Period; and

(b) the Taxes (other than Property Taxes) relating to Purchased Assets allocable to the Pre-Closing Tax Period shall be computed as if such taxable period ended as of the close of business on the Closing Date, *provided that* exemptions, allowances or deductions that are calculated on an annual basis and for which applicable Law does not require or permit separate computations for the portion of the Straddle Period that ends on the Closing Date shall be allocated between the period ending on the Closing Date and the period after the Closing Date in proportion to the number of days in each period.

"*Fixtures and Supplies*" means all furniture, furnishings and other tangible personal property owned by Seller or a Seller Subsidiary and used or held for use primarily in the operation or conduct of the Business, including desks, tables, chairs, file cabinets and other storage devices and office supplies, but excluding any such items that primarily relate to Excluded Assets or Excluded Liabilities.

"*Full Financing Side Letter*" means the letter agreement substantially in the form set forth as *Exhibit B*.

"*GAAP*" means United States generally accepted accounting principles.

"*General Purchase Agreements*" means Third-Party supply or other Agreements between Seller or an Affiliate of Seller and a Third Party pursuant to which Seller or an Affiliate of Seller purchases products or services from such Third Party for any of Seller's or such Affiliate's businesses other than solely for the Business.

"*Governmental Body*" means any legislative, executive or judicial unit of any governmental entity (federal, state, local, foreign or supranational) or any department, commission, board, agency, bureau, official or other regulatory, administrative or judicial authority thereof.

"*Governmental Permits*" means all Permits issued to or filed or obtained by Seller or a Seller Subsidiary with respect to the Business, the Assumed Leases or the Premises by a Governmental Body.

"*Hazardous Substance*" means (i) any material defined as a hazardous, toxic or dangerous waste, substance or material pursuant to any Environmental Law, (ii) petroleum and byproducts thereof,

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asbestos and PCBs and (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Body pursuant to any Environmental Law.

"*Home Depot*" means Home Depot U.S.A., Inc.

"*Home Depot Parcel*" means the tract of land adjacent to the Nebraska Property, containing approximately 49.971 acres, transferred to Home Depot by Seller pursuant to the Home Depot Purchase Agreement.

"*Home Depot Purchase Agreement*" means that certain purchase agreement, dated as of July 22, 2002 by Avaya and July 24, 2002 by Home Depot, between Avaya, as seller, and Home Depot, as buyer, as amended by an Amendment to Purchase Agreement dated March 18, 2003 by Avaya and March 28, 2003 by Home Depot, and a Second amendment to Purchase Agreement dated April 1, 2003 by Avaya and Home Depot, for the sale of the Home Depot Parcel.

"*HSR Act*" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"*Indebtedness*" of any Person means all obligations of such Person (i) for borrowed money, (ii) evidenced by notes, bonds, debentures or similar instruments, (iii) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business), (iv) lease obligations of such Persons, which in accordance with GAAP, should be capitalized or (v) in the nature of guarantees of the obligations described in clauses (i) through (iv) above of any other Person.

"*Intellectual Property*" means copyrights, patents, service marks, trademarks, trade names, domain names, industrial models, trade secrets, mask work rights, any applications and registrations for any of the foregoing, and any other proprietary and intellectual property rights, including all such rights to Proprietary Subject Matter.

"*Intellectual Property Agreements*" means the agreements in substantially the form set forth as *Exhibits C-1*through *C-6*.

"*Inventory*" means all inventory, wherever located, including raw materials, work in process, recycled materials, finished products, inventoriable supplies, parts and non-capital spare parts owned by Seller or a Seller Subsidiary and used or held for use primarily in the operation or conduct of the Business, and any rights of Seller or a Seller Subsidiary to the warranties received from suppliers and any related claims, credits, rights of recovery and setoff with respect to such Inventory, but only to the extent such rights are assignable.

"*Ireland Property*" means that certain property located in Bray, Ireland, more fully described on *Schedule 3.6(b)* hereof.

"*IRS*" means the U.S. Internal Revenue Service.

"*Law*" means any law, statute, ordinance, rule, regulation, code, order, judgment, injunction, decree or other requirement of any Governmental Body, and any rule or regulation of any stock exchange on which the relevant party's securities are listed.

"*Lease*" means any Agreement for the lease or sublease of any of the Leased Premises.

"*Lease Assignment*" means each assignment agreement with respect to a Lease in customary form, reasonably agreed to by Buyer and Seller prior to the Closing; *provided, however*, that, to the extent required by custom and/or applicable Law of the jurisdiction in which a Leased Premise is located, with such changes as are required by custom or applicable Law or reasonably required by Buyer, together with any other transfer declarations or other filings as are necessary or reasonably required by Buyer to give effect to such assignment (provided that no such separate assignment or other declaration or filing shall alter the parties' rights or obligations set forth in the aforesaid assignment).

"*Leased Equipment*" means all computer hardware and supporting and attached peripherals, servers, telecommunications equipment, machinery, equipment, automobiles and other vehicles, tools, molds and other similar items leased and used or held for use by Seller or a

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Seller Subsidiary primarily in the operation or conduct of the Business, but excluding any such items which are Excluded Assets or Excluded Liabilities.

"*Leased Premises*" means all the real property that is leased or subleased by Seller or a Seller Subsidiary from Third Parties and used or held for use primarily in the operation or conduct of the Business, including the real property leased under the Ireland Letting Agreement (as hereinafter defined), which real property, as of the date hereof, is identified on *Schedule 3.6(a)*.

"*Liability*" means all Indebtedness, obligations, commitments and other liabilities of a Person (whether known, unknown, absolute, accrued, contingent, fixed, liquidated, unliquidated, or otherwise, or whether due or to become due).

"*Licensed Avaya Trademarks*" shall have the meaning set forth in the Transitional Trademark License Agreement attached hereto as *Exhibit C-6*.

"*Licenses*" means all Agreements (i) under which Seller or a Seller Subsidiary is granted the right to use any Proprietary Subject Matter of a Third Party that is used or held for use primarily in the operation or conduct of the Business, (ii) under which Seller or a Seller Subsidiary grants a Third Party the right to use any Proprietary Subject Matter of Seller or a Seller Subsidiary that is used or held for use primarily in the operation or conduct of the Business, or (iii) identified on *Schedule 2.1(h)*.

"*Multi-Employer Plan*" means each Company Plan which is a "multi-employer plan" within the meaning of Section 3(37) or 4001(a)(3) of ERISA.

"*Nebraska Property*" means that certain parcel(s) of land located in Omaha, Nebraska, more fully described on *Schedule 3.6(b)* hereof.

"*Non-U.S. Collective Bargaining Agreements*" means the collective bargaining agreements between Seller and the unions governing the employment and employee benefits of certain represented Business Employees employed outside of the United States, as the same exist as of the date of this Purchase Agreement and as they may be amended, modified or superseded, each of which is identified on *Schedule 2.1(m)(3)*.

"*Nonassignable Licenses*" means those Agreements (i) under which Seller or a Seller Subsidiary has the right to use any Proprietary Subject Matter of a Third Party that is used or held for use primarily in the operation or conduct of a business of Seller or a Seller Subsidiary other than the Business, or (ii) identified on *Schedule 2.2 (e).*

"*Off-Balance Sheet Liability*" means any transaction or Agreement under which Seller or any Seller Subsidiary has (i) an obligation, including a contingent obligation, under a guarantee Agreement, (ii) a retained or contingent interest in assets transferred to an unconsolidated Person or (iii) an Agreement that would be accounted for as a derivative instrument but is classified as equity in the Financial Statements.

"*Pension Plan*" means each "employee pension benefit plan" within the meaning of Section 3(2) of ERISA which is a Company Plan or other plan pursuant to which Seller, any Seller Subsidiary, Avaya Tianjin or any ERISA Affiliates may have liability.

"*PBGC*" means the Pension Benefit Guaranty Corporation.

"*Permits*" means all permits and licenses, certificates of inspection, approvals, consents, waivers, concessions, exemptions, orders, registrations, notices or other authorizations, including any amendment, modification or renewal thereof.

"*Permitted Encumbrances*" means any (i) liens for Taxes, assessments and other governmental charges or liens of carriers, landlords, warehousemen, mechanics and material men incurred in the ordinary course of business, in each case for sums not yet due and payable or due but not delinquent or being contested in good faith, (ii) liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security with respect to any Transferred Employee, (iii) purchase money liens on the fixed assets set forth on *Schedule 3.5(a)*, (iv) Licenses and any other licenses granted by Seller or an Affiliate in

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connection with sales of products in the ordinary course of business, (v) the Encumbrances set forth on *Schedule 3.5(a)*, (vi) any Encumbrances that may be contained in the organizational documents of Avaya Tianjin or the Avaya Tianjin Joint Venture Agreement and (vii) all existing licenses to or under Seller's Intellectual Property as of the date hereof.

"*Permitted Real Property Encumbrances*" means only the following and no other lien or encumbrance: (i) liens for Taxes, assessments and other governmental charges for sums not yet due and payable or due but not delinquent, (ii) liens for Taxes, assessments and other governmental charges for sums being contested in good faith, which are due and payable on or prior to the Closing Date or but for the contest would be due and payable on or prior to the Closing Date, and any such Tax, assessment or other governmental charge being contested, shall not be an Assumed Liability, but rather shall be an Excluded Liability, and Seller shall pay on a timely basis any and all amounts determined to be due in connection therewith, (iii) mechanics', carriers', workers', materialmen's, warehousemen's and similar liens arising or incurred in the ordinary course of business, (iv) any Encumbrances, encroachments, zoning laws and other land use restrictions which (a) with respect to the Transferred Premises, do not prevent the use of the Transferred Premises for the purposes of conducting the Business consistent with the past practices of Seller and (b) with respect to the Transferred Premises and the Leased Premises, have not had nor would be reasonably expected to have a Seller Material Adverse Effect, provided that except as otherwise provided in item (v) below, in no event shall any Encumbrance securing money owed, be a Permitted Real Property Encumbrance, (v) the terms of the Assumed Leases, the Ireland Letting Agreement (as hereinafter defined) and the obligations to Home Depot under the Home Depot Amendment assumed by Buyer under *Section 5.9* below and (vi) Encumbrances and other exceptions set forth on *Schedule 3.6(a)* and *3.6(b)* provided the same do not secure money owed and which (a) with respect to the Transferred Premises, do not prevent the use of the Transferred Premises for the purposes of conducting the Business consistent with the past practices of Seller and (b) with respect to the Transferred Premises and the Leased Premises, have not had, nor would be reasonably expected to have a Seller Material Adverse Effect.

"*Person*" means any individual, corporation, limited liability company, partnership, firm, association, joint venture, joint stock company, trust, unincorporated organization or other entity, or any Governmental Body.

"*Pre-Closing Tax Period*" means any Tax period (or portion thereof) ending on or before the Closing Date.

"*Premises*" means the Leased Premises and the Transferred Premises.

"*Principal Equipment*" means all computer hardware and supporting and attached peripherals, servers, telecommunications equipment, machinery, equipment, automobiles and other vehicles, tools, molds and other similar items used or held for use by Seller or a Seller Subsidiary primarily in the operation or conduct of the Business including, in each case, embedded software therein, but not the Leased Equipment or any such items which are Excluded Assets or Excluded Liabilities. Principal Equipment includes rights to the warranties received from the manufacturers, sellers and distributors of such items and to any related claims, credits, rights of recovery and setoff with respect to such items, but only to the extent such rights are assignable.

"*Proprietary Subject Matter*" means: (i) all information (whether or not protectable by patent, copyright, mask work or trade secret rights) not generally known to the public, including know-how and show-how, specifications, technical manuals and data, libraries, blueprints, drawings, proprietary processes, product information, development work-in-process, inventions, discoveries and trade secrets; (ii) patentable subject matter, patented inventions and inventions subject to patent applications; (iii) industrial models and industrial designs; (iv) works of authorship, Software (as defined in the Technology Assignment Agreement attached hereto as *Exhibit C-5*) and copyrightable subject matter; (v) mask works; and (vi) trademarks, trade names, service marks, emblems, logos, insignia and related marks.

"*Real Estate Deed*" means (i) with respect to the Nebraska Property, a Nebraska special warranty deed, in recordable form and duly executed by Seller, conveying title to the Nebraska Property to Buyer consistent with the title representations set forth in *Section 3.6(b)(i)* herein, and (ii) with respect to the Ireland Property, a deed of conveyance or deed of transfer in the form necessary to grant and convey or transfer the Ireland Property in fee simple to Buyer in accordance with Irish laws consistent with the title representations set forth in *Section 3.6(b)(i)* herein, and (iii) with respect to the Singapore Property, an instrument in the form necessary to convey title to the Singapore

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Property to Buyer in accordance with local custom and usage in Singapore, Singapore Law and the requirements of Governmental Bodies in Singapore and consistent with the title representations set forth in *Section 3.6(b)(i)* herein.

"*Real Property*" means the Leased Premises and the Transferred Premises.

"*Registration Rights Agreement*" means the agreement in substantially the form set forth as *Exhibit D*.

"*Release*" means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Substance in the indoor or outdoor environment, including the movement of Hazardous Substance through or in the air, soil, surface water, ground water or property.

"*Remedial Action*" means all actions required by Environmental Law or by any Governmental Body undertaken to (i) clean up, remove, remediate, investigate, treat, or in any other way respond to or address any Hazardous Substance; or (ii) investigate or prevent the Release or minimize the further Release of any Hazardous Substance so that it does not cause environmental pollution, migrate or endanger public health, welfare or the environment.

"*Retention Agreements*" means those certain Agreements identified as such on *Schedule 2.1(m)(1)*.

"*Security Agreement*" means the security agreement, dated as of March 25, 2002, by and among Seller, the other grantor parties thereto and The Bank of New York Company, Inc., as collateral trustee.

"*Seller Material Adverse Change*" or "*Seller Material Adverse Effect*" means any change, effect, event, occurrence or state of facts that is materially adverse to the business, assets, condition (financial or otherwise) or results of operations of the Business, taken as a whole, other than any change, effect, event, occurrence or state of facts (i) relating to the United States or foreign economies in general, (ii) relating to either the telecommunications industry in general or the structured cabling systems industry in general and, in either case, not specifically relating to the Business or (iii) resulting from the public announcement of the transactions contemplated by this Purchase Agreement or Parent's or Buyer's contact with the suppliers, distributors and technology partners of the Business pursuant to *Section 5.6*, provided that with respect to (i) and (ii) such changes do not adversely affect the Business in a disproportionate manner.

"*Seller's knowledge*" or "*knowledge of the Seller*" means the actual knowledge of the individuals set forth on *Schedule 1.1*.

"*Singapore Property*" means the building and other improvements located at 35 Tuas Avenue 2, Singapore, and more fully described on *Schedule 3.6(b)*.

"*SMP Letter Agreement*" means the letter agreement dated as of the date hereof attached as *Exhibit E*.

"*Standstill Agreement*" means the agreement substantially in the form set forth as *Exhibit F*.

"*Tax Return*" means all returns, declarations, reports, estimates, information returns and statements required to be filed with respect to any Taxes.

"*Taxes*" means all taxes of any kind, and all charges, fees, customs, levies, duties, imposts, required deposits or other assessments, including all net income, capital gains, gross income, gross receipt, property, franchise, sales, use, excise, withholding, payroll, employment, social security, worker's compensation, unemployment, occupation, capital stock, ad valorem, value added, transfer, gains, profits, net worth, asset, transaction, and other taxes, and any interest, penalties or additions to tax with respect thereto, imposed upon any Person by any taxing authority or other Governmental Body under applicable Law and includes any Liability arising under any tax sharing agreement or any Liability for Taxes of another person by contract, as a transferee or successor, under Treasury. Reg. §1.1502-6 or analogous state, local or foreign law provision or otherwise.

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"*Third Party*" means any Person not an Affiliate of the other referenced Person or Persons.

"*Transfer Regulations*" means the European Communities (Protection of Employees on Transfer of Undertaking) Regulations, 2003.

"*Transferred Premises*" means all the real property, buildings and other improvements that are owned and used or held for use by Seller or a Seller Subsidiary primarily in the operation or conduct of the Business, which real property is identified on *Schedule 3.6(b)*.

"*Transition Services Agreement*" means an agreement for services in form and substance as reasonably agreed to by Buyer and Seller.

"*Unions*" means the International Brotherhood of Electrical Workers and its Local No. 1614 and Local No. 1974.

"*Welfare Plan*" means each Company Plan which is an "employee welfare benefit plan" (within the meaning of Section 3(1) of ERISA).

1.2 *Additional Defined Terms.* For purposes of this Purchase Agreement, the following terms shall have the meanings specified in the Sections indicated below:

Term	**Section**
"Acceptance Period"	*Section 2.4(b)*
"Accounts Payable"	*Section 2.5(j)*
"Accounts Receivable"	*Section 2.1(k)*
"Actual Return"	*Section 5.4(e)*
"Asset Acquisition Statement"	*Section 5.3(b)*
"Assumed Liabilities"	*Section 2.5*
"Avaya"	*Preamble*
"Avaya Retiree Welfare Plans"	*Section 5.4(g)(i)*
"Avaya Southeast Property"	*Section 2.2(f)*
"Avaya VEBAs"	*Section 5.4(g)(i)*
"Average Price"	*Section 2.3*
"Balance Sheets"	*Section 3.11(a)(iii)*
"Business"	*Recital A*
"Business Intellectual Property"	*Section 3.12(a)*
"Buyer"	*Preamble*
"Buyer Indemnified Party"	*Section 9.2*
"Buyer Material Adverse Effect"	*Section 4.1(a)*
"Buyer Represented Pension Plan"	*Section 5.4(f)*
"Buyer VEBAs"	*Section 5.4(g)(i)*
"Cash Payment"	*Section 2.3*
"Claims Period"	*Section 9.1*
"Closing Date"	*Section 7.3*
"Closing Net Assets"	*Section 2.4(a)*
"Closing Net Assets Threshold"	*Section 2.4(e)*
"Collateral Agreements"	*Recital D*
"Commitment Letter"	*Section 4.7*
"Components"	*Section 5.14*
"Convertible Note"	*Section 2.3*
"Critical Services"	*Section 5.15*

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"Designated Remedial Action"	*Section 9.5(b)*
"Dispute Notice"	*Section 2.4(b)*
"Effects Package Agreement"	*Section 2.6k)*
"Environmental Reports"	*Section 3.10(f)*
"Estimated Closing Net Assets"	*Section 2.4(a)*
"Exchange Act"	*Section 4.4*
"Excluded Assets"	*Section 2.2*
"Excluded Liabilities"	*Section 2.6*
"Financial Statements"	*Section 3.11(a)*
"First Pension Transfer Amount"	*Section 5.4(e)*
"First Transfer Date"	*Section 5.4(e)*
"Foreign Transferred Employees"	*Section 5.4(p)*
"Home Depot Amendment"	*Section 5.9*
"Indemnified Party"	*Section 9.6(a)*
"Indemnifying Party"	*Section 9.6(a)*
"Ireland Letting Agreement"	*Section 3.6(a)(v)*
"Irish Pension Liabilities"	*Section 5.4(h)*
"Irish Pension Plan"	*Section 5.4(s)*
"Irish Taxes Consolidation Act"	*Section 2.3(c)*
"IT Transfer Costs"	*Section 2.4(a)*
"Last Day"	*Section 5.4(c)*
"Leased Premises Consents"	*Section 2.7(d)(ii)*
"Losses"	*Section 9.2*
"Mandatorily Transferred Employees"	*Section 5.4(a)*
"Material Contracts"	*Section 3.9*
"Negotiating Period"	*Section 2.4(b)*
"Neutral Accounting Firm"	*Section 2.4(c)*
"Nonassignable Assets"	*Section 2.7(c)*
"non-U.S. Law"	*Section 5.4(a)*
"Parent"	*Preamble*
"Parent Common Stock"	*Section2.3*
"Parent SEC Reports"	*Section 4.4*

"Parent Shares"	*Section 2.3*
"PCBs"	*Section 3.10(f)*
"Pension Liabilities"	*Section 5.4(h)*
"Pension Transfer Amount"	*Section 5.4(f)*
"Post-Closing Statement"	*Section 2.4(a)*
"Primary Closing"	*Section 8.4*
"Purchase Price"	*Section 2.3*
"Purchase Agreement"	*Preamble*
"Purchased Assets"	*Section 2.1*
"PWC"	*Section 5.16*
"Represented Pension Trust"	*Section 5.4(e)*
"Represented Transferred Employees"	*Section 5.4(a)*
"Required Consents"	*Section 3.4(b)*
"Retiree Welfare Liabilities"	*Section 5.4(g)(i)*
"Rights Agreement"	*Section 5.18*

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"Salaried Transferred Employees"	*Section 5.4(a)*
"SEC"	*Section 4.4*
"Second Pension Transfer Amount"	*Section 5.4(e)*
"Second Transfer Date"	*Section 5.4(e)*
"Securities Act"	*Section 3.24*
"Seller"	*Preamble*
"Seller Indemnified Party"	*Section 7.3*
"Seller Subsidiaries"	*Section 3.1*
"Seller's Cafeteria Plan"	*Section 5.4(c)*
"Straddle Period"	*Section 1.1*
"Structured Cabling Solutions"	*Recital A*
"Subsequent Closing"	*Section 8.4*
"Supply Agreement"	*Section 5.19*
"Third-Party Claim"	*Section 9.6(a)*
"Threshold"	*Section 9.5(a)*
"Transfer Taxes"	*Section 2.10*
"Transferred Avaya Tianjin Shares"	*Section 2.1(l)*
"Transferred Employees"	*Section 5.4(a)*
"Underfunding"	*Section 5.4(j)*
"U.S. Transferred Employees"	*Section 5.4(k)*
"VEBA Transfer Amount"	*Section 5.4(g)(i)*
"VEBAs"	*Section 5.4(g)*
"WARN Act"	*Section 3.8(i)*

1.3 *Other Definitional and Interpretive Matters.* Unless otherwise expressly provided, for purposes of this Purchase Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Purchase Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Gender and Number. Any reference in this Purchase Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Purchase Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Purchase Agreement. All references in this Purchase Agreement to any "*Article*" or "*Section*" are to the corresponding Article or Section of this Purchase Agreement unless otherwise specified.

Herein. The words such as "*herein*," "*hereinafter*," "*hereof*," and "*hereunder*" refer to this Purchase Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word "*including*" or any variation thereof means "*including, without limitation*" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

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Payments and Computations. Except for the payment of the Purchase Price (which shall be paid at the Closing), each party shall make each payment due to another party to this Purchase Agreement not later than 1:00 p.m., New York City time, on the day when due. All payments shall be measured and paid in U.S. dollars by wire transfer in immediately available funds to the account or accounts designated by the party receiving such payment. Whenever any payment under this Purchase Agreement shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of payment of interest, if applicable.

Schedules and Exhibits. The Schedules and Exhibits attached to this Purchase Agreement shall be construed with and as an integral part of this Purchase Agreement to the same extent as if the same had been set forth verbatim herein. To the extent reasonably apparent on its face, disclosure by Seller on any one Schedule of this Purchase Agreement shall be deemed disclosed for the purposes of all other Schedules to which the disclosure is relevant. Notwithstanding the foregoing, if a word or phrase defined in this Purchase Agreement is given a different meaning in any Schedule or Exhibit, such different definition shall apply only to the Schedule or Exhibit defining that word or phrase independently, and the meaning given that word or phrase in this Purchase Agreement shall control for purposes of this Purchase Agreement, and such alternative meaning shall have no bearing or effect, on the interpretation of this Purchase Agreement or any Schedule of this Purchase Agreement.

Reasonable Best Efforts. The obligation of a party to use reasonable best efforts to accomplish an objective does not require a material expenditure of funds or the incurrence of a material liability on the part of the obligated party.

ARTICLE II

PURCHASE AND SALE OF THE BUSINESS

2.1 *Purchase and Sale of Assets.* Upon the terms and subject to the conditions of this Purchase Agreement and in reliance on the representations and warranties contained herein, on the Closing Date, Seller shall, or shall cause one or more of the Seller Subsidiaries to, subject to *Section 2.7*, sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase, acquire, assume and accept from Seller or the applicable Seller Subsidiary, all of the right, title and interest in, to and under the assets, properties and business (as a going concern), titles, estates, remedies, powers, privileges, of every kind, nature, character and description (whether tangible or intangible, real, personal or mixed, whether absolute, accrued, contingent, fixed or otherwise, wherever located and whether now existing or acquired on or prior to the Closing Date), whether or not any of such assets, properties or rights have any value for accounting purposes or are carried or reflected on or specifically referred to in Seller's or the applicable Seller Subsidiary's financial statements, owned, used or held for use primarily in the operation or conduct of the Business by Seller or the applicable Seller Subsidiary on the Closing Date (except in each case for the Excluded Assets) (collectively, the "*Purchased Assets*"), free and clear of all Encumbrances other than Permitted Encumbrances and Permitted Real Property Encumbrances. The Purchased Assets include:

(a) the Assumed Leases;

(b) the Transferred Premises;

(c) the Principal Equipment;

(d) the Fixtures and Supplies;

(e) the Inventory;

(f) the Business Intellectual Property;

(g) the Contracts;

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(h) the Licenses;

(i) the Business Records;

(j) the Governmental Permits that are necessary for the operation or conduct of the Business, including those set forth on *Schedule 3.7(b)*, but only to the extent that such Governmental Permits are assignable or transferable to Buyer;

(k) the accounts receivable of the Business existing on the Closing Date (including, for the avoidance of doubt, (i) invoiced accounts receivable, (ii) accrued but uninvoiced accounts receivable and (iii) all other accounts or notes receivable from customers, distributors and resellers of the Business, and, in each case, the full benefit of all security therefor, other than any Accounts Receivable from Seller or any Affiliate of Seller (collectively, the "*Accounts Receivable*");

(l) all the capital stock of Avaya Tianjin (such capital stock being referred to as the "*Transferred Avaya Tianjin Shares*") held by Seller or any Affiliate of Seller;

(m) (i) the Retention Agreements with respect to any Transferred Employee, (ii) insofar as they govern the employment of Represented Transferred Employees, the Collective Bargaining Agreements and the Non-U.S. Collective Bargaining Agreements, and (iii) with respect to any Transferred Employee, the Employee Agreements set forth on *Schedule 2.1(m)(4)*;

(n) notes receivable, dated March 20, 2002, issued by Electroconductores, C.A. in favor of Avaya International L.L.C. in the aggregate amount of $300,000;

(o) all goodwill attributable to the Business;

(p) any rights, claims or causes of action of Seller or any Seller Subsidiary against Third Parties relating to the Business or a Purchased Asset occurring on or prior to the Closing Date, subject to *Section 2.2(h)* and as otherwise provided in the Intellectual Property Agreements;

(q) all prepaid charges, expenses, sums and fees related to the Premises or under any Contract, License or Governmental Permit included in the Purchased Assets;

(r) subject to the limitations on use set forth in *Section 5.7* and the Transitional Trademark License Agreement, all sales and marketing or packaging materials, samples or prototypes containing any Avaya Trademarks and used primarily in connection with the Business and all other similar sales and marketing or packaging materials and marketing studies containing any identification indicating an association with Seller and used primarily in connection with the Business; and

(s) any assets reflected in the Post-Closing Statement (as hereinafter defined).

2.2 *Excluded Assets.* Notwithstanding anything in *Section 2.1* to the contrary, it is hereby expressly acknowledged and agreed that the Purchased Assets shall not include, and neither Seller nor any of the Seller Subsidiaries is selling, transferring, assigning, conveying or delivering to Buyer, and Buyer is not purchasing, acquiring or accepting from Seller or any of the Seller Subsidiaries, any of the rights, properties or assets set forth or described in *Sections 2.2(a)* through *(o)* (the rights, properties

and assets expressly excluded by this *Section 2.2* from the Purchased Assets being referred to herein as the "*Excluded Assets*"):

(a) any cash, cash equivalents, bank deposits or similar cash items of Seller or any Affiliate of Seller;

(b) any Proprietary Subject Matter of Seller or any Affiliate of Seller or Intellectual Property in and to the same that is not used or held for use primarily in the operation or conduct of the Business;

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(c) any (i) confidential personnel and medical records pertaining to any Business Employee other than the Transferred Employees; (ii) books and records that Seller or any Affiliate of Seller is required by Law to retain or that Seller reasonably determines are necessary or advisable to retain; *provided*, *however*, that Buyer shall have the right to make copies of such retained books and records that relate to the Business or any of the Purchased Assets; and (iii) the information management systems of Seller and any Affiliate of Seller other than (A) those used or held for use primarily in the operation or conduct of the Business and contained within computer hardware included as a Purchased Asset pursuant to *Section 2.1* or (B) listed on *Schedule 2.1(h)* as transferable to Buyer;

(d) except as specifically provided in *Section 2.10*, any claim, right or interest of Seller or any Affiliate of Seller, other than Avaya Tianjin, in or to any refund, rebate, abatement or other recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom, to the extent attributable to any Pre-Closing Tax Period;

(e) the Excluded Agreements and the Nonassignable Licenses;

(f) the approximately 60 acre parcel of land adjoining the Home Depot Parcel, as more particularly described on *Schedule 2.2(f)* (the "*Avaya Southeast Property*");

(g) except as explicitly set forth in *Section 5.4*, all the assets of or relating to the Company Plans, and any insurance policies, administration contracts and trust agreements pertaining thereto;

(h) any rights, claims or causes of action of Seller or any Seller Subsidiary against Third Parties relating to or arising out of the Excluded Assets and Excluded Liabilities;

(i) any of the rights, properties and assets set forth on *Schedule 2.2(i)*;

(j) except as explicitly set forth in *Section 5.4*, any insurance policies or rights of proceeds thereof;

(k) any claim, right or interest in or to any capital stock of the Seller Subsidiaries or to the minute books, charter documents, stock record books or other books and records that relate to the organization, existence or capitalization of such Seller Subsidiaries;

(l) any Retention Agreement or collective bargaining agreement other than those included in *Section 2.1* as a Purchased Asset;

(m) the Early Retirement Program;

(n) the equipment used for carrying out the Designated Remedial Action (as hereinafter defined) pursuant to *Section 9.5(b)* hereof;

(o) all other assets, properties, interests and rights of Seller or any Affiliate of Seller not used or held for use primarily in the operation or conduct of the Business; and

(p) except as set forth on *Schedule 2.2(p)*, the Singapore Property.

2.3 *Purchase Price.* In consideration of the sale, transfer, assignment, conveyance and delivery by Seller and the Seller Subsidiaries of the Purchased Assets to Buyer, and in addition to assuming the Assumed Liabilities, Parent shall cause Buyer at the Closing to (i) pay to Seller an aggregate amount equal to Two Hundred Ten Million Dollars ($210,000,000) in cash (the "*Cash Payment*") by wire transfer of immediately available funds to an account or accounts designated by Seller's written instructions given to Buyer at least two Business Days prior to the Closing, which amount shall be subject to adjustment pursuant to *Section 2.4* below, (ii) deliver to Seller a stock certificate or

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certificates of Parent (bearing any applicable legend required under federal or state securities laws) in the names and amounts designated by Seller at least two Business Days prior to Closing representing a number of shares (the "*Parent Shares*") of common stock, par value $0.01 per share, of Parent ("*Parent Common Stock*") determined as follows: if the average per share closing price of the Parent Common Stock, as reported on the New York Stock Exchange Composite Transactions Tape (as reported by *The Wall Street Journal* (Northeast Edition)), or if not reported thereby, by any other authoritative source) for the ten (10) trading days immediately prior to the trading day prior the Closing Date ("*Average Price*") is (a) not less than $10.00 and not more than $13.00, then the number of Parent Shares shall be equal to Thirty-Four Million Nine Hundred Thousand Dollars ($34,900,000) divided by the Average Price; (b) less than $10.00, then the number of Parent Shares shall be equal to 3,490,000 shares of Parent Common Stock; and (c) more than $13.00, then the number of Parent Shares shall be equal to 2,684,615 shares of Parent Common Stock, and (iii) as subject to adjustment pursuant to *Sections 2.4*, *5.4(j)*, *5.4(r)* and *8.4*, deliver to Seller a convertible note in the aggregate principal amount of Eighteen Million Dollars ($18,000,000), the summary terms of which are set forth on *Exhibit G* attached hereto (the "*Convertible Note*" and, together with the Cash Payment and the Parent Shares, collectively, the "*Purchase Price*").

2.4 *Adjustment of Cash Payment; IT Transfer Costs.*

(a) *Estimated Closing Net Assets*. No later than five Business Days prior to the Closing Date, Seller shall deliver to Buyer its good faith estimate (including reasonable supporting documentation) of the Closing Net Assets of the Business, as defined and calculated in accordance with *Schedule 2.4(a)* as of the close of business on the Business Day prior to the Closing Date (the "*Estimated Closing Net Assets*"). If the Estimated Closing Net Assets are less than the Closing Net Assets Threshold, then such shortfall shall first reduce the amount of the Convertible Note, dollar for dollar, and to the extent the amount of the Convertible Note is reduced to zero, any remaining shortfall shall reduce the Cash Payment, dollar for dollar. If the Estimated Closing Net Assets are more than the Closing Net Assets Threshold then such excess shall increase the amount of the Convertible Note, dollar for dollar.

(b) *Post-Closing Statement*. As soon as practicable but in any event within 60 days after the Closing Date, Parent will cause Buyer to prepare (or cause to be prepared) and deliver to Seller a statement (the "*Post-Closing Statement*") showing (i) Buyer's calculation of the Closing Net Assets of the Business as defined on and calculated in accordance with *Schedule 2.4(a)* as of the close of business on the Business Day prior to the Closing Date, including, in each case, the calculation thereof in reasonable detail and (ii) the aggregate costs of all license, transfer and assumption fees paid or payable (to the extent Buyer determines, in its discretion, that it requires such license, transfer or assumption) by Buyer in order to license, on substantially similar terms and conditions as those binding Seller, all Software (as defined in the Technology Assignment Agreement attached hereto as *Exhibit C-5*) currently used in the Business that is not assigned or transferred under this Purchase Agreement ("*IT Transfer Costs*") at no additional charge; *provided*, *however*, that such costs shall not include any amounts paid or payable for Software that constitutes an upgrade from that utilized in the Business (provided that, if the version currently used in the Business is no longer available from, or is being phased out by, the applicable vendor, the costs associated with any such upgrade shall be included up to the amount of the original purchase price of the

Software being replaced). Buyer shall provide to Seller such back-up or supporting data relating to the preparation of the Post-Closing Statement and the calculations of Closing Net Assets and IT Transfer Costs reflected thereon as Seller may reasonably request. Buyer shall also provide, and cause its representatives to provide, as applicable, Seller and its accountants and other representatives with such reasonable access to the books, records, files, working papers and personnel of Buyer or its representatives, as applicable, at reasonable times and upon reasonable notice, as Seller may reasonably request for the purposes of evaluating the Post-Closing Statement and the calculations of Closing Net Assets and IT Transfer Costs reflected thereon.

(c) *Acceptance Period; Delivery of Dispute Notice*. Seller shall, within the 30 day period following receipt thereby of such Post-Closing Statement (the "*Acceptance Period*"), notify Buyer of acceptance or non-acceptance, as the case may be, of the Post-Closing Statement and the calculation of Closing Net Assets and IT Transfer Costs reflected thereon. If no such notice is delivered to Buyer by Seller within the Acceptance Period, the Post-Closing Statement and the calculations of Closing Net Assets and IT

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Transfer Costs reflected thereon shall be deemed to have been accepted by Seller and shall be binding upon all of the parties to this Purchase Agreement for all purposes of this Purchase Agreement. If Seller gives notice (a "*Dispute Notice*") to Buyer within the Acceptance Period that Seller does not agree with or otherwise does not accept the calculation of the Closing Net Assets and IT Transfer Costs reflected in the Post-Closing Statement, Seller shall describe in such Dispute Notice in reasonable detail, the nature of any disagreement, identify the items involved and the dollar amount of each such disagreement and provide reasonable supporting documentation for each disagreement. Buyer and Seller shall endeavor in good faith to resolve all disagreements within the 30 day period (the "*Negotiating Period*") following the delivery by Seller of such Dispute Notice.

(d) *Determination of Disputes by Neutral Accounting Firm*. If Buyer and Seller are unable to resolve any disagreements regarding the Post-Closing Statement and the calculations reflected thereon within the Negotiating Period, then, upon the expiration of the Negotiating Period, any remaining disputes may at any time be referred for resolution, at the election of either Seller or Buyer, to Ernst & Young LLP or such other internationally recognized accounting firm that is mutually acceptable to Buyer and Seller (the "*Neutral Accounting Firm*"). The Neutral Accounting Firm shall investigate only those items which are in dispute and shall not assign a value to any item that is (i) greater than the greatest value for such item claimed by either of Buyer or Seller or (ii) lower than the lowest value for such item claimed by either of Buyer or Seller. The Neutral Accounting Firm's determination shall be based only upon written submissions by Buyer and Seller, and not upon an independent review by the Neutral Accounting Firm. The Parties shall instruct the Neutral Accounting Firm to render its determination within 30 days of the referral of such matter thereto, and the determination of the Neutral Accounting Firm shall be final and binding upon all parties to this Purchase Agreement for all purposes of this Purchase Agreement. Neither Seller nor Buyer shall have any ex parte communications or meetings with the Neutral Accounting Firm without the prior consent of Buyer (in the case of Seller) or Seller (in the case of Buyer). The fees and expenses of the Neutral Accounting Firm shall be paid by the party whose calculation or estimate of disputed items on an aggregate basis represents the greatest difference from the Neutral Accounting Firm's determination of those items on an aggregate basis.

(e) *Adjustment*. Promptly following the final determination of the Closing Net Assets, but in no event more than five Business Days thereafter, (i) if the amount of the Closing Net Assets exceeds the Estimated Closing Net Assets, then the aggregate principal amount of the Convertible Note shall be adjusted upward, dollar for dollar, by any such excess or (ii) if the amount of the Closing Net Assets is less than the Estimated Closing Net Assets, then the aggregate principal amount of the Convertible Note shall be reduced, dollar for dollar, and to the extent the amount of the Convertible Note is reduced to zero, Seller shall pay to Buyer by wire transfer of

immediately available funds to such account or accounts as Buyer may designate to Seller in writing, an amount equal to such difference. For the purposes of this Purchase Agreement, "*Closing Net Assets Threshold*" means the amount set forth on *Schedule 2.4(a)*. Promptly following the final determination of the IT Transfer Costs, but in no event more than five Business Days thereafter, if the IT Transfer Costs exceed Two Million Two Hundred Thousand Dollars ($2,200,000), then the aggregate principal amount of the Convertible Note shall be reduced, dollar for dollar by the amount of such excess, and to the extent the amount of the Convertible Note is reduced to zero, Seller shall pay to Buyer by wire transfer of immediately available funds to such account or accounts as Buyer may designate to Seller in writing, an amount equal to such difference. Any amounts paid under this *Section 2.4(e)* shall be paid together with interest thereon at the rate of interest per annum equal to the prime rate as announced by JP Morgan Chase Bank, N.A. on the date payment is to be made, calculated from the Closing Date through the date on which payment is made.

2.5 *Assumed Liabilities.* On the Closing Date, Buyer shall execute and deliver to Seller or the applicable Seller Subsidiary one or more Assumption Agreements and one or more Lease Assignments pursuant to which, notwithstanding anything to the contrary contained in this Purchase Agreement (including *Section 2.6*), Buyer shall accept, assume and agree to pay, perform or otherwise discharge, in accordance with the respective terms and subject to the respective conditions thereof, the Liabilities of Seller and the Seller Subsidiaries pursuant to and under the Assumed Liabilities. For purposes of this Purchase Agreement, the term "*Assumed Liabilities*" means only the following Liabilities of Seller and the Seller Subsidiaries and no other Liabilities whatsoever:

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(a) any Liability with respect to (i) accrued and unpaid salary and award accruals for U.S. Transferred Employees and (ii) accrued and unpaid vacation, sick days, personal days, floating holidays and sales commissions for Transferred Employees;

(b) any Liability or term or condition of employment which is applicable to any Transferred Employee who is not located in the United States, but only to the extent that such Liability or term or condition of employment is attributable to the Transferred Employee's employment in the Business and the assumption of such Liability or term or condition of employment is explicitly set forth in *Section 2.5* or *5.4*;

(c) the Liabilities under the (i) Assumed Leases, (ii) Contracts, (iii) Licenses, (iv) Leased Equipment, (v) Government Permits, (vi) with respect to any Transferred Employees, the Retention Agreements and the Employee Agreements identified on *Schedule 2.1(m)(4)*, (vii) with respect to any Transferred Employee, the automobile leases set forth on *Schedule 2.5(c)* and (viii) the Collective Bargaining Agreements and the Non-U.S. Collective Bargaining Agreements included in *Section 2.1* as a Purchased Asset (other than with respect to monetary damages resulting from any breaches or violations by Seller or a Seller Subsidiary of the Assumed Leases, Contracts, Licenses, Leased Equipment and Governmental Permits, Retention Agreements, Employee Agreements, automobile leases, Collective Bargaining Agreements and Non-U.S. Collective Bargaining Agreements occurring prior to or on the Closing Date);

(d) with respect to the Business, any of the following arising from sales of products in the ordinary course of business before the Closing or otherwise included in the Purchased Assets: (i) product warranty Liabilities, (ii) product returns, (iii) rebates, marketing and discount programs and (iv) consignment inventory Liabilities;

(e) the Permitted Encumbrances and the Permitted Real Property Encumbrances;

(f) any Liability for any Taxes (i) of Avaya Tianjin or (ii) arising out of or relating to the Business or the Purchased Assets for any period other than a Pre-Closing Tax Period, except as specifically provided in *Section 2.10*;

(g) any Liability under the Belden Contract;

(h) any Liability reflected in the Post-Closing Statement; and

(i) the accounts payable of the Business existing on the Closing Date (including, for the avoidance of doubt, (i) invoiced accounts payable, (ii) accrued but uninvoiced accounts payable and (iii) consigned accounts payable), other than accounts payable to Seller or any Affiliate of Seller (collectively, the "*Accounts Payable*").

2.6 *Excluded Liabilities.* Buyer shall not assume or be obligated to pay, perform or otherwise assume or discharge any Liabilities of Seller or any Seller Subsidiary or Affiliate of Seller, whether direct or indirect, known or unknown, absolute or contingent, whether or not any such Liability has a value for accounting purposes or is carried or reflected on or specifically referred to in either Seller's or the applicable Seller Subsidiary's financial statements, whether or not of, associated with or arising from the Business or the operation thereof or any Purchased Asset, that are not Assumed Liabilities (collectively, "*Excluded Liabilities*"), including:

(a) any Excluded Taxes;

(b) any Liability for any judgment, order, decree, ruling or charge, or any action, suit, grievance, arbitration, proceeding, hearing or investigation of, in, or before any Governmental Body or before any arbitrator, pending as of the Closing Date and to the extent relating to any act or omission occurring or condition existing prior to the Closing, other than with respect to any such matters that relate to or arise from an Assumed Liability;

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(c) subject to *Section 2.7(f)*, any Liability under the Excluded Agreements, Nonassignable Licenses and Nonassignable Assets or otherwise arising out of or under the Excluded Assets;

(d) any Liability of Seller or any Affiliate of Seller under the Contribution and Distribution Agreement, dated as of September 30, 2000, by and between Lucent Technologies Inc. and Seller;

(e) any Liability with respect to any individual that is an employee (including any Business Employee), consultant, independent contractor, or agent of Seller, the Seller Subsidiaries or Affiliates of Seller, in each case who is not a Transferred Employee or an employee of Avaya Tianjin on the Closing Date; without limiting the generality of the foregoing, any inducement, pension, severance, accrued vacation, accrued personal day, accrued sick day, medical insurance or other Liability under the Early Retirement Program or otherwise associated with the Early Retirees or with a Company Plan to the extent covering any Early Retiree shall be an "Excluded Liability";

(f) except as explicitly set forth in *Section 2.5* or *Section 5.4*, any Liability arising under any Company Plan;

(g) any Liability arising under or related in any way to Environmental Law, including the Remedial Action of Hazardous Substances at, to or from the Premises, that arises out of any act or omission that first occurred or failed to occur in whole or in part prior to the Closing Date;

(h) any Liability relating to, resulting from or arising out of workers' compensation claims incurred or made on or prior to the Closing Date;

(i) any Indebtedness of Seller or any Seller Subsidiary;

(j) subject to Buyer's compliance with its obligations under *Section 5.4(l)*, Buyer shall have no Liability for any damages or other losses which Seller may incur arising out of a claim by the Unions that Buyer failed to assume the Collective Bargaining Agreements;

(k) any Liability under the Memorandum of Agreement (the "*Effects Package Agreement*") dated May 31, 2003 among Seller and System Council T-3, I.B.E.W., on behalf of itself and Local Nos. 1614 and 1974, I.B.E.W., and any grievances related thereto; and

(l) any Liabilities to the extent attributable to the employment or termination of employment of any Transferred Employee on or prior to the Closing Date, except as explicitly set forth in *Section 2.5* or *5.4*.

2.7 *Further Assurances; Further Conveyances and Assumptions; Consent of Third Parties.*

(a) From time to time following the Closing, subject to applicable data protection Laws, Seller shall, and shall cause its Affiliates to, make available to Buyer such data in personnel records of Transferred Employees (other than confidential medical information relating to the Transferred Employees for which Buyer has no ongoing need) as is reasonably necessary for Buyer to transition such employees into Buyer's records and otherwise comply with its obligations under *Section 5.4* of this Purchase Agreement.

(b) From time to time following the Closing, Seller and Buyer shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquittances and such other instruments, and shall take such further actions, as may be necessary or appropriate to assure fully to Buyer and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Buyer under this Purchase Agreement and the Collateral Agreements and to assure fully to Seller and its Affiliates and their successors and

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assigns, the assumption of the Liabilities intended to be assumed by Buyer under this Purchase Agreement and the Collateral Agreements, and to otherwise make effective the transactions contemplated hereby and thereby, including (i) transferring back to Seller or the applicable Seller Subsidiary any asset or Liability not contemplated by this Purchase Agreement to be a Purchased Asset or an Assumed Liability, respectively, which asset or Liability was transferred to Buyer at the Closing, (ii) transferring to Buyer any asset or Liability contemplated by this Purchase Agreement to be a Purchased Asset or an Assumed Liability, respectively, which was not transferred to Buyer at the Closing and (iii) to the extent that Seller or any of its Affiliates have provided the landlord under any Lease with a bank guarantee or letter of credit, Buyer shall, upon the assignment of such Lease, provide such landlord with a substitute letter of credit or bank guarantee so that Seller's or its Affiliate's bank guarantee or letter of credit will be released.

(c) Nothing in this Purchase Agreement nor the consummation of the transactions contemplated hereby shall be construed as an attempt or agreement to assign any Purchased Asset, including any Contract, Lease, License, Governmental Permit, certificate, approval, authorization or other right, which by its terms or by Law is nonassignable without the consent of a Third Party or a Governmental Body or is cancelable by a Third Party or Governmental Body in the event of an assignment ("*Nonassignable Assets*") unless and until such consent shall have been obtained. Seller shall, and shall cause its Affiliates to, use its or their, as applicable, reasonable best efforts, if requested by Buyer, to obtain such consents promptly; *provided, however*, that such cooperation shall not require Seller or any of its Affiliates to make any payment to obtain any such consent with respect to any Nonassignable Asset, except to the extent that Buyer has agreed in writing to reimburse Seller for such expenses, or remain secondarily liable. Except as provided in *Section 8.2(c)*, the failure of any such consent or approval to be obtained or the failure of any such Nonassignable Asset to constitute a Purchased Asset or any circumstances resulting therefrom shall not, individually or in the aggregate, constitute a Seller Material Adverse Effect or a breach by Seller of any representation, warranty, covenant or agreement contained in this Purchase Agreement or a failure of any condition precedent to Buyer's obligations under this Purchase Agreement.

(d) (i) Buyer and Seller shall use their respective reasonable best efforts to obtain, or to cause to be obtained, any consent, substitution, approval or amendment required to novate all obligations under any and all Contracts or other Liabilities that constitute Assumed Liabilities or to obtain in writing the unconditional release of Seller and its Affiliates so that, in any such case, Buyer shall be solely responsible for such Liabilities. To the extent permitted by applicable Law, in the event consents to the assignment thereof cannot be obtained, such Nonassignable Assets shall be held, as of and from the Closing Date, by Seller or the applicable Affiliate of Seller in trust for Buyer (or any successor to or assignee of Buyer, by operation of Law or otherwise) and the covenants and obligations thereunder shall be performed by Buyer in Seller's or such Affiliate's name and all benefits and obligations existing thereunder shall be for Buyer's account. Seller shall take or cause to be taken at Seller's reasonable expense such actions in its name or otherwise as Buyer may reasonably request so as to provide Buyer with the benefits of the Nonassignable Assets and to effect collection of money or other consideration that becomes due and payable under the Nonassignable Assets, and Seller or the applicable Affiliate of Seller shall promptly pay over to Buyer all money or other consideration received by it with respect to all Nonassignable Assets.

(ii) Notwithstanding anything to the contrary contained in *Sections 2.7(d)(i)* and *(e)* hereof, with respect to the Leased Premises, Buyer and Seller shall use commercially reasonable efforts (not including payment of moneys to Third-Parties above and beyond any customary and reasonable ministerial or administrative fee) to obtain, or cause to be obtained, any consent, substitution, assignment, assumption, approval, amendment, lease termination or new lease on substantially the same terms (collectively, the "*Leased Premises Consents*") required to assign any Lease, to novate all obligations under any Lease or to obtain in writing the unconditional release of Seller and its Affiliates so that, in any such case, Buyer shall be solely responsible only for those liabilities and obligations that arise from and after Closing.

(e) As of and from the Closing Date, Seller on behalf of itself and its Affiliates authorizes Buyer, to the extent permitted by applicable Law and the terms of the Nonassignable Assets, at Buyer's expense, to perform all the obligations and receive all the

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benefits of Seller or its Affiliates under the Nonassignable Assets and appoints Buyer its attorney-in-fact to act in its name and on its behalf or in the name of the applicable Affiliate of Seller and on such Affiliate's behalf with respect thereto.

(f) Notwithstanding anything in this Purchase Agreement to the contrary, unless and until any consent or approval with respect to any Nonassignable Asset is obtained, such Nonassignable Asset shall not constitute a Purchased Asset and any associated Liability shall not constitute an Assumed Liability for any purpose under this Purchase Agreement, except to the extent that Buyer receives the benefit of such Nonassignable Asset.

2.8 *No Licenses.* Except as set forth in the Intellectual Property Agreements or in *Section 5.7* hereof, no title, right or license of any kind is granted to Parent or Buyer pursuant to this Purchase Agreement with respect to any Proprietary Subject Matter or Intellectual Property of Seller or any Affiliate of Seller, either directly or indirectly, by implication, by estoppel or otherwise.

2.9 *Bulk Sales Law.* Buyer hereby waives compliance by Seller and each of the Seller Subsidiaries with the requirements and provisions of any "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

2.10 *Taxes.* Buyer and Seller shall share equally all transfer, documentary, sales, use, stamp, registration, and other similar Taxes that may be imposed, assessed or payable by reason of the execution of, or consummation of the transactions contemplated by, this Purchase Agreement and all reasonable out of pocket costs and expenses relating to such Taxes ("*Transfer Taxes*"); *provided*, *however*, that (a) Buyer shall have the sole responsibility for (i) Transfer Taxes imposed as a result of Buyer's or its assignee's present or former connection with a jurisdiction (other than a present or former

connection with the jurisdiction of the United States (or any jurisdiction thereof or therein) or the jurisdiction of the relevant selling entity) imposing such Transfer Tax and (ii) value added Taxes to the extent they are fully recoverable by Buyer or its Affiliate via refund, credit, input credit, deduction and/or offset and (b) Seller shall have the sole responsibility for Seller's or any Seller Subsidiary's net income, franchise or other Taxes based on Seller's or any Seller Subsidiary's net income or gains from the transactions contemplated by this Purchase Agreement. Any refunds of Transfer Taxes split by Buyer and Seller pursuant to this *Section 2.10* shall be divided equally between Buyer and Seller. To the extent a party pays Transfer Taxes which are levied on the other party, to the extent permitted by Law, such payment shall be deemed to be an adjustment to the Purchase Price and any refund shall also be deemed an adjustment to the Purchase Price. Buyer and Seller agree that the allocation of the fees and expenses relating to the transfer and recordation of registered Business Intellectual Property is covered in the Intellectual Property Agreements and is not intended to be allocated by this *Section 2.10.*

2.11 *Parent Guaranty.* Parent unconditionally guarantees, as a primary obligor, the fulfillment of the covenants, agreements and payment and performance obligations of Buyer under this Purchase Agreement and each of the Collateral Agreements to which it is a party and shall be primarily responsible for all such covenants, agreements and payment and performance obligations to the extent Buyer fails to perform the same.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that:

3.1 *Organization and Qualification; Seller Subsidiaries.* Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. *Schedule 3.1* sets forth a complete list of each Affiliate of Seller that is engaged in the operation or conduct of the Business or that has title to, a leasehold interest in, or the license or right to use, any asset used or held for use in the conduct of the Business or an obligation or Liability that is an Assumed Liability (collectively, the "*Seller Subsidiaries*"). Seller and, except as set forth on *Schedule 3.1*, each Seller Subsidiary has all requisite corporate or similar power and authority to own, lease and operate the Purchased

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Assets owned, leased or operated by it and to carry on its portion of the Business as presently conducted and is duly qualified to do business and is in good standing as a foreign corporation or other entity (in any jurisdiction that recognizes such concept) in each jurisdiction where the ownership or operation of its properties and assets or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing individually or in the aggregate does not have or would not reasonably be expected to have a Seller Material Adverse Effect.

3.2 *Avaya Tianjin.* *Schedule 3.2* sets forth the authorized and outstanding stock of Avaya Tianjin as of the date hereof. All of the Avaya Tianjin shares are validly issued, fully paid and nonassessable and owned of record and beneficially by the Affiliate of Seller identified in *Schedule 3.2*. Upon delivery of the Avaya Tianjin shares and payment of the Purchase Price as herein provided, Buyer will acquire good, valid and transferable title thereto, free and clear of any Encumbrances, other than any Permitted Encumbrances. *Schedule 3.2* sets forth the outstanding Indebtedness of Avaya Tianjin.

3.3 *Authorization; Binding Effect.*

(a) Seller has all requisite corporate power and authority to execute and deliver this Purchase Agreement and the Collateral Agreements to which it will be a party and to effect the transactions contemplated hereby and thereby, and the execution, delivery and performance of this Purchase Agreement and the Collateral Agreements to which it will be a party have been duly authorized by all requisite corporate action. Each Seller Subsidiary that has title to any Purchased Asset or an obligation that is an Assumed Liability has all requisite power and authority to execute and deliver the Collateral Agreements to which it will be a party and to effect the transactions contemplated thereby, and the execution, delivery and performance of the Collateral Agreements to which it will be a party will be as of the Closing Date (or at the time of any Subsequent Closing, as applicable) duly authorized by all requisite action.

(b) This Purchase Agreement has been duly executed and delivered by Seller and this Purchase Agreement is, and the Collateral Agreements to which Seller and each Seller Subsidiary will be a party, when duly executed and delivered by Seller or such Seller Subsidiary, will be, valid and legally binding obligations of Seller or such Seller Subsidiary, enforceable against Seller or such Seller Subsidiary, as applicable, in accordance with their respective terms, assuming, in each case, the due execution and delivery by the other party or parties thereto.

3.4 *Non-Contravention; Consents.*

(a) Assuming that all of the consents, approvals, orders, authorizations, registrations and declarations referred to in clause (i), (ii) and (iii) of *Section 3.4(b)* have been made or obtained, as applicable, and except as set forth on *Schedule 3.4(a)*, the execution, delivery and performance of this Purchase Agreement by Seller and the Collateral Agreements by Seller or any Seller Subsidiary that is a party thereto and the consummation of the transactions contemplated hereby and thereby do not and will not: (i) result in a breach or violation of any provision of Seller's or the applicable Seller Subsidiary's charter, bylaws or similar organizational documents, (ii) violate or result in a breach of or constitute an occurrence of default under any provision of, result in the acceleration or cancellation of any obligation under, or give rise to a right by any party to terminate or amend its obligations under, any mortgage, deed of trust, conveyance to secure debt, note, loan, indenture, lien, lease, Agreement, instrument or other arrangement or commitment to which Seller or the applicable Seller Subsidiary is a party or by which it is bound and which is used or held for use primarily in the operation or conduct of the Business or the Purchased Assets or (iii) violate any order, judgment, decree, rule or regulation of any Governmental Body having jurisdiction over Seller, a Seller Subsidiary or the Purchased Assets other than, in the case of clauses (ii) and (iii), any such violations, breaches, defaults, accelerations, cancellations of obligations or rights that arise otherwise and, individually or in the aggregate, do not have and would not reasonably be expected to have a Seller Material Adverse Effect.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, any Person is required to be obtained by Seller or a Seller Subsidiary in connection with the execution and delivery of this Purchase Agreement or the Collateral

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Agreements to which Seller or such Seller Subsidiary will be a party or for the consummation of the transactions contemplated hereby or thereby by Seller or such Seller Subsidiary, except for (i) any filings required to be made under the HSR Act and any applicable filings required under foreign Competition Laws, (ii) those set forth on *Schedule 3.4(b)(ii)* (items (i) and (ii) being referred to herein as the "*Required Consents*"), (iii) consents or approvals of Third Parties that are required to transfer or assign to Buyer any Purchased Assets or assign the benefits of or delegate performance with regard thereto, including all consents and approvals of Third Parties necessary to effect the transfer of the Real Property from Seller to Buyer, including landlord and sublandlord consents to assignment of the Leased Premises and governmental approvals necessary to effect the transfer of the Transferred Premises, and (iv) such consents, approvals, orders, authorizations, registrations, declarations or filings the failure of which to be obtained or made, individually or in the aggregate, does not have and would not reasonably be expected to have a Seller Material Adverse Effect.

3.5 *Title to Personal Property; Principal Equipment; Sufficiency of Assets.*

(a) Except as set forth on *Schedule 3.5(a)*, (i) Seller or a Seller Subsidiary owns or leases all Inventory, machinery, equipment and other tangible assets necessary for the conduct of its respective business as it relates to the Business, as presently conducted, and (ii) Seller or a Seller Subsidiary has, and at the Closing will have and will convey to Buyer, good and valid title to, or a valid, binding and indefeasible leasehold interest or license in, all personal tangible Purchased Assets, free and clear of any Encumbrance other than Permitted Encumbrances.

(b) Except as set forth on *Schedule 3.5(b)*, each item of material Principal Equipment and other tangible assets used in the Business, (i) has been maintained in accordance with normal industry practices, (ii) complies in all material respects with applicable Law, and (iii) is in good operating condition and repair, subject to normal wear and tear.

(c) Except for (i) the assets that will be used in connection with providing services to Buyer under the Transition Services Agreement, (ii) the Excluded Assets and (iii) rights to use assets that will be provided to Buyer under the Intellectual Property License Agreement attached hereto as *Exhibit C-1*, and subject to the limitations set forth in *Section 3.12* hereof, the Purchased Assets are sufficient to conduct the Business as presently conducted.

3.6 *Real Estate.*

(a) *Schedule 3.6(a)* contains a complete and accurate list, as of the date hereof, of the Leased Premises and the Leases. Except as set forth in *Schedule 3.6(a)*:

(i) each Assumed Lease is in full force and effect, and is enforceable in all material respects in accordance with its terms against Seller or a Seller Subsidiary and, to Seller's knowledge, against each other Person that is a party thereto;

(ii) Seller or a Seller Subsidiary has good and valid leasehold title to the Leased Premises free and clear of all Encumbrances other than and subject to the Permitted Real Property Encumbrances;

(iii) there is no default under any Assumed Lease which has had or which would reasonably be expected to have a Seller Material Adverse Effect, nor has Seller or any Seller Subsidiary received (as a tenant) or given (as a landlord/licensor) any written notice of any material default (or any condition or event which, after notice or lapse of time or both, would constitute a material default) under any Assumed Lease;

(iv) neither Seller nor any Seller Subsidiary owes any brokerage commissions with respect to any Leased Premises; and

(v) the Letting Agreement dated June 18, 2002 between Avaya Ireland Limited, as landlord, and Avaya International Sales Limited, as tenant (for part of the property at Corke Abbey Avenue, Bray, Ireland) (the "*Ireland Letting*

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Agreement"), and each other Lease or license pursuant to which Seller or any Seller Subsidiary is the landlord/licensor, if any, constitutes a valid and subsisting demise of the premises described therein for the term described therein; such lease or license has not been altered, amended, changed or modified except as provided hereunder; such lease or license is in full force and effect in each and every respect; and, to Seller's knowledge, the landlord/licensor under such lease is not in material default under the lease or license and, to Seller's knowledge, no condition exists or event has occurred which with the passage of time or the giving of notice or both would constitute a material default thereunder.

(b) *Schedule 3.6(b)* contains a complete and accurate list, as of the date hereof, of the Transferred Premises. Except as set forth on *Schedule 3.6(b)*:

(i) Seller or a Seller Subsidiary has good and insurable fee simple title to the Nebraska Property free and clear of all Encumbrances other than and subject to the Permitted Real Property Encumbrances. Seller or a Seller Subsidiary has good and marketable fee simple title, or its reasonable equivalent in the jurisdiction in which the property is located unless such equivalent is unavailable or not customarily delivered in such jurisdiction, then whatever is customarily delivered in the applicable jurisdiction, to the Ireland Property and the Singapore Property free and clear of all Encumbrances other than and subject to the Permitted Real Property Encumbrances;

(ii) Seller or a Seller Subsidiary is in possession of the Transferred Premises and the Leased Premises subject to the terms of the Leases and the Ireland Letting Agreement; and

(iii) to Seller's knowledge, all improvements upon the Transferred Premises and all leased improvements on the Leased Premises located in Richardson, Texas and in Australia are in satisfactory condition and repair for the continued use in the ordinary course of business consistent with past practice.

3.7 *Compliance With Laws.*

(a) With respect to the Business and Real Property, Seller and each Seller Subsidiary is in compliance with all applicable Laws and all Permits, except for instances of noncompliance or possible noncompliance that individually or in the aggregate do not have and would not reasonably be expected to have a Seller Material Adverse Effect.

(b) *Schedule 3.7(b)* identifies each material Permit that relates primarily to, or is necessary for, the conduct of the Business. Seller or a Seller Subsidiary owns, holds or possesses all material Permits necessary for the operation or conduct of the Business as currently conducted. Seller has made available to Buyer accurate and complete copies of all of the Permits set forth on *Schedule 3.7(b)*, including all renewals thereof and all amendments thereto. Each Permit identified on *Schedule 3.7(b)* is valid and in full force and effect. Seller and each Seller Subsidiary is in compliance with all of the terms and requirements of each Permit identified on *Schedule 3.7(b)*, except to the extent such non-compliance would not be reasonably expected to have a Seller Material Adverse Effect. To Seller's knowledge, other than the transactions contemplated by this Purchase Agreement, no event has occurred and no condition or circumstance exists, that might (with or without notice or lapse of time) constitute or result, directly or indirectly, in the revocation, withdrawal, suspension, cancellation, termination or modification of any Permit set forth on *Schedule 3.7(b)*.

(c) Notwithstanding anything contained in this *Section 3.7* to the contrary, no representation or warranty made by Seller in *Section 3.7(a)* or *Section 3.7(b)* shall apply to compliance by Seller with any Laws that are the subject matter of the representations made in *Sections 3.8*, *3.10* and *3.14*.

3.8 *Business Employees.*

(a) *Schedule 3.8(a)(i)* contains a complete and accurate list as of the date hereof of all the Business Employees (other than employees of Avaya Tianjin) and identifies the location of each such Business Employee, their job title, salary, annual bonus paid in

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the 2002 fiscal year, start date, which Business Employees are covered by an Agreement listed in *Schedule 2.1(m)* or *Schedule 3.8(a)(ii)*, which Business Employees are consultants, independent contractors or agents of Seller or the Seller Subsidiaries, which Business Employees are authorized to work in the United States pursuant to a visa and the nature of each such visa, and which Business Employees are on leave of absence or short-term disability leave. During the three months ended August 31, 2003, except as disclosed on *Schedule 3.8(a)(i)*, no Business Employee spent less than 100% of his or her business hours with the Seller, the Seller Subsidiaries or Avaya Tianjin on matters relating to the Business. Except as set forth on *Schedule 2.1(m)* and *Schedule 3.8(a)(ii)*, none of the Business Employees (including those employed by Avaya Tianjin) is represented by any union, labor organization, works council or employee association, and none of Seller, any Seller Subsidiary or Avaya Tianjin is a party to or bound by any collective bargaining or similar agreement, or work rules or practices, agreed to with any labor organization, works council or employee association applicable to Business Employees.

(b) *Schedule 3.8(b)* contains a true and complete list of each Company Plan and each material Employee Agreement.

(c) Seller has made available to the Buyer a current, accurate and complete copy (or, to the extent no such copy exists, a written accurate description) of (i) all documents embodying or relating to each Company Plan, each material Employee Agreement, each Collective Bargaining Agreement and each Non-U.S. Collective Bargaining Agreement, including all amendments thereto and any related trust agreement or other funding instrument; (ii) the most recent determination letter received from the IRS, if any, for each Company Plan and related trust which is intended to satisfy the requirements of Section 401(a) of the Code; (iii) with respect to the Company Plan, the most recent summary plan description together with the most recent summary of material modifications, if any, required under ERISA; and (iv) with respect to each Company Plan, to the extent applicable, for the three most recent years (A) the Form 5500 and attached schedules, (B) audited financial statements prepared in accordance with GAAP or the applicable accounting standards for any such financial statements prepared in respect of Company Plans maintained outside of the United States, and (C) actuarial valuation reports prepared in accordance with the professional standards applicable thereto.

(d) Except as set forth on *Schedule 3.8(d)*, (i) each Company Plan has been established and administered in all material respects in accordance with its terms, and in compliance with the applicable provisions of ERISA, the Code and other applicable Laws and regulations; (ii) each Company Plan which is intended to be qualified within the meaning of Section 401(a) of the Code is so qualified and has received a favorable determination letter from the IRS to the effect that each such Company Plan is so qualified and that each trust forming a part of any such Company Plan is exempt from tax pursuant to Section 501(a) of the Code and nothing has occurred, whether by action or failure to act, that would reasonably be expected to cause the loss of such qualification or exemption, or Seller has operated such Company Plan in accordance with section 401(a) of the Code; (iii) no event has occurred and no condition exists that would subject Seller, any Seller Subsidiaries or Avaya Tianjin or any ERISA Affiliate to any excise tax, fine, Encumbrance or penalty imposed by ERISA, the Code or other applicable Laws; (iv) no "prohibited transaction," within the meaning of Section 4975 of the Code or Section 406 of ERISA, has occurred with respect to any Company Plan which would subject Seller, any Seller Subsidiary, Avaya Tianjin or any ERISA Affiliates to any Liability; (v) none of Seller, any Seller Subsidiary, Avaya Tianjin or any ERISA Affiliate is in violation of, any Company Plan or trust or in breach of any Employee Agreement; (vi) to the knowledge of each of Seller, no audit or investigation by the IRS, the U.S. Department of Labor or the PBGC is pending, threatened or anticipated, and no intervention by the IRS, the U.S. Department of Labor or the PBGC is threatened or anticipated with respect to the transaction contemplated under this Purchase Agreement; and (vii) no liability under any Company Plan has been funded nor has any such obligation been satisfied with the purchase of a contract from an insurance company as to which Seller, any of its Seller Subsidiaries or Avaya Tianjin has received notice that such insurance company is insolvent or is in rehabilitation or any similar proceeding.

(e) None of Seller, any Seller Subsidiary, Avaya Tianjin or any ERISA Affiliate (i) are currently contributing to or are obligated to contribute to, or incurred any withdrawal liability (within the meaning of Section 4201 of ERISA) to any Multi-Employer Plan or (ii) has contributed to or has been obligated to contribute to any such Multi-Employer Plan with respect to any Business Employee.

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(f) With respect to any Company Plan, Collective Bargaining Agreement or Non-U.S. Collective Bargaining Agreement, except as set forth on *Schedule 3.17*, (i) no actions, proceedings, arbitrations, suits or claims (other than routine claims for benefits in the ordinary course) are pending or, to the knowledge of Seller, threatened, and (ii) to the knowledge of Seller, no facts or circumstances exist that could give rise to any such actions, suits or claims.

(g) Except as set forth in *Schedule 3.8(g)*, or as required pursuant to the terms of any Company Plan or any Employee Agreement, since December 31, 2002, there has not been any (i) increase in the compensation or fringe benefits of any Business Employee who is a present or former director, officer or employee of Seller, any Seller Subsidiary or Avaya Tianjin (except for increases in salary or wages in the ordinary course of business consistent with past practice), (ii) grant of any severance or termination pay to any Business Employee who is a present or former director, officer or employee of Seller, any Seller Subsidiary or Avaya Tianjin other than in the ordinary course of business and consistent with past practice, (iii) loan or advance of money or other property by Seller, any Seller Subsidiary or Avaya Tianjin to any Business Employee who is a present or former director, officer or employee, (iv) with respect to any Business Employee, establishment, adoption, entrance into, material amendment or termination of any Company Plan or trust, or (v) with respect to any Business Employee, establishment, adoption, entrance into or material amendment of any Employee Agreement (other than such establishment, adoption, entrance into or material amendment of an Employee Agreement with any non-U.S. Business Employee or U.S. Business Employee below the position of director which is in the ordinary course of business consistent with past practice). Except as set forth on *Schedule 3.8(g)(i)* or in *Section 5.4*, the execution of, and performance of the transactions contemplated by, this Purchase Agreement will not (either alone or upon the occurrence of any additional or subsequent events) (x) constitute an event under any Company Plan, Employee Agreement or trust that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Business Employee, or (y) result in the triggering or imposition of any restrictions or limitations on the right to amend or terminate any Company Plan and receive the full amount of any excess assets remaining or resulting from such amendment or termination, subject to applicable Taxes.

(h) Except as set forth in *Schedule 3.8(h)* with respect to the Business, (i) there is not presently pending or existing, and to Seller's knowledge there is not threatened, any strike, slowdown, picketing or work stoppage, (ii) there is no pending application for certification of a collective bargaining agent, or (iii) there are no pending actions or proceedings filed by, or on behalf of, any Business Employees or groups of Business Employees, or to the knowledge of Seller threatened to be filed, with any court, arbitration tribunal or Governmental Body, in each case, that would, individually or in the aggregate, have a Seller Material Adverse Effect.

(i) *Schedule 3.8(i)*, contains a complete list of each current or former Business Employee who has experienced an "employment loss" within the meaning of the Worker Adjustment and Retraining Notification Act (the "*WARN Act*") during the 90-day period ending on the date of this Purchase Agreement. *Schedule 3.8(i)* shall be amended as necessary during the period commencing on the date of this Purchase Agreement and ending on the Closing Date to reflect any additional Business Employees who experience an "employment loss" within the meaning of the WARN Act during such period, and such amended *Schedule 3.8(i)* shall be provided to Buyer at Closing.

(j) Seller, each Seller Subsidiary and Avaya Tianjin (i) are in compliance with all applicable Laws respecting employment, employment practices, labor, terms and conditions of employment and wages and hours, in each case, with respect to Business Employees, and (ii) have withheld all amounts required by Law or by agreement to be withheld from the wages, salaries and other payments to Business Employees, except in each case for such noncompliance or failures to withhold that would not, individually or in the aggregate, have a Seller Material Adverse Effect.

(k) Except as disclosed on *Schedule 3.8(k)*, Seller, each Seller Subsidiary and Avaya Tianjin (i) are not liable for any arrears of wages or any Taxes or any penalty for failure to comply with any of the foregoing, and (ii) are not liable for any payment to any trust or other fund or to any governmental or administrative authority, with respect to social security or other benefits for

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Business Employees, in each case, that would, individually or in the aggregate, have a Seller Material Adverse Effect.

(l) Except as disclosed on *Schedule 3.8(l)*, no Company Plan is funded by a trust described in Section 501(c)(9) of the Code. Each of such trusts which assets are to be transferred pursuant to *Section 5.4* has received a favorable determination letter from the IRS with respect to its compliance with Section 501(c)(9) of the Code and Seller is not aware of any circumstances likely to result in revocation of any such favorable determination letter, or Seller has operated such trusts in accordance with Section 501(c)(9) of the Code.

(m) Except as set forth on *Schedule 3.8(m)*, (i) no steps have been taken to terminate any Pension Plan and no termination of any Pension Plan has occurred pursuant to which all Liabilities have not been satisfied in full, (ii) no Liability under Title IV of ERISA (other than premiums to the PBGC) has been incurred by Seller, any Seller Subsidiary, Avaya Tianjin or any ERISA Affiliate which has not been satisfied in full, and no event has occurred and no condition exists that could reasonably be expected to result in Seller, any Seller Subsidiary, Avaya Tianjin or any ERISA Affiliate incurring a Liability under Title IV of ERISA or could constitute grounds for terminating any Pension Plan; (iii) no proceeding has been initiated by the PBGC to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan; (iv) each Pension Plan which is subject to Part 3 of Subtitle B of Title I of ERISA or Section 412 of the Code, has been maintained in compliance with the minimum funding standards of ERISA and the Code, and no such Pension Plan has incurred any "accumulated funding deficiency," as defined in Section 412 of the Code and Section 302 of ERISA, whether or not waived; (v) none of Seller, any Seller Subsidiary, Avaya Tianjin or any ERISA Affiliate has sought or received a waiver of its funding requirements with respect to any Pension Plan and all contributions payable with respect to each Pension Plan have been timely made; and (vi) no reportable event, within the meaning of Section 4043 of ERISA, and no event described in Section 4062 or 4063 of ERISA, has occurred with respect to any Pension Plan.

(n) Except as set forth in *Schedule 3.8(n)*, Seller has not classified any individual as an "independent contractor" or of similar status who, according to a Company Plan or the law of any applicable jurisdiction, should have been classified as an employee or of similar status. No individual who provides services to Seller, the Seller Subsidiaries or Avaya Tianjin in connection with the Business, in any capacity, has been improperly excluded from participating in any Company Plan, other than exclusions that would not, individually or in the aggregate, have a Seller Material Adverse Effect.

(o) All Company Plans subject to the Laws of a jurisdiction outside of the United States (i) have been maintained in all material respects in accordance with all applicable requirements and (ii) if they are intended to qualify for special tax treatment meet all requirements for such treatment except, in each case, for such noncompliance that would not, individually or in the aggregate, have a Seller Material Adverse Effect.

(p) Seller is not liable to make any payment to any person under the Redundancy Payments Act 1967 to 2003 or any voluntary redundancy scheme or practice or pursuant to the Protection of Employees (Employer's Insolvency) Acts 1984 to 2001.

(q) To the extent that Seller has terminated in the 12-month period ending on the date of this Purchase Agreement, or terminates prior to the Closing Date, the employment of any person employed by it by reason of the transfer of assets contemplated in this Purchase Agreement, every such termination has been or shall be, as the case may be, for economic, technical and organizational reasons entailing changes in the work force and is not and shall not be in contravention of the Transfer Regulations, and the Seller has furnished to the Buyer details of every such termination or proposed termination, as the case may be.

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3.9 *Material Contracts.* *Schedule 3.9* contains a complete and accurate list of all existing contracts and commitments of Seller or a Seller Subsidiary, whether written or oral, used or held for use primarily in the operation or conduct of the Business or by which the Purchased Assets may be bound or affected that (i) would require over the full term thereof payments by or to Seller or a Seller Subsidiary of more than $500,000, (ii) are notes, mortgages, indentures, letters of credit, guarantees or other obligations for lending or borrowing of $100,000 or more pursuant to which any of the Purchased Assets are pledged or mortgaged as collateral and any agreement creating any guarantee or other agreement to be liable for the obligations of another Person (other than Seller or a Seller Subsidiary), (iii) are joint venture or partnership agreements used or held for use primarily in the operation or conduct of the Business, or (iv) contain any covenant not to compete, take or pay, or covenant prohibiting the development, sales, manufacture, marketing or distribution of the products or services of the Business or restrict the ability of Seller or a Seller Subsidiary to hire or solicit for hire any Person with respect to which the Business will be obligated following the Closing (the "*Material Contracts*"). Each Material Contract is valid, binding and enforceable against Seller or the applicable Seller Subsidiary and, to Seller's knowledge, the other parties thereto in accordance with its terms, and is in full force and effect. Except as set forth on *Schedule 3.9*, neither Seller nor any Seller Subsidiary has received any written notice that it is in default under or in breach of or is otherwise delinquent in performance under any Material Contract, and, to Seller's knowledge, each of the other parties thereto has performed all obligations required to be performed by it under, and is not in default under, any Material Contract and no event has occurred that, with notice or lapse of time, or both, would constitute such a default, except for breaches, failures of performance or defaults that individually or in the aggregate do not have and would not reasonably be expected to have a Seller Material Adverse Effect.

3.10 *Environmental Matters.* Except as set forth in *Schedule 3.10* and with respect to the Business:

(a) (i) Seller and each Seller Subsidiary are in compliance with all Environmental Laws with respect to the Business and have obtained or filed, and provided Buyer access to true and complete copies of, all Governmental Permits required to be obtained under Environmental Law necessary for the construction, ownership, operation and transfer to Buyer of the Purchased Assets, and the operation or conduct of the Business, (ii) all such Governmental Permits are duly issued and in full force and effect and Seller is not aware of any amendment, review, revocation or non-renewal or other change of any of the Governmental Permits, (iii) no material Governmental Permits required to be obtained under Environmental Law contain any terms or conditions with which Seller and each Seller Subsidiary is not, or does not expect to remain, in compliance, and (iv) Seller knows of no facts or circumstances that may prevent or substantially increase the cost of compliance by Seller or any Seller Subsidiary with Environmental Laws, except, in each case, where failures to obtain, file or maintain in full force and effect such Governmental Permits or be in compliance with Environmental Law or such Governmental Permits, individually or in the aggregate, do not have and would not reasonably be expected to have a Seller Material Adverse Effect;

(b) Except for those matters that individually or in the aggregate do not have and would not reasonably be expected to have a Seller Material Adverse Effect, none of the Premises included in the Purchased Assets is subject to any threatened or on-going claim by, notice of violation from, investigation by, order from or agreement with any Person relating to (i) any Environmental Law, (ii) any Remedial Action, or (iii) a breach of any Governmental Permit;

(c) Neither Seller nor any Seller Subsidiary is subject to any actual or, to the knowledge of Seller, threatened judicial or administrative proceeding, order, judgment, decree or settlement alleging or addressing a material violation of, or material liability under, any Environmental Law with respect to any of the Purchased Assets;

(d) Seller or each applicable Seller Subsidiary has filed all notices required to be filed with respect to the Purchased Assets under any Environmental Law indicating past or present presence, treatment, storage or disposal of a Hazardous Substance or reporting a spill or Release of a Hazardous Substance into the environment, except where failures to file any such notices, individually or in the aggregate, do not have and could not reasonably be expected have a Seller Material Adverse Effect;

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(e) Neither Seller nor any Seller Subsidiary has received any written notice, complaint or claim with respect to the Purchased Assets to the effect that any Seller or Seller Subsidiary is or may be liable to any Person as a result of the presence, management, Remedial Action, Release or threatened Release of a Hazardous Substance;

(f) Seller has made available to Buyer copies of all non-privileged environmental or health and safety related assessments, studies, reports, analyses, regulatory inspection reports, correspondence with regulatory authorities and results of investigations or Remedial Action involving the Purchased Assets ("*Environmental Reports*"), including but not limited to Environmental Reports pertaining to Releases, Remedial Action, underground and above-ground storage tanks, polychlorinated biphenyls ("*PCBs*"), asbestos in any buildings or products, off-site disposal of wastes, and environmental consent orders, fines and penalties, that are in Seller's or Seller's Subsidiaries' possession, custody or control;

(g) There does not exist, is not occurring and, to the knowledge of Seller, has not occurred at any time any Release or management of any Hazardous Substance on, in, under, to or from any of the Purchased Assets in violation of any Environmental Law or that may result in any Liability or obligation of the Seller, any Seller Subsidiary, or the Buyer;

(h) Neither Seller nor any Seller Subsidiary owns or operates, nor to knowledge of Seller, has any of them formerly owned or operated, any site, nor has the Seller or any Seller Subsidiary sent waste to a site, that (i) was not an authorized waste disposal facility pursuant to Environmental Law, (ii) has been placed on the "National Priorities List," the "CERCLIS" list or any other list of sites published by a Governmental Body with suspected or confirmed environmental problems, (iii) is subject to or the source of a claim, administrative order or other request to undertake Remedial Action or to pay money under any Environmental Law, or (iv) is otherwise the subject of any investigation relating to or arising under any Environmental Law;

(i) *Schedule 3.10* identifies (i) all on site locations where each Seller or Seller Subsidiary has Released, stored, or disposed of Hazardous Substances (except for storage of cleaning, pest control and office supplies held for use by Seller in the ordinary course of business), (ii) all underground storage tanks, and the capacity and contents of such tanks, located on any Premises or, to the knowledge of Seller, formerly located on any Premises, (iii) all lead based paint, asbestos or presumed asbestos that, to the knowledge of Seller, is contained in or forming part of any building, building component, structure or Premises owned, leased or otherwise occupied by Seller, and (iv) all PCBs used or stored at any Premises;

(j) To the knowledge of Seller, no products made, manufactured, constructed, distributed, sold, leased, supported or installed by Seller or any Seller Subsidiary contain asbestos, asbestos containing material, mercury, mercury-containing material, PCBs or PCB-containing material; and

(k) This *Section 3.10* contains the sole and exclusive representations and warranties of Seller with respect to Environmental Law.

3.11 *Financial Statement; Undisclosed Liabilities; Absence of Changes.*

(a) *Schedule 3.11(a)* contains true and complete copies of the following financial statements of the Business (the "*Financial Statements*"):

(i) audited balance sheets as of September 30, 2000 and 2001, in each case with a report by PricewaterhouseCoopers LLP;

(ii) audited statements of operations and cash flows for the years ended September 30, 2000 and 2001, in each case with a report by PricewaterhouseCoopers LLP; and

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(iii) unaudited balance sheets as of September 30, 2002, December 31, 2002, March 31, 2003 and June 30, 2003 (the "*Balance Sheets*") and unaudited statements of operations for the three months and twelve months ended September 30, 2002, the three months ended December 31, 2002, the three and six months ended March 31, 2003 and the three and nine months ended June 30, 2003.

(b) Except as set forth on *Schedule 3.11(b)*, the Financial Statements were prepared in accordance with GAAP (except, in the case of the unaudited Financial Statements, for normal and recurring year-end adjustments which, individually or in the aggregate, would not be material, and the omission of footnotes). The Financial Statements were prepared on the basis of the books and records of the Business (in each case, as of the date of such Financial Statements) and present fairly, in all material respects, the financial position of the Business as of the dates thereof and the results of its operations and cash flows for each of the periods then ended, in each case in conformity with GAAP applied on a consistent basis throughout the periods covered thereby.

(c) Neither Seller nor any Seller Subsidiary has any Liability with respect to the Business that would have been required to be disclosed, reflected in or reserved against on the Balance Sheet as of June 30, 2003, other than (i) Liabilities disclosed, reflected or reserved against on the Balance Sheet as of June 30, 2003 or disclosed in the notes thereto, (ii) Liabilities incurred in the ordinary course of business since June 30, 2003, (iii) Liabilities incurred since June 30, 2003 that would not reasonably be expected to be material to the Business, (iv) the Liabilities set forth on *Schedule 3.11(c)*, and (v) Liabilities incurred in connection with the transactions contemplated hereby. Except as set forth on *Schedule 3.11(c)*, there are no Off-Balance Sheet Liabilities that relate to the Business.

(d) Except as set forth on *Schedule 3.11(d)*, since June 30, 2003 to the date of this Purchase Agreement, Seller and the Seller Subsidiaries have conducted and operated the Business in the ordinary course and there has not been any:

(i) change, effect, event, occurrence or state of facts that has had, or would be reasonably likely to have, a Seller Material Adverse Effect;

(ii) change in any method of accounting or accounting practice by Seller with respect to the Business, except for any change required by reason of a concurrent change in GAAP and any change or series of changes that did not have an impact of more than $500,000 with respect to any of the Financial Statements;

(iii) (A) employment, retention, bonus, deferred compensation, severance, retirement or other similar agreement entered into with any Business Employee (or any amendment to any such existing agreement), (B) change in employment terms for any Business Employee, in each case other than in the ordinary course of business consistent with past practice with respect to Business Employees who are not officers of the Seller or any Affiliate of Seller, other than the Early Retirement Program, or (C) increase in the number of Business Employees by more than 2%;

(iv) license or sublicense of any material rights to any Business Intellectual Property to any Third Party, or license or sublicense of any material rights in any Intellectual Property to any Third Party if any such license or sublicense would materially and adversely affect Buyer's ability to operate the Business after the Closing, or agreement to any material restriction on its use of any Business Intellectual Property;

(v) sale or other disposition of any material assets of the Business, except Inventory in the ordinary course of business;

(vi) acquisition of assets by or for the Business for consideration of $100,000 or more, or lease of any assets by or for the Business providing for annual payments by the Business of $100,000 or more, other than in the ordinary course of business consistent with past practice;

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(vii) termination, or material extension or material modification, or waiver of any rights with respect to, any Material Contract, Assumed Lease, Premises, License except in the ordinary course of business consistent with past practice;

(viii) Tax election or change in any Tax election or Tax accounting method, settlement of any audit or filing of any Tax Return by or with respect to Avaya Tianjin to the knowledge of Seller, other than as required by Law; or

(ix) commitment on the part of Seller, any Seller Subsidiary or the Business to do any of the foregoing.

3.12 *Intellectual Property.*

(a) Seller or one of the Seller Subsidiaries (i) owns and has the right to assign to Buyer all of the Intellectual Property that it is assigning to Buyer, and (ii) has a valid right to license all of the Intellectual Property that it is licensing to Buyer pursuant to and in accordance with the terms of the Intellectual Property Agreements (collectively, the "*Business Intellectual Property*"). Except for rights arising under the Nonassignable Licenses, rights to use the Licensed Avaya Trademarks other than as provided in *Section 5.7* and as otherwise described on *Schedule 3.12(a)*, the Business Intellectual Property constitutes, and upon the Closing, Buyer will have, all of the rights in Business Intellectual Property required for Buyer to operate the Business subsequent to the Closing Date in the manner that the Business is being conducted as of the date hereof and as of the Closing Date, and to make, have made, use, lease, import, offer to sell and sell the products of the Business, as such products existed as of the date hereof and as of the Closing. Except as otherwise disclosed on *Schedule 3.12(a),* neither Seller nor any of the Seller Subsidiaries has agreed to any restrictions on the use of Business Intellectual Property that would adversely affect the Buyer's rights under the Intellectual Property Agreements.

(b) Except as set forth on *Schedule 3.12(b)*, to Seller's knowledge (i) neither Seller nor any of the Seller Subsidiaries has infringed the Intellectual Property of any Third Party in its conduct of the Business and (ii) there are no claims, notices or demands of any Third Party pertaining to the Business Intellectual Property with respect to the operation of the Business by Seller or the Seller Subsidiaries or with respect to the Purchased Assets, other than any such claims or demands that individually or in the aggregate do not have and would not reasonably be expected to have a Seller Material Adverse Effect. Except as set forth on *Schedule 3.12(b)*, no proceedings have been instituted, or, to Seller's knowledge, are pending which challenge the rights of Seller or any Seller Subsidiary with respect to the Business Intellectual Property, other than any such proceedings that individually or in the aggregate do not have and would not reasonably be expected to have a Seller Material Adverse Effect.

(c) Each License that is included in the Business Intellectual Property is valid, binding and enforceable against Seller or the applicable Seller Subsidiary and, to Seller's knowledge, the other parties thereto, in accordance with its terms, and is in full force and effect. Except as set forth on *Schedule 3.12(c)*, neither Seller nor any Seller Subsidiary has received any written notice that it is in default under or in breach of or is otherwise delinquent in performance under any such License and, to Seller's knowledge, each of the other parties thereto has performed all obligations required to be performed by it under, and is not in default under, any such License and no event has occurred that, with notice or lapse of time, or both, would constitute such a default, except for breaches, failures of performance or defaults that individually or in the aggregate do not have and would not reasonably be expected to have a Seller Material Adverse Effect.

(d) At the Closing, Seller or one of the Seller Subsidiaries will provide, either by assignment or royalty-free license to Buyer, in accordance with and subject to the limitations of the Intellectual Property Agreements, all of the Business Intellectual Property. In the event that Seller breaches the warranty set forth in *Section 3.12(a)*, Buyer shall provide Seller with a reasonable opportunity to cure that breach by the assignment or licensing by Seller or one of the Seller Subsidiaries to Buyer at no additional cost to Buyer, in accordance with the Intellectual Property Agreements, of those components of such technology which are required by Buyer to conduct the Business after the Closing and to make, have made, use, lease, import, offer to sell or sell any products of the Business, as such products existed as of the Closing Date. Notwithstanding the foregoing, under no circumstances shall Seller be required to grant to Buyer a license, right or other permission to use the Seller name, other than as set forth in *Section 5.7* or in the Transitional Trademark License Agreement attached hereto as *Exhibit C-6*.

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3.13 *Brokers.* Other than CitiGroup Global Markets Inc., the fees and expenses of which will be paid by Seller, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Purchase Agreement based upon arrangements made by or on behalf of Seller or any Affiliate of Seller.

3.14 *Taxes.*

(a) (i) All Tax Returns with respect to a material amount of Taxes required to be filed with respect to the Business, any of the Purchased Assets and Avaya Tianjin have been filed in a timely manner (within any applicable extension periods); (ii) all such Tax Returns were (and as to Tax Returns not filed on the date hereof will be) true, complete and correct and all Taxes with respect to the Business, the Purchased Assets and Avaya Tianjin that are due (whether or not shown or required to be shown on any Tax Return) or claimed or asserted by any taxing authority to be due have been timely paid in full or have been properly reserved for in accordance with GAAP or, in the case of non-United States jurisdictions, generally accepted accounting procedures in such jurisdictions and will be timely paid in full by the due date thereof; (iii) there are no material Tax liens with respect to the Business, the Purchased Assets or Avaya Tianjin; and (iv) there are no audits or other administrative proceedings or court proceedings in the United States and, in the case of non-United States jurisdictions, to the knowledge of the Seller there are no audits or other administrative proceedings or court proceedings presently pending or threatened with regard to any Taxes related to the Business, Purchased Assets or Avaya Tianjin and no taxing authority has asserted any claims in writing with respect to any Taxes with respect to the Business and/or any of the Purchased Assets or Avaya Tianjin.

(b) (i) None of the Purchased Assets is "tax exempt use property" within the meaning of Section 168(h) of the Code or "tax exempt bond financed property" within the meaning of Section 168(g) of the Code and (ii) none of the Purchased Assets is subject to any lease made pursuant to Section 168(f)(8) of the Internal Revenue Code of 1954.

(c) Seller and each Domestic Subsidiary is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code and shall provide Buyer with the affidavit referred to in Section 1445(b)(2) of the Code. No Seller Subsidiary that is not a Domestic Subsidiary is selling pursuant to this Purchase Agreement a United States real property interest within the meaning of Section 897 of the Code. Avaya Tianjin does not own a United States real property interest within the meaning of Section 897 of the Code.

(d) To the knowledge of Seller, no written claim has ever been made by an authority in a jurisdiction where Seller or any of the Seller Subsidiaries or Avaya Tianjin does not file Tax Returns, that it is or may be subject to taxation by that jurisdiction with respect to the Business, the Purchased Assets or Avaya Tianjin. To the knowledge of Seller, Avaya Tianjin is not the beneficiary of any extension of time with which to file any Tax Return.

(e) Seller, each of the Seller Subsidiaries, with respect to the Business and Purchased Assets, and Avaya Tianjin have withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party, and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

(f) Since its formation, Avaya Tianjin has been consistently treated as a corporation for U.S. federal income tax purposes.

(g) Except as set forth on *Schedule 3.14(g)*, none of the Real Property is subject to any deferred, roll back tax or tax rebate or incentive program.

3.15 *Value-Added Resellers, Distributors and Suppliers.* Seller and the Seller Subsidiaries have used their reasonable business efforts to maintain good working relationships with all of their respective customers, distributors, value-added resellers, dealers and suppliers. Since June 30, 2003, neither Seller nor any Seller Subsidiary has materially altered the conduct of its relations with value-added resellers, distributors or suppliers, including without limitation, sales terms and conditions. *Schedule 3.15* sets forth a complete and accurate list of the

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10 largest distributors and value-added resellers, on the one hand, and suppliers, on the other hand, of the Business in terms of dollar value of goods and services sold and purchased by the Business, for the nine months ended June 30, 2003 and the fiscal year ended September 30, 2002. Except as set forth on *Schedule 3.15*, as of the date hereof, neither the Seller nor any Seller Subsidiary has been notified in writing by any distributor, value-added reseller or supplier listed in *Schedule 3.15*, that such distributor, value-added reseller or supplier intends to: (i) cease doing business with the Business; (ii) materially reduce the amount of business it now does with the Business; or (iii) materially alter the terms and conditions pursuant to which business will be conducted with the Business. Neither Seller nor any Seller Subsidiary with respect to the Business has entered into any Agreement with any distributor, supplier or value-added reseller which is intended to or has the effect of providing credit support to such distributor, supplier or value-added reseller, other than trade payables incurred in the ordinary course of business.

3.16 *Business Records.* The Business Records have been maintained in accordance with good business practices and applicable legal and accounting requirements, reflect only bona fide and genuine transactions, and accurately reflect in all material respects the basis for the Seller's and the Seller Subsidiaries' respective financial position and results of operations.

3.17 *Litigation.* *Schedule 3.17* sets forth each instance in which Seller or any Seller Subsidiary with respect to the Business or the Real Property is as of the date hereof (i) subject to any outstanding injunction, judgment, order, decree, ruling, or charge or (ii) a party or, to Seller's knowledge, threatened to be made a party to any action, suit, proceeding (including condemnation and takings proceedings), hearing, or investigation of, in, or before any Governmental Body or before any arbitrator in each case, specifically excluding any instances related to Environmental Law. None of the

actions, suits, proceedings, hearings and investigations set forth on *Schedule 3.17* would reasonably be expected to result in any Seller Material Adverse Change.

3.18 *Affiliated Transactions.* Except as set forth on *Schedule 3.18*, there are no Agreements for the purchase and sale of products and services offered by the Business between the Seller, on the one hand, or any of its Affiliates (other than the Business), on the other hand.

3.19 *Product Recalls; Defects.* Except as set forth in *Schedule 3.19*, since September 30, 2001, there has been no material pending, or to Seller's knowledge, threatened recall or investigation of any product or system of products sold by Seller or any Seller Subsidiary in connection with the Business. Since September 30, 2001 there has been no material pending, or to Seller's knowledge, threatened claim that any products manufactured, assembled or distributed by the Business are defective.

3.20 *Accounts Receivable.* All Accounts Receivable of the Business, including without limitation all Accounts Receivable as shown on the Financial Statements, are bona fide receivables and were incurred in the ordinary course of business for products delivered or services rendered. As of the date of this Purchase Agreement, no notice has been received from any account debtor that any amount of such Accounts Receivable is subject to any pending or threatened set-off, discount or counterclaim of any kind, other than set-offs, discounts or counterclaims consistent with past practices and the applicable reserves for doubtful accounts reflected in the Financial Statements.

3.21 *Distributor Incentive and Marketing Programs.* *Schedule 3.21* includes copies of or accurate descriptions of the standard terms and conditions of distributor incentive and marketing programs for the products of Business sold in the United States. Except as set forth in *Schedule 3.21*, the products manufactured by the Business which have been sold by the Business in the United States, have been sold in all material respects in accordance with the standard distributor incentive and marketing programs.

3.22 *Inventory.* All Inventory whether reflected on the Financial Statements or subsequently created or acquired, has been created or acquired in the ordinary course of business and is suitable, usable, or saleable for the purposes for which it is intended, subject to normal and customary allowances for spoilage, damage and outdated items. All Inventory has been valued on the Financial Statements based on the lower of market value or Seller's cost of the Inventory. The markdowns and provisions for obsolescence and shrinkage reflected on the Financial Statements have been fairly determined consistent with past practices in accordance with GAAP. The reserve for obsolescence and shrinkage reflected on the Financial Statements has been fairly determined consistent with past practices in accordance with GAAP and is adequate to

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provide for excess, slow moving, obsolete, defective, damaged or missing Inventory. *Schedule 3.22* sets forth all Inventory consigned to or from Third Parties.

3.23 *Securities Act.* (i) The Parent Shares issued to Seller pursuant to this Purchase Agreement will not be transferred or otherwise disposed of by Seller except in a transaction registered, or exempt from registration, under the Securities Act of 1933, as amended (the "*Securities Act*"), (ii) Seller is acquiring the Parent Shares for its own account, for investment and not with a view to the distribution thereof within the meaning of the Securities Act; (iii) Seller understands that the Parent Shares have not been, and will not be, registered under the Securities Act or any state securities laws, by reason of their acquisition by Parent in a transaction exempt from the registration requirement thereof, and that the Parent Shares may not be sold unless such sale is registered under the Securities Act and applicable state securities laws or is exempt from registration thereunder; (iv) Seller further understands that the exemption from registration afforded by Rule 144 under the Securities Act (the provisions of which are known by Seller) depends on the satisfaction of various conditions and that, if applicable, Rule 144 may afford the basis for sales of Parent Shares only in limited amounts; (v) Seller is an "accredited investor" (as defined in Rule 501(a) under the Securities Act); and (vi) Seller has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the

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investment in the Parent Shares hereunder and is able to bear the economic risk of loss of such investment.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

Parent and Buyer represent and warrant to Seller, jointly and severally, that:

4.1 *Organization and Qualification.* Parent is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has all requisite corporate power and authority to carry on its business as currently conducted and to own or lease and operate its properties. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has all requisite limited liability company power and authority to carry on its business as currently conducted and to own or lease and operate its properties. Each of Parent and Buyer is duly qualified to do business and is in good standing (in any jurisdiction that recognizes such concept) as a foreign corporation or limited liability company, as applicable, in each jurisdiction where the ownership or operation of its assets or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing individually or in the aggregate does not have and would not reasonably be expected to have a material adverse effect on the ability of Parent or Buyer to perform its respective obligations under this Purchase Agreement and the Collateral Agreements (a "*Buyer Material Adverse Effect*"). Buyer was organized for the sole purpose of consummating the transactions contemplated by this Purchase Agreement, the Commitment Letter (as hereinafter defined) and the Collateral Agreements. Except for Liabilities incurred in connection with its organization or the negotiation and consummation of the transactions contemplated by this Purchase Agreement, the Commitment Letter and the Collateral Agreements, Buyer has neither incurred any Liabilities nor engaged in any business.

4.2 *Authorization; Binding Effect.*

(a) Each of Parent and Buyer has all requisite power and authority to execute and deliver this Purchase Agreement and the Collateral Agreements and to effect the transactions contemplated hereby and thereby, and the execution, delivery and performance of this Purchase Agreement and the Collateral Agreements have been duly authorized by all requisite action.

(b) This Purchase Agreement has been duly executed and delivered by each of Parent and Buyer and this Purchase Agreement is, and the Collateral Agreements, when duly executed and delivered by Parent and Buyer, as the case may be, will be valid and legally binding obligations of Parent and Buyer, enforceable against Parent and Buyer in accordance with their respective terms.

4.3 *Non-Contravention; Consents.*

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(a) The execution, delivery and performance of this Purchase Agreement and the Collateral Agreements by each of Parent and Buyer and the consummation of the transactions contemplated hereby and thereby do not and will not (i) result in a breach or violation of any provision of Parent's certificate of incorporation or bylaws or Buyer's certificate of formation or limited liability company agreement, (ii) violate or result in a breach of or constitute an occurrence of default under any provision of, result in the acceleration or cancellation of any obligation under, or give rise to a right by any party to terminate or amend its obligations under, any mortgage, deed of trust, conveyance to secure debt, note, loan, indenture, lien, lease, Agreement, instrument or other arrangement or commitment to which Parent or Buyer is a party or by which they or their respective assets or properties are bound or (iii) violate any order, judgment, decree, rule or regulation of any Governmental Body having jurisdiction over Parent or Buyer or any of their respective properties, other than, in the case of clauses (ii) and (iii), any such violations, breaches,

defaults, accelerations or cancellations of obligations or rights that individually or in the aggregate do not have and would not reasonably be expected to have a Buyer Material Adverse Effect.

(b) Except as set forth on *Schedule 4.3(b)*, no consent, approval, order or authorization of, or registration, declaration or filing with, any Person is required to be obtained by Buyer in connection with the execution and delivery of this Purchase Agreement and the Collateral Agreements or the consummation of the transactions contemplated hereby or thereby by Parent or Buyer, except for (i) any filings required to be made under the HSR Act and any applicable filings required under foreign Competition Laws and (ii) such consents, approvals, orders, authorizations, registrations, declarations or filings the failure of which to be obtained or made, individually or in the aggregate, do not have and would not reasonably be expected to have a Buyer Material Adverse Effect.

4.4 *SEC Reports; Financial Statements.* Parent has filed all forms, reports and documents required to be filed with the Securities and Exchange Commission ("*SEC*") since December 31, 2002 (any of the foregoing filed prior to the date hereof are referred to herein as the "*Parent SEC Reports*"). Each Parent SEC Report complied at the time of filing in all material respects with all applicable requirements of the Securities Act and the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), as in effect as of the filing date of such Parent SEC Report. None of such Parent SEC Reports, including any financial statements or schedules included or incorporated by reference therein, contained when filed any untrue statement of a material fact or omitted to state a material fact required to be stated or incorporated by reference therein or necessary in order to make the statements therein in light of the circumstances under which they were made not misleading, except to the extent superseded by a Parent SEC Report filed subsequently and prior to the date hereof. The audited consolidated financial statements of Parent included in the Parent SEC Reports fairly present in all material respects, the financial position of Parent as of the dates thereof and the results of its operations and cash flows for each for the periods then ended, in each case in conformity with GAAP applied on a consistent basis throughout the periods covered thereby (subject in the case of unaudited financial statements, to normal and recurring year-end audit adjustments which, individually or in the aggregate, would not be material).

4.5 *Parent Common Stock.* The Parent Shares to be issued to Seller as a portion of the Purchase Price have been duly authorized and, when issued at Closing, shall be validly issued, fully paid and nonassessable. The shares of Parent Common Stock to be issued upon conversion of the Convertible Note have been duly authorized and reserved, and when issued upon conversion of the Convertible Note in accordance with the terms of the Convertible Note, shall be validly issued, fully paid and nonassessable.

4.6 *Brokers.* Other than Wachovia Capital Markets, LLC, the fees and expenses of which will be paid by Parent and Buyer, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Purchase Agreement based on arrangements made by or on behalf of Parent or Buyer or any of their Affiliates.

4.7 *Sufficiency of Funds.* Parent has delivered to Seller a true and complete copy of a letter of commitment obtained by Parent from Wachovia Bank, National Association to provide debt financing for the transactions contemplated hereby pursuant to a senior secured credit facility (the "*Commitment Letter*"). An executed copy of the Commitment Letter is attached hereto as *Exhibit H*. Assuming that the financing contemplated by the Commitment Letter is consummated in accordance with the terms thereof, the funds to be borrowed thereunder by Parent (including, if applicable, with respect to the special closing commitment), together with Parent's available cash, will provide sufficient funds to

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Parent and Buyer to make the Cash Payment and to consummate the transactions contemplated hereby. As of the date of this Purchase Agreement, to the actual knowledge of senior management of Parent, there are no facts or circumstances related to the business, assets, condition or operation of

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Parent and its subsidiaries or the Business that create a reasonable basis for Parent to believe that Parent will not be able to obtain the financing contemplated by the Commitment Letter.

4.8 *No Inducement or Reliance; Independent Assessment.*

(a) With respect to the Purchased Assets, the Business and any other rights or obligations to be transferred hereunder or under the Collateral Agreements or pursuant hereto or thereto, neither Parent nor Buyer has been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller, any Affiliate or any agent, employee, attorney or other representative of Seller or by any other Person representing or purporting to represent Seller, that are not expressly set forth in this Purchase Agreement or in the Collateral Agreements (including the Schedules and Exhibits hereto and thereto), whether or not any such representations, warranties or statements were made in writing or orally.

(b) Each of Parent and Buyer acknowledges that it has made its own assessment of the present condition and the future prospects of the Business and is sufficiently experienced to make an informed judgment with respect thereto. Each of Parent and Buyer further acknowledges that neither Seller nor any Affiliate of Seller has made any warranty, express or implied, as to the future prospects of the Business or its profitability for Parent or Buyer or with respect to any forecasts, projections or business plans prepared by or on behalf of Seller and delivered to Buyer in connection with the Business and the negotiation and the execution of this Purchase Agreement.

ARTICLE V

CERTAIN COVENANTS

5.1 *Access and Information.*

(a) Upon reasonable advance notice, Seller shall, and shall cause its Affiliates to, give to Parent, Buyer and their officers, employees, accountants, counsel and other representatives reasonable access (including for the purpose of inspection and copying) during Seller's or the applicable Affiliate's normal business hours prior to the Closing to the Real Property, Purchased Assets, Business Records and Business Employees and to all of Seller's or the applicable Affiliate's properties, books, contracts, commitments, reports of examination and records (excluding confidential portions of personnel and medical records) directly relating to the Business, the Purchased Assets or the Assumed Liabilities (but excluding the Excluded Assets and Excluded Liabilities and subject to any limitations that are reasonably required to preserve any applicable attorney-client privilege or Third-Party confidentiality obligation) for the purpose of allowing Parent and Buyer to (i) observe Seller's year end audit, including an audit of the physical Inventory, (ii) conduct appraisals of the Purchased Assets and (iii) conduct environmental due diligence. Seller shall, and shall cause its Affiliates to, assist Parent and Buyer, at Parent's and Buyer's expense, in making such investigation and shall cause its counsel, accountants, engineers, consultants and other non-employee representatives to be reasonably available to Parent and Buyer for such purposes. In conducting any inspections, sampling, investigations or tests of the Transferred Premises or Leased Premises or in installing any temporary monitoring wells or equipment thereon, Parent, Buyer and their agents and representatives shall: (i) not interfere in any material respect with the operation and maintenance of the Transferred Premises and Leased Premises; (ii) not damage in any material respect any part of the Transferred Premises and Leased Premises or any personal property owned or held by any Third Party; (iii) comply with all applicable Laws; (iv) promptly pay when due all of its costs of all tests, investigations, and examinations performed by or on behalf of Parent and Buyer with regard to the Transferred Premises and Leased Premises; (vi) not permit any Encumbrances to attach to the Transferred Premises or Leased Premises by reason of the

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exercise of its rights hereunder; (vii) repair any damage to the Transferred Premises and Leased Premises resulting directly or indirectly from any

such inspection or tests; (viii) carry insurance reasonably requested by Seller, name Seller as an additional insured thereunder, and provide Seller with copies of such insurance; (ix) not reveal or disclose prior to Closing any information obtained concerning the Transferred Premises and Leased Premises to any Third Parties, except as reasonably necessary to effectuate the Closing or except as may be otherwise required by applicable Law; and (x) not take subsurface soil or groundwater samples in the vicinity of the Designated Remedial Action without Seller's consent (which consent shall not be unreasonably withheld or delayed).

(b) Each of Parent and Buyer indemnifies and holds Seller harmless from and against any and all Encumbrances, claims, causes of action, damages, Liabilities and expenses (including reasonable attorneys' fees) arising out of Parent's and Buyer's negligent inspections, sampling, investigations or tests, or Parent's and Buyer's negligent installation of any temporary monitoring wells or equipment permitted under this Purchase Agreement; *provided*, *however*, the indemnity in this Section 5.1(b) shall not extend to protect Seller from any Encumbrances, claims, causes of action, damages, Liabilities and expenses (including reasonable attorneys' fees) arising out of discovery by Parent or Buyer of any Hazardous Substance or contamination. Parent's and Buyer's obligations under this *Section 5.1(b)* shall survive the termination of this Purchase Agreement and shall survive the Closing for 18 months and shall be subject to the indemnification claims procedures in *Section 9.6*.

(c) After the Closing Date, each of the parties shall, and shall cause their respective Affiliates to, provide to each other and to their respective officers, employees, counsel and other representatives, upon request (subject to any limitations that are reasonably required to preserve any applicable attorney-client privilege or Third-Party confidentiality obligation), reasonable access for inspection and copying of all Business Records, Governmental Permits, Licenses, Leases, Contracts, insurance records and any other information existing as of the Closing Date and relating to the Business, the Purchased Assets or the Assumed Liabilities, and shall make their respective personnel reasonably available for interviews, depositions and testimony in any legal matter concerning transactions contemplated by this Purchase Agreement, the operations or activities relating to the Business or the Purchased Assets and as otherwise may be necessary or desirable to enable the party requesting such assistance to: (i) comply with any reporting, filing or other requirements imposed by any Governmental Body; (ii) assert or defend any claims or allegations in any litigation or arbitration or in any administrative or legal proceeding, other than claims or allegations that one party to this Purchase Agreement has asserted against the other; or (iii) subject to clause (ii) above, perform its obligations under this Purchase Agreement. The party requesting such information or assistance shall reimburse the other party for all reasonable out of pocket costs and expenses incurred by such party in providing such information and in rendering such assistance. The access to files, books and records contemplated by this *Section 5.1(c)* shall be during normal business hours and upon reasonable prior notice and shall be subject to such reasonable limitations as the party having custody or control thereof may impose to preserve the confidentiality of information contained therein.

(d) Buyer shall preserve all Business Records, Licenses, Leases, Contracts and Governmental Permits for at least seven years after the Closing Date. After such seven-year period and at least 90 days prior to the planned destruction of any Business Records, Licenses, Leases, Contracts or Governmental Permits, Buyer shall notify Seller in writing and shall make available to Seller, upon its request, such Business Records, Licenses, Leases, Contracts and Governmental Permits. Buyer further agrees that, to the extent Business Records, Licenses, Leases, Contracts or Governmental Permits are placed in storage, they will be indexed in such a manner as to make individual document retrieval possible in an expeditious manner.

(e) Seller shall use its commercially reasonable efforts to deliver to Buyer a current, accurate survey of the Nebraska Property, and shall provide reasonable assistance to Buyer in order for

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Buyer to obtain, at Buyer's expense, a current title insurance commitment on the Nebraska Property.

5.2 *Conduct of Business.* From and after the date of this Purchase Agreement and until the Closing Date, except as set forth on *Schedule 5.2* or as otherwise contemplated by this Purchase Agreement or as Parent and Buyer shall otherwise consent to in writing, Seller and each of the Seller Subsidiaries, with respect to the Business:

(a) will carry on the Business in the ordinary course and, to the extent consistent therewith, use commercially reasonable best efforts to keep intact the Business, and keep available the services of the Business Employees;

(b) will not permit, other than in the ordinary course of business or as may be required by applicable Law or a Governmental Body, any of the Purchased Assets (real or personal, tangible or intangible) to be sold, licensed or subjected to any Encumbrance (other than a Permitted Encumbrance);

(c) (i) will not file any new original patent application on invention disclosures resulting from research and development activities of the Business other than foreign patent applications based on previously filed United States patent applications, and (ii) will not sell, lease, license, transfer or dispose of any asset valued in excess of $250,000 that would otherwise be a Purchased Asset, except (A) the Transferred Avaya Tianjin Shares pursuant to the organizational documents of Avaya Tianjin or the Avaya Tianjin Joint Venture Agreement, (B) sales of Inventory in the ordinary course of business consistent with past practice, and (C) the failure to pay maintenance fees for patent registrations to the extent that Seller has notified Buyer in writing as of the date hereof of its intent to abandon specific patent registrations and Buyer has not objected in writing;

(d) will not acquire any asset that will be a Purchased Asset except in the ordinary course of business;

(e) will not enter into, terminate, or materially extend or materially modify, or waive any rights with respect to, any Material Contract, Assumed Lease, Premises or License or modify any Encumbrance on the Real Property, except (other than with respect to Licenses related to the Business Intellectual Property) in the ordinary course of business, *provided*, *however*, that Seller will not extend either of the Leases for the Leased Premises set forth on *Schedule 3.6(a*) located in Richardson, Texas;

(f) will not incur or assume any Indebtedness other than Indebtedness that will constitute Excluded Liabilities;

(g) will not adopt, amend or terminate any Company Plan in a manner affecting Business Employees, except as required by applicable Law or pursuant to any of the Agreements listed on *Schedule 2.1(m)*;

(h) will not increase the number of Business Employees by more than 2% from the number as of the date hereof, increase the rate of compensation for any of the Business Employees or otherwise enter into or alter any employment, consulting or managerial services agreement affecting the Business or Business Employees, except (i) for normal merit or cost-of-living increases to non-executive Business Employees, or (ii) in the ordinary course of business consistent with past practice;

(i) will make capital expenditures necessary or advisable to maintain the business in accordance with the capital expenditures budget attached hereto as *Schedule 5.2(i)* and will not commit Buyer to make any capital expenditures in excess of $250,000 in the aggregate;

(j) will not make a change or series of changes in any method of accounting practice by the Seller with respect to the Business except for any change required by reason of a concurrent

change in GAAP and any change that will not have an impact of more than $500,000 with respect to any of the Financial Statements;

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(k) will not license or sublicense any rights to any Business Intellectual Property to any Third Party, or license or sublicense any rights in any Intellectual Property to any Third Party if any such license or sublicense would adversely affect Buyer's rights under the Intellectual Property Agreements, or agree to any restriction on its use of any Business Intellectual Property;

(l) except as required by applicable Law and excluding Avaya Tianjin from the definition of Seller Subsidiary for the purposes of this clause, will not cause, participate, facilitate or suggest that Avaya Tianjin file any Tax Return, or make any Tax election, other than in a manner consistent with past practice, or settle any audit, examination or other claim for Taxes, or change any accounting or Tax methods, practices or policies;

(m) will perform and comply in all material respects with its obligations under the Material Contracts;

(n) will use commercially reasonable efforts to maintain good working relationships with all of the customers, distributors, value-added resellers, dealers and suppliers of the Business and will not materially alter its working relationships with customers, distributors, value-added resellers, dealers and suppliers, including sales terms and conditions;

(o) will maintain and operate the Real Property in the same manner as it currently is being maintained and operated; and

(p) will not enter into any agreement or commitment with respect to any of the foregoing.

5.3 *Tax Reporting and Allocation of Consideration.*

(a) Seller and Buyer acknowledge and agree that (i) Seller will be responsible for and will perform all Tax withholding, payment and reporting duties with respect to any wages and other compensation paid by Seller or any Seller Subsidiary to any Business Employee in connection with the operation or conduct of the Business prior to or on the Closing Date and (ii) Buyer will be responsible for and will perform, or where applicable will cause Avaya Tianjin to perform, all Tax withholding, payment and reporting duties with respect to any wages and other compensation paid by Buyer or Avaya Tianjin to any Transferred Employee in connection with the operation or conduct of the Business after the Closing Date.

(b) Seller and Buyer recognize their mutual obligations pursuant to Section 1060 of the Code to timely file IRS Form 8594 (the "*Asset Acquisition Statement*") with their respective United States federal income tax returns. Accordingly, Buyer shall furnish Seller, no later than 120 days after the Closing Date, a proposed allocation of the Purchase Price for United States federal income tax purposes and the Assumed Liabilities among the Purchased Assets consistent with the provisions of Section 1060 of the Code and the Treasury Regulations thereunder. Seller shall have thirty days after its receipt of Buyer's proposed allocation to object to such allocation. If Seller objects, Buyer and Seller negotiate in good faith to resolve such objections. Any issues not resolved by such negotiations shall be submitted to an independent accounting firm of national standing satisfactory to the parties which shall resolve the issues within 30 days after submission of the issues to such accounting firm. The costs of the accounting firm shall be shared equally by Seller and Buyer. The parties agree to prepare the Asset Acquisition Statement in accordance with the allocations proposed by Buyer as amended by the results of the negotiations and resolutions of the accounting firm described above and to timely file such Asset Acquisition Statement with their respective United States federal income tax returns and neither Seller nor Buyer shall take a Tax position which is inconsistent with such Purchase Price allocation; *provided*, *however*, that the parties agree that, in all events, the Asset Acquisition Statement will provide that the portion of the Purchase Price and the Assumed Liabilities allocated to any of the Purchased Assets which are held by a

Seller Subsidiary that is not a Domestic Subsidiary shall be equal to the net book value of such Purchased Assets as of the Closing Date, or the Subsequent Closing, as applicable.

(c) Buyer and Seller hereby agree that the portion of the Purchase Price properly attributable to the Purchased Assets situated in Ireland or otherwise related to Ireland consists entirely of cash, being part of the Cash Payment. The applicable Seller Subsidiary

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shall produce to Buyer (or Buyer's assignee or assignees under Section 10.4, if appropriate) prior to Closing a tax certificate under Section 980 of the Irish Taxes Consolidation Act, 1997 (as amended) in relation to the land and buildings situated in Ireland that are part of the Purchased Assets.

5.4 *Transferred Employees.*

(a) As of the Closing Date (for purposes of this *Section 5.4*, the Closing Date shall also refer to the date of each Subsequent Closing, as applicable), Buyer shall make offers of employment to all Business Employees listed on *Schedule 3.8(a)(i)* as amended and presented to Buyer at Closing and anytime prior to Closing if reasonably requested by Buyer (including those absent due to vacation, holiday, illness, leave of absence or short-term disability, but excluding any Business Employees on long-term disability, any Business Employee whose employment is automatically transferred to Buyer pursuant to any applicable Law of any non-U.S. jurisdiction (a "*non-U.S. Law*") regardless of whether such Business Employee accepts Buyer's offer of employment ("*Mandatorily Transferred Employees*") with respect to which the terms of *Section 5.4(p)* shall apply, or any Business Employee employed by Avaya Tianjin); *provided* that: (i) unless otherwise required under applicable non-U.S. Law, with respect to any Business Employee who is on leave or short-term disability as of the Closing Date, Buyer shall only be required to make offers of employment to such Business Employees who are able and willing to return to work within 180 days after the Closing Date, and (ii) with respect to Business Employees covered by a Collective Bargaining Agreement or a Non-U.S. Collective Bargaining Agreement, Business Employees on leave, short-term disability or long-term disability on the Closing Date who subsequently are able and willing to return to work shall be offered employment if, as and when required by the applicable Agreement. A Business Employee who accepts Buyer's offer of employment and commences employment with Buyer or who is a Mandatorily Transferred Employee, in either case, as of the effective date of their employment with Buyer, are collectively referred to as "*Transferred Employees*"; provided, however, that no Early Retiree shall be a Transferred Employee. Transferred Employees who are represented by a union on the Closing Date are referred to as "*Represented Transferred Employees*"; and Transferred Employees who are not represented by a union on the Closing Date are referred to as "*Salaried Transferred Employees*." Employment with Buyer of Transferred Employees shall be effective as of the day following the Closing Date, except that (x) the employment of Salaried Transferred Employees receiving short-term disability benefits or on approved leave of absence (excluding vacation, holiday, scheduled non-working day or illness other than short-term disability) on the Closing Date will become effective as of the date they present themselves for work with Buyer; *provided*, *however*, that Buyer shall not be required to employ any Salaried Business Employee who is able to return to active service and does not present himself or herself for work with Buyer on the first Business Day following the last day of his or her approved absence, and no such Business Employee shall be a Transferred Employee, and (y) the employment of the Represented Transferred Employees receiving short-term or long-term disability benefits or on an approved leave of absence on the Closing Date will become effective if, as and when required by the applicable Agreement. Buyer agrees to assume all immigration-related rights, duties and obligations of Seller with regard to both nonimmigrant and immigrant processes, including the obligations of all certified labor condition applications, labor certification applications, and immigrant visa petitions, and act as successor in interest with regard to such applications and petitions.

(b) As of the Closing Date, Buyer or an Affiliate of Buyer shall adopt, or cause to be adopted for the benefit of U.S. Salaried Transferred Employees a total compensation package of salary, bonus opportunity and benefits (other than retiree welfare benefits and defined benefit pension plans) that is in the aggregate comparable to that provided to U.S. Salaried Transferred Employees by Seller on the Closing Date (other than retiree welfare benefits and defined benefit pension plans); *provided* that nothing herein shall prohibit Buyer or any of its Affiliates from amending or terminating any plan at any time following the Closing Date. Each employee benefit plan (as described in Section 3(3) of ERISA) of Buyer and its subsidiaries, including pension plans, welfare plans, vacation plans and severance plans, shall recognize (i) for purposes of satisfying any deductibles, co-pays and out-of-pocket maximums during the coverage period that includes the Closing Date, any payment made by any Transferred Employee towards deductibles, co-pays and out-of-pocket maximums in any comparable Company Plan and (ii) for purposes of eligibility to participate, early retirement eligibility (if any), early retirement subsidies (if any), vesting and schedule of benefits, all service with Seller or a Seller Subsidiary, including service with predecessor employers that was recognized by any comparable Company Plan and any prior unbridged service with Seller or a Seller Subsidiary; *provided that* such service shall not be recognized to the extent

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such recognition would result in a duplication of benefits or if such service would not have been recognized under Buyer's plan in respect of its employees.

(c) Subject to any agreements set forth in the Transition Services Agreement, Seller agrees to maintain the Avaya Inc. Reimbursement Account Plan ("*Seller's Cafeteria Plan*") until the later of (i) December 31, 2003, and (ii) the last day on which claims may be submitted to Seller's Cafeteria Plan pursuant to the terms thereof for the period ending December 31, 2003 ("*Last Day*"), for the benefit of each Transferred Employee who has such an account under Seller's Cafeteria Plan on the Closing Date, and shall permit any and all of such Transferred Employees to continue their participation in Seller's Cafeteria Plan through December 31, 2003. Through and including December 31, 2003, Seller shall continue to accept contributions made pursuant to any existing salary reduction elections made by Transferred Employees under Seller's Cafeteria Plan for the 2003 plan year. Such elections shall be honored by Buyer as if such elections were made under a cafeteria plan qualified under Section 125 of the Code maintained by Buyer, and Buyer shall transfer to Seller any such contributions made by a Transferred Employee pursuant such an election promptly after receipt of such contributions. Seller shall accept and process any claims incurred on or prior to December 31, 2003 under Seller's Cafeteria Plan in accordance with the terms thereof. Buyer agrees to reimburse Seller for any reasonable costs incurred as a result of Seller's administration of Seller's Cafeteria Plan for the period commencing after the Closing Date and ending on the Last Day, provided that such costs shall be limited to those attributable to Transferred Employees who are actually employed by Buyer.

(d) Seller shall cause all Transferred Employees to become fully vested in the Avaya Inc. Savings Plan, the Avaya Inc. Savings Plan for Salaried Employees, the Avaya Inc. Pension Plan, the Avaya Inc. Pension Plan for Salaried Employees (Services Based Program and Account Balance Program), the Avaya Inc. Deferred Compensation Plan, the Avaya Inc. Supplemental Pension Plan and to the extent required by applicable Law or the terms of the applicable plan documents, the Avaya equity programs (as applicable) on the Closing Date and agrees to contribute any matching contributions to the Avaya Inc. Savings Plan and the Avaya Inc. Savings Plan for Salaried Employees on such date that such contributions are normally made under such plans, without regard to whether the Transferred Employee is employed by Seller on such contribution date, and to amend such plans, if necessary, to permit such contributions.

(e) Buyer shall, on or prior to a date (the "*First Transfer Date*") to be mutually agreed by Buyer and Seller, establish a defined benefit pension plan (the "*Buyer Represented Pension Plan*"), with trusts thereunder (the "*Represented Pension Trust*"), for the purpose of accepting a transfer of

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the pension plan liabilities and assets attributable to Represented Transferred Employees, as described herein. Buyer shall prior to the First Transfer Date provide Seller with written evidence of (i) the adoption of the new plan by Buyer, (ii) the creation of the trust thereunder, and (iii) the submission by Buyer of such plan to the IRS for a favorable determination letter. On the First Transfer Date, Seller will transfer or cause to be transferred from the trust under the Avaya Pension Plan to the Represented Pension Trust, cash or, to the extent agreed by the parties, marketable securities/units in commingled funds, in an amount equal to 90% of the estimated Pension Transfer Amount for the Represented Transferred Employees (the "*First Pension Transfer Amount*"), plus earnings on the amounts transferred from the Closing Date through the First Transfer Date at a rate equal to the actual investment gain or loss (realized and unrealized) on the assets of the Avaya Inc. Pension Plan for which a daily valuation is made (assuming no change in the allocation of assets among the different investment accounts after the Closing Date and all benefit payments are made from a fixed income investment account designated by Seller and reasonably acceptable to Buyer) (the "*Actual Return*"). As of a date not more than 60 days after the First Transfer Date (the "*Second Transfer Date*"), Seller shall transfer or cause to be transferred from the trust under the Avaya Pension Plan to the Represented Pension Trust cash or, to the extent agreed by the parties hereto, marketable securities/units in commingled funds, in an amount (the "*Second Pension Transfer Amount*") equal to the sum of (i) the Pension Transfer Amount minus the First Pension Transfer Amount, plus (ii) earnings on the amount described in clause (i) from the Closing Date through the Second Transfer Date equal to the Actual Return. In the event the Second Pension Transfer Amount is less than zero, then Buyer shall transfer or cause to be transferred such amount in cash from the Represented Pension Trust back to the trust

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under the Avaya Inc. Pension Plan, plus investment gain or loss thereon based on the fixed income portfolio under Buyer's Represented Pension Plan. Subject to the completion of the foregoing asset transfers, as of the Closing Date, all of the obligations and associated Liabilities of the Avaya Inc. Pension Plan relating to the Represented Transferred Employees shall be assumed in full by the Buyer Represented Pension Plan, except that prior to the First Transfer Date all payments required under the Avaya Inc. Pension Plan shall be made by the Avaya Inc. Pension Plan.

(f) For purposes of this *Section 5.4*, the "*Pension Transfer Amount*" shall mean the minimum required transfer amount determined in accordance with the terms of the Avaya Inc. Pension Plan and the requirements of Section 414(1) of the Code based on the accrued benefit obligation, as of the Closing Date, of Represented Transferred Employees as if they were employed as of such date by Seller, utilizing the "safe harbor" rates and assumptions set forth in the regulations promulgated under Section 4044 of ERISA as of the Closing Date, except that the termination and retirement rate assumptions utilized for purposes of this *Section 5.4(f)* shall be the assumptions set forth on *Schedule 5.4(f)* and no expense load, including any loading charge determined under the Loading Assumptions set forth in Appendix C to Part 4044 of the PBGC Regulations, shall be charged and the assets of the Avaya Inc. Pension Plan shall be deemed to include all accrued but unpaid contributions to the plan.

(g) Assets of certain of Seller's Voluntary Employees' Benefits Associations ("*VEBAs*") will be transferred to Buyer's VEBAs as described in this *Section 5.4(g)*.

(i) This *Section 5.4(g)(i)* shall govern the transfer of assets from the Avaya Post-retirement Life and Health VEBAs for Represented Transferred Employees (also referred to herein as the "*Avaya VEBAs*") to one or more corresponding Buyer Post-retirement Life and Health VEBAs (also referred to herein as the "*Buyer VEBAs*"), which Buyer shall establish and submit to the IRS for a favorable ruling as to their tax-exempt status prior to the Second Transfer Date. If Seller is reasonably satisfied that the corresponding Buyer Post-retirement Life and Health VEBAs are tax-exempt under Section 501(c)(9) of the Code, then on or prior to the Second Transfer Date, Seller shall

determine the aggregate present value, as of the Closing Date, of the accumulated post-retirement benefit obligation of the Avaya Inc. Retiree Medical Expense Plan and the Avaya Inc. Life Insurance Plans (together the "*Avaya Retiree Welfare Plans*") funded by such Avaya Post-retirement Life and Health VEBAs, with respect to all Represented Transferred Employees (the "*Retiree Welfare Liabilities*"), and shall transfer or cause to be transferred to Buyer's Post-Retirement Life and Health VEBAs cash or, to the extent agreed by the parties, marketable securities/units in commingled funds, in an amount determined as set forth below. Such amount (the "*VEBA Transfer Amount*") shall be equal to the fair market value as of the Closing Date of the assets of the plans funded by such Avaya VEBAs multiplied by a fraction, the numerator of which shall be the accumulated post-retirement benefits obligation under FAS 106 for Represented Transferred Employees whose post-retirement life and health benefits are funded by such VEBAs, and the denominator of which shall be the accumulated post-retirement benefits obligation under FAS 106 for all participants and dependents whose post-retirement life and health benefits are funded by such VEBAs. Buyer and Seller shall adopt, and shall use their reasonable best efforts to cause their insurers to adopt, procedures to implement such asset transfers in a reasonable and expeditious manner that is consistent with the underlying group life insurance contracts and applicable legal requirements.

(ii) For purposes of this *Section 5.4(g)*, all Liability determinations shall be made as of the Closing Date, based on the active and inactive census data as of the Closing Date. For purposes of determining the Retiree Welfare Liabilities, the assumptions and methods shall be those set forth on *Schedule 5.4(f)*. The amounts to be transferred as described above shall be decreased by the aggregate amount of any payments made by an Avaya VEBA with respect to Represented Transferred Employees prior to such transfer, and adjusted by earnings or losses on the amounts transferred from the Closing Date through the date of such transfer at a rate equal to the actual investment gain or loss (realized and unrealized) on the assets of the Avaya VEBAs. Upon the completion of the foregoing transfer, all obligations and associated liabilities of each of the Avaya Post-retirement Life and Health VEBAs with respect to the Represented Transferred Employees shall be assumed in full by the corresponding Buyer Post Retirement Life and Health VEBAs, and prior to the completion of the

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asset transfers described in this *Section 5.4(g)*, all payments required under the Avaya Retiree Welfare Plans shall be made by Buyer's portion of the Avaya VEBAs. Nothing in this Purchase Agreement shall be interpreted to provide that any assets transferred pursuant to this *Section 5.4(g)* have reverted to Seller or Buyer.

(h) Seller, on or prior to the Second Transfer Date, shall notify Buyer in writing of Seller's determination of the amounts of assets required to be transferred in accordance with the provisions of *Sections 5.4(e)*, *(f)*, *(g)* and *(s)* and the defined benefit pension plan projected benefit obligation, as defined in FAS 87 in respect of the Represented Transferred Employees, as of the Closing based on the assumptions set forth on *Schedule 5.4(f)* (the "*Pension Liabilities*"), the defined benefit pension plan projected obligation, as defined in FAS 87 in respect of the Transferred Employees located in Ireland as of the Closing based on the assumptions set forth on *Schedule 5.4(s)* (the "*Irish Pension Liabilities*"), and the Retiree Welfare Liabilities based on the assumptions set forth on *Schedule 5.4(f)*, and shall provide Buyer with a copy of the census data and actuarial reports (which shall be prepared in accordance with the professional standards applicable thereto) relating to the determination of such amounts, together with such related materials as Buyer may reasonably request, and, in the case of the transfers of assets contemplated by *Sections 5.4(e)*, *(f)*, *(g)* and *(s)*, shall provide Buyer with a written determination by Seller's actuary that the amounts of assets proposed to be transferred are not less than the required amounts determined in accordance with this Purchase Agreement.

(i) Buyer shall notify Seller in writing of Buyer's disagreement with any determination made by Seller pursuant to *Section 5.4(h)* as soon as practicable and in any event within 180 days after the date on which the information specified in *Section 5.4(h)* is provided to Buyer. If no such notice is given by Buyer prior to the expiration of the foregoing period, the determinations contained in Seller's notice to Buyer shall be conclusive and binding upon the parties hereto. If Buyer gives written notice to Seller prior to the expiration of the foregoing period setting forth any objections to the determinations made by Seller, the parties shall attempt in good faith to reach an agreement as to all matters in dispute. If the parties hereto, notwithstanding such good-faith effort, fail to resolve all matters in dispute within 30 days after Buyer advises Seller of its objections, then any remaining disputed matters shall be finally and conclusively determined by a qualified independent actuary selected by Seller and Buyer, which actuary shall not be the regular actuary of either party. Promptly, but in no event later than 30 days after its acceptance of its appointment, the actuary shall determine only those matters in dispute and shall render a written report as to the disputed matters and the resulting calculation of the pension or other assets required to be transferred by Seller in accordance with the provisions of *Section 5.4(e), (f)*, *(g)* and *(s)*, which report shall be conclusive and binding upon the parties. The parties shall share the fees and expenses of the actuary equally.

(j) If the sum of the Pension Liabilities and the Retiree Welfare Liabilities exceeds the sum of the Pension Transfer Amount and VEBA Transfer Amount (such excess herein referred to as the "*Underfunding*") by more than $66,700,000, then on the Second Transfer Date, the principal amount of the Convertible Note shall be reduced dollar for dollar, effective as of the Closing Date, by the amount of the Underfunding exceeding $66,700,000; *provided*, *however*, that to the extent that the amount of the Underfunding exceeding $66,700,000 reduces the amount of the Convertible Note to zero, Seller shall pay to Buyer by wire transfer of immediately available funds to such account or accounts as Buyer may designate to Seller in writing, the amount of the Underfunding exceeding $66,700,000 not so applied in reduction of the Convertible Note. If $66,700,000 exceeds the amount of the Underfunding, then on the Second Transfer Date, the principal amount of the Convertible Note shall be increased dollar for dollar, effective as of the Closing Date, by the amount of such excess; *provided*, *however*, that such increase shall not be in excess of $10,000,000. Any amounts paid under this *Section 5.4(j)* shall be paid together with interest thereon at the rate of interest per annum equal to the prime rate as announced by JP Morgan Chase Bank, N.A. on the date payment is to be made, calculated from the Closing Date through the date on which payment is made.

(k) Seller hereby acknowledges that for FICA and FUTA Tax purposes, Buyer qualifies as a successor employer with respect to the Transferred Employees located in the United States ("*U.S. Transferred Employees*"). In connection with the foregoing, at Buyer's option, Seller agrees to follow the "Alternative Procedures" set forth in Section 5 of Revenue Procedure 96-60. Buyer shall notify Seller of its intention to follow the "Alternative Procedures" on or immediately after the Closing Date. If the "Alternative Procedures" are followed, Seller and Buyer understand that Buyer shall assume Seller's entire obligation to furnish a Form W-2,

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Wage and Tax Statement, to the U.S. Transferred Employees. In addition to all personnel files and records relating to the Transferred Employees that Seller shall deliver to Buyer as of the Closing Date or as otherwise required by this Purchase Agreement, Seller shall timely provide Buyer with any and all other information (and in such format and media) as it shall reasonably request to properly comply with the requirements in the preceding sentence, which in no event shall be more than 10 Business Days after the date that Buyer notifies Seller of its intention to follow such "*Alternate Procedures*."

(l) SS Holdings shall recognize the Unions as the exclusive bargaining representatives for the respective collective bargaining units of the Represented Transferred Employees and assume the Collective Bargaining Agreements effective as of the Closing Date. Buyer or its delegate shall

recognize the union or equivalent Person under any Non-U.S. Collective Bargaining Agreement and shall assume each such Non-U.S. Collective Bargaining Agreement effective as of the Closing Date. Buyer agrees that, as successor employer under each such collective bargaining agreement, it shall comply with any equitable relief legally binding on Buyer awarded pursuant to such collective bargaining agreements after the Closing Date.

(m) Buyer shall make and be responsible for all accrued bonus, sales incentive or similar compensation payments, if any, to Transferred Employees for any period prior to the Closing Date and assumed pursuant to *Section 2.5*, and neither Seller nor any of its Affiliates shall have any Liability with respect to such obligations.

(n) Except as explicitly set forth in *Section 5.4(c)* and *(g)*, *(i)* Seller shall retain all Liability for all medical, dental, life insurance or other welfare benefit claims incurred under its Company Plans on or prior to the Closing Date, and neither Buyer nor any of its Affiliates shall have any Liability with respect to such obligations, and (ii) after the Closing Date, Buyer shall be responsible for all such claims incurred after the Closing Date with respect to each Transferred Employee under and in accordance with Buyer's benefit plans. For purposes of this *Section 5.4(n)*, a claim will be deemed to have been incurred on the date of death in the case of life insurance benefits and on the date on which the medical treatment or service was rendered or expense actually incurred in the case of medical, dental and other claims.

(o) Seller shall be responsible for and shall defend, indemnify and hold harmless Buyer for any failure to provide health continuation coverage (including any penalties, excise taxes or interest resulting from the failure to provide continuation coverage) required by Section 4980B of the Code due to qualifying events with respect to Transferred Employees which occur on or before the Closing Date. Buyer shall be responsible for and shall defend, indemnify and hold harmless Seller for any failure to provide health continuation coverage (including any penalties, excise taxes or interest resulting from the failure to provide continuation coverage) required by Section 4980B of the Code due to qualifying events with respect to Transferred Employees which occur after the Closing Date and Seller shall be responsible for providing any applicable COBRA notices with respect to events occurring on the Closing Date.

(p) With respect to any Mandatorily Transferred Employee or any other Transferred Employee employed outside the U.S. on the Closing Date (collectively the "*Foreign Transferred Employees*"), (i) Buyer or its subsidiaries shall provide terms and conditions of employment with respect to each such Foreign Transferred Employee that are the same as the terms and conditions of employment applicable to such Foreign Transferred Employee immediately prior to the applicable Closing Date to the extent required by applicable non-U.S. Law to accomplish the transfer of employment of such employee, the sale of the Business or avoid the payment of any severance or termination Liability to the employee that would otherwise arise under applicable non-U.S. Laws in connection with the transfer of employment or the consummation of the transaction and (ii) Buyer and Seller agree to take such actions as are reasonably practicable in connection therewith, including the assumption by Buyer of Liabilities attributable to the employment of any Foreign Transferred Employee on or prior to the Closing Date, but only if and to the extent necessary to accomplish the transfer of employment, the sale of the Business or avoid the payment of any severance or termination Liability to the employee that would otherwise arise in connection with the transfer of employment or the consummation of the transaction

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under any applicable non-U.S. Law. In the event Buyer is obligated to assume any Liability attributable to the employment of any Foreign Transferred Employee on or prior to the Closing Date that would otherwise be a Liability of Seller, notwithstanding clause (ii) of the foregoing sentence, Seller shall remain responsible for such Liability.

(q) After the Closing Date, Buyer or an Affiliate of Buyer shall adopt, or cause to be adopted for the benefit of Transferred Employees employed outside of the United States on the Closing Date, a total compensation package of salary, bonus opportunity and benefits, that, in the aggregate, is comparable to that provided to such Transferred Employees by Seller on the Closing Date (other than retiree welfare benefits and defined benefit pension plans). On the Closing Date, to the extent required to transfer the employment or the Business or to avoid payment of any severance, Seller agrees, with respect to each Transferred Employee employed outside the U.S., to vest any benefits which have not vested as of the Closing Date or credit service with Buyer after the Closing Date for vesting purposes under any of its non-U.S. Company Plans.

(r) Under Seller's applicable Company Plan or Plans, as currently in effect, any Salaried Transferred Employee who as of the Closing Date (a) is at least age 55 and has at least 15 years of service is eligible to elect on a one-time basis to commence to receive Seller subsidized retiree medical benefits at any time following the Closing Date as a retired employee; or (b) is at least age 50 and has at least 15 years of service is eligible to elect on a one-time basis to commence to receive retiree medical benefits, at the sole expense of the Salaried Transferred Employee, at any time following the Closing Date as a retired employee; it being understood that the foregoing does not constitute a representation or commitment that such benefits will be provided in the future and that such benefits are and shall be provided in accordance with and subject to the terms of the applicable plan document. Subject to the applicable plan document, as amended from time to time (but, until the expiration of the current Collective Bargaining Agreement with the Unions on May 31, 2006, not in a manner that, in form, materially discriminates against Transferred Employees as compared to similarly situated Seller employees participating in the applicable Company Plan), this benefit shall be available for election on a one-time basis under the Company Plans at any time after the Closing Date, regardless of whether the Salaried Transferred Employee is employed by Buyer at the time of the election. All Liabilities under the applicable Company Plan with respect to the obligations described in this *Section 5.4(r)* shall be borne solely by Seller, and neither Buyer nor any of its Affiliates shall have any Liability with respect to such obligations.

(s) Buyer shall assume or otherwise accept a transfer of the assets and liabilities of the pension plan maintained in the Republic of Ireland that is a defined benefit scheme (as defined under the Irish Pensions Act of 1990) (the "*Irish Pension Plan*") attributable to Transferred Employees located in the Republic of Ireland in a manner that is mutually agreed upon by Buyer and Seller; *provided*, *however*, that only the assumptions set forth in *Schedule 5.4(s)* shall be utilized for purposes of the determinations to be made under this *Section 5.4(s)*. The amount of the assets to be transferred shall be decreased by the aggregate amount of any payments made by the Irish Pension Plan with respect to Transferred Employees located in the Republic of Ireland prior to such transfer, and shall be adjusted by earnings or losses on the amounts transferred from the Closing Date through the date of such transfer at a rate equal to the actual investment gain or loss (realized and unrealized) on the assets of the Irish Pension Plan. To the extent that the Irish Pension Liabilities exceed the asset transfer amount (determined as of the Closing Date prior to adjustment for earnings and losses between the Closing Date and the date that the assets are transferred), the amount of the Convertible Note shall be reduced, dollar for dollar, effective as of the Closing Date, by the amount of such excess. To the extent the amount of the Convertible Note is reduced to zero, Seller shall pay to Buyer by wire transfer of immediately available funds to such account or accounts as Buyer may designate to Seller in writing, an amount equal to such underfunding not so applied in reduction of the Convertible Note, plus interest thereon at the rate of interest per annum equal to the prime rate as announced by JP Morgan Chase Bank, N.A. on the date payment is to be made, calculated from the Closing Date through the date on which payment is made.

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(t) Buyer shall be exclusively responsible for any Liability to the extent attributable to the employment or termination of employment of any Transferred Employee following the Closing Date, including, but not limited to, any Liability attributable to service required to be recognized pursuant to *Section 5.4(b)*.

5.5 *Reasonable Best Efforts.* Upon the terms and subject to the conditions set forth in this Purchase Agreement, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Purchase Agreement and the Collateral Agreements, including using reasonable best efforts to accomplish the following: (i) the taking of all acts necessary to cause the conditions to Closing to be satisfied as promptly as practicable, (ii) the obtaining of all necessary actions or nonactions, waivers, permits, consents and approvals from Governmental Bodies and the making of all necessary registrations, notices, amendments, applications and other filings (including filings with Governmental Bodies, if any) and the taking of all steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by any Governmental Body, (iii) the obtaining of all necessary consents, approvals, releases or waivers from Third Parties, including consent to and approval of the novation or assignment of Contracts, (iv) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Purchase Agreement or the consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any Governmental Body vacated or reversed (v) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Purchase Agreement and the Collateral Agreements, (vi) the implementation of the provisions of *Section 5.4* in a manner that avoids the interruption of the provision of pay and employee benefits from and after the Closing Date and (vii) the provision by Seller to Buyer of at least two weeks advance notice of any material Benefit Plan changes that impact Business Employees. Not limiting the generality of the foregoing, Seller and Buyer shall, or shall cause any ultimate parent entity with respect thereto to, use reasonable best efforts to (a) take promptly all actions necessary to make the filings required under the HSR Act or Competition Laws of any foreign jurisdiction (and in any event each party shall, or shall cause its ultimate parent entity to, use its reasonable best efforts to, make such filings no later than the date that is 10 Business Days after the date hereof), (b) comply at the earliest practicable date with any request for additional information received by Seller or Buyer or their Affiliates from the Federal Trade Commission or the Antitrust Division of the Department of Justice pursuant to the HSR Act or Competition Laws of any foreign jurisdiction, and (c) cooperate with each other in connection with their respective filings under the HSR Act and in connection with resolving any investigation or other inquiry concerning the transactions contemplated by this Purchase Agreement commenced by either the Federal Trade Commission, the Antitrust Division of the Department of Justice or state attorneys general or any foreign jurisdiction. For purposes of this *Section 5.5*, the reasonable best efforts of any party hereto shall include payment by such party (or its Affiliates) of all standard fees and expenses which are legal obligations of such party related to obtaining any consents from a Governmental Body, including all fees incurred in connection with all filings under any Competition Laws (including the HSR Act and EC Common Market).

5.6 *Contacts with Suppliers and Customers.* With the prior consent of Seller, which consent shall not be unreasonably withheld or delayed, Buyer and its representatives shall have the right to contact key suppliers and distributors and technology partners of the Business.

5.7 *Sale by Buyer of Inventory Marked With Avaya's Name.* Seller grants to Buyer a license to use the Licensed Avaya Trademarks in accordance with the terms and conditions set forth in the Transitional Trademark License Agreement attached hereto as *Exhibit C-6*, and other than as set forth

therein, in no event shall Buyer or any Affiliate of Buyer advertise or hold itself out as Avaya or an Affiliate of Avaya after the Closing Date.

5.8 *Non-Solicitation of Employees.* Seller shall not, and shall cause its representatives and Affiliates not to, for a period of two years from the date hereof, directly or indirectly, solicit the employment (including as a consultant or independent contractor) of, or engage as an employee, consultant or independent contractor, any Transferred Employee without Buyer's prior written consent. The term "solicit the employment" shall not be deemed to include generalized searches for employees through media advertisements, employment firms or otherwise that are not focused on Persons employed by Buyer or any successor. This restriction shall not apply to solicitations directed at any

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Transferred Employee whose employment with Buyer or its successor has theretofore been involuntarily terminated by Buyer or its successor after the Closing.

5.9 *Home Depot.* Buyer acknowledges that Seller has sold and transferred to Home Depot the Home Depot Parcel pursuant to the Home Depot Purchase Agreement and, as the owner of the Nebraska Property, is bound to cooperate in certain matters with Home Depot with respect to the Nebraska Property and the development of the Home Depot Parcel, as more particularly set forth in the Amendment to the Home Depot Purchase Agreement executed by Seller on March 18, 2003 and executed by Home Depot on March 28, 2003 (the "*Home Depot Amendment*"). Seller shall assign to Buyer, and Buyer shall assume, the rights and obligations of Seller under Paragraph 4 of the Home Depot Amendment to the extent relating to the Nebraska Property, but specifically excluding any rights and obligations relating to the Home Depot Parcel or the Avaya Southeast Property. Without limiting the foregoing, (i) Buyer shall assume the obligation to maintain the separate access road to Seller's facility located on the Nebraska Property referenced in Paragraph 4(a) of the Home Depot Amendment, (ii) Seller shall assign to Buyer all easements, rights and benefits appurtenant to the Nebraska Property under the REA (as defined in the Home Depot Purchase Agreement), the escrow agreement referenced in Paragraph 4(h) of the Home Depot Amendment, and that letter agreement dated April 15, 2003 between Avaya and Home Depot regarding culvert design and tree relocation costs, and (iii) Seller shall remain solely responsible for all liabilities and obligations relating to the Avaya Southeast Property, whether arising under the Home Depot Purchase Agreement, the REA or any other document or source. Notwithstanding anything to the contrary herein, Seller shall pay on demand all documented out-of-pocket expenses incurred by Buyer in connection with the Home Depot Purchase Agreement, the REA, the Home Depot Parcel and/or the Avaya Southeast Property, except for the obligations and Liabilities to be assumed hereunder. Notwithstanding anything to the contrary contained herein, Buyer shall only assume the obligations and liabilities under the REA which are applicable to the owner of property which is being transferred to Buyer pursuant to this Purchase Agreement.

5.10 *Financing.*

(a) Parent agrees to use its commercially reasonable efforts to take, or cause to be taken, all actions with respect to itself and Buyer necessary to consummate the transactions contemplated by the Commitment Letter. Parent will promptly notify Seller in writing of any termination of the Commitment Letter or any proposed changes or modifications to the Commitment Letter that would materially adversely affect the ability of Parent to consummate the transactions contemplated by this Purchase Agreement. Parent will not amend, modify or supplement any of the material terms or conditions of the Commitment Letter relating to the amount or closing conditions thereof or in a manner reasonably likely to materially adversely affect the ability of Parent to consummate of the transactions contemplated by this Purchase Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

(b) If at any time prior to the termination of this Purchase Agreement the financing contemplated by the Commitment Letter is no longer available to Parent, Parent agrees to use its

commercially reasonable efforts to arrange alternative financing on terms which in Parent's judgment are at least as favorable to Parent as those contemplated by the Commitment Letter to enable Parent and Buyer to consummate the transactions contemplated by this Purchase Agreement and the Collateral Documents.

(c) Seller shall use its commercially reasonable efforts and cooperate with Buyer and its agents and representatives in connection with the financing contemplated by the Commitment Letter or, as applicable, alternative financing arrangements, including providing reasonable access to the Purchased Assets, Business Records, officers, directors, employees agents and other representatives of Seller, and using commercially reasonable efforts to cause its officers, directors, employees, agents, legal advisors, auditors and other representatives to assist and cooperate with the preparation of a standard confidential memorandum and participate in and cooperate with the marketing of any loan syndication and any meetings with rating agencies and prospective lenders; *provided* that Parent shall reimburse Seller for any out-of-pocket expenses incurred by Seller in connection with providing such cooperation or assistance.

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5.11 *Advice of Changes.* Each party hereto will promptly advise the other in writing of (i) the failure of any condition to be satisfied by it hereunder, (ii) any notice or other communication from any Person that the consent of such Person is required for the consummation of the transactions contemplated by this Purchase Agreement or the Collateral Agreements, (iii) any notice or other communication from any Governmental Body in connection with the transactions contemplated by this Purchase Agreement or the Collateral Agreements, (iv) Seller's receipt of any written notice from any value added reseller, distributor or supplier set forth on *Schedule 3.15* that such distributor, value-added reseller or supplier intends to: (A) cease doing business with the Business; (B) materially reduce the amount of business it now does with the Business; or (C) materially alter the terms and conditions pursuant to which business will be conducted with the Business. Seller will promptly advise Buyer in writing of (i) any event known by Seller that would render any representation or warranty of Seller contained in this Agreement untrue or inaccurate in any material respect or (ii) any change, condition or event that has had or could be reasonably expected to have a Seller Material Adverse Effect. No disclosure pursuant to this *Section 5.11*, however, shall be deemed to amend or supplement the Schedules or to prevent or cure any misrepresentation, breach of warranty, or breach of covenant.

5.12 *Third Party Confidentiality Agreements.* Within two Business Days after the date hereof, Seller shall request that all Persons who received Confidential Information of or relating to the proposed sale of the Business or any material portion thereof since July 1, 2003 return or destroy such Confidential Information in accordance with the provisions of the applicable confidentiality agreement entered into between Seller and such Person.

5.13 *No Negotiation or Solicitation.* From the date hereof until the earlier of the Closing Date or the date on which this Purchase Agreement is terminated pursuant to Article XI, Seller will not, and will not permit any of its Affiliates, officers, employees, directors, investment bankers or representatives to, solicit offers, inquiries or proposals from, disclose information to, afford any access to or negotiate or participate in discussions (and Seller shall immediately cease providing information to, and engaging in discussions or negotiations that are ongoing) with, other Persons in connection with the possible sale, disposition, recapitalization or other similar transaction involving all or any part of the Business. Notwithstanding the foregoing, nothing in this *Section 5.13* shall prohibit any acquisition of Seller, whether by way of merger, purchase of capital of capital stock, purchase of substantially all assets, including the Purchased Assets, or otherwise.

5.14 *Non-Competition.* Seller agrees that, for five (5) years following the Closing Date, it will not, and will cause its Affiliates not to, directly or indirectly, sell, distribute, make or have made any products, or engage in any business or other endeavor of a kind which competes with the Business as currently conducted, in any area of the world; *provided*, *however*, that neither Seller nor any Seller

Subsidiary shall be prevented from (a) acquiring shares of capital stock, partnership or other equity interests in any Person as investments of Seller's pension funds or funds of any other Company Plan whether or not such Person is engaged in the same business as the Business, (b) acquiring ownership of 5% or less of any class of securities registered under the Exchange Act, (c) performing any act or conducting any business contemplated by this Purchase Agreement or any of the Collateral Agreements, (d) purchasing, selling, installing or otherwise utilizing products and services of the Business, or products and services similar to the products of the Business (cumulatively, the "Components"), for internal use or to include with or incorporate in products sold by, or as part of maintenance or service offerings of, Seller or any of its Affiliates so long as Seller and its Affiliates do not private label any such Components, use any marks of the Seller or its Affiliates to identify such Components nor otherwise represent or market to customers that Seller or any of its Affiliates has designed or manufactured such Components; or (e) enforcing its rights under that certain patent license agreement between Avaya Licensing Corporation and Panduit Corporation, effective as of December 4, 2002, that certain patent license agreement between Avaya Licensing Corporation and Leviton Manufacturing Co., Inc., effective as of November 15, 2002, and that certain patent license agreement between AT&T IPM Corp., AT&T Network Cable Systems and Superior Modular Products Incorporated dated June 1, 1995 (as assigned to and assumed by Seller), subject to the limitations in the Intellectual Property License Agreement.

5.15 *Collateral Agreements.* Prior to the Closing Date, Seller, on the one hand, and Parent and Buyer, on the other hand, shall negotiate in good faith (a) the form of the Convertible Note to be delivered to Seller at Closing pursuant to *Section 2.3* in accordance with the summary of terms thereof set forth on *Exhibit G* attached hereto, (b) the Transition Services Agreement including the schedules for the services to be attached to the Transition Services Agreement and (c) the time periods to be used in the Transitional Trademark License

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Agreement. With respect to the Transition Services Agreement, assuming that the services requested are not more than the services currently provided to the Business, the cost of such services will not be in excess of One Million Two Hundred Fifty Thousand Dollars ($1,250,000) per month. The parties acknowledge that Parent or Buyer may require certain services deemed critical to the operation of the Business (the "*Critical Services*") and such Critical Services shall be subject to a term extension as Parent or Buyer reasonably determine and subject to cost terms as are mutually agreeable, *provided*, *that* Critical Services shall not include any legal or accounting (excluding payroll) services. Subject to the limitations set forth in this *Section 5.15*, Seller agrees to provide all services necessary for Parent and Buyer to operate the Business substantially the same as at the signing of this Purchase Agreement.

5.16 *Financial Statements.* Prior to the Closing, Seller shall deliver to Buyer true and complete copies of the audited balance sheets as of September 30, 2002 and 2003 and audited statements of operations and cash flows for the years ended September 30, 2002 and 2003, in each case with a report by PricewaterhouseCoopers LLP ("*PWC*"), that present fairly, in all material respects, the financial position of the Business as of the dates thereof and the results of its operations and cash flows for the period then ended, in each case in conformity with GAAP applied on a consistent basis throughout the periods covered thereby. Seller shall use its reasonable best efforts to cause PWC to give Buyer and Buyer's accountants reasonable access to representatives of PWC and PWC's work papers.

5.17 *Listing of Shares.* Parent shall use its reasonable best efforts to cause (a) the Parent Shares to be issued by Parent as a portion of the Purchase Price and (b) the shares of Parent Common Stock to be issued by Parent upon conversion of the Convertible Note, to be approved for listing on the New York Stock Exchange, subject to official notice of issuance, prior to the Closing Date.

5.18 *Past Due Licenses.* Not later than 60 days after the Closing Date (or such earlier time as may be required to avoid Buyer's loss of a License), Seller shall make any and all payments due with respect to the Licenses set forth on *Schedule 3.12(c)*.

5.19 *Supply Agreement.* Prior to the Closing Date, Seller, Parent and Buyer shall negotiate in good faith, the terms and conditions of a supply agreement (the "*Supply Agreement*") relating to the purchase of products currently manufactured or sold in connection with the Business, it being understood that, notwithstanding any other provision of this Purchase Agreement, the execution of the Supply Agreement shall not be a condition precedent to the obligations of the parties under this Purchase Agreement.

5.20 *Apportionments.* The following items will be adjusted as of the Closing Date (or as soon thereafter as is reasonably feasible, and the appropriate party promptly will pay adjustment amounts as necessary to prorate such amounts as of the Closing Date):

(i) rent and other charges payable under any Assumed Lease for the calendar month (or other period for paying rent or charges) in which the Closing Date occurs;

(ii) gas, electricity, sewer, water and other utility charges for the billing period that includes the Closing Date; and

(iii) charges under service, management or other agreements, if any, that remain in effect after the Closing Date and are assumed by Buyer for the billing period that includes the Closing Date.

ARTICLE VI

CONFIDENTIAL NATURE OF INFORMATION

6.1 *Confidentiality Agreement.*

(a) Parent agrees that the Confidentiality Agreement shall apply to (i) all documents, materials and other information that it shall have obtained regarding Seller or its Affiliates during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Purchase Agreement), any investigations made in connection therewith and the preparation of this Purchase Agreement and related documents and (ii) all analyses, reports, compilations, evaluations and other materials prepared by Parent or its counsel, accountants or financial advisors that contain or

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otherwise reflect or are based upon, in whole or in part, any of the provided information; *provided*, *however*, that subject to *Section 6.2(a)*, the Confidentiality Agreement shall terminate as of the Closing and shall be of no further force and effect thereafter with respect to information of Seller or a Seller Subsidiary the ownership of which is transferred to Buyer.

(b) Notwithstanding this *Article VI* or the Confidentiality Agreement, each party hereto (and each employee, representative or other agent of each party) may disclose to any and all Persons, the tax treatment and tax structure of the transactions contemplated by this Purchase Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure; *provided*, *however*, that (i) this provision shall not permit such disclosure until the earliest of (a) the date of the public announcement of discussions relating to the transactions contemplated by this Purchase Agreement, (b) the date of the public announcement of such transactions, or (c) the date of the execution of an agreement to enter into such transactions; (ii) this provision shall not permit the disclosure of the identity of any of the parties; and (iii) nothing in this provision shall limit in any way any party's ability to consult any tax advisor (including a tax advisor independent from all other entities involved in the transactions contemplated by this Purchase Agreement) regarding the tax treatment or tax structure of such transactions.

6.2 *Proprietary Subject Matter.*

(a) Except as provided in *Sections 6.2(b)* and *(d)*, after the Closing and for a period of three years following the Closing Date, each of the parties agrees that it will keep confidential all Proprietary Subject Matter of the other party or its Affiliates that is received from, or made available by, the other party, in the course of the transactions contemplated hereby, including, for purposes of this *Section 6.2*, (i) information about the Business's business plans and strategies, marketing ideas and concepts, especially with respect to unannounced products and services, present and future product plans, pricing, volume estimates, financial data, product enhancement information, business plans, marketing plans, sales strategies, customer information (including customers' applications and environments), market testing information, development plans, specifications, customer requirements, configurations, designs, plans, drawings, apparatus, sketches, software, hardware, data, prototypes, connecting requirements or other technical and business information, except, in the case of Parent's and Buyer's obligation, for such Proprietary Subject Matter as is conveyed to Buyer as part of the Purchased Assets, and (ii) all Proprietary Subject Matter included in the Purchased Assets in the case of Seller's obligation.

(b) Notwithstanding the foregoing, such Proprietary Subject Matter shall not be deemed confidential and none of the parties shall have any obligation with respect to any such Proprietary Subject Matter that:

(i) at the time of disclosure was already known to Seller or Parent and Buyer, as the case may be, other than as a result of this transaction, free of restriction as evidenced by documentation in Seller's or Parent's and Buyer's possession, as the case may be, other than Proprietary Subject Matter included in the Purchased Assets in the case of Seller's obligation;

(ii) is or becomes publicly known through publication, inspection of a product or otherwise, and through no breach, negligence or other wrongful act of Seller or Parent and Buyer, as the case may be;

(iii) is received by Seller or Parent and Buyer, as the case may be, from a Third Party without similar restriction and without breach of any agreement, other than Proprietary Subject Matter included in the Purchased Assets in the case of Seller's obligation; or

(iv) to the extent it is independently developed by Seller or Parent and Buyer, as the case may be, other than Proprietary Subject Matter included in the Purchased Assets in the case of Seller's obligation.

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(c) If Seller (or any of its Affiliates) or Parent and Buyer (or any of their Affiliates), as the case may be, is requested or required (by oral question, interrogatory, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Proprietary Subject Matter of the other party, such party will promptly notify the other party of such request or requirement and will cooperate with such other party such that such other party may seek an appropriate protective order or other appropriate remedy. If, in the absence of a protective order or the receipt of a waiver hereunder, a party (or any of its Affiliates) is in the opinion of its counsel compelled to disclose the Proprietary Subject Matter of the other party or else stand liable for contempt or suffer other censure or significant penalty, such party (or its Affiliate) may disclose only so much of the Proprietary Subject Matter to the Person compelling disclosure as is required by Law. Seller or Parent and Buyer, as the case may be, will exercise its (and will cause its Affiliates to exercise their) reasonable best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to such Proprietary Subject Matter.

(d) Except to the extent that disclosure thereof is required under accounting, stock exchange or federal securities or labor relations Laws disclosure obligations, the terms and conditions of this Purchase Agreement and the Collateral Agreements, and all attachments and amendments hereto

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and thereto shall be considered Proprietary Subject Matter protected under this *Article VI*. Notwithstanding anything in this *Article VI* to the contrary, in the event that any such Proprietary Subject Matter is also subject to a limitation on disclosure or use contained in another written agreement between Parent or Buyer and Seller or their respective Affiliates that is more restrictive than the limitation contained in this *Article VI*, then the limitation in such other agreement shall supersede this *Article VI*. Upon the Closing, Seller's Proprietary Subject Matter included in the Purchased Assets shall be the property of Buyer, and Parent and Buyer shall have no obligations to Seller pursuant to this *Article VI* with respect thereto; *provided however*, nothing in the foregoing paragraph shall alter any rights or obligations set forth in the Intellectual Property License Agreement attached hereto as *Exhibit C-1*.

ARTICLE VII

CLOSING

7.1 *Deliveries by Seller or the Seller Subsidiaries.* On the Closing Date (or to the extent applicable, at any Subsequent Closing), Seller shall, or shall cause a Seller Subsidiary to, deliver to Buyer the following:

(a) the duly executed Collateral Agreements to be executed by Seller or a Seller Subsidiary;

(b) duly endorsed stock certificates evidencing the Transferred Avaya Tianjin Shares;

(c) all consents, waivers or approvals theretofore obtained by Seller with respect to the sale of the Purchased Assets or the consummation of the transactions contemplated by this Purchase Agreement or the Collateral Agreements;

(d) a certificate of an appropriate officer of Seller, dated the Closing Date, certifying the fulfillment of the conditions set forth in *Sections 8.2(a)* and *(b)*;

(e) a certificate or certificates in form and substance reasonably satisfactory to Buyer, duly executed and acknowledged, certifying that Seller and each Domestic Subsidiary is exempt from withholding under Section 1445 of the Code and, if necessary, information sufficient for the closing agent to complete an IRS Form 1099; and

(f) except to the extent otherwise contemplated by *Section 8.4*, all such other bills of sale, assignments and other instruments of assignment, transfer or conveyance and such other documents and instruments as Buyer may reasonably request or as may be otherwise necessary or desirable to evidence and effect the sale, transfer, assignment, conveyance and delivery of the Purchased

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Assets to Buyer and to put Buyer in actual possession or control of the Purchased Assets including certifications or instruments customarily required from a seller for the issuance of title insurance policies on all Real Property where title insurance is available.

7.2 *Deliveries by Parent and Buyer.* On the Closing Date (or to the extent applicable, at any Subsequent Closing), Parent and Buyer shall deliver, or cause to be delivered, to Seller the following:

(a) the Purchase Price as provided in *Section 2.3*;

(b) the duly executed Collateral Agreements to be executed by Parent, Buyer or their respective subsidiaries;

(c) a certificate of an appropriate officer of each of Parent and Buyer, dated the Closing Date, certifying the fulfillment of the conditions set forth in *Sections 8.3(a)* and *(b)* ;

(d) all such other documents and instruments as Seller may reasonably request or as may be otherwise necessary or desirable to evidence and effect the assumption by Buyer of the Assumed Liabilities; and

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(e) evidence of the obtaining of or the filing with respect to, any required approvals set forth on *Schedule 4.3(b)*.

7.3 *Closing Date.* The Closing shall take place at the offices of Weil, Gotshal & Manges LLP, located at 767 Fifth Avenue, New York, New York 10153, at 10:00 a.m. local time, within five Business Days after the date on which the last of the conditions specified in *Article VIII* has been satisfied or waived, or at such other place or time or on such other date as Seller and Buyer may agree upon in writing (such date and time being referred to herein as the "*Closing Date*").

7.4 *Contemporaneous Effectiveness.* All acts and deliveries prescribed by this *Article VII*, regardless of chronological sequence, will be deemed to occur contemporaneously and simultaneously on the occurrence of the last act or delivery, and none of such acts or deliveries will be effective until the last of the same has occurred.

ARTICLE VIII

CONDITIONS PRECEDENT TO CLOSING

8.1 *General Conditions.* The obligations of Parent and Buyer and Seller to effect the Closing of the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, any of which may be mutually waived in writing by Seller and Parent and Buyer:

(a) No order or ruling of any court, arbitrator or administrative agency with competent authority shall be in effect that enjoins, restrains, conditions, stays or prohibits consummation of the transactions contemplated by this Purchase Agreement or the Collateral Agreements or imposes material conditions on Buyer's operation of the Business or ownership or use of the Purchased Assets following the Closing.

(b) Any applicable waiting period under the HSR Act relating to the transactions contemplated by this Purchase Agreement or the Collateral Agreements shall have expired or been terminated, and the parties shall have obtained all material consents, waivers and approvals under all other Competition Laws required in connection with the transactions contemplated by this Purchase Agreement or the Collateral Agreements.

(c) The Bank of New York Company, Inc., as collateral agent under the Security Agreement, shall have released all Encumbrances it has in the Purchased Assets, and Buyer shall have received termination statements on form UCC-3 or such other

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appropriate form which shall have been prepared and signed by The Bank of New York Company, Inc. for filing on the Closing Date.

8.2 *Conditions Precedent to Parent's and Buyer's Obligations.* The obligations of Parent and Buyer to effect the Closing of the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, any of which may be waived in writing by Parent and Buyer:

(a) The representations and warranties of Seller contained in this Purchase Agreement or in any schedule, certificate or document delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby shall be true and correct in all material respects (except for representations and warranties that are subject to a materiality qualification, which representations and warranties as so qualified shall be true and correct in all respects) at and as of the Closing Date, as though such representations and warranties were made at and as of the Closing Date, except to the extent that (i) such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such date, and (ii) any breach thereof (without regard to any qualification as to materiality or Seller Material Adverse Effect), individually or when aggregated with all such breaches, has not had and would not be reasonably likely to have a Seller Material Adverse Effect.

(b) Seller and/or the applicable Seller Subsidiary shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants required by this Purchase Agreement to be performed or complied with by it prior to or at the Closing, including executing and delivering the Collateral Agreements and making each of the other deliveries set forth in *Section 7.1*.

(c) The Required Consents (or waivers in lieu thereof) shall have been obtained and shall be in full force and effect.

(d) No change, effect, event, occurrence or state of facts shall have occurred which, individually or in the aggregate, has had a Seller Material Adverse Effect.

(e) The financing contemplated by the Commitment Letter (or, if applicable, with respect to the special closing commitment) shall have been funded by the lenders party thereto.

8.3 *Conditions Precedent to Seller's Obligations.* The obligations of Seller to effect the Closing of the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, any of which may be waived in writing by Seller:

(a) The representations and warranties of Parent and Buyer contained in this Purchase Agreement or in any schedule, certificate or document delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby shall be true and correct in all material respects (except for representations and warranties that are subject to a materiality qualification, which representations and warranties as so qualified shall be true and correct in all respects) at and as of the Closing Date, as though such representations and warranties were made at and as of the Closing Date, except to the extent that (i) such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such date, and (ii) any breach thereof (without regard to any qualification as to materiality or Buyer Material Adverse Effect), individually or when aggregated with all such breaches, has not had and would not be reasonably likely to have a Buyer Material Adverse Effect.

(b) Parent and Buyer shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants required by this Purchase Agreement to be performed or complied with by it prior to or at the Closing, including executing the Collateral Agreements and making each of the other deliveries set forth in *Section 7.2*.

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8.4 *Subsequent Closings.* Notwithstanding any provision in this Purchase Agreement to the contrary, in the event that all the conditions set forth in *Sections 8.2* and *8.3* have been satisfied, and all the conditions set forth in *Section 8.1* have been satisfied with respect to the portion of the Business conducted by Seller and the Seller Subsidiaries in the United States of America, the Commonwealth of Australia, the Netherlands, Singapore and the Republic of Ireland, but the conditions set forth in *Section 8.1* have not been satisfied with respect to the portion of the Business conducted by Seller and the Seller Subsidiaries in one or more other jurisdictions, Seller and Parent and Buyer agree to consummate the Closing with respect to all assets and Liabilities of the Business in such jurisdictions with respect to which the conditions set forth in *Section 8.1* have been satisfied (the "*Primary Closing*"). In connection with the Primary Closing the parties shall enter into the Intellectual Property Agreements covering the Business Intellectual Property on a worldwide basis, even if the other assets and Liabilities in certain countries are to be conveyed and assumed in a Subsequent Closing. In the event of the Primary Closing, Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, those Purchased Assets and Assumed Liabilities constituting the portion of the Business conducted in such jurisdictions with respect to which the conditions set forth in *Section 8.1* have been satisfied, and Buyer shall pay the Purchase Price minus the net book value of the Purchased Assets (as reflected in the books and records of Seller or the applicable Seller Subsidiary at such time) that were not so transferred, other than the Avaya Tianjin

shares, which shall be equal to the value on *Schedule 8.5*. Such reduction, if any, shall first reduce the amount of the Convertible Note, dollar for dollar, and to the extent the amount of the Convertible Note is reduced to zero, any remaining shortfall shall reduce the Cash Payment, dollar for dollar. The closing or closings with respect to the Purchased Assets and Assumed Liabilities not sold, transferred, assigned, conveyed and delivered, and purchased, acquired and accepted, at the Primary Closing (each, a "*Subsequent Closing*") shall occur from time to time as promptly as practical after the conditions set forth in *Section 8.1* have been satisfied with respect to the portion of the Business conducted in any particular jurisdiction. At each Subsequent Closing, Buyer shall pay to Seller and the Seller Subsidiaries, as applicable, the net book value of the Purchased Assets (as reflected in the books and records of Seller or the applicable Seller Subsidiary at such time), other than the Avaya Tianjin shares, which shall be equal to the value on *Schedule 8.5*, being transferred at such Subsequent Closing and assume all related Assumed Liabilities at such Subsequent Closing. In no event shall the conditions set forth in *Sections 8.2(a)* and *8.3(a)* be deemed to apply to any Subsequent Closing, and, except as provided in *Section 8.5* below, in no event shall the aggregate consideration paid by Buyer to Seller and its Subsidiaries, as applicable, at the Primary Closing and all Subsequent Closings be less than or more than the Purchase Price. The sale, assignment, transfer, conveyance and delivery, and the purchase, acquisition and acceptance, of the Purchased Assets and the Assumed Liabilities at each Subsequent Closing shall be effected pursuant to short-form bills of sale and assumption agreements, in each case in such form as Seller and Buyer mutually agree satisfies the requirements of applicable local Law. From and after the Primary Closing, the entirety of the Business (including that portion operated by Seller and the Seller Subsidiaries) shall be operated for the benefit and detriment of Buyer in accordance with *Section 2.6*.

8.5 *Sale of Avaya Tianjin Shares.* If the Transferred Avaya Tianjin Shares are transferred to any Third Party in accordance with the applicable provisions of any existing contractual obligations of Seller or any Seller Subsidiary (or the applicable provisions of the joint venture agreement, limited liability company agreement or other governing documents of Avaya Tianjin), then if the purchase price received by Seller is greater than the value of the Transferred Avaya Tianjin Shares as set forth on *Schedule 8.5*, Seller shall pay to Buyer 50% of the amount by which such purchase price exceeds such value. Any payments required by the preceding sentence shall be made by wire transfer of immediately available funds within 10 Business Days after written notice from Seller is received by Buyer (with such written notice detailing the material terms and purchase price with respect to any transfer of Transferred Avaya Tianjin Shares to a Third Party); *provided* that such notice will be sent by Seller as soon as practicable after the receipt by Seller of the purchase price with respect to any transfer of Transferred Avaya Tianjin Shares to a Third Party. Any Transferred Avaya Tianjin Shares that are transferred to any Third Party shall no longer be considered a Purchased Asset for purposes of this Purchase Agreement and, as of the date of such transfer, the Convertible Note shall be deemed to be reduced downward by the amount set forth on *Schedule 8.5*, or to the extent that the Convertible Note is not outstanding, Seller shall pay to Buyer the amount set forth on *Schedule 8.5* in cash by wire transfer of immediately available funds to such account or accounts as Buyer may designate in writing.

ARTICLE IX

STATUS OF AGREEMENTS

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The rights and obligations of Parent and Buyer and Seller under this Purchase Agreement shall be subject to the following terms and conditions:

9.1 *Survival.* The covenants contained in this Purchase Agreement, unless otherwise expressly set forth herein, shall survive the Closing without limitation. The representations and warranties of Parent and Buyer and Seller contained in this Purchase Agreement shall survive the Closing solely for purposes of this *Article IX* and such representations and warranties shall terminate at the close of business on the date that is 18 months after the Closing Date (the "*Claims Period*") (and for the

avoidance of doubt, claims asserted in writing (which shall state in reasonable detail the basis of such claim, together with supporting documentation) before such date shall be deemed timely made regardless of whether litigation or arbitration proceedings are commenced by such date); *provided*, *however*, that such limitation shall not apply to the following:

(a) Seller's representations and warranties in *Section 3.8* with respect to Business Employees and *Section 3.14* with respect to Taxes, which shall survive until 60 days after the expiration of the applicable statute of limitations;

(b) Seller's representations and warranties in *Section 3.2* with respect to Avaya Tianjin, excluding the last sentence thereof, and *Section 3.3* with respect to Authorization, which shall survive indefinitely;

(c) Parent's and Buyer's representations and warranties in *Section 4.2* with respect to Authorization and *Section 4.5* with respect to Parent Shares, which shall survive indefinitely; and

(d) Seller's representations and warranties in *Section 3.6(b)(i)* (with respect to title of the Nebraska Property), shall not survive the Closing.

Neither Seller nor Buyer shall have any Liability whatsoever with respect to any such representations or warranties after such applicable period, except with respect to claims for which notice was provided prior to the expiration of such periods.

9.2 *Indemnification Provisions for Benefit of Parent and Buyer.* Seller shall indemnify and hold harmless Parent, Buyer and their Affiliates and any director, officer, employee or agent of Parent and Buyer or such Affiliates (each, a "*Buyer Indemnified Party*"), from and against any and all claims, actions, suits, proceedings, liabilities, obligations, losses and damages, amounts paid in settlement, interest, costs and expenses (including reasonable attorneys' fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, "*Losses*") incurred, suffered or sustained by any Buyer Indemnified Party to the extent that such Losses result from, arise out of, relate to, are based upon, or are caused by (a) subject to *Section 9.1*, any breach or inaccuracy of any representation or warranty of Seller contained in this Purchase Agreement or any certificates delivered pursuant to this Purchase Agreement (without giving effect to any qualification as to materiality or Seller Material Adverse Effect), (b) the breach by Seller of, or failure by Seller to comply with, any covenant or agreement contained in this Purchase Agreement to the extent not theretofore waived in writing by Parent or Buyer, (c) any Excluded Liability, (d) Buyer's waiver of any applicable Bulk Sales Laws, or (e) any and all grievances or other disputes filed against Seller or any Affiliate of Seller pursuant to any Collective Bargaining Agreement or Non-U.S. Collective Bargaining Agreement or other agreement between Seller and the unions to the extent attributable to any act or omission occurring on or prior the Closing Date.

9.3 *Indemnification Provisions for Benefit of Seller.* Parent and Buyer shall indemnify and hold harmless Seller and its Affiliates and any director, officer, employee or agent of Seller or such Affiliates (each a "*Seller Indemnified Party*") from and against any and all Losses resulting from, arising out of, relating to, based upon, or caused by (a) any breach or misrepresentation of any such representation or warranty of Parent or Buyer contained in this Purchase Agreement or any certificates delivered pursuant to this Purchase Agreement (without giving effect to any qualification as to materiality or Buyer Material Adverse Effect), (b) any breach by Parent or Buyer of or failure to comply with any covenant or agreement contained in this Purchase Agreement, to the extent not theretofore waived in writing by Seller, (c) any Assumed Liability, (d) Buyer's operation of the Business following the Closing, except for matters where Seller has agreed to indemnify Buyer pursuant

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to *Section 9.2* of this Purchase Agreement, or (e) any Liability related to Avaya Tianjin, except with respect to Losses for which a Buyer Indemnified Party is indemnified by Seller pursuant to *Section 9.2(a)*.

9.4 *Indemnity Adjustments.*

(a) Amounts payable with respect to the parties' indemnification obligations shall be treated as an adjustment to the Purchase Price. Buyer and Seller agree to cooperate in the preparation of a supplemental Asset Acquisition Statement as required by *Section 5.3* and Treasury Reg. § 1.1060-1(e) as a result of any adjustment to the Purchase Price pursuant to the preceding sentence. Whether or not the Indemnifying Party chooses to defend or prosecute any Third-Party Claim both parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith or as provided in *Section 5.1*.

(b) The amount of the Indemnifying Party's liability under this Purchase Agreement shall be net of any applicable insurance proceeds actually received by the Indemnified Party. The indemnification obligations of each party hereto under this *Article IX* shall inure to the benefit of the directors, officers, employees, agents, successors and assigns and Affiliates of the other party hereto on the same terms as are applicable to such other party.

9.5 *Limitation on Indemnification.*

(a) The Indemnifying Party's or Parties' liability for all claims made under *Section 9.2(a)* or *Section 9.3(a)*, as applicable, shall be subject to the following limitations: (i) the Indemnifying Party shall have no liability for such claims until the aggregate amount of the Losses incurred shall exceed Two Million Five Hundred Thousand Dollars ($2,500,000) (the "*Threshold*"), in which case the Indemnifying Party shall only be liable for Losses in excess of the Threshold, (ii) the Indemnifying Party shall have no liability for any single claim unless the amount of Losses for such claim exceeds Fifty Thousands Dollars ($50,000), and (iii) other than with respect to Losses based on fraud or intentional misrepresentation, the Indemnifying Party's or Parties' aggregate liability for all such claims shall not exceed One Hundred Twenty Five Million Dollars ($125,000,000); *provided*, *however*, that the limitations set forth in this *Section 9.5(a)* shall not apply to Parent's and Buyer's obligations pursuant to *Section 5.1(b)* or to Seller's obligations with respect to breach of any representation or warranty set forth in *Sections 3.1* (Organization), *3.3* (Authorization) and *3.8(e)* (ERISA Affiliate).

(b) Seller shall undertake all Remedial Action to respond to all Releases of Hazardous Substances existing prior to the Closing Date at the Nebraska Property ("*Designated Remedial Action*") that is necessary to comply with all applicable Environmental Law as may currently be in effect or may come into effect in the future until such time as the Designated Remedial Action results in a determination by all Governmental Bodies that have asserted jurisdiction over the Designated Remedial Action that no further action is required. Buyer shall provide Seller with commercially reasonable access to the Nebraska Property pursuant to the Environmental Remediation License Agreement. Seller shall submit its plan(s) for Designated Remedial Action and final drafts of any other submissions and/or material correspondence to Governmental Bodies for Buyer's review and comment, which comments shall not be unreasonably rejected by Seller, before undertaking any work to be performed and/or making such submissions. Buyer shall have the right to be present and comment during all material conversations or meetings with Governmental Bodies regarding the Nebraska property. Seller shall promptly provide to Buyer copies of all written information, documents and submissions (copies of which shall be provided to Buyer prior to their submission to any Governmental Body) relating to the Designated Remedial Action as well as correspondence to and from any Governmental Body with jurisdiction over the Designated Remedial Action. Seller will indemnify, defend and hold harmless Buyer from and against any and all Losses arising out of the Designated Remedial Action (including reasonable attorneys' fees), except for such Losses arising out of or related to the willful misconduct or gross negligence of Buyer. Seller shall promptly provide to Buyer all final draft reports, data, lab

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analyses, any supporting information necessary to interpret such data and a final copy generated or prepared in connection with the performance of the Designated Remedial Action. Seller shall have no obligation hereunder to undertake Remedial Action which exceeds the standards necessary to obtain a no further action determination from any Governmental Bodies that have asserted jurisdiction over the Designated Remedial Action.

(c) The indemnification provided in this *Article IX* shall be the sole and exclusive remedy after the Closing Date for damages available to the parties to this Purchase Agreement for breach of any of the terms, conditions, representations or warranties contained herein, any right, claim or action arising from the transactions contemplated by this Purchase Agreement or with respect to the Designated Remedial Action, other than a claim or action based on fraud or intentional misrepresentation; *provided*, *however*, this exclusive remedy for damages does not preclude a party from bringing an action for specific performance or other equitable remedy to require a party to perform its obligations under this Purchase Agreement or any Collateral Agreement.

(d) All parties shall use commercially reasonable efforts to mitigate their damages.

(e) If there is any outstanding balance on the Convertible Note, any amounts payable by Seller to a Buyer Indemnified Party with respect to its indemnification obligations under this *Article IX* shall first be applied to repay any outstanding amount of the Convertible Note, dollar for dollar, until the Convertible Note is repaid in full. The rights to indemnification under this *Article IX* shall not otherwise be subject to set-off for any claim by the Indemnifying Party against any Indemnified Party, whether or not arising from the same event giving rise to such Indemnified Party's claim for indemnification.

(f) Notwithstanding anything contained in this Purchase Agreement to the contrary, no party shall be liable to the other party for any special, punitive, exemplary or consequential loss or damage arising out of this Purchase Agreement; *provided*, *however*, that the foregoing shall not be construed to preclude recovery by the Indemnified Party with respect to Losses (i) directly incurred from Third Party Claims or (ii) for actual lost profits or incidental damages.

9.6 *General Procedures for Indemnification.*

(a) If any third party shall notify any Buyer Indemnified Party or Seller Indemnified Party seeking indemnification under this Purchase Agreement (the "*Indemnified Party*") with respect to any matter (a "*Third Party Claim*") which may give rise to a claim for indemnification against any other party (the "*Indemnifying Party*") under this *Article IX*, then the Indemnified Party shall promptly notify each Indemnifying Party thereof in writing; *provided*, *however*, that no delay or failure on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is actually prejudiced. Such notice shall describe the Third Party Claim in reasonable detail, together with supporting documentation.

(b) Any Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party so long as (i) the Indemnifying Party notifies the Indemnified Party in writing within 15 days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against any Loss the Indemnified Party may suffer resulting from, arising out of, relating to, based upon, or caused by the Third Party Claim, and (ii) the Third Party Claim involves only money damages or both money damages and equitable relief against the Indemnified Party that cannot be severed, where the claims for money damages are the primary claims asserted by the Third Party and the claims for equitable relief are incidental to the claims for money damages.

(c) So long as the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with *Section 9.6(b)*, (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party

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Claim, (ii) the Indemnified Party shall not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party, and (iii) the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party unless such settlement or judgment relates solely to monetary damages. The Indemnifying Party shall not, without the Indemnified Party's prior written consent, enter into any compromise or settlement that (i) commits the Indemnified Party to take, or to forbear to take, any action and/or (ii) does not provide for a complete release by such Third Party of the Indemnified Party.

(d) In the event any of the conditions in *Section 9.6(b)* above is not satisfied, however, (i) the Indemnified Party may defend against the Third Party Claim in any manner it may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, any Indemnifying Party in connection therewith), (ii) the Indemnified Party may (y) consent to the entry of any judgment or enter into any settlement with respect to the equitable relief sought in the Third Party Claim in any manner it may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, any Indemnifying Party in connection therewith) and (z) consent to the entry of any judgment or enter into any settlement with respect to the monetary damages sought in the Third Party Claim without the consent of the Indemnifying Party, (iii) the Indemnifying Party shall reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses), and (iv) the Indemnifying Party will remain responsible for any Losses the Indemnified Party may suffer resulting from, arising out of, relating to, based upon, in the nature of, or caused by the Third Party Claim to the fullest extent provided in this *Article IX*.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given upon receipt if (a) mailed by certified or registered mail, return receipt requested, (b) sent by Federal Express or other express carrier, fee prepaid, (c) sent via facsimile with receipt confirmed or (d) delivered personally, addressed as follows or to such other address or addresses of which the respective party shall have notified the other.

If to Seller, to:	Avaya Inc. Attn: Justin C. Choi, Vice President−Mergers and Acquisitions 211 Mt. Airy Road Basking Ridge, NJ 07920 Facsimile: (908) 953-4912
With a copy to:	Weil, Gotshal & Manges LLP Attn: Akiko Mikumo Michael S. Colvin 767 Fifth Avenue New York, NY 10153 Facsimile: (212) 310-8007

If to Parent or Buyer, to:	CommScope, Inc. Attn: Frank B. Wyatt, II 1100 CommScope Place, SE

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Hickory, NC 28602
Facsimile: (828) 431-2520

	Fried, Frank, Harris, Shiver & Jacobson
	Attn: Christopher Ewan
With a copy to:	One New York Plaza
	New York, NY 10004
	Facsimile: (212) 859-4000

10.2 *Expenses.* Except as otherwise provided in this Purchase Agreement, each party to this Purchase Agreement will bear all the fees, costs and expenses that are incurred by it (or, in the case of Seller, by any Affiliate or Seller Subsidiary) in connection with the transactions contemplated hereby, whether or not such transactions are consummated, and all such fees, costs and expenses incurred by Seller or any Seller Subsidiary shall be Excluded Liabilities.

10.3 *Entire Agreement; Modification.* The agreement of the parties, which consists of this Purchase Agreement (including the Schedules and Exhibits hereto) and the Collateral Agreements, sets forth the entire agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, relating to the subject matter of this Purchase Agreement and the Collateral Agreements. No amendment, supplement, modification or waiver of this Purchase Agreement shall be binding unless executed in writing by the party to be bound thereby, and in accordance with *Sections 11.4* and *11.5*.

10.4 *Assignment; Binding Effect; Severability.* This Purchase Agreement may not be assigned by any party hereto without the other party's written consent, except for (a) assignments and transfers by operation of Law, (b) prior to Closing, Parent and Buyer may assign any or all of their rights, interests and obligations hereunder to one or more direct or indirect Subsidiaries of Parent, provided that in such case Parent and Buyer nonetheless will remain responsible for the performance of their respective obligations hereunder and (c) Parent and Buyer may assign any or all of their rights and interests hereunder to any bank, agent for a lenders syndicate or other lender to Parent, Buyer or any of their Affiliates or Subsidiaries for collateral security. This Purchase Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors, legal representatives and permitted assigns of each party hereto. The provisions of this Purchase Agreement are severable, and in the event that any one or more provisions are deemed illegal or unenforceable the remaining provisions shall remain in full force and effect unless the deletion of such provision shall cause this Purchase Agreement to become materially adverse to either party, in which event the parties shall use reasonable best efforts to arrive at an accommodation that best preserves for the parties the benefits and obligations of the offending provision.

10.5 *Governing Law.* THIS PURCHASE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, IRRESPECTIVE OF THE CHOICE OF LAWS PRINCIPLES OF THE STATE OF NEW YORK, AS TO ALL MATTERS, INCLUDING MATTERS OF VALIDITY, CONSTRUCTION, EFFECT, ENFORCEABILITY, PERFORMANCE AND REMEDIES.

10.6 *Consent to Jurisdiction.* Each of Parent, Buyer and Seller irrevocably submits, and Seller agrees to cause the Seller Subsidiaries to irrevocably submit to, the exclusive jurisdiction of (a) the Supreme Court of the State of New York, New York County, and (b) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Purchase Agreement or any transaction contemplated hereby (and each agrees that no such action, suit or proceeding relating to this Purchase Agreement or any transaction contemplated hereby

shall be brought by it or any of its Affiliates except in such courts). Each of Parent, Buyer and Seller further agrees and Seller agrees to cause the Seller Subsidiaries to agree, that service of any process, summons, notice or document by U.S. registered mail to such person's respective address set forth above shall be effective service of process for any action, suit or proceeding in New York with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each of Parent, Buyer and Seller irrevocably

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and unconditionally waives (and agrees not to plead or claim), and Seller agrees to cause the Seller Subsidiaries to irrevocably and unconditionally waive (and not to plead or claim), any objection to the laying of venue of any action, suit or proceeding arising out of this Purchase Agreement or the transactions contemplated hereby in (i) the Supreme Court of the State of New York, New York County, or (ii) the United States District Court for the Southern District of New York or that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

10.7 *Waiver of Jury Trial.* Each party hereby waives, and agrees to cause each of its Affiliates to waive, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Purchase Agreement. Each party (a) certifies that no representative of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Purchase Agreement by, among other things, the mutual waivers and certifications in this *Section 10.7*.

10.8 *Execution in Counterparts.* This Purchase Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.9 *Public Announcement.* Prior to the signing of this Purchase Agreement, Seller, Parent and Buyer shall prepare a mutually agreeable releases announcing the transaction contemplated hereby. Except for such press releases, neither Seller, Parent nor Buyer shall, without the approval of the other, make any press release or other public announcement concerning the existence of this Purchase Agreement or the terms of the transactions contemplated by this Purchase Agreement, except as and to the extent that any such party shall be so obligated by Law, in which case the other party shall be advised and the parties shall use their reasonable best efforts to cause a mutually agreeable release or announcement to be issued; provided, however, that the foregoing shall not preclude communications or disclosures necessary to comply with accounting, stock exchange or federal securities Law disclosure obligations.

10.10 *No Third-Party Beneficiaries.* Except as expressly provided in *Article IX*, nothing in this Purchase Agreement, express or implied, is intended to or shall (a) confer on any Person other than the parties hereto and their respective successors or assigns any rights (including Third-Party beneficiary rights), remedies, obligations or liabilities under or by reason of this Purchase Agreement or (b) constitute the parties hereto as partners or as participants in a joint venture. This Purchase Agreement shall not provide Third Parties with any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to the terms of this Purchase Agreement. Nothing in this Purchase Agreement shall be construed as giving to any Business Employee, or any other individual, any right or entitlement under any employee benefit plan (as described in Section 3(3) of ERISA), policy or procedure maintained by Seller or Buyer, except as expressly provided in such plan, policy or procedure. No Third Party shall have any rights under Section 502, 503 or 504 of ERISA or any regulations thereunder because of this Purchase Agreement that would not otherwise exist without reference to this Purchase Agreement. Except as expressly provided in *Article IX*, no Third Party shall have any right, independent of any right that exists irrespective of this Purchase Agreement, under or granted by this Purchase Agreement, to bring any suit at law or equity for any matter governed by or subject to the provisions of this Purchase Agreement.

ARTICLE XI

TERMINATION AND WAIVER

11.1 *Termination.* This Purchase Agreement may be terminated at any time prior to the Closing Date by:

(a) Mutual Consent. The mutual written consent of Parent and Buyer, on the one hand, and Seller, on the other hand;

(b) Failure of Parent and Buyer Condition. Parent and Buyer upon written notice to Seller if any of the conditions to the Closing set forth in *Section 8.2* shall have become incapable of fulfillment and shall not have been waived in writing by Parent and Buyer;

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(c) Failure of Seller Condition. Seller upon written notice to Parent and Buyer if any of the conditions to the Closing set forth in *Section 8.3* shall have become incapable of fulfillment and shall not have been waived in writing by Seller;

(d) Court or Administrative Order. Parent and Buyer, on one hand, or Seller, on the other hand, if there shall be in effect a final, non-appealable order of a court or government administrative agency of competent jurisdiction prohibiting the consummation of the transactions contemplated hereby;

(e) Delay. Parent and Buyer, on the one hand, or Seller, on the other hand, if the Primary Closing shall not have occurred by February 28, 2004;

provided, *however*, that the party seeking termination pursuant to clause (b), (c) or (e) is not then in breach in any material respect of any of its representations, warranties, covenants or agreements contained in this Purchase Agreement.

11.2 *Effect of Termination.* In the event of the termination of this Purchase Agreement in accordance with *Section 11.1*, this Purchase Agreement shall become void and have no effect, without any liability on the part of any party or its directors, officers or stockholders, except under the Confidentiality Agreement and for the obligations of the parties hereto as provided in *Article VI* relating to the obligations of Parent, Buyer and Seller to keep confidential certain information, *Section 10.2* relating to certain expenses, *Section 10.9* relating to publicity and this *Section 11.2*; *provided*, *however*, that nothing herein, and no termination of this Purchase Agreement, shall relieve any party hereto from liability for any breach or default under this Purchase Agreement prior to the effectiveness of such termination. Nothing in this *Section 11.2* shall be deemed to release either party from any liability for any willful and material breach of any obligation hereunder.

11.3 *Collateral Agreements; Material to Be Returned.*

(a) In the event of the termination of this Purchase Agreement in accordance with *Section 11.1*, the transactions contemplated by this Purchase Agreement shall be terminated, without further action by any party hereto.

(b) Furthermore, in the event that this Purchase Agreement is terminated as provided herein:

(i) Parent and Buyer shall return all documents and other material received from Seller, any Affiliate of Seller or any representative of Seller or of any Affiliate of Seller relating to the Business or the transactions contemplated by this Purchase Agreement, whether obtained before or after the execution of this Purchase Agreement, to Seller; and

(ii) Seller shall return all documents and other material received from Parent and Buyer or any Affiliate of Buyer or any representative of Parent and Buyer or any Affiliate of Parent and Buyer relating to Parent and Buyer or the transactions contemplated by this Purchase

Agreement, whether obtained before or after the execution of this Purchase Agreement, to Parent and Buyer.

11.4 *Waiver of Agreement.* Any term or condition hereof may be waived at any time prior to the Closing Date by the party hereto which is entitled to the benefits thereof by action taken by a duly authorized officer or employee, whether before or after the action of such party; *provided*, *however*, that such action shall be evidenced by a written instrument duly executed on behalf of such party by such duly authorized officer or employee. The failure of either party to enforce at any time any provision of this Purchase Agreement shall not be construed to be a waiver of such provision nor shall it in any way affect the validity of this Purchase Agreement or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Purchase Agreement shall be held to constitute a waiver of any other or subsequent breach.

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11.5 *Amendment of Agreement.* This Purchase Agreement may be amended with respect to any provision contained herein at any time prior to the Closing Date by action of the parties hereto taken by their duly authorized officers or employees; provided, however, that such amendment shall be evidenced by a written instrument duly executed on behalf of each party by such duly authorized officers or employees.

IN WITNESS WHEREOF, each party has caused this Purchase Agreement to be duly executed on its behalf by its duly authorized officer as of the date first written above.

AVAYA INC.

By: /s/ GARRY K. MCGUIRE
Name: Garry K. McGuire
Title: Chief Financial Officer

COMMSCOPE, INC.

By: /s/ FRANK M. DRENDEL
Name: Frank M. Drendel
Title: Chairman and Chief Executive Officer

SS HOLDINGS, LLC

By: /s/ RANDALL W. CRENSHAW
Name: Randall W. Crenshaw
Title: President

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NOTE: The Schedules to this Exhibit 2.2, which are listed on pages vi and vii of this Exhibit 2.2, have been omitted as they do not contain information that is material to an investment decision and not otherwise disclosed in Exhibit 2.2. The Company hereby agrees to furnish supplementally a copy of any omitted Schedule to the Commission upon request.

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Exhibit 10.34

EXECUTION COPY

AMENDED AND RESTATED FIVE YEAR
REVOLVING CREDIT FACILITY AGREEMENT
Dated as of April 30, 2003
among
AVAYA INC.,
as Borrower,
THE LENDERS PARTY HERETO,
CITIBANK, N.A.,
as Agent
CITIGROUP GLOBAL MARKETS INC.,
as Lead Arranger,
BANK ONE, NA, JPMORGAN CHASE BANK and DEUTSCHE BANK AG NEW YORK BRANCH,
as Co-Syndication Agents and Co-Arrangers
and
COMMERZBANK AG, NEW YORK BRANCH
as Co-Arranger

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EXHIBIT B	Form of Standby Note
EXHIBIT C	Assignment and Acceptance
EXHIBIT D	Form of Opinion of Counsel to the Borrower

AMENDED AND RESTATED FIVE YEAR REVOLVING CREDIT FACILITY AGREEMENT dated as of April 30, 2003, among AVAYA INC., a Delaware corporation (the "Borrower"), the lenders listed in Schedule 2.01 (the "Lenders"), CITIBANK, N.A., as agent for the Lenders (in such capacity, the "Agent"), CITIGROUP GLOBAL MARKETS INC., as Lead Arranger, BANK ONE, NA, JPMORGAN CHASE BANK and DEUTSCHE BANK AG NEW YORK BRANCH, as Co-Syndication Agents and Co-Arrangers, and COMMERZBANK AG, NEW YORK BRANCH, as Co-Arranger.

The Borrower is party to a Five Year Competitive Advance And Revolving Credit Facility Agreement dated as of September 25, 2000, as amended by Letter Amendment dated as of August 10, 2001, as amended by Amendment No. 2 dated as of February 8, 2002 and as amended and restated as of September 3, 2002 (as so amended, the "Existing Credit Agreement") with the lenders and agents parties thereto and the Agent.

The Borrower has requested, and the Required Lenders have agreed, subject to the satisfaction of the conditions set forth in Section 4.01, to amend and restate the Existing Credit Agreement on the terms and subject to the conditions herein set forth.

Accordingly, the Borrower, the Lenders and the Agent agree as follows:

ARTICLE 1

Definitions

SECTION 1.01. *Defined Terms.* As used in this Agreement, the following terms shall have the meanings specified below:

"ABR Borrowing" shall mean a Borrowing comprised of ABR Loans.

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"ABR Loan" shall mean any Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

"Administrative Fees" shall have the meaning assigned to such term in Section 2.05(b).

"Administrative Questionnaire" shall mean an Administrative Questionnaire containing contact information for each Lender in form satisfactory to the Agent.

"Affiliate" shall mean, when used with respect to a specified person, another person that directly or indirectly controls or is controlled by or is under common control with the person specified.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the greater of (a) the Base Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. For purposes hereof, "Base Rate" shall mean the rate of interest per annum publicly announced from time to time by the Agent as its base rate in effect at its principal office in New York City; each change in the Base Rate shall be effective on the date such change is publicly announced as effective. For purposes hereof, "Federal Funds Effective Rate" shall mean, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the arithmetic average, as determined by the Agent, of the quotations for the day of such transactions received by the Agent from three Federal funds brokers of recognized standing selected by it. If for any reason the Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Agent to obtain sufficient quotations in accordance with the terms thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the first sentence of this definition until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate or

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the Federal Funds Effective Rate shall be effective on the effective date of such change in the Base Rate or the Federal Funds Effective Rate, respectively.

"Amendment No. 2 Effective Date" means February 8, 2002.

"Applicable Margin" shall mean, as of any date, a percentage per annum determined by reference to the Public Debt Rating in effect on such date as set forth below:

Public Debt Rating S&P/Moody's		Applicable Margin for Eurodollar Loans	Applicable Margin for ABR Loans
I:	At least BBB- or Baa3	1.250%	0.000%
II:	Below I, but at least BB+ and Ba1	1.625%	0.125%
III:	Below II, but at least BB and Ba2	2.000%	0.500%
IV:	Below III, but at least BB- and Ba3	2.500%	1.000%
V:	Below IV	3.250%	1.750%

"Applicable Percentage" means, as of any date, a percentage per annum determined by reference to the Public Debt Rating in effect on such date as set forth below:

Public Debt Rating S&P/Moody's	Applicable Percentage

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I:	At least BBB- or Baa3	0.250%
II:	Below I, but at least BB+ and Ba1	0.375%
III:	Below II, but at least BB and Ba2	0.500%
IV:	Below III, but at least BB- and Ba3	0.500%
V:	Below IV	0.750%

"Applicable Utilization Fee" means, as of any date that the aggregate Loans exceed 50% of the aggregate Commitments, a percentage per annum determined by reference to the Public Debt Rating in effect on such date as set forth below:

Public Debt Rating S&P/Moody's		**Applicable Utilization Fee for Eurodollar Loans**	**Applicable Utilization Fee for ABR Loans**
I:	At least BBB- or Baa3	0.250%	0.000%
II:	Below I, but at least BB+ and Ba1	0.250%	0.250%
III:	Below II, but at least BB and Ba2	0.250%	0.250%
IV:	Below III, but at least BB- and Ba3	0.500%	0.500%
V:	Below IV	0.500%	0.500%

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Agent, in the form of Exhibit C.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States.

"Board of Directors" shall mean the Board of Directors of the Borrower, or any duly authorized committee thereof.

"Borrowing" shall mean a group of Loans of a single Type made by the Lenders on a single date and as to which a single Interest Period is in effect.

"Business Day" shall mean any day (other than a day which is a Saturday, Sunday or legal holiday in the State of New York) on which banks are open for business in New York City; *provided*, *however*,

that, when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"Capitalized Leases" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

"Closing Date" shall mean the date hereof.

"Code" shall mean the Internal Revenue Code of 1986, as the same may be amended from time to time.

"Collateral" means all "Collateral" referred to in the Collateral Documents and all other property that is or is intended to be subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

"Collateral Account" has the meaning specified in the Security Agreement.

"Collateral Documents" means the Security Agreement, the Collateral Trust Agreement, and any other agreement that creates or purports to create a Lien in favor of the Collateral Trustee for the benefit of the Secured Parties.

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"Collateral Trigger" means the date on which (a) the Borrower's corporate credit rating shall be lower than BBB- by S&P or (b) the Borrower's Public Debt Rating shall be lower than Baa3 by Moody's.

"Collateral Trust Agreement" means the Collateral Trust Agreement dated as of March 25, 2002 among the Borrower, the other grantors named therein and The Bank of New York, as collateral trustee.

"Collateral Trustee" has the meaning specified in the Collateral Trust Agreement.

"Commitment" shall mean, with respect to each Lender, the Commitment of such Lender as set forth in Schedule 2.01 hereto.

"Borrowing" shall mean a Borrowing consisting of simultaneous Loans from each of the Lenders.

"Borrowing Request" shall mean a request made pursuant to Section 2.03 in the form of Exhibit A.

"Consolidated EBITDA" shall mean, for any period, net income (or net loss) *plus* the sum of (a) consolidated interest expense, (b) consolidated income tax expense, (c) consolidated depreciation expense, (d) consolidated amortization expense (including the write down of intangibles associated with the adoption or implementation of FAS 142) and (e) all other non-cash charges except to the extent any such non-cash charge represents an accrual or reserve for cash expenditures in a future period, in each case, determined in accordance with GAAP for such period, *excluding*, (i) up to $163,000,000 of restructuring charges, including asset impairment and other one time charges during such period to be taken no later than the fourth quarter of fiscal year 2002 of the Borrower, (ii) non-cash in process research and development charges associated with Investments made in accordance with Section 5.19(xi), (iii) up to $100,000,000 of restructuring charges to be taken no later than the fourth quarter of fiscal year 2003 of the Borrower and (iv) gains or losses realized upon the making of Investments in the LYONs.

"Debt "of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for installment sale or other deferred purchase price of property or services (other than trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person as lessee under Capitalized Leases and under synthetic, off-balance sheet or tax retention leases, (e) all obligations, contingent or otherwise, of such Person in

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respect of acceptances, standby letters of credit or similar extensions of credit, (f) all net payment obligations of such Person in respect of Hedge Agreements, (g) all Debt of others referred to in clauses (a) through (f) above or clause (h) below guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Debt or to advance or supply funds for the payment or purchase of such Debt or (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of providing direct or indirect security for such Debt or to assure the holder of such Debt against loss, and (h) all Debt referred to in clauses (a) through (g) above secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Debt.

"Default" shall mean any event or condition which upon notice, lapse of time or both would constitute an Event of Default.

"Defaulting Lender" means, at any time, any Lender that, at such time, (a) has failed to fund any portion of any Loan required to be made by such Lender to the Borrower pursuant to Section 2.01 or 2.02 at or prior to such time or (b) shall take any action or be the subject of any action or proceeding of a type described in Section 6.01(g) or (h).

"dollars" or "$" shall mean lawful money of the United States of America.

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"Environmental Law" shall mean any federal, state, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, health, safety or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means any Person that for purposes of Title IV of ERISA is a member of the Borrower's controlled group, or under common control with the Borrower, within the meaning of Section 414 of the Internal Revenue Code.

"ERISA Event" means (a) (i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, with respect to any Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC, or (ii) the requirements of subsection (1) of Section 4043(b) of ERISA (without regard to subsection (2) of such Section) are met with a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following 30 days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of the Borrower or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by the Borrower or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for the imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any Plan; (g) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA; or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, a Plan.

"Eurodollar Borrowing" shall mean a Borrowing comprised of Eurodollar Loans.

"Eurodollar Loan" shall mean any Loan bearing interest at a rate determined by reference to the LIBO Rate in accordance with the provisions of Article II.

"Event of Default" shall have the meaning assigned to such term in Article VI.

"Excluded Subsidiary" means Mercury Insurance Inc., Avaya International LLC and any special purpose entity established in connection with an offering of Indebtedness secured by real property.

"Existing Credit Agreement" has the meaning specified in the Preliminary Statements.

"Facility Fee" shall have the meaning assigned to such term in Section 2.05(a).

"Fee Letter" shall mean the Fee Letter dated August 10, 2000, between the Borrower, Salomon Smith Barney Inc. and the Agent.

"Fees" shall mean the Facility Fee and the Administrative Fees.

"Financial Officer" of any corporation shall mean the chief financial officer, principal accounting officer or Treasurer of such corporation.

"GAAP" shall mean generally accepted accounting principles, applied on a consistent basis.

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"Governmental Authority" shall mean any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

"Hazardous Materials" shall mean (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

"Hedge Agreement" means interest rate swap or collar agreements, interest rate future contracts, currency swap agreements, currency future contracts and other similar agreements.

"Interest Payment Date" shall mean, with respect to any Loan, the last day of the Interest Period applicable thereto and, in the case of a Eurodollar Loan with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date for such Loan had successive Interest Periods of three months' duration been applicable to such Loan and, in addition, the date of any conversion of such Loan to a Loan of a different Type.

"Interest Period" shall mean (a) as to any Eurodollar Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as the case may be, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is 1, 2, 3, 6 or to the extent available to each Lender, 9 or 12 months thereafter, as the Borrower may elect and (b) as to any ABR Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as the case may be, and ending on the earliest of (i) the next succeeding March 31, June 30, September 30 or December 31, (ii) the Maturity Date, and (iii) the date such Borrowing is converted to a Borrowing of a different Type in accordance with Section 2.04 or repaid or prepaid in accordance with Section 2.06 or Section 2.11; *provided*, *however*, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of Eurodollar Loans only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Investment" in any Person means any loan or advance to such Person, any purchase or other acquisition of any equity interests or Debt or the assets comprising a division or business unit or a substantial part or all of the business of such Person, any capital contribution to such Person or any other direct or indirect investment in such Person, including, without limitation, any acquisition by way of a merger or consolidation and any arrangement pursuant to which the investor incurs Debt of the types referred to in clause (g) or (h) of the definition of "Debt" in respect of such Person. The amount of any Investment shall be the original cash cost of such Investment plus the cost of all additions thereto, without any adjustment for increases or decreases in value, but shall be reduced by the amount of such Investment returned in cash.

"LIBO Rate" means, for any Interest Period for all of the Eurodollar Loans comprising part of the same Borrowing, an interest rate per annum equal to the rate per annum (rounded upward to the nearest whole multiple of $^{1}/_{16}$ of 1% per annum) appearing on Moneyline Telerate Markets Page 3750 (or any successor page) as the London interbank offered rate for deposits in United States dollars at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period or, if for any reason such rate is not available, the average (rounded upward to the nearest whole multiple of $^{1}/_{16}$ of 1% per annum, if such average is not such a multiple) of the rate per annum at which deposits in United States dollars are offered by the principal office of each of the Reference Banks in London, England to prime banks in the London interbank market at 11:00 A.M. (London time) two Business Days before the first day of such Interest Period in an amount substantially equal to such Reference Bank's Eurodollar Loan comprising part of such Borrowing to be outstanding during such Interest Period (or, if any Reference Bank shall not have such a Eurodollar Loan, $1,000,000) and for a period equal to such Interest Period. The LIBO Rate for any Interest Period for each of the Eurodollar Loans comprising part of the same Borrowing shall be determined by the Agent on the basis of applicable rates furnished to and received by the Agent from the Reference Banks two Business Days before the first day of such Interest Period, *subject*, *however*, to the provisions of Section 2.07.

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"Lien" means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property.

"Loan Documents" means this Agreement, any notes evidencing the Loans, any guaranty delivered pursuant to Section 5.15 and, during the continuance of the Security Period, the Collateral Documents.

"Loan Parties" means the Borrower and the Subsidiary Guarantors.

"Loans" shall mean the revolving loans made by the Lenders to the Borrower pursuant to Section 2.03. Each Loan shall be a Eurodollar Loan or an ABR Loan.

"Margin Regulations" shall mean Regulations T, U and X of the Board as from time to time in effect, and all official rulings and interpretations thereunder or thereof.

"Margin Stock" shall have the meaning given such term under Regulation U of the Board.

"Marketable Securities" means any of the following, to the extent owned by the Borrower free and clear of all Liens other than Liens created under the Collateral Documents and having a maturity of not greater than 180 days from the date of acquisition thereof: (a) readily marketable direct obligations of the Government of the United States or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of the Government of the United States, (b) insured certificates of deposit of or time deposits with any commercial bank that is a Lender or a member of the Federal Reserve System, issues (or the parent of which issues) commercial paper rated as described in clause (c) below, is organized under the laws of the United States or any State thereof and has combined capital and surplus of at least $500 million, (c) commercial paper in an aggregate amount of no more than $25,000,000 per issuer outstanding at any time, issued by any corporation

organized under the laws of any State of the United States and rated at least "Prime-1" (or the then equivalent grade) by Moody's or "A-1" (or the then equivalent grade) by S&P, (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) and entered into with a financial institution satisfying the criteria in clause (b) or (e) other instruments as set forth on the Borrower's policy as in effect on the date hereof, a copy of which has been made available to each Lender.

"Material Adverse Effect" shall mean a material adverse effect on the business, assets, operations or condition, financial or otherwise of the Borrower and its subsidiaries taken as a whole.

"Material Subsidiary" of each Borrower, as the case may be, means, at any time, each of its Subsidiaries having (a) assets with a value of not less than 5% of the total value of the consolidated assets of such Borrower and its Subsidiaries, taken as a whole, or (b) consolidated revenues not less than 5% of the consolidated revenues of such Borrower and its Subsidiaries, taken as a whole, in each case as of the end of or for most recently completed fiscal year of such Borrower.

"Maturity Date" shall mean September 25, 2005.

"Moody's" shall mean Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

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"Multiple Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of the Borrower or any ERISA Affiliate and at least one person other than the Borrower or the ERISA Affiliate or (b) was so maintained and in respect of which the Borrower or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

"*Net Cash Proceeds*" means, with respect to any sale, transfer or other disposition of any asset of Borrower or its Subsidiaries (excluding receivables) and/or the sale, incurrence or issuance of any Debt in the capital markets or equity interests by any Person, the aggregate amount of cash received from time to time (whether as initial consideration or through payment or disposition of deferred consideration) by or on behalf of such Person in connection with such transaction after deducting therefrom only (without duplication) (a) reasonable and customary brokerage commissions, underwriting fees and discounts, legal fees, finder's fees and other similar fees and commissions, (b) the amount of taxes payable in connection with or as a result of such transaction and (c) the amount of any Debt secured by a Lien on such asset that, by the terms of the agreement or instrument governing such Debt, is required to be repaid upon such disposition, in the case of (a) and (c) to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid to a Person that is not an Affiliate of such Person and in each case are properly attributable to such transaction or to the asset that is the subject thereof.

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor).

"Permitted Lien" means such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (a) Liens for taxes, assessments and governmental charges or levies other than any such Lien that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained, and as to which no Lien resulting therefrom has attached to its property and become enforceable against its other creditors; (b) landlord's liens and Liens imposed by law, such as materialmen's, mechanics', carriers', workmen's and repairmen's Liens and other similar Liens arising in the ordinary course of business securing obligations that are not overdue for a period of more than 60 days; (c) pledges or deposits to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory

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obligations; (d) easements, rights of way and other encumbrances on title to real property that do not render title to the property encumbered thereby unmarketable or materially adversely affect the use of such property for its present purposes; (e) governmental (Federal, state or municipal) liens arising out of contracts for the purchase of products and deposits or pledges to obtain the release of any of such liens; (f) liens created by or resulting from any litigation or legal proceeding that is currently being contested in good faith by appropriate proceedings; (g) deposits in connection with bids, tenders, contracts (other than for the payment of money); (h) deposits in connection with obtaining or maintaining self-insurance or to obtain the benefits of any law, regulation or arrangement pertaining to unemployment insurance, old age pensions, social security or similar matters; and (i) deposits of cash or obligations of the United States of America to secure surety, appeal or customs bonds.

"Person" or "person" shall mean any natural person, corporation, business trust, joint venture, association, company, partnership or government, or any agency or political subdivision thereof.

"Plan" means a Single Employer Plan or a Multiple Employer Plan.

"Public Debt Rating" means, as of any date, the lowest rating that has been most recently announced by either S&P or Moody's, as the case may be, for any class of non-credit enhanced long-term senior unsecured debt issued by the Borrower. For purposes of the foregoing, (a) if only one of S&P and Moody's shall have in effect a Public Debt Rating, the Applicable Margin, the Applicable Percentage and the Applicable Utilization Fee shall be determined by reference to the available rating; (b) if neither S&P nor Moody's shall have in effect a Public Debt Rating, the Applicable Margin, the Applicable Percentage and the Applicable Utilization Fee will be set in accordance with Level V under the definition of "Applicable Margin", "Applicable Percentage" or "Applicable Utilization Fee", as the case may be; (c) if the ratings established by S&P and Moody's shall fall within different levels and (x) the higher level is Level II or lower, the Applicable Margin, the Applicable Percentage and the Applicable Utilization Fee shall be based upon the lower of such ratings or (y) the higher level is Level I, the

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Applicable Margin, the Applicable Percentage and the Applicable Utilization Fee shall be based upon the higher of such ratings, provided in the case of this clause (y) that if the lower of such ratings is more than one level below the higher of such ratings, the Applicable Percentage, the Applicable Margin and the Applicable Utilization Fee shall be determined by reference to the level that is one level above such lower rating; (d) if any rating established by S&P or Moody's shall be changed, such change shall be effective as of the date on which such change is first announced publicly by the rating agency making such change; and (e) if S&P or Moody's shall change the basis on which ratings are established, each reference to the Public Debt Rating announced by S&P or Moody's, as the case may be, shall refer to the then equivalent rating by S&P or Moody's, as the case may be.

"Reference Banks" shall mean Citibank, N.A., JPMorgan Chase Bank and Deutsche Bank AG.

"Register" shall have the meaning given such term in Section 8.04(d).

"Required Lenders" shall mean, at any time, Lenders having Commitments representing at least 51% of the Total Commitment or, for purposes of acceleration pursuant to clause (ii) of Article VI, Lenders holding Loans representing at least 51% of the aggregate principal amount of the Loans outstanding.

"Responsible Officer" of any corporation shall mean any executive officer or Financial Officer of such corporation and any other officer or similar official thereof responsible for the administration of the obligations of such corporation in respect of this Agreement.

"S&P" shall mean Standard and Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"SEC" shall mean the Securities and Exchange Commission.

"Secured Parties" has the meaning specified in the Collateral Trust Agreement.

"Security Agreement" means the Security Agreement dated as of March 25, 2002 made by the Borrower and the other grantors named therein in favor of the Collateral Trustee.

"Security Period" means the period, if any, beginning with the occurrence of the Collateral Trigger until the earlier of (a) the date thereafter, if any, that (i) the Borrower's corporate credit rating shall be at least BBB by S&P and the Borrower's Public Debt Rating shall be at least Baa2 by Moody's and (ii) to the extent such corporate credit rating shall be BBB by S&P or such Public Debt Rating shall be Baa2 by Moody's, such rating shall not be accompanied by either (x) in the case of S&P, a negative outlook, creditwatch negative or the equivalent thereof or (y) in the case of Moody's, a negative outlook, a review for possible downgrade or the equivalent thereof, and (b) the later of the repayment in full of all Advances and the Maturity Date.

"Single Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of the Borrower or any ERISA Affiliate and no person other than the Borrower or the ERISA Affiliate or (b) was so maintained and in respect of which the Borrower or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

"Subsidiary" shall mean, with respect to the Borrower, any corporation, partnership, joint venture, limited liability company, trust or estate, a majority of the Voting Shares of which are at the time owned or controlled, directly or indirectly, by it or by one or more of its Subsidiaries and required to be consolidated in accordance with GAAP in its consolidated financial statements.

"Subsidiary Guarantors" means each Material Subsidiary that shall be required to execute and deliver a guaranty pursuant to Section 5.15, but shall not include any Excluded Subsidiary.

"Total Commitment" shall mean, at any time, the aggregate amount of Commitments of all the Lenders, as in effect at such time.

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"Transactions" shall have the meaning assigned to such term in Section 3.02.

"Type", when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, "Rate" shall include the LIBO Rate and the Alternate Base Rate.

"Unrestricted Domestic Cash" means**, for any Person,** cash held by **such Person** in accounts located within the United States that is not subject to any Lien.

"Voting Shares" shall mean, as to shares or other ownership interests of a particular corporation, partnership, joint venture, limited liability company, trust or estate (i) outstanding shares of stock of any class of such corporation entitled to vote in the election of directors, excluding shares entitled so to vote only upon the happening of some contingency, (ii) the interests in the capital or profits of such partnership, joint venture or limited liability company or (iii) the beneficial interest in such trust or estate.

"Warburg Transactions" means the transactions contemplated by (i) the Preferred Stock and Warrant Purchase Agreement dated as of August 8, 2000, by and among the Borrower, Warburg, Pincus Equity Partners, L.P. and the other Purchasers party thereto, including the terms of the Series B convertible participating preferred stock and warrants issued pursuant thereto and (ii) any amendment of the terms of the Series B convertible participating preferred stock or exchange or equity interests for shares of Series B convertible participating preferred stock, in each case, to the extent permitted under Section 5.18(iv).

SECTION 1.02. *Terms Generally.* The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and

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"including" shall be deemed to be followed by the phrase "without limitation." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time.

ARTICLE II

The Credits

SECTION 2.01. *Commitments.* Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, to make Loans to the Borrower, at any time and from time to time on and after the date hereof and until the earlier of the Maturity Date and the termination of the Commitment of such Lender, in an aggregate principal amount at any time outstanding not to exceed such Lender's Commitment, subject, however, to the conditions that (i) at no time shall (A) the outstanding aggregate principal amount of all Loans made by all Lenders exceed (B) the Total Commitment, and (ii) at all times the outstanding aggregate principal amount of all Loans made by each Lender shall equal the product of (A) the percentage which its Commitment represents of the Total Commitment times (B) the outstanding aggregate principal amount of all Loans made pursuant to Section 2.03. Each Lender's Commitment is set forth opposite its name in Schedule 2.01. Such Commitments may be terminated or reduced from time to time pursuant to Section 2.10.

Within the foregoing limits, the Borrower may borrow, pay or prepay and reborrow Loans hereunder, on and after the Closing Date and prior to the Maturity Date, subject to the terms, conditions and limitations set forth herein.

SECTION 2.02. *Loans.* a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments; *provided*, *however*, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any

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other Lender to make any Loan required to be made by such other Lender). The Loans comprising any Borrowing shall be in an aggregate principal amount which is an integral multiple of $1,000,000 and not less than $10,000,000 (or an aggregate principal amount equal to the remaining balance of the available Commitments).

(b) Each Borrowing shall be comprised entirely of Eurodollar Loans or ABR Loans, as the Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; *provided*, *however*, that the Borrower shall not be entitled to request any Borrowing which, if made, would result in an aggregate of more than 10 separate Borrowings comprised of Eurodollar Loans being outstanding hereunder at any one time. For purposes of the foregoing, Loans having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Loans.

(c) Subject to Section 2.04, each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to the Agent in New York, New York, not later than 12:00 noon, New York City time, and the Agent shall by 3:00 p.m., New York City time, credit the amounts so received to the general deposit account of the Borrower with the Agent or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders. Loans shall be made by the Lenders pro rata in accordance with Section 2.15. Unless the Agent shall have received notice from a

Lender prior to the date of any Borrowing that such Lender will not make available to the Agent such Lender's portion of such Borrowing, the Agent may assume that such Lender has made such portion available to the Agent on the date of such Borrowing in accordance with this paragraph (c) and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have made such portion available to the Agent, such Lender and the Borrower severally agree to repay to the Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Effective Rate. If such Lender shall repay to the Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

SECTION 2.03. *Borrowing Procedure.* In order to request a Borrowing, the Borrower shall hand deliver or telecopy to the Agent a duly completed Borrowing Request in the form of Exhibit A (a) in the case of a Eurodollar Borrowing, not later than 10:30 a.m., New York City time, three Business Days before a proposed Borrowing and (b) in the case of an ABR Borrowing, not later than 10:30 a.m., New York City time, on the day of a proposed Borrowing. Such notice shall be irrevocable and shall in each case specify (i) whether the Borrowing then being requested is to be a Eurodollar Borrowing or an ABR Borrowing; (ii) the date of such Borrowing (which shall be a Business Day) and the amount thereof; and (iii) if such Borrowing is to be a Eurodollar Borrowing, the Interest Period with respect thereto, which shall not end after the Maturity Date. If no election as to the Type of Borrowing is specified in any such notice, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any Eurodollar Borrowing is specified in any such notice, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Notwithstanding any other provision of this Agreement to the contrary, the Borrower shall not be entitled to request any Borrowing if the Interest Period requested with respect to such Borrowing would end after the Maturity Date. The Agent shall promptly advise the Lenders of any notice given pursuant to this Section 2.03 and of each Lender's portion of the requested Borrowing.

SECTION 2.04 *Conversion and Continuation of Loans.* The Borrower shall have the right at any time upon prior irrevocable notice to the Agent (i) not later than 10:30 a.m., New York City time, on the day of the conversion, to convert all or any part of any Eurodollar Borrowing into an ABR Borrowing, (ii) not later than 10:30 a.m., New York City time, three Business Days prior to conversion or continuation, to convert any ABR Borrowing into a Eurodollar Borrowing or to continue any Eurodollar Borrowing as a Eurodollar Borrowing for an additional Interest Period and (iii) not later than 10:30 a.m., New York City time, three Business Days prior to conversion,

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to convert the Interest Period, with respect to any Eurodollar Borrowing to another permissible Interest Period, subject in each case to the following:

(a) if less than all the outstanding principal amount of any Borrowing shall be converted or continued, the aggregate principal amount of the Borrowing converted or continued shall be an integral multiple of $1,000,000 and not less than $10,000,000;

(b) accrued interest on a Borrowing (or portion thereof) being converted shall be paid by the Borrower at the time of conversion;

(c) if any Eurodollar Borrowing is converted at a time other than the end of the Interest Period applicable thereto, the Borrower shall pay, upon demand, any amounts due to the Lenders pursuant to Section 2.14;

(d) any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurodollar Borrowing;

(e) any portion of a Eurodollar Borrowing which cannot be continued as a Eurodollar Borrowing by reason of clause (d) above shall be automatically converted at the end of the Interest Period in effect for such Eurodollar Borrowing into an ABR Borrowing; and

(f) no Interest Period may be selected for any Eurodollar Borrowing that would end later than the Maturity Date.

Each notice of the Borrower pursuant to this Section 2.04 shall be irrevocable and shall refer to this Agreement and specify (i) the identity and amount of the Borrowing that the Borrower requests to be converted or continued, (ii) whether such Borrowing is to be converted to or continued as a Eurodollar Borrowing or an ABR Borrowing, (iii) if such notice requests a conversion, the date of such conversion (which shall be a Business Day) and (iv) if such Borrowing is to be converted to or continued as a Eurodollar Borrowing, the Interest Period with respect thereto. If no Interest Period is specified in any such notice with respect to any conversion to or continuation as a Eurodollar Borrowing, the Borrower shall be deemed to have selected an Interest Period of one month's duration. If the Borrower shall not have given notice in accordance with this Section 2.04 to convert or continue any Borrowing, such Borrowing shall, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be converted or continued into a new Interest Period as an ABR Borrowing.

SECTION 2.05. *Fees.* (a) The Borrower agrees to pay to each Lender, through the Agent, on each March 31, June 30, September 30 and December 31 (with the first payment being due on June 30, 2003) and on the date on which the Commitment of such Lender shall be terminated or reduced as provided herein, a facility fee (a "Facility Fee") equal to the Applicable Percentage per annum in effect from time to time on the average daily amount of the Commitment of such Lender, whether used or unused, during the preceding quarter (or other period commencing on the date of this Agreement, or ending with the Maturity Date or any date on which the Commitment of such Lender shall be terminated or reduced). All Facility Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Facility Fee due to each Lender shall commence to accrue on the date of this Agreement, and shall cease to accrue on the earlier of the Maturity Date and the termination of the Commitment of such Lender as provided herein.

(b) The Borrower agrees to pay the Agent, for its own account, the administrative and other fees referred to in the Fee Letter (the "Administrative Fees") at the times and in the amounts agreed upon in the Fee Letter.

(c) All Fees shall be paid on the dates due, in immediately available funds, to the Agent for distribution, if and as appropriate, among the Lenders. Once paid, none of the Fees shall be refundable under any circumstances.

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SECTION 2.06. *Repayment of Loans; Evidence of Debt.* (a) The Borrower hereby agrees that the outstanding principal balance of each Loan shall be payable on the Maturity Date. Each Loan shall bear interest on the outstanding principal balance thereof as set forth in Section 2.07.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the appropriate lending office of such Lender resulting from each Loan made by such lending office of such Lender from time to time, including the amounts of principal and interest payable and paid such lending office of such Lender from time to time under this Agreement.

(c) The Agent shall maintain the Register pursuant to Section 8.04(d), and a subaccount for each Lender, in which Register and accounts (taken together) shall be recorded (i) the amount of each Loan made hereunder, the Type of each Loan made and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower

to each Lender hereunder and (iii) the amount of any sum received by the Agent hereunder from the Borrower and each Lender's share thereof.

(d) The entries made in the Register and accounts maintained pursuant to paragraph (b) and (c) of this Section 2.06 shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; *provided*, *however*, that the failure of any Lender or the Agent to maintain such account, such Register or such subaccount, as applicable, or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans made to the Borrower by such Lender in accordance with their terms.

(e) The Borrower agrees that upon notice by any Lender after the initial borrowing hereunder to the Borrower (with a copy to the Agent) to the effect that a promissory note or other evidence of indebtedness is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Loans owing to, or to be made by, such Lender, the Borrower shall promptly, execute and deliver to such Lender, with a copy to the Agent, a promissory note in substantially the form of Exhibit B hereto, payable to the order of such Lender in a principal amount equal to the Commitment of such Lender.

SECTION 2.07. *Interest on Loans.* (a) Subject to the provisions of Section 2.08, the Loans comprising each Eurodollar Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the LIBO Rate for the Interest Period in effect for such Borrowing plus (x) the Applicable Margin from time to time in effect plus (y) the Applicable Utilization Fee from time to time in effect.

(b) Subject to the provisions of Section 2.08, the Loans comprising each ABR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, for periods during which the Alternate Base Rate is determined by reference to the Base Rate and 360 days for periods during which the Alternate Base Rate is determined by reference to the Federal Funds Effective Rate) at a rate per annum equal to the Alternate Base Rate from time to time in effect plus (x) the Applicable Margin from time to time in effect plus (y) the Applicable Utilization Fee from time to time in effect.

(c) Interest on each Loan shall be payable on each Interest Payment Date applicable to such Loan except as otherwise provided in this Agreement. The applicable LIBO Rate or Alternate Base Rate for each Interest Period or day within an Interest Period, as the case may be, shall be determined in good faith by the Agent, and such determination shall be conclusive absent manifest error.

(d) Each Reference Bank agrees to furnish to the Agent timely information for the purpose of determining each Eurodollar Loan and each LIBO Rate. If any one or more of the Reference Banks shall not furnish such timely information to the Agent for the purpose of determining any such interest rate, the Agent shall determine such interest rate on the basis of timely information furnished by the remaining Reference Banks. The Agent shall give prompt notice to the Borrower and the Lenders of the applicable

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interest rate determined by the Agent for purposes of Section 2.07(a), (b) or (c), and the rate, if any, furnished by each Reference Bank for the purpose of determining the interest rate under Section 2.07(a).

(e) If fewer than two Reference Banks furnish timely information to the Agent for determining the LIBO Rate for any Eurodollar Loan,

(i) the Agent shall forthwith notify the Borrower and the Lenders that the interest rate cannot be determined for such Eurodollar Loans,

(ii) with respect to Eurodollar Loans, each such Loan will automatically, on the last day of the then existing Interest Period therefor, be prepaid by the Borrower or be automatically converted into a Base Rate Loan, and

(iii) the obligation of the Lenders to make Eurodollar Loans or to convert Base Rate Loans into Eurodollar Loans shall be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

(f) Upon the occurrence and during the continuance of any Event of Default under Section 6.01(b) or (c), (i) each Eurodollar Loan will automatically, on the last day of the then existing Interest Period therefor, be converted into Base Rate Loans and (ii) the obligation of the Lenders to make, or to convert Advances into, Eurodollar Loans shall be suspended.

SECTION 2.08. *Default Interest.* If the Borrower shall default in the payment of the principal of or interest on any Loan or any other amount becoming due hereunder, whether by scheduled maturity, notice of prepayment, acceleration or otherwise, the Borrower shall on demand from time to time from the Agent pay interest, to the extent permitted by law, on such defaulted amount up to (but not including) the date of actual payment (after as well as before judgment) at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the Alternate Base Rate plus 2%.

SECTION 2.09. *Alternate Rate of Interest.* In the event, and on each occasion, that on the day two Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing the Agent shall have determined in good faith (i) that dollar deposits in the principal amounts of the Eurodollar Loans comprising such Borrowing are not generally available in the London interbank market or (ii) that reasonable means do not exist for ascertaining the LIBO Rate, the Agent shall, as soon as practicable thereafter, give telecopy notice of such determination to the Borrower and the Lenders. In the event of any such determination under clauses (i) or (ii) above, until the Agent shall have advised the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, any request by the Borrower for a Eurodollar Borrowing pursuant to Section 2.03 shall be deemed to be a request for an ABR Borrowing. In the event a Lender notifies the Agent that the rates at which dollar deposits are being offered will not adequately and fairly reflect the cost to such Lender of making or maintaining its Eurodollar Loan during such Interest Period, the Agent shall notify the Borrower of such notice and until the Lender shall have advised the Agent that the circumstances giving rise to such notice no longer exist, any request by the Borrower for a Eurodollar Borrowing shall be deemed a request for an ABR Borrowing for the same Interest Period with respect to such Lender. Each determination by the Agent hereunder shall be in good faith and conclusive absent manifest error.

SECTION 2.10. *Termination and Reduction of Commitments.* (a) The Commitments shall be automatically terminated on the Maturity Date.

(b) Upon at least three Business Days' prior irrevocable telecopy notice to the Agent, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Total Commitment; *provided*, *however*, that (i) each partial reduction of the Total Commitment shall be in an integral multiple of $1,000,000 and in a minimum principal amount of $10,000,000 and (ii) no such termination or reduction shall be made which would reduce the Total Commitment to an amount less than the aggregate outstanding principal amount of the Loans. Once terminated or reduced, the Total Commitment may not be reinstated.

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(c) Each reduction in the Total Commitment hereunder shall be made ratably among the Lenders in accordance with their respective Commitments. The Borrower shall pay to the Agent for the account of the Lenders, on the date of each termination or reduction of the Commitment, the Facility Fees on the amount of the Commitments so terminated or reduced accrued through the date of such termination or reduction.

SECTION 2.11. *Prepayment.* (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon giving telecopy notice (or telephone notice promptly confirmed by telecopy notice) to the Agent: (i) before 10:00 a.m., New York City time, two Business Days prior to prepayment, in the case of Eurodollar Loans, and (ii) before 10:00 a.m., New York City time, on the same Business Day of prepayment, in the case of ABR Loans; *provided*, *however*, that each partial prepayment shall be in an amount which is an integral multiple of $1,000,000 and not less than $5,000,000.

(b) On the date of any termination or reduction of the Commitments pursuant to Section 2.10, the Borrower shall pay or prepay so much of the Borrowings as shall be necessary in order that the aggregate principal amount of the Loans outstanding will not exceed the Total Commitment, after giving effect to such termination or reduction.

(c) Each notice of prepayment from the Borrower shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid, shall be irrevocable and shall commit the Borrower to prepay such Borrowing (or portion thereof) by the amount stated therein on the date stated therein. All prepayments under this Section 2.11 shall be subject to Section 2.14 but otherwise without premium or penalty. All prepayments under this Section 2.11 shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment.

SECTION 2.12. *Reserve Requirements; Change in Circumstances.* (a) Notwithstanding any other provision herein, if after the date of this Agreement any change in applicable law or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) shall result in the imposition, modification or applicability of any reserve, special deposit or similar requirement against assets of, deposits with or for the account of or credit extended by any Lender, or shall result in the imposition on such Lender or the London interbank market any other condition affecting this Agreement, such Lender's Commitment or any Eurodollar Loan made by such Lender, and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise) by an amount deemed by such Lender to be material, then the Borrower will pay to such Lender upon demand such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender shall have determined that the applicability of any law, rule, regulation or guideline adopted after the date hereof pursuant to or arising out of the July 1988 report of the Basle Committee on Banking Regulations and Supervisory Practices entitled "International Convergence of Capital Measurement and Capital Standards," or the adoption after the date hereof of any other law, rule, regulation or guideline regarding capital adequacy, or any change in any of the foregoing or in the interpretation or administration of any of the foregoing by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or any lending office of such Lender) or any Lender's holding company with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, such Lender's Commitment or the Loans made by such Lender pursuant hereto to a level below that which such Lender or such Lender's holding company could have achieved but for such adoption, change or compliance (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

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(c) A certificate of the Lender setting forth such amount or amounts (including computation of such amount or amounts) as shall be necessary to compensate the Lender or its holding company as specified in paragraph (a) or (b) above, as the case may be, shall be delivered to the Borrower and such amount or amounts may be reviewed by the Borrower. Unless the Borrower disagrees in good faith with the computation of the amount or amounts in such certificate, the Borrower shall pay to the Lender, within 10 Business Days after receipt by the Borrower of such certificate delivered by the Lender, the amount shown as due on any such certificate. If the Borrower, after receipt of any such certificate from the Lender, disagrees with the Lender on the computation of the amount or amounts owed to the Lender pursuant to paragraph (a) or (b) above, the Lender and the Borrower shall negotiate in good faith to promptly resolve such disagreement. In either case, however, the Lender shall have a duty to mitigate the damages that may arise as a consequence of paragraph (a) or (b) above to the extent that such mitigation will not, in the judgment of the Lender, entail any cost or disadvantage to the Lender that the Lender is not reimbursed or compensated for by the Borrower.

(d) Failure on the part of any Lender to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to any period shall not constitute a waiver of such Lender's right to demand compensation with respect to any other period; *provided* that if any Lender fails to make such demand within 45 days after it obtains knowledge of the event giving rise to the demand such Lender shall, with respect to amounts payable pursuant to this Section 2.12 resulting from such event, only be entitled to payment under this Section 2.12 for such costs incurred or reduction in amounts or return on capital from and after the date 45 days prior to the date that such Lender does make such demand. The protection of this Section shall be available to each Lender regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, guideline or other change or condition which shall have occurred or been imposed.

SECTION 2.13. *Change in Legality.* (a) Notwithstanding any other provision herein, if any change in any law or regulation or in the interpretation thereof by any Governmental Authority charged with the administration or interpretation thereof shall make it unlawful for any Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to any Eurodollar Loan, then, by 30 days' (or such shorter period as shall be required in order to comply with applicable law) written notice to the Borrower and to the Agent, such Lender may:

(i) declare that Eurodollar Loans will not thereafter be made by such Lender hereunder, whereupon any request by the Borrower for a Eurodollar Borrowing shall, as to such Lender only, be deemed a request for an ABR Loan unless such declaration shall be subsequently withdrawn; and

(ii) require that all outstanding Eurodollar Loans made by it be converted to ABR Loans, in which event all such Eurodollar Loans shall be automatically converted to ABR Loans as of the effective date of such notice as provided in paragraph (b) below.

In the event any Lender shall exercise its rights under (i) or (ii) above, all payments and prepayments of principal which would otherwise have been applied to repay the Eurodollar Loans that would have been made by such Lender or the converted Eurodollar Loans of such Lender shall instead be applied to repay the ABR Loans made by such Lender in lieu of, or resulting from the conversion of, such Eurodollar Loans.

(b) For purposes of this Section 2.13, a notice to the Borrower by any Lender shall be effective as to each Eurodollar Loan, if lawful, on the last day of the Interest Period currently applicable to such Eurodollar Loan; in all other cases such notice shall be effective on the date of receipt by the Borrower.

SECTION 2.14. *Indemnity.* The Borrower shall indemnify each Lender against any out-of-pocket loss or expense which such Lender may sustain or incur as a consequence of (a) any failure by the Borrower to borrow or to refinance, convert or continue any Loan hereunder after irrevocable notice of such borrowing, refinancing, conversion or continuation has been given pursuant to Section 2.03 or 2.04, (b) any payment, prepayment or conversion, or an assignment required under Section 2.19, of a Eurodollar Loan by the Borrower required by any

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other provision of this Agreement or otherwise made or deemed made on a date other than the last day of the Interest Period, if any, applicable thereto, (c) any default by the Borrower in payment or prepayment of the principal amount of any Loan or any part thereof or interest accrued thereon, as and when due and payable (at the due date thereof, whether by scheduled maturity, acceleration, irrevocable notice of prepayment or otherwise) or (d) the occurrence of any Event of Default.

In the case of a Eurodollar Loan, such out-of-pocket loss or expense shall be limited to an amount equal to the excess, if any, of (i) its cost of obtaining the funds for the Loan being paid, prepaid, converted or not borrowed, converted or continued (based on the LIBO Rate applicable thereto) for the period from the date of such payment, prepayment, conversion or failure to borrow, convert or continue to the last day of the Interest Period for such Loan (or, in the case of a failure to borrow, convert or continue, the Interest Period for such Loan which would have commenced on the date of such failure) over (ii) the amount of interest that would be realized by the Lender in reemploying the funds so paid, prepaid, converted or not borrowed, converted or continued for such period or Interest Period, as the case may be. In the case of an ABR Loan, such out-of-pocket loss or expense shall be limited to an amount equal to the excess, if any, of (i) its cost of obtaining the funds for the ABR Loan being paid, prepaid, converted or not borrowed, converted or continued for the period from the date of such payment, prepayment, conversion or failure to borrow, convert or continue to the next Business Day for such ABR Loan over (ii) the amount of interest that would be realized by the Lender in reemploying the funds so paid, prepaid, converted or not borrowed, converted or continued until the next Business Day, as the case may be.

A certificate of the Lender setting forth such amount or amounts (including the computation of such amount or amounts) as shall be necessary to compensate the Lender or its holding company for the out-of-pocket expenses defined herein shall be delivered to the Borrower and such amount or amounts may be reviewed by the Borrower. If the Borrower, after receipt of any such certificate from the Lender, disagrees in good faith with the Lender on the computation of the amount owed to the Lender pursuant to this Section 2.14, the Lender and the Borrower shall negotiate in good faith to promptly resolve such disagreement.

Each Lender shall have a duty to mitigate the damages to such Lender that may arise as a consequence of clause (a), (b), (c) or (d) above to the extent that such mitigation will not, in the judgment of such Lender, entail any cost or disadvantage to such Lender that such Lender is not reimbursed or compensated for by the Borrower.

SECTION 2.15. *Pro Rata Treatment.* Except as required under Sections 2.09, 2.12, 2.13, 2.14, 2.18 and 2.19, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each payment of the Facility Fees, each reduction of the Commitments and each refinancing or conversion of any Borrowing with a Borrowing of any Type, shall be allocated pro rata among the Lenders in accordance with their respective Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans). Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole dollar amount.

SECTION 2.16. *Sharing of Setoffs.* Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower, or pursuant to a secured claim

under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans as a result of which the unpaid principal portion of the Loans of such Lender shall be proportionately less than the unpaid principal portion of the Loans of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Loans of such other Lender, so that the aggregate unpaid principal amount of the Loans and participations in the Loans held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Loans then outstanding as the principal amount of its Loans prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Loans outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; *provided*, *however*, that, if any such purchase or purchases or adjustments shall be made

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pursuant to this Section 2.16 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest. The Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in a Loan deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Borrower to such Lender by reason thereof as fully as if such Lender had made a Loan directly to the Borrower in the amount of such participation.

SECTION 2.17. *Payments.* (a) The Borrower shall make each payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder from an account in the United States not later than 12:00 noon, New York City time, on the date when due in dollars to the Agent at its offices at 388 Greenwich Street, New York, NY 10013, in immediately available funds.

(b) Whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

SECTION 2.18. *Taxes.* (a) Any and all payments by the Borrower hereunder shall be made, in accordance with Section 2.17, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto imposed by the United States or any political subdivision or taxing authority thereof, excluding taxes imposed on the Agent's or any Lender's (or any transferee's or assignee's, including a participation holder's (any such entity a "Transferee")) net income and franchise taxes imposed on the Agent or any Lender (or Transferee) by the United States or any political subdivision or taxing authority thereof (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Lender (or any Transferee) or the Agent, (i) the sum payable shall be increased by the amount necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.18) such Lender (or Transferee) or the Agent (as the case may be) shall receive an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant taxing authority or other Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement imposed by the United States or any political subdivision or taxing authority thereof (hereinafter referred to as "Other Taxes").

(c) The Borrower will indemnify each Lender (or Transferee) and the Agent for the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes on amounts payable under this Section 2.18) paid by such Lender (or Transferee) or the Agent, as the case may be, with respect to the Borrower and any liability (including penalties, interest and reasonable out-of-pocket expenses) arising therefrom or with respect thereto (other than any such liability that results from the gross negligence or willful misconduct of the Lender (or Transferee) or Agent), whether or not such Taxes or Other Taxes were correctly or legally asserted by the relevant taxing authority or other Governmental Authority. Such indemnification shall be made within 30 days after the date any Lender (or Transferee) or the Agent, as the case may be, makes written demand therefor. If the Borrower or any Lender (or Transferee) or the Agent shall determine that Taxes or Other Taxes may not have been correctly or legally assessed by the relevant taxing authority or other Governmental Authority, and that a Lender (or Transferee) or the Agent may be entitled to receive a refund in respect of Taxes or Other Taxes, it shall promptly notify the other party of the availability of such refund and such Lender (or Transferee) or the Agent shall, within 60 days after receipt of a request by the Borrower, apply for such refund at the Borrower's expense. If any Lender (or Transferee) or the Agent receives a refund or credit or offset against another tax liability in respect of any Taxes or Other Taxes for which such Lender (or Transferee) or the Agent has received payment from the Borrower hereunder it shall promptly repay such refund or credit or offset against another tax liability (including any interest received by such Lender (or Transferee) or the Agent from the taxing authority with respect to the refund with respect to such Taxes or Other Taxes) to the Borrower, net of all out-of-pocket expenses of such Lender; *provided* that the Borrower, upon the request of such Lender (or Transferee) or the Agent, agrees to return

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such refund or credit or offset against another tax liability (plus penalties, interest or other charges) to such Lender (or Transferee) or the Agent in the event such Lender (or Transferee) or the Agent is required to repay such refund or credit or offset against another tax liability. For purposes of the preceding sentence, the Agent or any Lender shall determine in good faith and in its discretion the amount of any credit or offset against another tax liability and shall be under no obligation to make available to the Borrower any of its tax returns or any other information that it deems to be confidential.

(d) As soon as practicable after the date of any payment of Taxes or Other Taxes withheld by the Borrower in respect of any payment to any Lender (or Transferee) or the Agent, the Borrower will furnish to the Agent, at its address referred to in Section 8.01, the original or a certified copy of a receipt evidencing payment thereof.

(e) Without prejudice to the survival of any other agreement contained herein, the agreements and obligations contained in this Section 2.18 shall survive the payment in full of the principal of and interest on all Loans made hereunder.

(f) Each Lender (or Transferee) which is organized outside the United States shall, prior to the due date of the first payment by the Borrower to such Lender (or Transferee) hereunder, deliver to the Borrower such certificates, documents or other evidence, as required by the Code or Treasury Regulations issued pursuant thereto, including Internal Revenue Service Form W-8BEN or Form W-8ECI and any other certificate or statement of exemption required by Treasury Regulation Section 1.1441-1(a) or Section 1.1441-6(c) or any subsequent version thereof, properly completed and duly executed by such Lender (or Transferee) establishing that such payment is (i) not subject to withholding under the Code because such payment is effectively connected with the conduct by such Lender (or Transferee) of a trade or business in the United States or (ii) totally exempt from United States tax under a provision of an applicable tax treaty. Each such Lender (or Transferee) that changes its funding office shall promptly notify the Borrower of such change and, upon written request from the Borrower, shall deliver any new certificates, documents or other evidence required pursuant to the preceding sentence prior to the immediately following due date of any payment by the Borrower hereunder. Unless the Borrower and the Agent have received forms or other documents satisfactory to

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them indicating that payments hereunder are not subject to United States withholding tax, notwithstanding paragraph (a), the Borrower or the Agent shall withhold taxes from such payments at the applicable statutory rate in the case of payments to or for any Lender (or Transferee) organized under the laws of a jurisdiction outside the United States.

(g) The Borrower shall not be required to pay any additional amounts to any Lender (or Transferee) in respect of Taxes and Other Taxes pursuant to paragraphs (a), (b) and (c) above if the obligation to pay such additional amounts would not have arisen but for a failure by such Lender (or Transferee) to comply with the provisions of paragraph (f) above unless such Lender (or Transferee) is unable to comply with paragraph (f) because of (i) a change in applicable law, regulation or official interpretation thereof or (ii) an amendment, modification or revocation of any applicable tax treaty or a change in official position regarding the application or interpretation thereof, in each case after the date hereof (and, in the case of a Transferee, after the date of assignment or transfer).

(h) Any Lender (or Transferee) claiming any additional amounts payable under this Section 2.18 shall (i) to the extent legally able to do so, file any certificate or document if such filing would avoid the need for or reduce the amount of any such additional amounts which may thereafter accrue, and the Borrower shall not be obligated to pay such additional amounts if, any Lender (or Transferee) could have filed such certificate or document and failed to do so; or (ii) consistent with legal and regulatory restrictions, use reasonable efforts to change the jurisdiction of its applicable lending office if the making of such change would avoid the need for or reduce the amount of any additional amounts which may thereafter accrue and would not, in the sole determination of such Lender (or Transferee), be otherwise disadvantageous to such Lender (or Transferee).

SECTION 2.19. *Mandatory Assignment; Commitment Termination.* In the event any Lender delivers to the Agent or the Borrower, as appropriate, a certificate in accordance with Section 2.12(c) or a notice in accordance with Section 2.09 or 2.13 or is a Defaulting Lender, or the Borrower is required to pay any additional amounts or other payments in accordance with Section 2.18, the Borrower may, at its own expense, and in its sole discretion (a) require such Lender to transfer and assign in whole or in part, without recourse (in accordance with

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Section 8.04), all or part of its interests, rights and obligations under this Agreement to an assignee acceptable to the Agent which shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) such assignment shall not conflict with any law, rule or regulation or order of any court or other Governmental Authority and (ii) the Borrower or such assignee shall have paid to the assigning Lender in immediately available funds the principal of and interest accrued to the date of such payment on the Loans made by it hereunder and all other amounts owed to it hereunder or (b) terminate the Commitment of such Lender and prepay all outstanding Loans of such Lender; *provided* that (x) such termination of the Commitment of such Lender and prepayment of Loans does not conflict with any law, rule or regulation or order of any court or Governmental Authority, (y) the Borrower shall have paid to such Lender in immediately available funds the principal of and interest accrued to the date of such payment on the Loans made by it hereunder and all other amounts owed to it hereunder and (z) the Borrower shall have paid to the Agent a processing and recordation fee of $3,500 if such assignee is not an existing Lender.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to each of the Lenders that:

SECTION 3.01. *Organization; Powers.* It (a) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, (c) is qualified to do business in every jurisdiction where such qualification is

required, except where the failure so to qualify would not result in a Material Adverse Effect, and (d) has the corporate power and authority to execute, deliver and perform its obligations under this Agreement and to borrow funds hereunder.

SECTION 3.02. *Authorization.* The execution, delivery and performance by it of this Agreement and the Borrowings by it hereunder (collectively, the "Transactions") (a) have been duly authorized by all requisite corporate actions and (b) will not (i) violate (A) any provision of any law, statute, rule or regulation (including, without limitation, the Margin Regulations) or of its certificate of incorporation or other constitutive documents or by-laws, (B) any order of any Governmental Authority or (C) any provision of any indenture, agreement or other instrument to which it is a party or by which it or any of its property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under any such indenture, agreement or other instrument or (iii) result in the creation or imposition of any lien upon any of its property or assets.

SECTION 3.03. *Enforceability.* This Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms.

SECTION 3.04. *Governmental Approvals.* No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions.

SECTION 3.05. *Financial Statements.* (a) The Borrower has heretofore furnished to the Agent and the Lenders copies of its consolidated financial statements as of and for (1)the fiscal year ended September 30, 2002 as included in the Borrower's Annual Report on Form 10-K filed with the Securities and Exchange Commission on December 23, 2002 (the "2002 Form 10-K") and (2)the quarter ended December 31, 2002, and included in the Borrower's Quarterly Report on Form 10-Q filed February 12, 2003. Such financial statements present fairly, in all material respects, the consolidated financial condition of the Borrower as of such date and for such periods in accordance with GAAP.

(b) Except as disclosed in the Borrower's 2002 Form 10-K and the Borrower's Quarterly Report on Form 10-Q dated February 12, 2003 and each of the Borrower's Form 8-Ks filed on March 19, 2003, March 28, 2003 and April 24, 2003, there has been no material adverse change in the consolidated business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries taken as a

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whole since September 30, 2002. For purposes of this representation a change in the Public Debt Rating of the Borrower shall not constitute a material adverse change.

SECTION 3.06. *Litigation; Compliance with Laws.* (a) (i) There are no actions or proceedings filed or (to its knowledge) investigations pending or threatened against it in any court or before any Governmental Authority or arbitration board or tribunal which question the validity, enforceability or legality of or seek damages in connection with this Agreement, the Transactions or any action taken or to be taken pursuant to this Agreement and no order or judgment has been issued or entered restraining or enjoining it from the execution, delivery or performance of this Agreement nor is there any action or proceeding which involves a probable risk of an adverse determination which would have any such effect; (ii) nor is there any other action or proceeding filed or (to its knowledge) investigation pending or threatened against it in any court or before any Governmental Authority or arbitration board or tribunal which involves a probable risk of a material adverse decision which would result in a Material Adverse Effect except as provided in the Borrower's Quarterly Report on Form 10-Q for the fiscal quarter ended December 31, 2002 and the Borrower's Current Report on Form 8-K filed on March 28, 2003, or materially restrict the ability of it to comply with its obligations under this Agreement.

(b) Neither it nor any of its subsidiaries is in violation of any law, rule or regulation, or in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such

violation or default could result in a Material Adverse Effect except as provided in the Borrower's Quarterly Report on Form 10-Q for the fiscal quarter ended December 31, 2002 and the Borrower's Current Report on Form 8-K filed on March 28, 2003.

SECTION 3.07. *Federal Reserve Regulations.* (a) Neither it nor any of its subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose which entails a violation of, or which is inconsistent with, the provisions of the Margin Regulations.

SECTION 3.08. *Investment Company Act; Public Utility Holding Company Act.* Neither it nor any of its subsidiaries is (a) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 3.09. *Use of Proceeds.* All proceeds of the Loans shall be used for general corporate purposes of the Borrower, including refunding of debt, support for commercial paper and acquisition financing.

SECTION 3.10. *No Material Misstatements.* No report, financial statement or other written information furnished by it or on its behalf to the Agent or any Lender pursuant to Section 3.05 or Section 5.02 hereof contains as of the date hereof in the case of Section 3.05, or will contain as of the date furnished in the case of Section 5.02, any material misstatement of fact or omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or will be made, not misleading.

SECTION 3.11. *Solvency.* The Borrower is, individually and together with its Subsidiaries, Solvent. "*Solvent*" means, with respect to any Person on a particular date, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (ii) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (iv) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

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ARTICLE IV

Conditions of Lending

The obligations of the Lenders to make Loans hereunder are subject to the satisfaction of the following conditions:

SECTION 4.01. *All Borrowings.* On the date of each Borrowing:

(a) The Agent shall have received a notice of such Borrowing as required by Section 2.03.

(b) The representations and warranties set forth in the Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date; *provided* that the representation and warranty in Section 3.11 shall only be made upon the Closing Date.

(c) The Borrower shall be in compliance with all the terms and provisions set forth herein in all material respects, and at the time of and immediately after such Borrowing no Event of Default or Default shall have occurred and be continuing.

Each Borrowing shall be deemed to constitute a representation and warranty by the Borrower on the date of such Borrowing as to the matters specified in paragraphs (b) and (c) of this Section 4.01.

SECTION 4.02. *Closing Date.* On the Closing Date:

(a) The Agent shall have received a favorable written opinion of (i) a corporate counsel of the Borrower, dated the Closing Date and addressed to the Lenders, to the effect set forth in Exhibit D hereto and (ii) Shearman & Sterling, counsel for the Agent, in form and substance satisfactory to the Agent.

(b) The Agent shall have received (i) a long form certificate as to the certificate of incorporation, including all amendments thereto, of the Borrower as of a recent date by the Secretary of State of the state of incorporation of the Borrower and a certificate as to the good standing of the Borrower as of a recent date, from such Secretary of State; (ii) a certificate of the Secretary or an Assistant Secretary of the Borrower dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the by-laws of the Borrower as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below except for any changes specified in such certificate, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of the Borrower authorizing the execution, delivery and performance of this Agreement and the Borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate of incorporation of the Borrower has not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (i) above, and (D) as to the incumbency and specimen signature of each officer executing this Agreement or any other document delivered in connection herewith on behalf of the Borrower; and (iii) a certificate of another officer of the Borrower as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to (ii) above.

(c) The Agent shall have received a certificate from the Borrower, dated the Closing Date and signed by a Financial Officer of the Borrower confirming compliance with the conditions precedent set forth in paragraphs (b) and (c) of Section 4.01.

(d) The Agent shall have received any Fees and other amounts due and payable on or prior to the Closing Date.

ARTICLE V

Covenants

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The Borrower covenants and agrees as to itself and with each Lender and the Agent that so long as this Agreement shall remain in effect or the principal of or interest on any Loan, any Fees or any other expenses or amounts payable hereunder shall be unpaid unless the Required Lenders shall otherwise consent in writing:

SECTION 5.01. *Existence.* It will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as otherwise expressly permitted under Section 5.06.

SECTION 5.02. *Financial Statements, Reports, Etc..* It will furnish to the Agent and each Lender:

(a) within 105 days after the end of each fiscal year, its consolidated balance sheets and the related statements of income and cash flows, showing its consolidated financial condition as of the close of such fiscal year and the consolidated results of its operations during such year, all audited by PricewaterhouseCoopers LLC or other independent auditors of recognized national standing and accompanied by an opinion of such auditors to the effect that such consolidated financial statements fairly present in all material respects its financial condition and results of operations on a consolidated basis in accordance with GAAP consistently applied;

(b) within 60 days after the end of each of the first three fiscal quarters of each fiscal year, its consolidated balance sheets and related statements of income and cash flows, showing its consolidated financial condition as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and the then elapsed portion of such fiscal year, all certified by one of its Financial Officers as fairly presenting in all material respects its financial condition and results of operations on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments;

(c) concurrently with any delivery of financial statements under paragraph (a) above, a certificate of a Financial Officer (i) certifying that no Event of Default or Default has occurred and is continuing or, if such an Event of Default or Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (ii) setting forth in reasonable detail the calculations necessary to demonstrate compliance with Section 5.08 and 5.09;

(d) promptly after the same become publicly available, copies of all reports filed by it with the SEC (other than reports on Form 8-K which are filed solely for the purpose of filing exhibits), or any Governmental Authority succeeding to any of or all the functions of the SEC, or distributed to its shareholders, as the case may be;

(e) not later than October 4, 2003, a certificate of a Financial Officer setting forth in reasonable detail the calculations necessary to demonstrate compliance with Section 5.21; and

(f) promptly after a Financial Officer becomes aware thereof, notice of each Default or Event of Default that is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto.

Reports and financial statements required to be delivered by the Borrower pursuant to paragraphs (a), (b) and (d) of this Section 5.02 shall be deemed to have been delivered on the date on which it posts such reports, or reports containing such financial statements, on its website on the Internet at www.avaya.com or when such reports, or reports containing such financial statements are posted on the SEC's website at www.sec.gov; *provided* that it shall deliver paper copies of the reports and financial statements referred to in paragraphs (a), (b) and (d) of this Section 5.02 to the Agent or any Lender who requests it to deliver such paper copies until written notice to cease delivering paper copies is given by the Agent or such Lender; and *provided further* that in every instance it shall provide paper copies of the certificate required by subsection (c) to the Agent and each of the Lenders until such time as the Agent shall provide it written notice otherwise.

SECTION 5.03. *Maintaining Records.* It will record, summarize and report all financial information in accordance with GAAP.

SECTION 5.04. *Use of Proceeds.* It will use the proceeds of the Loans only for the purposes set forth in Section 3.09.

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SECTION 5.05. *Compliance with Laws, Etc.*. It will comply in all material respects with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, compliance with ERISA and Environmental Laws.

SECTION 5.06. *Consolidations, Mergers, and Sales of Assets.* It will not merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to, any Person, except that the Borrower may merge or consolidate with any other Person so long as (a) the Borrower is the surviving corporation, or (b) if the Borrower is not the surviving corporation, (i) the surviving corporation expressly assumes the obligations of the Borrower under this Agreement and the Notes and (ii) the surviving corporation has a Public Debt Rating of not lower than BBB- from S&P and Baa3 from Moody's, *provided*, in each case, that no Default or Event of Default would result therefrom.

SECTION 5.07. *Limitations on Liens.* The Borrower will not create or suffer to exist, or permit any of its Material Subsidiaries to create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of its Material Subsidiaries to assign, any right to receive income, other than:

(i) Permitted Liens;

(ii) Liens existing on September 25, 2000 securing Debt of the Borrower or its Material Subsidiaries outstanding on such date;

(iii) purchase money Liens upon or in or conditional sales agreements or other title retention agreements with respect to, real property or equipment acquired or held by the Borrower or any of its Material Subsidiaries in the ordinary course of business to secure the purchase price of such property or equipment or to secure Debt incurred solely for the purpose of financing the acquisition, construction or improvement of any such property or equipment to be subject to such Liens (including any Liens placed on such property or equipment within 180 days after the latest of the acquisition, completion of construction or improvement of such property), or Liens existing on any such property or equipment at the time of acquisition (other than any such Liens created in contemplation of such acquisition that do not secure the purchase price), or extensions, renewals, refundings or replacements of any of the foregoing for the same or a lesser amount; *provided, however*, that no such Lien shall extend to or cover any property other than the property or equipment being acquired, constructed or improved, and no such extension, renewal, refunding or replacement shall extend to or cover any property not theretofore subject to the Lien being extended, renewed, refunded or replaced (except to the extent of financed construction or improvement);

(iv) Liens (including financing statements and undertakings to file financing statements) arising solely from precautionary filings of financing statements under the Uniform Commercial Code of the applicable jurisdiction in respect of equipment leases under which the Borrower or any of its Material Subsidiaries is the lessee; *provided* that any such Lien in respect of any equipment lease is limited to the equipment being leased under such lease and the proceeds thereof;

(v) any Lien existing on any asset of any corporation at the time such corporation becomes a Material Subsidiary and not created in contemplation of such event;

(vi) any Lien on any asset of any corporation existing at the time such corporation is merged or consolidated with or into the Borrower or a Material Subsidiary and not created in contemplation of such event;

(vii) any Lien existing on any asset prior to the acquisition thereof by the Borrower or a Material Subsidiary and not created in contemplation of such acquisition;

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(viii) synthetic leases in effect as of the Amendment No. 2 Effective Date;

(ix) Liens not otherwise permitted by the foregoing clauses of this definition securing Debt of the Borrower or its Material Subsidiaries in an aggregate principal amount at any time outstanding not to exceed $75,000,000;

(x) any Lien arising out of the refinancing, extension, renewal or refunding of any Debt secured by any Lien permitted by any of the foregoing clauses of this Section, provided that (x) such Debt is not secured by any additional assets, and (y) the amount of such Debt secured by any such Lien is not increased;

(xi) Liens created under the Collateral Documents; and

(xii) Liens securing Debt permitted by Section 5.17(i)(B) and (ii)(C).

SECTION 5.08. *Interest Coverage Ratio.* It will maintain a ratio of Consolidated EBITDA of the Borrower and its Subsidiaries to interest expense for the period consisting of the previous four consecutive fiscal quarters by the Borrower and its Subsidiaries of not less than the ratios set forth below for periods indicated:

Fiscal Quarter Ended	Ratio
March 31, 2003 through June 30, 2003	2.50 to 1
September 30, 2003	2.70 to 1
December 31, 2003	2.90 to 1
March 31, 2004	3.20 to 1
June 30, 2004	3.50 to 1
September 30, 2004 and thereafter	4.00 to 1

provided, that the ratios set forth above shall be deemed to be reduced (i) by 0.20 for the fiscal quarter in which the Borrower's Connectivity Solutions business is sold, (ii) by 0.40 for the fiscal quarter following the fiscal quarter referred to in clause (i) above, (iii) by 0.60 for the fiscal quarter following the fiscal quarter referred to in clause (ii) above and (iv) by 0.80 for each fiscal quarter thereafter.

SECTION 5.09. *Minimum EBITDA.* It will maintain, as of the end of each period set forth below, Consolidated EBITDA of the Borrower and its Subsidiaries of not less than the amount set forth below for such period:

Period	Minimum EBITDA	
Four quarters ending June 30, 2003	$	190,000,000
Four quarters ending September 30, 2003	$	220,000,000
Four quarters ending December 31, 2003	$	230,000,000
Four quarters ending March 31, 2004	$	270,000,000
Four quarters ending June 30, 2004	$	300,000,000
Four quarters ending September 30, 2004	$	330,000,000
Rolling four quarter periods thereafter	$	350,000,000

provided, that the Minimum EBITDA amounts set forth above shall be deemed to be reduced (i) by $15,000,000 for the fiscal quarter in which the Borrower's Connectivity Solutions business is sold, (ii) by $30,000,000 for the fiscal quarter following the fiscal quarter referred to in clause (i) above, (iii) by $45,000,000 for the fiscal quarter following the fiscal quarter referred to in clause (ii) above and (iv) by $60,000,000 for each fiscal quarter thereafter.

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SECTION 5.10. *Visitation Rights.* At any reasonable time and from time to time, upon reasonable prior notice, it will permit the Agent or any of the Lenders or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and any of its Subsidiaries with any financial officers and, upon reasonable prior to notice to the Borrower and subject to the right of a financial officer to be present during such discussions, with their independent certified public accountants; *provided*, that unless an Event of Default shall have occurred and is continuing, each of the Agent and the Lenders may take such actions only once during any fiscal quarter of the Borrower.

SECTION 5.11. *Maintenance of Properties, Etc.* It will maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its material properties that are material to the conduct of its business taken as a whole in good working order and condition, ordinary wear and tear excepted; *provided*, *however*, that nothing in this Section 5.11 shall prevent the Borrower or any such Subsidiary from discontinuing the operation or maintenance of any property if such discontinuance is in the judgment of the Borrower desirable in the conduct of its business or the business of such Subsidiary.

SECTION 5.12. *Maintenance of Insurance.* It will maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates; *provided*, *however*, that (i) the Borrower and its Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates and to the extent consistent with prudent business practice and (ii) insurance coverage against terrorist acts shall be required only so long as such coverage is available on commercially reasonable terms.

SECTION 5.13. *Payment of Taxes, Etc.* It will pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all lawful claims, in each case, that, if unpaid, could reasonably be expected to result in a Material Adverse Effect; *provided*, *however*, that neither the Borrower nor any of its Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained so long as the failure to so pay or discharge could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.14. *Transactions with Affiliates.* It will conduct, and cause each of its Subsidiaries to conduct, all transactions otherwise permitted under this Agreement with any of their Affiliates on terms that are fair and reasonable and no less favorable to the Borrower or such Subsidiary than it would obtain in a comparable arm's-length transaction with a Person not an Affiliate; *provided*, that the foregoing shall not apply to transactions between the Borrower and its Subsidiaries or the Warburg Transactions.

SECTION 5.15. *Covenant to Guarantee Obligations and Give Security.* At any time during the Security Period, it will upon (x) the request of the Agent following the occurrence and during the continuance of a Default or an Event of Default, (y) the formation or acquisition of any new direct or indirect domestic Material Subsidiaries by any Loan Party or (z) the acquisition of any material property by any Loan Party, and such property, in the judgment of the Agent, shall not already be subject to a perfected first priority security interest in favor of the Collateral Trustee for the benefit of the Secured Parties, then the Borrower shall, in each case at the Borrower's expense:

(i) in connection with the formation or acquisition of a domestic Material Subsidiary, within 10 days after such formation or acquisition, cause each such Subsidiary, and cause each direct and indirect domestic parent of such Subsidiary (if it has not already done so), to duly execute and

deliver to the Agent a guaranty or guaranty supplement, in form and substance reasonably satisfactory to the Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents,

(ii) within 15 days after such request, formation or acquisition, duly execute and deliver, and cause each such Subsidiary and each direct and indirect domestic parent of such Subsidiary (if it has not already done so) to duly execute and deliver, to the

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Collateral Trustee, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and other security agreements, as specified by and in form and substance reasonably satisfactory to the Agent, securing payment of all the obligations of the applicable Loan Party, such Subsidiary or such parent, as the case may be, under the Loan Documents and constituting Liens on all such properties, *provided* that no real property shall be subjected to a security interest in favor of the Collateral Trustee for the benefit of the Secured Parties,

(iii) within 30 days after such request, formation or acquisition, take, and cause such Subsidiary or such parent to take, whatever action (including, without limitation, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be reasonably necessary or advisable in the opinion of the Agent to vest in the Collateral Trustee (or in any representative of the Collateral Trustee designated by them) valid and subsisting Liens on the properties purported to be subject to the pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements delivered pursuant to this Section 5.15, enforceable against all third parties in accordance with their terms,

(iv) within 60 days after such request, formation or acquisition, deliver to the Agent, upon the request of the Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Agent as to the matters contained in clauses (i), (ii) and (iii) above, as to such guaranties, guaranty supplements, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements being legal, valid and binding obligations of each Loan Party party thereto enforceable in accordance with their terms, as to the matters contained in clause (iii) above, as to such recordings, filings, notices, endorsements and other actions being sufficient to create valid perfected Liens on such properties to the extent a Lien can be created by filing under the Uniform Commercial Code, and as to such other matters as the Agent may reasonably request,

(v) at any time and from time to time, promptly execute and deliver any and all further instruments and documents and take all such other action as the Agent may deem necessary or desirable in obtaining the full benefits of, or in perfecting and preserving the Liens of, such guaranties, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements.

SECTION 5.16. *Further Assurances.* (i) It will promptly upon request by the Agent, or any Lender through the Agent, correct, and cause each of its Subsidiaries promptly to correct, any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and

(ii) It will promptly upon request by the Agent, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, pledge agreements, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as the Agent may reasonably require from time to time in order to (A) carry out more effectively the purposes of the Loan Documents, (B) to the fullest extent permitted by applicable law and during the Security Period, subject any Loan Party's or any of its domestic Subsidiaries' properties, assets, rights or interests to

the Liens now or hereafter intended to be covered by any of the Collateral Documents, (C) during the Security Period, to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (D) to assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so; *provided*, that nothing contained herein shall require the Borrower or any Subsidiary to grant a security interest in the assets or property of any Excluded Subsidiary.

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SECTION 5.17. *Debt.* It will not create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Debt, except:

(i) in the case of the Borrower,

(A) Debt outstanding on the Closing Date under the 11.125% Senior Secured Notes due April, 2009, and

(B) Debt issued in the capital markets, having a maturity no earlier than 90 days after the Maturity Date, shall have no mandatory prepayments, redemptions or defeasements or be otherwise payable prior to 90 days after the Maturity Date and shall be in an aggregate principal amount not to exceed the sum of $200,000,000 and any over allotment thereof at any time outstanding, *provided* such Debt is secured by a Lien on the Collateral that is junior to the Lien granted to the Lenders or is otherwise subordinated on terms acceptable to the Required Lenders, and

(ii) in the case of the Borrower and its Subsidiaries,

(A) Debt under the Loan Documents,

(B) Debt outstanding on the Amendment No. 2 Effective Date and any Debt extending the maturity of, or refunding or refinancing, in whole or in part, any such Debt, *provided* that the terms of any such extending, refunding or refinancing Debt, and of any agreement entered into and of any instrument issued in connection therewith, are otherwise permitted by the Loan Documents, *provided further* that the principal amount of such Debt shall not be increased above the sum of (i) principal amount thereof outstanding immediately prior to such extension, refunding or refinancing, and (ii) any fees and expenses in connection therewith, and the direct and contingent obligors therefor shall not be changed, as a result of or in connection with such extension, refunding or refinancing,

(C) Debt in an aggregate principal amount not to exceed $130,000,000 at any time outstanding secured by real property provided such debt matures no earlier than, and has no mandatory prepayments, redemptions or defeasements or is otherwise payable prior to 90 days after the Maturity Date,

(D) Debt of the Borrower to any Subsidiary of the Borrower or of any Subsidiary to the Borrower or any other Subsidiary of the Borrower,

(E) Debt permitted to be secured by Liens in accordance with Section 5.07(v), (vi) or (vii);

(F) Debt in respect of Hedge Agreements designed to hedge against fluctuations in interest rates or foreign exchange rates incurred in the ordinary course of business and in accordance with prudent business practices,

(G) Debt in respect of trade letters of credit in an aggregate amount not to exceed $25,000,000 at any time outstanding,

(H) Debt arising under the Electronic Wire and Cable Product Purchase Agreement, as amended, and related agreements, between the Borrower and the Belden Communication Division, a division of Belden line, and

(I) other Debt not to exceed in the aggregate $50,000,000 at any time outstanding.

SECTION 5.18. *Restricted Payments.* It will not declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of capital stock of the Borrower, or purchase, redeem or otherwise acquire for value (or permit any of its Subsidiaries to do so) any shares of any class of capital stock of the Borrower or any warrants, rights or

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options to acquire any such shares, now or hereafter outstanding, except that, so long as no Default or Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom, the Borrower may (i) declare and make any dividend payment or other distribution payable in common stock of the Borrower, (ii) purchase, redeem or otherwise acquire shares of its common stock or warrants, rights or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock or options or warrants convertible into common stock; (iii) declare or pay cash dividends to the holders to its Series B convertible participating preferred stock and warrants and purchase, redeem or otherwise acquire shares of its Series B convertible participating preferred stock or warrants, rights or options to acquire any such shares to the extent permitted by the terms of such Series B convertible participating preferred stock or pay cash dividends in respect of equity interests received in exchange for shares of Series B convertible participating preferred stock, as described in clause (iv); and (iv) amend the terms of the Series B convertible participating preferred stock or issue equity interests of the Borrower, *provided*, *however*, that such amended terms or the terms of such equity interests shall not provide for (i) mandatory redemption prior to 90 days after the Maturity Date or (ii) the payment of cash dividends in an amount in excess of the amount of cash dividends that may be paid in respect of the Series B convertible participating preferred stock based on the terms of the Series B convertible participating preferred stock as in effect on September 3, 2002.

SECTION 5.19. *Investments.* It will not make or hold, or permit any of its Subsidiaries to make or hold, any Investment in any Person other than:

(i) Investments (other than Investments permitted by clause (iv) below) by the Borrower and its Subsidiaries in their Subsidiaries outstanding on the Amendment No. 2 Effective Date and (x) additional Investments in an aggregate amount not to exceed $50,000,000 at any time outstanding in Subsidiaries that are not Subsidiary Guarantors and (y) additional Investments in the Subsidiary Guarantors;

(ii) loans and advances to employees in the ordinary course of the business of the Borrower and its Subsidiaries as presently conducted in an aggregate principal amount not to exceed $10,000,000 at any time outstanding;

(iii) Investments in Marketable Securities;

(iv) Investments consisting of intercompany Debt permitted under Section 5.17;

(v) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with customers and suppliers, in each case, in the ordinary course of business;

(vi) Investments in joint ventures and other minority interests in an amount not to exceed $75,000,000 at any time outstanding;

(vii) warrants received from and minority equity interests in, customers of and vendors to the Borrower and its Subsidiaries so long as no cash is expended by the Borrower or any of its Subsidiaries to purchase any of the foregoing;

(viii) minority interests received in connection with the sale or disposition of any assets of the Borrower;

(ix) Investments existing on the Amendment No. 2 Effective Date;

(x) Investments in the Borrower's Liquid Yield Option-TM- Notes due 2021 (the "LYONs") in an aggregate amount not to exceed $100,000,000 (which may be increased by up to another $300,000,000 (a) by an amount equal to the Net Cash Proceeds of Debt issued in accordance with Section 5.17(i)(B) and equity interests of the Borrower sold in the capital markets and (b) by an amount equal to 50% of the Net Cash Proceeds from the sale of the assets listed on Schedule 5.19), *provided* that: (1) immediately before and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom; (2) no Loans are outstanding immediately before or immediately after making such Investment, (3) immediately before and after giving effect thereto, the Borrower and its Subsidiaries have Unrestricted Domestic Cash and Marketable Securities in an

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aggregate amount of not less than $300,000,000 and (4) immediately after such Investment, the subject LYONs shall be cancelled; and

(xi) other Investments in an aggregate amount invested not to exceed $50,000,000, *provided* that: (1) immediately before and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom; (2) any company or business acquired or invested in pursuant to this clause (xi) shall be in the same line of business of the Borrower or any of its Subsidiaries or reasonably related thereto; (3) immediately after giving effect to the acquisition of a company or business pursuant to this clause (xi), the Borrower shall be in pro forma compliance with Section 5.08, calculated based on the financial statements most recently delivered to the Lenders pursuant to Section 5.02 and as though such acquisition had occurred at the beginning of the four-quarter period covered thereby, as evidenced by a certificate of the Chief Financial Officer of the Borrower delivered to the Lenders demonstrating such compliance and (4) such Investments shall not be used for the purposes set forth in clause (x) above.

SECTION 5.20. *Change in Nature of Business.* It will not make, or permit any of its Subsidiaries to make, any material change in the nature of its business taken as a whole as carried on at the date hereof (other than changes that are reasonably related to such business).

SECTION 5.21. *Liquidity.* It will maintain, as of each day in the period commencing September 30, 2004 until the later of (a) the date that the put obligation under the LYONs is satisfied and (b) the date upon which the Borrower delivers the certificate required to be delivered pursuant to Section 5.02(c) in respect of the fiscal quarter ended September 30, 2004, Liquidity of not less than $300,000,000 on a pro forma basis as if the put obligation under the LYONs had been satisfied as of such day. "Liquidity" means the sum of the unused Total Commitment plus Unrestricted Domestic Cash and Marketable Securities held by the Borrower free and clear of any Liens other than Liens under the Collateral Documents.

SECTION 5.22. *Prepayments, Etc. of Debt.* It will not (a prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Debt, except (i) the prepayment of the Loans in accordance with this Agreement and (ii) required repayments and redemptions of the LYONs or as otherwise permitted by Section 5.19(x), or (b) amend, modify or change in any manner any term or condition of any Debt to shorten the maturity or amortization thereof to a date prior to December 31, 2005 or permit any of its Subsidiaries to do any of the foregoing other than to prepay any Debt payable to the Borrower.

ARTICLE VI

Events of Default

In case of the happening of any of the following events (each an "Event of Default"):

(a) any representation or warranty made or deemed made in or in connection with the execution and delivery of this Agreement or the Borrowings hereunder, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in paragraph (b) above) due hereunder, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days;

(d) default shall be made in the due observance or performance of any covenant, condition or agreement contained in Section 5.01, 5.02(e), 5.02(f), 5.04, 5.06, 5.07, 5.08, 5.09, 5.10, 5.14, 5.17, 5.18, 5.19, 5.20, 5.21 or 5.22;

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(e) default shall be made in the due observance or performance of any covenant, condition or agreement contained herein (other than those specified in (b), (c) or (d) above or (f) below) or in any other Loan Document and such default shall continue for a period of 30 days after notice thereof from the Agent or any Lender to the Borrower;

(f) default shall be made in the due observance or performance of covenants, conditions or agreements contained in Section 5.02 (a) through (d) and such default shall continue unremedied for a period of 15 days after notice thereof from the Agent or any Lender to the Borrower;

(g) a court or governmental agency having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Borrower, or for any substantial part of its property or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 20 consecutive days;

(h) the Borrower shall commence a voluntary case under any applicable bankruptcy or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law; or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Borrower, or for any substantial part of its property or make any general assignment for the benefit of creditors; or the Borrower shall admit in writing its inability to pay its debts generally as they become due, or corporate action shall be taken by the Borrower in furtherance of any of the aforesaid purposes;

(i) The Borrower or any of its Subsidiaries shall fail to pay any principal of or premium or interest on any Debt that is outstanding in a principal amount of at least $100,000,000 in the aggregate (but excluding Debt outstanding hereunder) of the Borrower or such Subsidiary (as the case may be), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the

acceleration of, the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof;

(j) Judgments or orders for the payment of money in excess of $100,000,000 in the aggregate shall be rendered against the Borrower or any of its Subsidiaries and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 45 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; *provided*, *however*, that any such judgment or order shall not be an Event of Default under this clause (j) if and for so long as and to the extent that (i) the amount of such judgment or order is covered by a valid and binding policy of insurance between the defendant and the insurers covering payment thereof and (ii) such insurers, which shall be rated at least "B+" by A.M. Best Company, have been notified of, and coverage has not been denied for, the amount of such judgment or order; and

(k) The Borrower or any of its ERISA Affiliates shall incur, or shall be reasonably likely to incur liability in excess of $100,000,000 in the aggregate as a result of one or more of the following: (i) the occurrence of any ERISA Event; (ii) the partial or complete withdrawal of the Borrower or any of its ERISA Affiliates from a Multiemployer Plan; or (iii) the reorganization or termination of a Multiemployer Plan; or

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(l) (i) Any Person or group of Persons (within the meaning of Section 13 or Section 14 of the Securities and Exchange Act of 1934) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under such Act), directly or indirectly, of Voting Shares of the Borrower (or other securities convertible into such Voting Shares) representing 30% or more of the combined voting power of all Voting Shares of the Borrower; or (ii) during any period of up to 24 consecutive months, commencing before or after the date of this Agreement, individuals who at the beginning of such 24-month period were directors of the Borrower shall cease for any reason (other than due to death or disability) to constitute a majority of the board of directors of the Borrower (except to the extent that individuals who at the beginning of such 24-month period were replaced by individuals (x) elected by a majority of the remaining members of the board of directors of the Borrower or (y) nominated for election by a majority of the remaining members of the board of directors of the Borrower and thereafter elected as directors by the shareholders of the Borrower); or

(m) any provision of any guarantee after delivery thereof pursuant to Section 5.15 shall for any reason cease to be valid and binding on or enforceable against any Loan Party party to it, or any such Loan Party shall so state in writing; or

(n) any Collateral Document or financing statement after delivery thereof pursuant to Section 5.15 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority lien on and security interest in the Collateral purported to be covered thereby;

then, and in every such event (other than an event described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Agent, at the request of the Required Lenders, shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein to the contrary notwithstanding; and, in any event with

respect to the Borrower described in paragraph (f) or (g) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein to the contrary notwithstanding.

ARTICLE VII

The Agent

In order to expedite the transactions contemplated by this Agreement, Citibank, N.A. is hereby appointed to act as Agent on behalf of the Lenders. Each of the Lenders hereby irrevocably authorizes the Agent to take such actions on behalf of such Lender and to exercise such powers as are specifically delegated to the Agent by the terms and provisions hereof, together with such actions and powers as are reasonably incidental thereto. The Agent is hereby expressly authorized by the Lenders, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders all payments of principal of and interest on the Loans and all other amounts due to the Lenders hereunder, and promptly to distribute to each Lender its proper share of each payment so received; (b) to give notice on behalf of each of the Lenders to the Borrower of any Event of Default specified in this Agreement of which the Agent has actual knowledge acquired in connection with its agency hereunder; and (c) to distribute to each Lender copies of all notices, financial statements and other materials delivered by the Borrower pursuant to this Agreement as received by the Agent.

Neither the Agent nor any of its directors, officers, employees or agents shall be liable as such for any action taken or omitted by any of them except for its or his own gross negligence or willful misconduct, or be responsible for any statement, warranty or representation herein or the contents of any document delivered in connection herewith, or be required to ascertain or to make any inquiry concerning the performance or observance by the Borrower of any of the terms, conditions, covenants or agreements contained in this Agreement. The Agent shall not be

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responsible to the Lenders for the due execution, genuineness, validity, enforceability or effectiveness of this Agreement or other instruments or agreements. The Agent may deem and treat the Lender which makes any Loan as the holder of the indebtedness resulting therefrom for all purposes hereof until it shall have received notice from such Lender, given as provided herein, of the transfer thereof. The Agent shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Lenders and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Lenders. The Agent shall, in the absence of knowledge to the contrary, be entitled to rely on any instrument or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or persons. Neither the Agent nor any of its directors, officers, employees or agents shall have any responsibility to the Borrower on account of the failure of or delay in performance or breach by any Lender of any of its obligations hereunder or to any Lender on account of the failure of or delay in performance or breach by any other Lender or the Borrower of any of their respective obligations hereunder or in connection herewith. The Agent may execute any and all duties hereunder by or through agents or employees and shall be entitled to rely upon the advice of legal counsel selected by it with respect to all matters arising hereunder and shall not be liable for any action taken or suffered in good faith by it in accordance with the advice of such counsel.

The Lenders hereby acknowledge that the Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement unless it shall be requested in writing to do so by the Required Lenders.

Subject to the appointment and acceptance of a successor Agent as provided below, the Agent may resign at any time by notifying the Lenders and the Borrower. Upon any such resignation, the Required

Lenders shall have the right to appoint a successor Agent acceptable to the Borrower. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent which shall be a bank with an office in New York, New York, having a combined capital and surplus of at least $500,000,000 or an Affiliate of any such bank. Upon the acceptance of any appointment as Agent hereunder by a successor bank, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations hereunder. After the Agent's resignation hereunder, the provisions of this Article and Section 8.05 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

With respect to the Loans made by it hereunder, the Agent in its individual capacity and not as Agent shall have the same rights and powers as any other Lender and may exercise the same as though it were not the Agent, and the Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Agent.

Each Lender agrees (i) to reimburse the Agent, on demand, in the amount of its pro rata share (based on its Commitment hereunder) of any expenses incurred for the benefit of the Lenders by the Agent, including counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, which shall not have been reimbursed by the Borrower, and (ii) to indemnify and hold harmless the Agent and any of its directors, officers, employees or agents, on demand, in the amount of such pro rata share, from and against any and all liabilities, taxes, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against it in its capacity as the Agent or any of them in any way relating to or arising out of this Agreement or any action taken or omitted by it or any of them under this Agreement to the extent the same shall not have been reimbursed by the Borrower; *provided* that no Lender shall be liable to the Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence or willful misconduct of the Agent or any of its directors, officers, employees or agents.

Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender

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also acknowledges that it will, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any related agreement or any document furnished hereunder or thereunder.

Each Lender hereby acknowledges that none of the Lead Arranger, the Co-Syndication Agents, the Co-Arrangers or any agent (other than the Agent) designated on the signature pages hereof has any liability hereunder other than in its capacity as a Lender.

ARTICLE VIII

Miscellaneous

SECTION 8.01. *Notices.* (a) Notices and other communications provided for herein shall be in writing and shall be either (x) in writing delivered by hand or overnight courier service, mailed or sent by telecopy, graphic scanning or other telegraphic communications equipment of the sending party or

(y) as and to the extent set forth in Section 8.01(b) and in the proviso to this Section 8.02(a), as follows:

(i) if to the Borrower, to it at Avaya Inc., 211 Mount Airy Road, Basking Ridge, NJ 07920, Attention: Chief Financial Officer (Facsimile No. 908-953-2202) with a copy to: Vice President, Law−Corporate (Facsimile No. 908-953-4912);

(ii) if to the Agent, to it at Two Penns Way, New Castle, Delaware 19720, Attention: Bank Loan Syndications Department, (Facsimile No. 212-994-0961); with a copy thereof to it at 388 Greenwich Street, NY 10013, Attention: Charles Foster, Global Media and Telecommunications Department, (Facsimile No. (212) 816-8084); and

(iii) if to a Lender, to it at its address (or telecopy number) set forth in Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender became a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy, graphic scanning or other telegraphic communications equipment of the sender, or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 8.01(a) or in accordance with the latest unrevoked direction from such party given in accordance with this Section 8.01(a), *provided* that materials required to be delivered pursuant to Section 5.02(c) shall be delivered to the Agent as specified in Section 8.01(b) or as otherwise specified to the Borrower by the Agent.

(b) So long as Citibank is the Agent, materials required to be delivered pursuant to Section 5.02(c) shall be delivered to the Agent in an electronic medium in a format acceptable to the Agent and the Lenders by e-mail at oploanswebadmin@citigroup.com. The Borrower agrees that the Agent may make such materials, as well as any other written information, documents, instruments and other material relating to the Borrower, any of its Subsidiaries or any other materials or matters relating to this Agreement, the Notes or any of the transactions contemplated hereby (collectively, the "*Communications*") available to the Lenders by posting such notices on "e-Disclosure" (the "*Platform*"), the Agent's internet delivery system that is part of Fixed Income Direct, Global Fixed Income's primary web portal. Although the primary web portal is secured with a dual firewall and a User ID/Password Authorization System and the Platform is secured through a single user per deal authorization method whereby each user may access the Platform only on a deal-by-deal basis, the Borrower acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Platform is provided "as is" and "as available" and (iii) neither the Agent nor any of its Affiliates warrants the accuracy, adequacy or completeness of the Communications or the Platform and each expressly disclaims liability for errors or omissions in the Communications or the Platform. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability,

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fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by the Agent or any of its Affiliates in connection with the Platform.

(c) Each Lender agrees that notice to it (as provided in the next sentence) (a "*Notice*") specifying that any Communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Lender for purposes of this Agreement; *provided* that if requested by any Lender the Agent shall deliver a copy of the Communications to such Lender by email or telecopier. Each Lender agrees (i) to notify the Agent in writing of such Lender's e-mail address to which a Notice may be sent by electronic transmission (including by electronic communication) on or before the date such Lender becomes a party to this Agreement (and from time to time thereafter to ensure that the Agent has on

record an effective e-mail address for such Lender) and (ii) that any Notice may be sent to such e-mail address.

SECTION 8.02. *Survival of Agreement.* All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans regardless of any investigation made by the Lenders or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not been terminated.

SECTION 8.03. *Binding Effect.* This Agreement shall become effective when it shall have been executed by the Borrower and the Agent and when the Agent shall have received copies hereof (telefaxed or otherwise) which, when taken together, bear the signatures of the Required Lenders (as defined in the Existing Credit Agreement), and thereafter shall be binding upon and inure to the benefit of the Borrower, the Agent and each Lender and their respective successors and assigns.

SECTION 8.04. *Successors and Assigns.* (a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower, the Agent or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

(b) Each Lender may assign to one or more assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided*, *however*, that (i) the Borrower must give its prior written consent to such assignment (such consent not to be unreasonably withheld) except for an assignment to an Affiliate of a Lender provided that, in such case, the Lender give notice of such assignment to the Borrower and, in each case, the Lender give notice of such assignment to the Agent, (ii) the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Agent) shall be at least $10,000,000 or increments of $1,000,000 in excess thereof (or the remaining balance of its Commitment) and the amount of the Commitment of such Lender remaining after such assignment shall not be less than $10,000,000 or shall be zero, (iii) the parties to each such assignment shall execute and deliver to the Agent an Assignment and Acceptance, and a processing and recordation fee of $3,500 and (iv) the assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire. Upon acceptance and recording pursuant to paragraph (e) of this Section 8.04, from and after the effective date specified in each Assignment and Acceptance, which effective date shall be at least five Business Days after the execution thereof, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto (but shall continue to be entitled to the benefits of Sections 2.12, 2.14, 2.18 and 8.05, as well as to any Fees accrued for its account hereunder and not yet paid)) and (C) Schedule 2.01 shall be deemed amended to give effect to such assignment.

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(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim,

(ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto or the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under this Agreement or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.02 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Agent by the terms hereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Agent shall maintain at one of its offices in the City of New York a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and the principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive in the absence of manifest error and the Borrower, the Agent and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and each Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee together with an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above and, if required, the written consent of the Borrower to such assignment, the Agent shall (i) accept such Assignment and Acceptance and (ii) record the information contained therein in the Register.

(f) Each Lender may, without the consent of the Borrower or the Agent, sell participations to one or more banks or other entities in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided*, *however*, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) each participating bank or other entity shall be entitled to the benefit of the cost protection provisions contained in Sections 2.12, 2.14 and 2.18 to the same extent as if it was the selling Lender, except that all claims and petitions for payment and payments made pursuant to such Sections shall be made through such selling Lender, and (iv) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such selling Lender in connection with such Lender's rights and obligations under this Agreement, and such Lender shall retain the sole right (and participating banks or other entities shall have no right) to enforce the obligations of the Borrower relating to the Loans and to approve any amendment, modification or waiver of any provision of this Agreement (other than amendments, modifications or waivers decreasing any fees payable hereunder or the amount of principal of or the rate at which interest is payable on the

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Loans, or extending any scheduled principal payment date or date fixed for the payment of interest on the Loans).

(g) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 8.04, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; *provided* that, prior to any such disclosure, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree to be bound by the confidentiality restrictions used by the Agent in connection with the syndication of the Commitments and shall agree (subject to customary exceptions) to preserve the confidentiality of any such confidential information relating to the Borrower.

(h) Except in accordance with Section 8.13, the Borrower shall not assign or delegate any of its respective rights and duties hereunder without the prior written consent of all Lenders and any attempted assignment without such consent shall be void.

(i) Any Lender may at any time pledge all or any portion of its rights under this Agreement to a Federal Reserve Bank; *provided* that no such pledge shall release any Lender from its obligations hereunder or substitute any such Bank for such Lender as a party hereto. In order to facilitate such an assignment to a Federal Reserve Bank, the Borrower shall, at the request of the assigning Lender, duly execute and deliver to the assigning Lender a promissory note or notes in the form of Exhibit B hereto, evidencing the Loans made to the Borrower by the assigning Lender hereunder.

SECTION 8.05. *Expenses; Indemnity.* (a) The Borrower agrees to pay all reasonable out-of-pocket expenses incurred by the Agent in connection with entering into this Agreement or in connection with any amendments, modifications or waivers of the provisions hereof, or incurred by the Agent or any Lender in connection with the enforcement or protection of their rights in connection with this Agreement or in connection with the Loans made hereunder, including the fees and disbursements of counsel for the Agent or, in the case of enforcement or protection, Lenders.

(b) The Borrower agrees to indemnify the Agent, the Lenders, Affiliates, and their respective directors, officers, employees and agents (each such person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees and expenses, incurred by or asserted against any Indemnitee arising out of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the transactions contemplated thereby, (ii) the use of the proceeds of the Loans or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. The Borrower also agrees not to assert any claim for special, indirect, consequential or punitive damages against the Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, arising out of or otherwise relating to this Agreement, any other Loan Document, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Loans.

(c) The provisions of this Section 8.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the invalidity or unenforceability of any term or provision of this Agreement or any investigation made by or on behalf of the Agent or any Lender. All amounts due under this Section 8.05 shall be payable on written demand therefor.

SECTION 8.06. *Right of Setoff.* Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request specified by Section 6.01 to authorize the Agent to declare the Loans due and payable pursuant to the provisions of Section 6.01,

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each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. Each Lender agrees promptly to notify the Borrower after any such set off and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including, without limitation, other rights of setoff) that such Lender and its Affiliates may have.

SECTION 8.07. *Applicable Law.* THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

SECTION 8.08. *Waivers; Amendment.* (a) No failure or delay of the Agent or any Lender in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders; *provided*, *however*, that no such agreement shall (i) decrease the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any interest on any Loan, or waive or excuse any such payment or any part thereof, or decrease the rate of interest on any Loan, without the prior written consent of each Lender affected thereby, (ii) increase the Commitment or decrease the Facility Fee of any Lender without the prior written consent of such Lender, (iii) amend or modify the provisions of Section 2.15 or Section 8.04(h), the provisions of this Section or the definition of the "Required Lenders," without the prior written consent of each Lender, or (iv) release all or substantially all of the Collateral without the prior written consent of each Lender, *provided* that so long as no Default or Event of Default has occurred and is continuing, no consent of any Lender or the Agent shall be required for the release of any Collateral with the sale or other disposition of the assets described on Schedule 2.10 hereto and (z) in any fiscal year of the Borrower, Collateral having a fair market value not in excess of $25,000,000 shall be released upon sale or other disposition with only the consent of the Agent; *provided further*, *however*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Agent hereunder without the prior written consent of the Agent. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section and any consent by any Lender pursuant to this Section shall bind any assignee of its rights and interests hereunder.

SECTION 8.09. *Entire Agreement.* This Agreement and the Fee Letter constitute the entire contract among the parties relative to the subject matter hereof. Any previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the Fee Letter. Nothing in this Agreement or the Fee Letter expressed or implied, is intended to confer upon any

party other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the Fee Letter.

SECTION 8.10. *Severability.* In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

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SECTION 8.11. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one contract, and shall become effective as provided in Section 8.03.

SECTION 8.12. *Headings.* Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

IN WITNESS WHEREOF, the Borrower, the Agent and the Lenders have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

AVAYA INC.

By /s/ GARRY K. MCGUIRE
Name: Garry K. McGuire
Title: Chief Financial Officer

CITIBANK, N.A., individually and as Agent,

By /s/ THOMAS LABERGERE
Name: Thomas Labergere
Title: Vice President

BANK ONE, NA (Main Office Chicago)

By /s/ PHILLIP D. MARTIN
Name: Phillip D. Martin
Title: Senior Vice President

JPMORGAN CHASE BANK

By /s/ EDMOND DEFOREST
Name: Edmond DeForest
Title: Vice President

DEUTSCHE BANK AG NEW YORK BRANCH

By /s/ ANDREAS NEUMEIER
Name: Andreas Neumeier
Title: Director

By /s/ PETER ESCHMANN
Name: Peter Eschmann
Title: Vice President

COMMERZBANK AG, NEW YORK BRANCH

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By /s/ ROBERT S. TAYLOR
Name: Robert S. Taylor
Title: Senior Vice President

By /s/ ANDREW P. LUSK
Name: Andrew P. Lusk
Title: Assistant Vice President

THE BANK OF NEW YORK

By /s/ BRENDAN T. NEDZI
Name: Brendan T. Nedzi
Title: Senior Vice President

THE BANK OF TOKYO–MITSUBISHI LTD., NEW YORK BRANCH

By /s/ SPENCER HUGHES
Name: Spencer Hughes
Title: Authorized Signatory

CREDIT SUISSE FIRST BOSTON

By /s/ ROBERT HETU
Name: Robert Hetu
Title: Director

By /s/ DOREEN B. WELCH
Name: Doreen B. Welch
Title: Associate

HSBC BANK USA

By /s/ PAOLO DE ALESSANDRINI
Name: Paolo de Alessandrini
Title: Senior Vice President

THE NORTHERN TRUST COMPANY

By /s/ KAREN E. DAHL
Name: Karen E. Dahl
Title: Vice President

SUMITOMO MITSUI BANKING CORPORATION

By /s/ PETER R.C. KNIGHT

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Name: Peter R.C. Knight
Title: Joint General Manager

WESTDEUTSCHE LANDESBANK GIROZENTRALE, NEW YORK BRANCH

By ______________________________
Name:
Title:

SCHEDULE I
APPLICABLE LENDING OFFICES

Name of Initial Lender	Domestic Lending Office	Eurodollar Lending Office
The Bank of New York	One Wall Street, 21st Floor New York, NY 10286 Attn: Pat Butler Terry Blackburn T: 212 635-7937/7938 F: 212 809-9060	One Wall Street, 21st Floor New York, NY 10286 Attn: Pat Butler Terry Blackburn T: 212 635-7937/7938 F: 212 809-9060
Bank One, NA	1 Bank One Plaza Chicago, IL 60670 Attn: Ben Oliva T: 312 732-5987 F: 312 732-4840	1 Bank One Plaza Chicago, IL 60670 Attn: Ben Oliva T: 312 732-5987 F: 312 732-4840
The Bank of Tokyo-Mitsubishi Ltd., New York Branch	1251 Avenue of the Americas 12th Floor New York, NY 10020 Attn: Rolando Uy T: 212 782-5637 F: 212 782-5635	1251 Avenue of the Americas 12th Floor New York, NY 10020 Attn: Rolando Uy T: 212 782-5637 F: 212 782-5635
JPMorgan Chase Bank	270 Park Avenue New York, NY 10017 Attn: Camile Wilson T: 212 552-7488 F: 212 552-5700	270 Park Avenue New York, NY 10017 Attn: Camile Wilson T: 212 552-7488 F: 212 552-5700
Citibank, N.A.	Two Penns Way New Castle, Delaware 19720 Attn: Bilal Aman T: 302 89406013 F: 302 894-6120	Two Penns Way New Castle, Delaware 19720 Attn: Bilal Aman T: 302 89406013 F: 302 894-6120
Commerzbank, AG, New York Branch	2 World Financial Center New York, NY 10281 Attn: Joylynn Jarvis Warren Leung	2 World Financial Center New York, NY 10281 Attn: Joylynn Jarvis Warren Leung

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	T: 212 266-7348/7749 F: 212 266-7593	T: 212 266-7348/7749 F: 212 266-7593
Credit Suisse First Boston	11 Madison Avenue New York, NY 10010 Attn: Robert Hetu T: 212 325-4542 F: 212 325-8309	11 Madison Avenue New York, NY 10010 Attn: Robert Hetu T: 212 325-4542 F: 212 325-8309
Deutsche Bank AG New York Branch	31 West 52nd Street New York, NY 10019 Attn: Joseph Gyurindak T: 212 469-4107 F: 212 469-4139	31 West 52nd Street New York, NY 10019 Attn: Joseph Gyurindak T: 212 469-4107 F: 212 469-4139
HSBC Bank USA	140 Broadway, 4th Floor New York, NY 10005 Attn: Monisha Khadse T: 212 658-5572 F: 212 658-5109	140 Broadway, 4th Floor New York, NY 10005 Attn: Monisha Khadse T: 212 658-5572 F: 212 658-5109
The Northern Trust Company	50 S. LaSalle Street Chicago, IL 60675 Attn: Linda Honda T: 312 444-3532 F: 312 630-1566	50 S. LaSalle Street Chicago, IL 60675 Attn: Linda Honda T: 312 444-3532 F: 312 630-1566
Sumitomo Mitsui Banking Corporation	277 Park Avenue New York, NY 10172 Attn: Ivelisse Mena-Garcia T: 212 224-4150 F: 212 224-5197	277 Park Avenue New York, NY 10172 Attn: Ivelisse Mena-Garcia T: 212 224-4150 F: 212 224-5197
Westdeutsche Landesbank Girozentrale, New York Branch	1211 Avenue of the Americas New York, NY 10036 Attn: Pascal Kabemba T: 212 852-5938 F: 212 852-6300	1211 Avenue of the Americas New York, NY 10036 Attn: Pascal Kabemba T: 212 852-5938 F: 212 852-6300

SCHEDULE 2.01

Name and Address of Lender	**Commitment**	
Citibank N.A.	$	58,823,529.43
JPMorgan Chase Bank	$	27,573,529.41
Deutsche Bank AG New York Branch	$	27,573,529.41
Bank One, NA	$	25,735,294.12
Commerzbank AG, New York Branch	$	25,735,294.12
The Bank of New York	$	18,382,352.94
Credit Suisse First Boston	$	14,705,882.35
Bank of Tokyo−Mitsubishi Ltd.	$	11,029,411.76
HSBC Bank USA	$	11,029,411.76
Sumitomo Mitsui Banking Corporation	$	11,029,411.76
Westdeutsche Landesbank	$	11,029,411.76

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The Northern Trust Company	$	7,352,941.18
Total	**$**	**250,000,000**

SCHEDULE 5.19

The Borrower's Connectivity Solutions business and the aircraft pledged under the Aircraft Security Agreement dated as of September 23, 2002 made by the Borrower in favor of The Bank of New York, as collateral trustee.

EXHIBIT A

FORM OF BORROWING REQUEST

Citibank, N.A., as Agent for
the Lenders referred to below,

____

Attention: [Date]

Ladies and Gentlemen:

The undersigned, Avaya Inc. (the "Borrower"), refers to the Amended and Restated Five Year Revolving Credit Facility Agreement dated as of , 2003 (as it may hereafter be amended, modified, extended or restated from time to time, the "Credit Agreement"), among the Borrower, the Lenders named therein, the agents named therein and Citibank, N.A., as Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. The Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Borrowing under the Credit Agreement, and in that connection sets forth below the terms on which such Borrowing is requested to be made:

(A) Date of Borrowing (which is a Business Day) ________________

(B) Principal Amount of Borrowing * ________________

(C) Interest rate basis ** ________________

(D) Interest Period and the last day thereof *** ________________

Upon acceptance of any or all of the Loans made by the Lenders in response to this request, the Borrower shall be deemed to have represented and warranted that the conditions to lending specified in Section 4.01(b) and (c) of the Credit Agreement have been satisfied.

Very truly yours,

AVAYA INC.

____

* Not less than $10,000,000 (and in integral multiples of $1,000,000) or greater than the Total Commitment then available.

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** Eurodollar Loan or ABR Loan.

*** Which shall be subject to the definition of "Interest Period" and end not later than the Maturity Date.

By ________________________

Name:

Title: [Responsible Officer]

EXHIBIT B

FORM OF STANDBY NOTE

$[Amount of Commitment] New York, New York

[Date]

FOR VALUE RECEIVED, the undersigned, Avaya Inc., a Delaware corporation (the "Borrower"), hereby promises to pay to the order of [Name of Lender] (the "Lender"), at the office of Citibank, N.A. (the "Agent") at [Address of Citibank, N.A.], on the Maturity Date (as defined in the Amended and Restated Five Year Revolving Credit Facility Agreement dated as of , 2003 (the "Credit Agreement"), among the Borrower, the Lenders named therein, the agents named therein and the Agent) the lesser of the principal sum of [amount of Commitment in words] ($[ ]) and the aggregate unpaid principal amount of all Loans (as defined in the Credit Agreement) made to the Borrower by the Lender pursuant to the Credit Agreement, in lawful money of the United States of America, in immediately available funds, and to pay interest on the principal amount hereof from time to time outstanding, in like funds, at said office, at the rate or rates per annum, from the dates and payable on the dates provided in the Credit Agreement.

The Borrower promises to pay interest, on demand, on any overdue principal and, to the extent permitted by law, overdue interest from their due dates at the rate or rates provided in the Credit Agreement.

The Borrower hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. The nonexercise by the holder of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All borrowings evidenced by this Note and all payments and prepayments of the principal hereof and interest hereon and the respective dates and maturity dates thereof shall be endorsed by the holder hereof on the schedule attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in its internal records; *provided*, *however*, that the failure of the holder to make such a notation or any error in such a notation shall not affect the obligations of the Borrower under this Note.

The Loans evidenced hereby are Loans referred to in the Credit Agreement, which, among other things, contains provisions for the acceleration of the maturity thereof upon the happening of certain events, for optional and mandatory prepayment of the principal thereof prior to the maturity thereof and for the amendment or waiver of certain provisions of the Credit Agreement, all upon the terms and conditions therein specified. THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

AVAYA INC.

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By ____________________________
Name:
Title:

Loans and Payments

Date	Amount and Type of Loan	Maturity Date	Principal	Payments	Interest	Unpaid Principal Balance of Note	Name of Person Making Notation

EXHIBIT C

FORM OF
ASSIGNMENT AND ACCEPTANCE

Reference is made to the Amended and Restated Five Year Revolving Credit Facility Agreement dated as of , 2003 (as the same may be modified, amended, extended or restated from time to time, the "Credit Agreement"), among Avaya Inc. (the "Borrower"), the lenders party thereto (the "Lenders"), the agents party thereto and Citibank, N.A., as agent for the Lenders (in such capacity, the "Agent"). Terms defined in the Credit Agreement are used herein with the same meanings.

1. The Assignor hereby sells and assigns, without recourse, to the Assignee, and the Assignee hereby purchases and assumes, without recourse, from the Assignor, effective as of the Effective Date set forth on the reverse hereof, the interests set forth on the reverse hereof (the "Assigned Interest") in the Assignor's rights and obligations under the Credit Agreement, including, without limitation, the interests set forth on the reverse hereof in the Commitment of the Assignor on the Effective Date and Loans owing to the Assignor which are outstanding on the Effective Date, together with unpaid interest accrued on the assigned Loans to the Effective Date. Each of the Assignor and the Assignee hereby makes and agrees to be bound by all the representations, warranties and agreements set forth in Section 8.04(c) of the Credit Agreement, a copy of which has been received by each such party. From and after the Effective Date (i) the Assignee shall be a party to and be bound by the provisions of the Credit Agreement and, to the extent of the interests assigned by this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and (ii) the Assignor shall, to the extent of the interests assigned by this Assignment and Acceptance, relinquish its rights (except as set forth in Section 8.04(b) of the Credit Agreement) and be released from its obligations under the Credit Agreement.

2. This Assignment and Acceptance is being delivered to the Agent together with (i) if the Assignee is organized under the laws of a jurisdiction outside the United States, the forms specified in Section 2.18(f) of the Credit Agreement, duly completed and executed by such Assignee, (ii) if the Assignee is not already a Lender under the Credit Agreement, an Administrative Questionnaire and (iii) a processing and recordation fee of $3,500.

3. This Assignment and Acceptance shall be governed by and construed in accordance with the laws of the State of New York.

Date of Assignment:

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Legal Name of Assignor:

Legal Name of Assignee:

Assignee's Address for Notices:

Effective Date of Assignment
(may not be fewer than 5 Business
Days after the Date of Assignment):

	Percentage Assigned of Facility and Commitment thereunder (set forth, to at least 8 decimals, as a percentage of the Facility and the aggregate Commitments of all the Lenders thereunder)
Commitment Assigned:	%
Loans:	

The terms set forth above and on the reverse side hereof are hereby agreed to:	Accepted: as of ,
, as Assignor	CITIBANK, N.A., as agent
By:	By:
Name: Title:	Name: Title:
, as Assignee	[AVAYA INC.]
By:	By:
Name: Title:	Name: Title:

EXHIBIT D

FORM OF

OPINION OF COUNSEL FOR AVAYA INC.

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Exhibit 10.35

AVAYA INC. DEFERRED COMPENSATION PLAN

Effective October 1, 2000,
Amended October 31, 2003

Preamble

The Avaya Inc. Deferred Compensation Plan is intended to constitute an unfunded, deferred compensation plan maintained primarily for a select group of management or highly compensated employees and for members of the Board of Directors who are not employees of the Company. The purpose of the Plan is to provide a means by which eligible employees and non-employee Directors may defer the receipt of certain forms of compensation while at the same time giving the Company the present use of the compensation so deferred. The Plan is intended to be an employee pension benefit plan within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended. The Plan is not a qualified plan under Section 401(a) of the Internal Revenue Code of 1986, as amended. Benefits under the Plan are paid directly by the Company out of its general assets when due. The Plan is effective as of October 1, 2000, and is a successor plan to the Lucent Technologies Inc. ("Lucent") Deferred Compensation Plan for the benefit of Eligible Members whose employment was transferred from Lucent to the Company in connection with the spinoff of the Company from Lucent, and for non-employee Directors of the Company who were non-employee directors of Lucent prior to the spinoff of the Company.

Section 1. Definitions.

As used in the Plan, the following terms shall have the meanings set forth below:

(a) "Account" shall mean, for each Participant, such Participant's Deferred Cash Equivalent Account and Deferred Share Equivalent Account.

(b) "Administrator" shall mean the Senior Vice President of Human Resources of the Company.

(c) "Affiliate" shall mean (i) any Person that directly, or through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company or (ii) any entity in which the Company has a significant equity interest, as determined by the Committee.

(d) "Beneficiary Election" shall mean a written instrument, in a form prescribed by the Administrator, relating to elections under Section 5.

(e) "Board" shall mean the Board of Directors of the Company.

(f) "Change in Control" shall mean the happening of any of the following events:

(1) An acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (an "Entity") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of either (A) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); excluding, however, the following: (1) any acquisition directly from the Company, other than an acquisition by virtue of the exercise of a conversion privilege unless the security being so converted was itself acquired directly from the Company, (2) any acquisition

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by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (4) any acquisition by any corporation pursuant to a transaction

which complies with clauses (A), (B) and (C) of subsection (3) of this Section 1(f); or

(2) A change in the composition of the Board during any two year period such that the individuals who, as of the beginning of such two year period, constitute the Board (such Board shall be hereinafter referred to as the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; *provided*, *however*, that for purposes of this definition, any individual who becomes a member of the Board subsequent to the beginning of the two year period, whose election, or nomination for election by the Company's shareowners, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; and *provided*, *further however*, that any such individual whose initial assumption of office occurs as a result of or in connection with either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of an Entity other than the Board shall not be so considered as a member of the Incumbent Board; or

(3) The approval by the shareowners of the Company of a merger, reorganization or consolidation or sale or other disposition of all or substantially all of the assets of the Company (each, a "Corporate Transaction") or, if consummation of such Corporate Transaction is subject, at the time of such approval by shareowners, to the consent of any government or governmental agency, the obtaining of such consent (either explicitly or implicitly by consummation); excluding however, such a Corporate Transaction pursuant to which (A) all or substantially all of the individuals and entities who are the beneficial owners of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Corporate Transaction will beneficially own, directly or indirectly, more than 60% of the outstanding shares of common stock, and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors of the corporation resulting from such Corporate Transaction (including, without limitation, a corporation or other Person which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries (a "Parent Company")) in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, (B) no Entity (other than the Company, any employee benefit plan (or related trust) of the Company, such corporation resulting from such Corporate Transaction or, if reference was made to equity ownership of any Parent Company for purposes of determining whether clause (A) above is satisfied in connection with the applicable Corporate Transaction, such Parent Company) will beneficially own, directly or indirectly, 50% or more of the outstanding shares of common stock of the corporation resulting from such Corporate Transaction or the combined voting power of the outstanding voting securities of such corporation entitled to vote generally in the election of directors unless such ownership resulted solely from ownership of securities of the Company prior to the Corporate Transaction, and (C) individuals who were members of the Incumbent Board will immediately after the consummation of the Corporate Transaction constitute at least a majority of the members of the board of directors of the corporation resulting from such Corporate Transaction (or, if reference was made to equity ownership of any Parent Company for purposes of

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determining whether clause (A) above is satisfied in connection with the applicable Corporate Transaction, of the Parent Company); or

(4) The approval by the shareowners of the Company of a complete liquidation or dissolution of the Company.

(g) "Change in Control Election" shall mean a written instrument, in a form prescribed by the Administrator, relating to elections under Section 7.

(h) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(i) "Committee" shall mean the Corporate Governance and Compensation Committee of the Board (or any successor committee).

(j) "Company" shall mean Avaya Inc.

(k) "Deferral Election" shall mean a written election, in a form prescribed by the Administrator, to defer receipt of Incentive Awards, Retainer Payments or salary otherwise payable to a Participant.

(l) "Deferred Cash Equivalent Account" shall mean a book-entry account in the name of a Participant maintained in the Company's records with entries denominated in dollars.

(m) "Deferred Share Equivalent Account" shall mean a book-entry account in the name of a Participant maintained in the Company's records with entries denominated in Share equivalents.

(n) "Director" shall mean any non-employee member of the Board.

(o) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

(p) "Eligible Member" shall mean an Officer, a Director, Other Participant or a participant in either Predecessor Plan or another person or group of employees who is designated by the Administrator as an Eligible Member.

(q) "Fiscal Year" shall mean the period commencing October 1 and ending on the next succeeding September 30, or such other period as the Company may from time to time adopt as its fiscal year.

(r) "Incentive Award" shall mean any award under the Short Term Plan, and any other bonus payment, performance award, stock unit award or other award under any of the Other Avaya Plans (other than options) and any dividend equivalent payment under the Other Avaya Plans.

(s) "NYSE" shall mean the New York Stock Exchange, Inc.

(t) "Officer" shall mean the Chief Executive Officer and any Senior Vice President or Group Vice President of the Company.

(u) "Other Avaya Plans" shall mean the Avaya Inc. Long Term Incentive Plan for Management Employees and the Avaya Inc. 2000 Long Term Incentive Plan, as those plans may be amended from time to time, and shall include any successor plans to the Other Avaya Plans.

(v) "Other Participant" shall mean any employee of the Company or any of its Affiliates, but only if the Administrator determines that such employee shall be eligible to participate in the Plan.

(w) "Participant" shall mean an Eligible Member who delivers a Deferral Election to the Company or who received a Savings Plan Make-Up Credit under a Predecessor Plan. A person shall not cease being a Participant if the person ceases being an Eligible Member, if the person has an Account with a positive balance.

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(x) "Participating Company" shall mean the Company and any of its Affiliates.

(y) "Payment Election" shall have the meaning set forth in Section 6(a).

(z) "Person" shall mean any individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization, limited liability company, other entity or government or political subdivision thereof.

(aa) "Plan" shall mean this Avaya Deferred Compensation Plan.

(bb) "Plan Year" shall mean each twelve (12) consecutive month period commencing January 1 and ending on December 31 of the same calendar year.

(cc) "Potential Change in Control" shall mean:

(1) the commencement of a tender or exchange offer by any third person which, if consummated, would result in a Change in Control;

(2) the execution of an agreement by the Company, the consummation of which would result in the occurrence of a Change in Control;

(3) the public announcement by any person (including the Company) of an intention to take or to consider taking actions which if consummated would constitute a Change in Control other than through a contested election for directors of the Company; or

(4) the adoption by the Board, as a result of other circumstances, including, without limitation, circumstances similar or related to the foregoing, of a resolution to the effect that a Potential Change in Control has occurred.

A Potential Change in Control shall be deemed to be pending until the earliest of (i) the second anniversary thereof, (ii) the occurrence of a Change in Control and (iii) the occurrence of a subsequent Potential Change in Control.

(dd) "Predecessor Plans" shall mean the Lucent Technologies Inc. Deferred Compensation Plan, the Lucent Technologies Inc. Officer Incentive Award Deferral Plan and the Lucent Technologies Inc. Deferred Compensation Plan for Non-Employee Directors.

(ee) "Retainer Payments" shall mean any amounts payable to a Director for service as a Director.

(ff) "Savings Plan" shall mean the Lucent Savings Plan.

(gg) "Savings Plan Make-Up Credit" shall mean, for any Eligible Member, and for any Plan Year ended before January 1, 2000, an amount equal to the excess, if any, of the value of the contribution that would have been made by the Company for the applicable Plan Year on behalf of the Eligible Member under Section 4.4 of the Savings Plan or any similar provision under any similar plan of Lucent, without regard to any limitation imposed by Sections 401(a)(17), 401(m)(2)(A) or 415 of the Code, over the contribution actually made to the Savings Plan pursuant to such Section 4.4, or to such other plan pursuant to such similar provision, for the applicable Plan Year.

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(hh) "Shares" shall mean the shares of common stock, $.01 par value, of the Company.

(ii) "Short Term Plan" shall mean the Avaya Short Term Incentive Plan.

Section 2. Deferral Elections.

(a) Delivery and Effectiveness of Deferral Elections. A Participant may elect to defer receipt of non-cash Incentive Awards otherwise payable to the Participant by delivering a Deferral Election to the Participant's employing Participating Company not later than six months prior to

the date the non-cash Incentive Awards become payable, or by such other time as the Administrator may determine. A Participant may elect to defer receipt of a Retainer Payment, cash Incentive Award or salary by delivering a Deferral Election to the Participant's employing Participating Company at any time prior to the beginning of the period to which the Retainer Payment, cash Incentive Award or salary relates, or by such other time as the Administrator may determine. A Participant shall have the right to revoke a Deferral Election (i) with respect to non-cash Incentive Awards, if the revocation is made at least six months prior to the date the non-cash Incentive Awards become payable, and (ii) with respect to Retainer Payments, cash Incentive Awards and salary, if the revocation is made prior to the beginning of the period to which the Retainer Payment, cash Incentive Award or salary relates; in all other circumstances, a Participant shall not have the right to modify or revoke a Deferral Election unless such modification or revocation is otherwise permitted by the Administrator and in any case subject to Section 6. A deferral election under a Predecessor Plan that has not been terminated shall be deemed a Deferral Election for purposes of the Plan. During the period that a Deferral Election is effective, the Participant shall not be entitled to receive currently payments covered by such Deferral Election. The Company shall instead make credits to the Participant's Account in accordance with Section 3.

(b) Contents of Deferral Elections. Each Deferral Election shall specify the types of compensation which shall be subject to such Deferral Election and the effective date of the Deferral Election and shall contain the Participant's Payment Election. A Deferral Election may also contain the date on which the Deferral Election is to terminate.

(c) Modification and Renewal of Deferral Elections. A Deferral Election shall remain effective until the Participant terminates or modifies such election by written notice to the Company. Any such termination or modification shall become effective immediately following the end of the Fiscal Year in which such notice is given. A Participant who has terminated a Deferral Election may, so long as such Participant remains an Eligible Member or has an Account with a positive balance, thereafter file a new Deferral Election in accordance with Section 2(a).

(d) Deferral of Incentive Awards. A Deferral Election may relate to all or any portion of the Incentive Awards otherwise payable to a Participant. If the amount of the part of any Incentive Award (other than dividend equivalent payments) subject to a Deferral Election is less than $1,000 (based on a valuation at the time the award would otherwise be paid), that Incentive Award will be paid currently and no credit relating to such Incentive Award will be made under the Plan.

(e) Deferral of Salary. A Deferral Election may relate to all or part of a Participant's salary; *provided*, *however*, that a Participant may not elect to defer salary in any Fiscal Year unless the Participant has elected to defer all of his or her awards under the Short Term Plan and any other bonus payments for such Fiscal Year.

(f) Deferral of Retainer Payments. A Director's Deferral Election may relate to all or part of the Retainer Payments otherwise payable to the Director. Notwithstanding Section 2(a), a newly-elected Director may deliver a Deferral Election to the Company within 30 days after his or her election, which Deferral Election shall be effective for all Retainer Payments after the date on which the Deferral Election is delivered to the Company.

Section 3. Participant Accounts.

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(a) Deferred Cash Equivalent Account. (i) There shall be credited to a Participant's Deferred Cash Equivalent Account the following:

(A) portions of Incentive Awards otherwise payable in cash and for which a Deferral Election specifies crediting under the Plan;

(B) that portion of a Director's Retainer Payment for which a Deferral Election specifies crediting to the Participant's Deferred Cash Equivalent Account;

(C) amounts related to salary for which a Deferral Election specifies crediting under the Plan;

(D) amounts previously deferred into cash equivalent accounts under the Predecessor Plans and credited under this Plan, and

(E) Savings Plan Make-Up Credits made for periods ended before January 1, 2000. No Savings Plan Make-Up Credit shall be made for any period beginning after December 31, 1999.

(ii) Amounts credited to the Participant's Deferred Cash Equivalent Account shall bear interest as provided in Section 4 from the date the Incentive Award, Retainer Payment, salary or Savings Plan Make-Up Credits would otherwise have been paid to the Participant or paid or credited to the Savings Plan, as applicable. Interest shall be credited to Deferred Cash Equivalent Accounts at the end of each fiscal quarter of the Company.

(b) Deferred Share Equivalent Account. (i) There shall be credited to a Participant's Deferred Share Equivalent Account the following:

(A) portions of Incentive Awards otherwise payable in Shares and for which a Deferral Election specifies crediting under the Plan;

(B) that portion of a Director's Retainer Payment for which a Deferral Election specifies crediting to the Participant's Deferred Share Equivalent Account; and

(C) amounts previously deferred into share equivalent accounts under the Predecessor Plans and credited under this Plan.

(ii) Cash amounts credited to a Participant's Deferred Share Equivalent Account shall be converted to the number of Share equivalents determined by dividing such cash amount by the Conversion Price. In addition, the Participant's Deferred Share Equivalent Account shall be credited on each dividend payment date for Shares, with an amount equal to the number of Shares that could be purchased at the Conversion Price with dividends that would have been payable on the number of Shares equal to the number of Share equivalents in the Participant's Deferred Share Equivalent Account on the record date for such dividend. "Conversion Price" means the average of the daily high and low sale prices of Shares on the NYSE for the period of five trading days ending on the date such amount otherwise would have been paid to the Participant or, in the case of a dividend equivalent, on the dividend payment date, or the period of five trading days immediately preceding such applicable date if the NYSE is closed on such applicable date.

(iii) In the event of any change in outstanding Shares by reason of any stock dividend or stock split, recapitalization, merger, consolidation, combination or exchange of shares or other similar corporate change, the Board shall make such adjustments, if any, that it deems appropriate in the number of Share equivalents then

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credited to Participants' Deferred Share Equivalent Accounts. Any and all such adjustments shall be within the sole discretion of the Board and its decision in regard to such adjustments shall be conclusive, final and binding upon all parties concerned.

Section 4. Deferred Cash Equivalent Account Interest Rate.

(a) Interest Rate Generally. The interest rate to be accrued on a Participant's Deferred Cash Equivalent Account shall be such rate as is determined, from time to time, by the Board. Such rate may be applied by the Board to a Participant's existing balance in a Deferred Cash Equivalent Account or to amounts subsequently credited to such Participant's Account. The determination by the Board pursuant to this Section 4 shall be within its sole discretion and its decision shall be conclusive, final and binding upon all parties concerned.

(b) Interest Rate Following Termination Without the Company's Consent. Notwithstanding Section 4(a), with respect to amounts credited to the Deferred Cash Equivalent Accounts of Officers and Other Participants who terminate employment (other than by death or disability) under circumstances that the Administrator determines are not in the interests of the Company, the effective annual rate of interest following the date of such termination of employment shall be the one-year U.S. Treasury note rate.

Section 5. Payments Following Death.

(a) Form of Payment. A Participant may deliver a Beneficiary Election to the Administrator electing that, in the event the Participant should die before full payment of all amounts credited to the Participant's Account, the balance of the Account shall be distributed in one payment or in some other number of approximately equal annual installments (not exceeding five (5)) to the person(s) designated in the Beneficiary Election. In the event that a Participant fails to designate such a beneficiary, or the beneficiary(ies) predecease(s) him or her, payment following the death of the Participant shall be made to the Participant's surviving spouse or, if there is no surviving spouse, to the Participant's estate. The first installment (or the single payment if the Participant has so elected) shall be paid on the first day of the calendar quarter next following the month of death; *provided*, *however*, that the Administrator may, in his or her sole discretion, direct that the first installment (or the single payment) shall be paid on the first day of the Fiscal Year next following the date of death.

(b) Change of Beneficiary Designation. The elections referred to in Section 5(a), including the designation of a beneficiary or beneficiaries, may be changed by a Participant at any time by delivering a new Beneficiary Election to the Administrator.

Section 6. Payments.

(a) Commencement of Benefits. (i) At the time a Participant makes a Deferral Election, the Participant shall also make an election under Section 6(a)(ii) with respect to the distribution of the amounts credited to such Participant's Account pursuant to such Deferral Election (each such election, a "Payment Election"). Any similar election related to the distribution of deferred amounts under the Predecessor Plans which has not been modified or terminated shall be deemed a Payment Election under this Plan. A Participant may, at any time earlier than twelve (12) months prior to the date on which a distribution of a portion (or all) of a Participant's Account would commence under the terms of such Payment Election, submit a written election to the Company (hereinafter a "Redeferral Election") requesting that (A) the initial distribution date be further deferred, (B) the type of payment initially elected under Section 6(c)(i) be changed from a lump sum to annual installments, or (C) the payment period initially elected be extended (but not beyond the period permitted in Section 6(c)(i)). With respect to each Payment Election, a participant may make a single Redeferral Election addressing one or more of the initial distribution date, the type of payment, or the payment period, and the Redeferral Election shall supersede the Payment Election and be irrevocable upon delivery to the Administrator.

(ii) Each Payment Election shall specify whether payments related to Account balances other than Savings Plan Make-Up Credits shall commence (i) on the first day of the calendar

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quarter next following the month in which the Participant attains the age specified in such election, which age shall not be earlier than 55 or later than 70, (ii) on the first day of the calendar quarter next following the month in which the Participant retires from a Participating Company or otherwise terminates employment (including termination of service as a member of the Board) with any Participating Company (except for a transfer to another Participating Company); *provided*, *however*, that the Administrator may, in his or her sole discretion, direct that the Participant's benefits shall commence on the first day of the Fiscal Year next following the date of retirement or other termination of employment, or (iii) on the first day (the "First Day") of the calendar year next following the calendar year in which the Participant retires from a Participating Company or otherwise terminates employment (including termination of service as a member of the Board) with any Participating Company (except for a transfer to another Participating Company); *provided*, *however*, that the Administrator may, in his or her sole discretion, direct that the Participant's benefits shall commence on the first day of the Fiscal Year next following the First Day.

(iii) Notwithstanding the foregoing, amounts credited to a Participant's Account as Savings Plan Make-Up Credits or earnings thereon shall be distributed in one payment following the Participant's termination of employment.

(b) Form of Distributions. Amounts credited to a Participant's Deferred Cash Equivalent Account shall be distributed in cash. Amounts credited to a Participant's Deferred Share Equivalent Account as Share equivalents shall be distributed in the form of an equal number of Shares, with fractional shares being paid in cash.

(c) Payment Period. (i) A Participant may elect in a Payment Election to receive the amounts credited to the Participant's Account other than Savings Plan Make-Up Credits in one payment or in some other number of approximately equal annual installments (not exceeding ten (10) or such longer period as approved by the Committee, in individual cases), *provided*, *however*, that the number of annual installments may not extend beyond the life expectancy of the Participant, determined as of the date the first installment is paid.

(ii) Installments subsequent to the first installment to the Participant, or to a beneficiary or to the Participant's estate, shall be paid on the first day of the applicable calendar quarter in each succeeding calendar year until the entire amount credited to the Participant's Account shall have been paid. Prior to distribution, Accounts shall continue to receive credits under Section 3(a)(ii) and Section 3(b)(ii).

(d) Acceleration of Payment for Severe Financial Hardship. In the event a Participant, or the Participant's beneficiary after the Participant's death, incurs a severe financial hardship, the Administrator may, in his or her sole discretion, accelerate or otherwise revise the payment schedule for the Participant's Account to the extent reasonably deemed necessary to eliminate or alleviate the severe financial hardship. For the purpose of this Section 6(d) a severe financial hardship must have been caused by an accident, illness or other event beyond the control of the Participant or, if applicable, the beneficiary.

(e) Immediate Distribution of Deferred Cash Equivalent Account Balance. A Participant may at any time elect to receive a distribution of all or any portion of the balance in his or her Deferred Cash Equivalent Account. Amounts credited to Deferred Share Equivalent Accounts shall not be available for distribution under this Section 6(e). Requests for distributions shall be submitted in writing (on a form prescribed by the Administrator for such purpose) to the Administrator. Distributions from the Participant's Deferred Cash Equivalent Account pursuant to this Section 6(e) will at all times be subject to (i) reduction for applicable tax withholdings pursuant to Section 9(h), and (ii) a reduction in the amount paid equal to six percent (6%) of the

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amount requested. Distributions pursuant to this Section 6(e) shall be payable in a single lump sum, in cash, within thirty (30) days of submission of the completed form.

(f) Immediate Distribution of Account Balance Following Certain Terminations of Employment. Notwithstanding any contrary election pursuant to this Section 6, the entire amount then credited to a Participant's Account shall be paid immediately in a single payment (A) if the Participant is discharged for cause by his or her Participating Company, (B) if the Administrator determines that the Participant engaged in misconduct in connection with the Participant's employment with the Participating Company, (C) if the Participant terminates employment under circumstances that the Administrator determines are not in the interest of the Company, or (D) if the Participant without the consent of the board of directors of his or her Participating Company, during either the Participant's period of employment with a Participating Company or the nine (9) month period following termination for any reason of the Participant's employment with a Participating Company, on behalf of any competitor of the Company (x) renders any services relating to: (1) strategic planning, research and development, manufacturing, marketing, or selling with respect to any product, process, material or service which resembles, competes with, or is the same as a product, process, material or service of the Company about which the Participant gained any proprietary or confidential information or on which the Participant worked during the three (3) years prior to termination of employment, or (2) any actual or potential customer of the Company about whom the Participant gained any proprietary or confidential knowledge or with whom the Participant worked during the three (3) years prior to termination of employment, or (y) solicits or offers, or induces or encourages others to solicit or offer, employment to any employee of the Company.

Section 7. Change in Control.

(a) Notwithstanding any Payment Election, the aggregate amount credited to a Participant's Account shall be paid in one lump-sum payment as soon as practicable following a Change in Control, but in no event later than 90 days after such Change in Control.

(b) A Participant may, prior to the beginning of the Fiscal Year in which a Change in Control happens, deliver an election to the Administrator specifying that the aggregate amount credited to the Participant's Account be paid in accordance with the Participant's Payment Election or Redeferral Election in effect as of the date of such Change in Control.

Section 8. Administration.

(a) Administration. The Administrator shall have the authority to administer and to interpret the Plan.

(b) Responsibilities and Powers of the Administrator. In administering the Plan, the Administrator shall have the following responsibilities:

(1) To administer the Plan in accordance with the terms hereof, and to exercise all powers specifically conferred upon the Administrator hereby or necessary to carry out the provisions hereof;

(2) To construe this Plan, which construction shall be conclusive, correct any defects, supply omissions, and reconcile inconsistencies to the extent necessary to effectuate the Plan;

(3) To determine in his or her sole discretion the amount of benefits payable to Participants under the Plan. Any interpretation or determination made by the Plan Administrator pursuant to its discretionary authority shall be final and binding on the Company, any Participant, and any other affected party; and

(4) To keep all records relating to Participants and such other records as are necessary for proper operation of the Plan.

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(c) Actions of the Administrator. In carrying out the responsibilities set forth in Section 8(b):

(1) The Administrator may adopt rules and regulations necessary for the administration of the Plan which are consistent with the provisions hereof.

(2) All acts and decisions of the Administrator shall apply uniformly to all Participants in like circumstances. Written records shall be kept of all acts and decisions.

(3) The Administrator may delegate, in writing, any of his or her responsibilities and powers with respect to the Plan to another individual or individuals.

(d) Professional Assistance. The Administrator shall have the right to hire, at the expense of the Company, such professional assistants and consultants as he or she, in his or her sole discretion, deems necessary or advisable, including but not limited to accountants, actuaries, consultants, counsel and such clerical assistance as is necessary for proper discharge of his or her duties hereunder.

Section 9. Miscellaneous.

(a) Benefits Payable by the Company. All benefits payable under this Plan constitute an unfunded obligation of the Company. Payments shall be made, as due, from the general funds of the Company or, in the case of Share payments, from newly issued Shares, Shares purchased in the market, treasury Shares or otherwise. The Company may, at its option, maintain one or more bookkeeping reserve accounts to reflect its obligations under the Plan and may make such investments as it may deem desirable to assist it in meeting its obligations. Any such investments shall be assets of the Company subject to the claims of its general creditors. No person eligible for a benefit under this Plan shall have any right, title to, or interest in any such investments. Nothing contained in this Section 9(a) shall limit the ability of the Company to pay benefits through one or more grantor trusts as provided in Section 9(b). Participants are general, unsecured creditors of the Company. This Plan constitutes a mere promise to pay benefits in the future.

(b) Grantor Trusts. (i) The Company shall create a grantor trust or utilize an existing grantor trust to assist it in accumulating the shares of Common Stock and cash needed to fulfill its obligations under this Plan to Directors (including former Directors), to which it shall be obligated to make contributions, no later than the date upon which any Potential Change in Control occurs, of a number of Shares and an amount of cash such that the assets of such trust are sufficient to discharge all of the Company's obligations under this Plan to Directors (including former Directors) accrued as of the date of the Potential Change in Control. While a Potential Change in Control is pending and after any Change in Control, the Company shall be obligated to make additional contributions at least once each fiscal quarter to the extent necessary to ensure that the assets of such trust remain sufficient to discharge all such obligations accrued as of the last day of such fiscal quarter. If a Potential Change in Control occurs but ceases to be pending without the occurrence of a Change in Control or a subsequent Potential Change in Control then the Company shall be permitted (but not required) to cause the trustee of such trust to distribute any or all of the assets of the Trust to the Company.

(ii) The Company may create a grantor trust or utilize an existing grantor trust to assist it in accumulating the Shares and cash needed to fulfill its obligations under this Plan to Participants who are not Directors (or former Directors). The Board shall determine whether it is necessary or desirable to create such a trust and to deposit Shares and cash in such trust to enable the Company to meets its obligations under this Plan and the extent of any such deposit to such trust.

(iii) Participants shall have no beneficial or other interest in any trust referred to in this Section 9(b) and the assets thereof, and their rights under the Plan shall be as general

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creditors of the Company, unaffected by the existence of any trust, except that payments to Participants from any such trust shall, to the extent thereof, be treated as satisfying the Company's obligations under this Plan.

(c) Obligation for Payment of Benefits. The obligation to make a distribution of amounts credited to a Participant's Account shall be borne by the Participating Company which otherwise would have paid such amounts currently. However, the obligation to make a distribution with respect to Accounts which are related to amounts credited under a Predecessor Plan, and with respect to which no Participating Company would otherwise have paid the related award or deferred amount currently, shall be borne by the Participating Company to which the Participant was assigned on October 1, 2000.

(d) Amendment or Termination. (i) The Board may amend the Plan or terminate the Plan at any time, but such amendment or termination shall not adversely affect the rights of any Participant, without his or her consent, to any benefit under the Plan to which such Participant may have previously become entitled prior to the effective date of such amendment or termination. The Administrator with the concurrence of the General Counsel of the Company or his or her delegate shall be authorized to make minor or administrative changes to the Plan, as well as amendments required by applicable federal or state law (or authorized or made desirable by such statutes). Any amendment to the Plan by the Board shall be made in writing, with or without a meeting, or shall be made in writing by the Administrator, to the extent of the aforementioned authorization.

(ii) If the Plan is terminated, a valuation shall be made of each Participant's Account balance as of the Plan termination date. The amount of such Account balance shall be payable to the Participant at the time it would have been payable under Section 5 and Section 6 had the Plan not been terminated; *provided*, *however*, that the Committee may elect instead to immediately distribute all Participants' Account balances in lump sums upon termination of the Plan.

(e) Entire Agreement. This Plan constitutes the entire agreement of the Company with respect to the benefits provided herein and cannot be modified orally or in any writing other than as set forth in Section 9(d).

(f) Payments to Incompetents. If a Participant entitled to receive any benefits hereunder is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, they will be paid to the duly appointed guardian of such Participant or to such other legally appointed person as the Administrator may designate. Such payment shall, to the extent made, be deemed a complete discharge of any liability for such payment under the Plan.

(g) Benefits not Transferable. The right of any person to any benefit or payment under the Plan shall not be subject to voluntary or involuntary transfer, alienation or assignment and, to the fullest extent permitted by law, shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process. In the event a person who is receiving or is entitled to receive benefits under the Plan attempts to assign, transfer or dispose of such right, or if an attempt is made to subject said right to such process, such assignment, transfer, or disposition shall be null and void.

(h) Tax Withholding. The Company is authorized to withhold from any Account or payment due under the Plan the amount of applicable withholding taxes in respect of such payment or Account and to take such other action as may be necessary in the opinion of the Company to satisfy all obligations for the payment of such federal, state or other governmental entity tax obligation.

(i) Governing Law. The provisions of the Plan shall be construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the Company has caused this Plan, as amended, to be executed this 31st day of October, 2003.

AVAYA INC.

By: /s/ MARYANNE DIMARZO

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Maryanne DiMarzo
Senior Vice President–Human Resources

Attest: /s/ PAMELA CRAVEN

Pamela Craven
Senior Vice President, General Counsel & Secretary

QuickLinks

AVAYA INC. DEFERRED COMPENSATION PLAN

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Exhibit 10.36

SEVERANCE AGREEMENT

THIS AGREEMENT is entered into as of the 1st day of September 2003 (the "Effective Date") by and between Avaya Inc., a Delaware corporation, and Donald K. Peterson (the "Executive").

W I T N E S S E T H

WHEREAS, the Executive currently serves as a key employee of the Company (as defined in Section 1) and the Executive's services and knowledge are valuable to the Company in connection with the management of one or more of the Company's principal operating facilities, divisions, departments or subsidiaries; and

WHEREAS, the Board (as defined in Section 1) has determined that it is in the best interests of the Company and its stockholders to secure the Executive's continued services and to ensure the Executive's continued dedication and objectivity in the event of any threat or occurrence of, or negotiation or other action that could lead to, or create the possibility of, a Change in Control (as defined in Section 1) of the Company, without concern as to whether the Executive might be hindered or distracted by personal uncertainties and risks created by any such possible Change in Control, and to encourage the Executive's full attention and dedication to the Company, the Board has authorized the Company to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the Company and the Executive hereby agree as follows:

1. *Definitions.* As used in this Agreement, the following terms shall have the respective meanings set forth below:

(a) "Board" means the Board of Directors of the Company.

(b) "Cause" means:

(1) a material breach by the Executive of those duties and responsibilities of the Executive which do not differ in any material respect from the duties and responsibilities of the Executive during the 90-day period immediately prior to a Change in Control (other than as a result of incapacity due to physical or mental illness) which is demonstrably willful and deliberate on the Executive's part, which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Company and which is not remedied in a reasonable period of time after receipt of written notice from the Company specifying such breach;

(2) the commission by the Executive of a felony involving moral turpitude;

(3) the commission by the Executive of theft, fraud, breach of trust or any act of dishonesty involving the Company or its subsidiaries; or

(4) the significant violation by the Executive of the Company's code of conduct or any statutory or common law duty of loyalty to the Company or its subsidiaries.

(c) "Change in Control" means:

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(1) an acquisition by any individual, entity or group (within the meaning of Section 13 (d)(3) or 14 (d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (an "Entity") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of either (A) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (B) the combined

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voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); excluding, however, the following: (1) any acquisition directly from the Company, other than an acquisition by virtue of the exercise of a conversion privilege unless the security so being converted was itself acquired directly from the Company, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (4) any acquisition by any corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (3) of this Section 1(c); or

(2) a change in the composition of the Board such that the individuals who, as of the Effective Date, constitute the Board (such Board shall be hereinafter referred to as the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; *provided*, *however*, that for purposes of this definition, that any individual who becomes a member of the Board subsequent to the Effective Date, whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; and *provided*, *further however*, that any such individual whose initial assumption of office occurs as a result of or in connection with either an actual or threatened solicitation by an Entity other than the Board for the purpose of opposing a solicitation by any other Entity with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of an Entity other than the Board shall not be so considered as a member of the Incumbent Board; or

(3) the approval by the stockholders of the Company of a merger, reorganization or consolidation or sale or other disposition of all or substantially all of the assets of the Company (each, a "Corporate Transaction") or, if consummation of such Corporate Transaction is subject, at the time of such approval by stockholders, to the consent of any government or governmental agency, the obtaining of such consent (either explicitly or implicitly by consummation); excluding however, such a Corporate Transaction pursuant to which (A) all or substantially all of the individuals and entities who are beneficial owners, respectively, of the Outstanding Company Stock and Outstanding Company Voting Securities immediately prior to such Corporate Transaction will beneficially own, directly or indirectly, more than 60% of, respectively, the outstanding shares of common stock, and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Corporate Transaction (including, without limitation, a corporation or other individual, partnership, association, joint-stock company, trust, unincorporated organization, limited liability company, other entity or government or political subdivision which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries (a "Parent Company")) in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (B) no Entity (other than the Company, any employee benefit plan (or related trust) of the Company, such corporation resulting from such Corporate Transaction or, if reference was made to equity ownership of any Parent Company for purposes of determining whether clause (A) above is satisfied in connection with the applicable Corporate Transaction, such Parent Company) will beneficially own, directly or indirectly, 50% or more of, respectively, the outstanding shares of common stock of the corporation resulting from such Corporate Transaction or the combined voting power of the outstanding voting securities of such corporation entitled to vote generally

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in the election of the directors unless such ownership resulted solely from ownership of securities of the Company prior to the Corporate Transaction, and (C) individuals who were members of the Incumbent Board will immediately after the consummation of the Corporate Transaction constitute at least a majority of the members of the board of directors of the corporation resulting from such Corporate Transaction (or, if reference was made to equity ownership of any Parent Company for purposes of determining whether clause (A) above is satisfied in connection with the applicable Corporate Transaction, of the Parent Company); or

(4) the approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

(d) "Company" means Avaya Inc., a Delaware corporation.

(e) "Date of Termination" means:

(1) the effective date on which the Executive's employment by the Company terminates as specified in a prior written notice by the Company or the Executive, as the case may be, to the other, delivered pursuant to Section 11 or

(2) if the Executive's employment by the Company terminates by reason of death, the date of death of the Executive.

(f) "Entity" has the meaning set forth in Section 1(c)(1).

(g) "Good Reason" means, without the Executive's express written consent, the occurrence of any of the following events after a Change in Control:

(1) any of (i) the assignment to the Executive of any duties inconsistent in any material respect with the Executive's duties or responsibilities with the Company immediately prior to such Change in Control, (ii) any material reduction in the Executive's duties or responsibilities with the Company immediately prior to such Change in Control; (iii) a change in the Executive's titles or offices with the Company as in effect immediately prior to such Change in Control which is adverse to the Executive or (iv) any removal or involuntary termination of the Executive from the Company otherwise than as expressly permitted by this Agreement;

(2) a reduction by the Company in the Executive's rate of annual base salary or Target Percentage as in effect immediately prior to such Change in Control (or if a different short-term incentive compensation opportunity is then in effect, a reduction in the amount of such different short-term incentive compensation opportunity below the short-term incentive compensation opportunity which had been afforded by the Target Percentage as in effect immediately prior to such Change in Control) or as the same may be increased from time to time thereafter;

(3) any requirement of the Company that the Executive be based more than 30 miles from the facility where the Executive is located at the time of the Change in Control;

(4) the failure of the Company to continue in effect any incentive compensation plan or supplemental retirement plan, including the Supplemental Pension Plan, in which the Executive is participating immediately prior to such Change in Control, unless the Executive is permitted to participate in other plans providing the Executive with substantially comparable compensation opportunity and benefits, or the taking of any action by the Company which would adversely affect the Executive's participation in or materially reduce the Executive's compensation opportunity and benefits under any such plan; or

(5) the failure of the Company to obtain the assumption agreement from any successor as contemplated in Section 10(b).

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For purposes of this Agreement, any good faith determination of Good Reason made by the Executive shall be conclusive; *provided*, *however*, that an isolated, insubstantial and inadvertent action taken in good faith and which is remedied by the Company promptly after receipt of written notice thereof given by the Executive shall not constitute Good Reason.

(h) "Nonqualifying Termination" means a termination of the Executive's employment:

(1) by the Company for Cause,

(2) by the Executive for any reason other than Good Reason,

(3) by the Executive for Good Reason more than six (6) months after the event constituting Good Reason,

(4) as a result of the Executive's death or

(5) by the Company under circumstances where the Executive qualifies for benefits under a long-term disability pay plan.

(i) "Potential Change in Control," for purposes of this Plan, shall mean the happening of any of the following events:

(1) the commencement of a tender or exchange offer by any third person which, if consummated, would result in a Change in Control;

(2) the execution of an agreement by the Company, the consummation of which would result in the occurrence of a Change in Control;

(3) the public announcement by any person (including the Company) of an intention to take or to consider taking actions which if consummated would constitute a Change in Control other than through a contested election for directors of the Company; or

(4) the adoption by the Board, as a result of other circumstances, including, without limitation, circumstances similar or related to the foregoing, of a resolution to the effect that a Potential Change in Control has occurred.

A Potential Change in Control shall be deemed to be pending until the earliest of (i) the first anniversary thereof, (ii) the occurrence of a Change in Control and (iii) the occurrence of a subsequent Potential Change in Control.

(j) "Supplemental Pension Plan" means the Avaya Inc. Supplemental Pension Plan or any successor plan.

(k) "Target Percentage" means the annualized percentage applied to an Executive's annual base salary in order to calculate the target award for such Executive under the Company's short-term incentive compensation program, prior to the application of Company or individual performance factors.

(l) "Termination Period" means the period of time beginning with a Change in Control and ending on the earlier to occur of:

(1) two years following such Change in Control and

(2) the Executive's death.

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2. *Obligations of the Executive.* The Executive agrees that in the event of a Potential Change in Control, he shall not voluntarily leave the employ of the Company without Good Reason prior to the termination of such Potential Change in Control as follows:

(a) if the Potential Change in Control terminates by reason other than the occurrence of a Change in Control, until the earlier of (1) the first anniversary of such Potential Change in Control and (2) the occurrence of a subsequent Potential Change in Control; and

(b) if the Potential Change in Control terminates by reason of the occurrence of a Change in Control, until 90 days following such Change in Control.

For purposes of clause (a) of the preceding sentence, Good Reason shall be determined as if a Change in Control had occurred when such Potential Change in Control became known to the Board.

3. *Payments Upon Termination of Employment.*

(a) If during the Termination Period the employment of the Executive shall terminate, other than by reason of a Nonqualifying Termination, then the Company shall pay to the Executive, within 30 days following the Date of Termination, as compensation for services rendered to the Company:

(1) a cash amount equal to the sum of (i) the Executive's full annual base salary from the Company and its affiliated companies through the Date of Termination and any short-term incentive compensation earned by the Executive for any performance period ending prior to the Date of Termination, in each case to the extent not theretofore paid, (ii) an amount equal to the Executive's annual base salary multiplied by the Executive's Target Percentage applicable immediately prior to the Date of Termination (or, if greater, immediately prior to the Change in Control), multiplied by 50%, multiplied by a fraction, the numerator of which is the number of days elapsed in the applicable six-month performance period in which the Date of Termination occurs through the Date of Termination and the denominator of which is 180 (or if a different short-term incentive compensation opportunity is then in effect, an amount equal to the target short-term incentive compensation afforded by such different short-term incentive compensation opportunity for the applicable performance period in which the Date of Termination occurs (but not less than the amount that would have been afforded by the Target Percentage as in effect immediately prior to such Change in Control), multiplied by a fraction, the numerator of which is the number of days elapsed in the applicable performance period in which the Date of Termination occurs through the Date of Termination and the denominator of which is the total number of days in such applicable performance period) and (iii) any compensation previously deferred by the Executive (together with any interest and earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid; plus

(2) a lump-sum cash amount (subject to any applicable payroll or other taxes required to be withheld pursuant to Section 5) in an amount equal to (i) three (3) times the Executive's highest annual base salary from the Company and its affiliated companies in effect during the 12-month period prior to the Date of Termination, plus (ii) an amount equal to the product of three (3) times such annual base salary multiplied by the Executive's Target Percentage as applicable immediately prior to the Date of Termination (or, if greater, immediately prior to the Change in Control) (or if a different short-term incentive compensation opportunity is then in effect, an amount equal to the product of three (3) times the annual target short-term incentive compensation afforded by such different short-term incentive compensation opportunity, but not less than three (3) times the amount that would have been afforded by the Target Percentage as in effect immediately prior to such Change in Control); *provided*, *however*, that any amount paid pursuant to this Section 3(a)(2) shall be paid in lieu of any

other amount of severance relating to salary, short-term incentive compensation or other bonus continuation to be received by the Executive upon termination of employment of the Executive under any severance plan, policy or arrangement of

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the Company. Notwithstanding the foregoing, if the Company is obligated by law or contract to pay severance pay, notice pay or other similar benefits, or if the Company is obligated by law or by contract to provide advance notice of separation ("Notice Period"), then the payments made pursuant to this Section 3(a)(2) shall be reduced by the amount of any such severance, notice pay or other similar benefits, as applicable, and by the amount of any severance pay, notice pay or other similar benefits received during any Notice Period.

(b) In addition to the payments to be made pursuant to Section 3(a), the Company shall pay to the Executive at the time the payments pursuant to Section 3(a) shall be made, a lump-sum cash amount equal to the actuarial equivalent of the excess of (i) the Executive's accrued benefits under any qualified defined benefit pension plan and any nonqualified supplemental defined benefit pension plan of the Company in which the Executive is a participant, calculated by increasing the Executive's age and service credit under such plans as of the Date of Termination by three (3) year(s) over (ii) the Executive's accrued benefits under such plans as of the Date of Termination. Such lump sum cash amount shall be computed using the same actuarial methods and assumptions then in use for purposes of computing benefits under such plans, provided that the interest rate used in making such computation shall not be greater than the interest rate permitted under Section 417(e) of the Internal Revenue Code of 1986, as amended (the "Code"), on the Date of Termination.

(c) For a period of three (3) years commencing on the Date of Termination, the Company shall continue to keep in full force and effect all policies of medical and life insurance with respect to the Executive and his dependents with the same level of coverage, upon the same terms and otherwise to the same extent as such policies shall have been in effect immediately prior to the Date of Termination or as provided generally with respect to other peer executives of the Company and its affiliated companies, and the Company and the Executive shall share the costs of the continuation of such insurance coverage in the same proportion as such costs were shared immediately prior to the Date of Termination; *provided*, *however*, that the medical and life insurance coverage provided pursuant to this Section 3(c) shall be in lieu of any other medical and life insurance coverage to which the Executive is entitled under any plan, policy or arrangement of the Company or any law obligating the Company to provide such insurance coverage upon termination of employment of the Executive.

(d) If during the Termination Period the employment of the Executive shall terminate by reason of a Nonqualifying Termination, then the Company shall pay to the Executive, within 30 days following the Date of Termination, a cash amount equal to the sum of:

(1) the Executive's full annual base salary from the Company through the Date of Termination, to the extent not theretofore paid, and

(2) any compensation previously deferred by the Executive (together with any interest and earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid.

4. *Certain Additional Payments by the Company.*

(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company or its affiliated companies to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, including, without limitation, as a result of the acceleration of the vesting of stock options, restricted stock units or other equity awards, but

determined without regard to any additional payments required under this Section 4) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code, or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income and employment taxes (and any interest and penalties imposed with respect thereto) and the Excise Tax imposed upon the

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Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments; *provided*, *however*, that the Executive shall be entitled to receive a Gross-Up Payment only if the amount of the "parachute payment" (as defined in Section 280G(b)(2) of the Code) exceeds the sum of (A) $50,000 plus (B) 2.99 times the Executive's "base amount" (as defined in Section 280G(b)(3) of the Code), and *provided further*, that if the Executive is not entitled to receive a Gross-Up Payment, the Executive shall be entitled to receive only such amounts under Sections 3(a)(2), 3(b) and 3(c) of this Agreement that would not include any "excess parachute payment" (as defined in Section 280G(b)(1) of the Code). The intent of the parties is that the Company shall be solely responsible for, and shall pay, any Excise Tax on any Payment and Gross-Up Payment and any income and employment taxes (including, without limitation, penalties and interest) imposed on any Gross-Up Payment, as well as bearing any loss of tax deduction caused by the Gross-Up Payment.

(b) Subject to the provisions of Section 4(c), all determinations required to be made under this Section 4, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the Company's public accounting firm (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 4, shall be paid by the Company to the Executive within five (5) days of the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by the Executive, it shall furnish the Executive with a written opinion that failure to report the Excise Tax on the Executive's applicable federal income tax return would not result in the imposition of a negligence or similar penalty. The Accounting Firm shall make all determinations under the tax standard of "substantial authority" as such term is used in Section 6662 of the Code. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Company exhausts its remedies pursuant to Section 4(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than 10 business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which the Executive gives such notice to the Company (or such shorter period ending on the date that any payment of taxes

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with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

(1) give the Company any information reasonably requested by the Company relating to such claim,

(2) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,

(3) cooperate with the Company in good faith in order effectively to contest such claim, and

(4) permit the Company to participate in any proceedings relating to such claim;

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provided, *however*, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 4(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; *provided further*, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Executive on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and *provided further*, that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 4(c), the Executive becomes entitled to receive, and receives, any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 4(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 4(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

5. *Withholding Taxes.* The Company may withhold from all payments due to the Executive (or his beneficiary or estate) hereunder all taxes which, by applicable federal, state, local or other law, the Company is required to withhold therefrom.

6. *Reimbursement of Expenses.* If any contest or dispute shall arise under this Agreement involving termination of the Executive's employment with the Company or involving the failure or refusal of the Company to perform fully in accordance with the terms hereof, the Company shall reimburse the Executive, on a current basis, for all reasonable legal fees and expenses, if any, incurred by the Executive in connection with such contest or dispute, together with interest thereon at a rate equal to the prime rate, as published under "Money Rates" in *The Wall Street Journal* from time to time, but in no event higher than the maximum legal rate permissible under applicable law, such interest to accrue from the date the Company receives the Executive's statement for such fees and expenses through the date of payment thereof; *provided*, *however*, that in the event the resolution of any such contest or dispute includes a finding denying, in total, the Executive's claims in such contest or dispute, the Executive shall be required to reimburse the Company, over a period of 12 months from the date of such resolution, for all sums advanced to the Executive pursuant to this Section 6.

7. *Operative Event.* Notwithstanding any provision herein to the contrary, no amounts shall be payable hereunder unless and until there is a Change in Control at a time when the Executive is employed by the Company.

8. *Termination of Agreement.*

(a) This Agreement shall be effective on the Effective Date and shall expire on the second anniversary of the Effective Date, provided that the term of this Agreement shall be extended automatically for one additional year as of each annual anniversary of the Effective Date, commencing with the second anniversary of the Effective Date (each such date a "Renewal Date") unless this Agreement is terminated pursuant to Section 8(b) or, if earlier, upon the earlier to occur of (i) termination of the Executive's employment with the Company prior to a Change in Control and (ii) the Executive's death. Notwithstanding the foregoing, any

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expiration of this Agreement shall not retroactively impair or otherwise adversely affect the rights of the Executive which have arisen prior to the date of such expiration.

(b) The Company shall have the right, in its sole discretion, pursuant to action by the Board, to approve the amendment or termination of this Agreement, which amendment or termination shall not become effective until the Renewal Date coincident with or next following the date of such action, or if later, the date fixed by the Board for such amendment or termination; provided, that an amendment which is not adverse to the interests of the Executive shall take effect immediately; and provided further, that in no event shall this Agreement be amended in a manner adverse to the interests of the Executive or be terminated during any period that a Potential Change in Control is pending or in the event of a Change in Control.

9. *Scope of Agreement.* Nothing in this Agreement shall be deemed to entitle the Executive to continued employment with the Company or its subsidiaries and, if the Executive's employment with the Company shall terminate prior to a Change in Control, then the Executive shall have no further rights under this Agreement; *provided*, *however*, that any termination of the Executive's employment following a Change in Control shall be subject to all of the provisions of this Agreement.

10. *Successors; Binding Agreement.*

(a) This Agreement shall not be terminated by any merger or consolidation of the Company whereby the Company is or is not the surviving or resulting corporation or as a result of any transfer of all or substantially all of the assets of the Company. In the event of any such merger, consolidation or transfer of assets, the provisions of this Agreement shall be binding upon the surviving or resulting corporation or the person or entity to which such assets are transferred.

(b) The Company agrees that concurrently with any merger, consolidation or transfer of assets referred to in Section 10(a), it will cause any successor or transferee unconditionally to assume, by written instrument delivered to the Executive (or the Executive's beneficiary or estate),

all of the obligations of the Company hereunder. Failure of the Company to obtain such assumption prior to the effectiveness of any such merger, consolidation or transfer of assets shall be a breach of this Agreement and shall entitle the Executive to compensation and other benefits from the Company in the same amount and on the same terms as the Executive would be entitled hereunder if the Executive's employment were terminated following a Change in Control other than by reason of a Nonqualifying Termination during the Termination Period. For purposes of implementing the foregoing, the date on which any such merger, consolidation or transfer becomes effective shall be deemed the Date of Termination.

(c) This Agreement shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive shall die while any amounts would be payable to the Executive hereunder had the Executive continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to such person or persons appointed in writing by the Executive to receive such amounts or, if no person is so appointed, to the Executive's estate.

11. *Notices.*

(a) For purposes of this Agreement, all notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given when delivered or five (5) days after deposit in the United States mail, certified and return receipt requested, postage prepaid, addressed

(1) if to the Executive, to the home address of the Executive on the most current Company records, and if to the Company, to Avaya Inc., attention Vice President, Human Resources with a copy to the Secretary of the Board, or

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(2) to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

(b) A written notice of the Executive's Date of Termination by the Company or the Executive, as the case may be, to the other, shall (i) indicate the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) specify the termination date (which date shall be not less than fifteen (15) days after the giving of such notice). The failure by the Executive or the Company to set forth in such notice any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company hereunder or preclude the Executive or the Company from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

12. *Full Settlement; Resolution of Disputes.*

(a) The Company's obligation to make any payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment.

(b) If there shall be any dispute between the Company and the Executive in the event of any termination of the Executive's employment, then, unless and until there is a final, nonappealable

judgment by a court of competent jurisdiction declaring that such termination was for Cause, that the determination by the Executive of the existence of Good Reason was not made in good faith, or that the Company is not otherwise obligated to pay any amount or provide any benefit to the Executive and his dependents or other beneficiaries, as the case may be, under Sections 3(a), 3(b) and 3(c), the Company shall pay all amounts, and provide all benefits, to the Executive and his dependents or other beneficiaries, as the case may be, that the Company would be required to pay or provide pursuant to Sections 3(a), 3(b) and 3(c) as though such termination were by the Company without Cause or by the Executive with Good Reason; *provided*, *however*, that the Company shall not be required to pay any disputed amounts pursuant to this Section 12(b) except upon receipt of an undertaking by or on behalf of the Executive to repay all such amounts to which the Executive is ultimately adjudged by such court not to be entitled.

13. *Employment with Subsidiaries.* Employment with the Company for purposes of this Agreement shall include employment with (i) any "subsidiary corporation" of the Company, as defined in Section 424(f) of the Code, (ii) an entity in which the Company directly or indirectly owns 50% or more of the voting interests or (iii) an entity in which the Company has a significant equity interest, as determined by the Board or by the Corporate Governance and Compensation Committee (or any successor committee) of the Board.

14. *Governing Law; Validity.* The interpretation, construction and performance of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware without regard to the principle of conflicts of laws. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which other provisions shall remain in full force and effect.

15. *Counterparts.* This Agreement may be executed in two counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument.

16. *Miscellaneous.* No provision of this Agreement may be modified or waived unless such modification or waiver is agreed to in writing and signed by the Executive and by a duly authorized officer of the Company. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. Failure by the

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Executive or the Company to insist upon strict compliance with any provision of this Agreement or to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement. Except as otherwise expressly set forth in this Agreement, the rights of, and benefits payable to, the Executive, his estate or his beneficiaries pursuant to this Agreement are in addition to any rights of, or benefits payable to, the Executive, his estate or his beneficiaries under any other employee benefit plan or compensation program of the Company.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by a duly authorized officer of the Company and the Executive has executed this Agreement as of the day and year first above written.

AVAYA INC.

By: /s/ MICHAEL J. HARRISON

EXECUTIVE

/s/ DONALD K. PETERSON

Donald K. Peterson

Note: The Company has also entered into Severance Agreements, each dated as of September 1, 2003, with each of the following executive officers:

Garry K. McGuire, Sr.	Chief Financial Officer and Senior Vice President, Corporate Development
Louis J. D'Ambrosio	Group Vice President, Avaya Global Services
David P. Johnson	Group Vice President, Small and Medium Business Solutions
Michael Thurk	Group Vice President, Enterprise Communications Group

Such Severance Agreements are substantially identical to Mr. Peterson's in all material respects, except that the severance benefit for each above listed executive officer is two times the sum of their respective annual base salaries and target bonuses. In addition, these executive officers are entitled to continuation of medical and life insurance and a pension enhancement payment for a two-year period.

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SEVERANCE AGREEMENT

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Exhibit 10.37

AVAYA INC.

2000 LONG TERM INCENTIVE PLAN

Amended as of November 1, 2003

Article 1−Background and Purpose

The purpose of the Avaya Inc. 2000 Long Term Incentive Plan is to enhance shareholder value by reinforcing the Company's efforts to motivate Employees to contribute to the Company's growth and performance, and enabling the Company to attract and retain individuals of exceptional talent upon whom, in large measure, the sustained progress, growth and profitability of the Company depend.

Article 2−Definitions

For the purposes of this Plan, the following words shall have the meanings ascribed to them below:

(a) Award

Any Option, Stock Appreciation Right, Restricted Stock Award, Performance Award, Dividend Equivalent, Other Stock Unit Award, Substitute Award or any other right, interest, or option relating to Shares or other securities of the Company granted pursuant to the provisions of the Plan.

(b) Award Agreement

The written agreement, contract, or other instrument or document provided by the Company to evidence an Award and signed by both the Company and the Participant.

(c) Board

The Board of Directors of the Company.

(d) Change in Control

The happening of any of the following events:

(i) An acquisition by any individual, entity or group (within the meaning of Section 13 (d)(3) or 14 (d)(2) of the Exchange Act) (an "Entity") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of either (A) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); excluding, however, the following: (1) any acquisition directly from the Company, other than an acquisition by virtue of the exercise of a conversion privilege unless the security so being converted was itself acquired directly from the Company, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (4) any acquisition by any corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (iii) of this Article 2(d); or

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(ii) A change in the composition of the Board such that the individuals who, as of the Effective Date, constitute the Board (such Board shall be hereinafter referred to as the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; *provided, however,* that for purposes of this definition, any individual who becomes a member of the Board subsequent to the Effective Date, whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; and *provided*, *further however*, that any such individual whose initial assumption of office occurs as a result of or in connection with either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act)

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or other actual or threatened solicitation of proxies or consents by or on behalf of an Entity other than the Board shall not be so considered as a member of the Incumbent Board; or

(iii) The approval by the stockholders of the Company of a merger, reorganization or consolidation or sale or other disposition of all or substantially all of the assets of the Company (each, a "Corporate Transaction") or, if consummation of such Corporate Transaction is subject, at the time of such approval by stockholders, to the consent of any government or governmental agency, the obtaining of such consent (either explicitly or implicitly by consummation); excluding however, such a Corporate Transaction pursuant to which (A) all or substantially all of the individuals and entities who are beneficial owners, respectively, of the Outstanding Company Stock and Outstanding Company Voting Securities immediately prior to such Corporate Transaction will beneficially own, directly or indirectly, more than 60% of, respectively, the outstanding shares of common stock, and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Corporate Transaction (including, without limitation, a corporation or other Person which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries (a "Parent Company")) in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (B) no Entity (other than the Company, any employee benefit plan (or related trust) of the Company, such corporation resulting from such Corporate Transaction or, if reference was made to equity ownership of any Parent Company for purposes of determining whether clause (A) above is satisfied in connection with the applicable Corporate Transaction, such Parent Company) will beneficially own, directly or indirectly, 50% or more of, respectively, the outstanding shares of common stock of the corporation resulting from such Corporate Transaction or the combined voting power of the outstanding voting securities of such corporation entitled to vote generally in the election of the directors unless such ownership resulted solely from ownership of securities of the Company prior to the Corporate Transaction, and (C) individuals who were members of the Incumbent Board will immediately after the consummation of the Corporate Transaction constitute at least a majority of the members of the board of directors of the corporation resulting from such Corporate Transaction (or, if reference was made to equity ownership of any Parent Company for purposes of determining whether clause (A) above is satisfied in connection with the applicable Corporate Transaction, of the Parent Company); or

(iv) The approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

(e) Code

The Internal Revenue Code of 1986, as amended.

(f) Committee

The Corporate Governance and Compensation Committee (or any successor committee) of the Board.

(g) Company

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Avaya Inc., a Delaware corporation.

(h) Company Action

A Company or Subsidiary declared or initiated (i) termination from service under a force management program, (ii) sale of a unit or portion of a unit, (iii) transfer of a Participant to a

corporation, partnership, limited liability company or other business entity in which the Company has a direct or indirect equity interest and which does not constitute a Subsidiary or (iv) placement of the job function of a Participant with an outsourcing contractor unless the successor employer has made appropriate provision for the assumption and continuation of Awards of Employees who are employed by the successor employer after an event described in (ii), (iii) or (iv).

(i) Covered Employee

A "covered employee" within the meaning of Section 162(m)(3) of the Code.

(j) Delegate

The person or committee authorized by the Committee or the Board to exercise specified authority under this Plan.

(k) Dividend Equivalent

Has the meaning assigned in Article 6(b).

(l) Disability or Disabled

Termination of employment under circumstances where the Participant qualifies for benefits under a long-term disability pay plan as provided in the Participant's Award Agreement.

(m) Employee

Any employee of the Company or any Subsidiary, excluding leased employees within the meaning of Section 414(n) of the Code.

(n) Exchange Act

The Securities Exchange Act of 1934, as amended.

(o) Expiration Date

The date specified in the Award Agreement after which rights under the Award expire.

(p) Fair Market Value

The average of the high and low sales prices of a Share as reported on the New York Stock Exchange on the Grant Date, or if no sales of Shares were reported on such date, the average of the high and low prices of a Share on the next preceding day on which sales were reported.

(q) Grant Date

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The Grant Date shall be the date an Award is granted as set forth in the Award Agreement.

(r) Incentive Option

An Option granted under Article 7 that is intended to meet the requirements of Section 422 of the Code or any successor provision thereto.

(s) Nonstatutory Option

An Option granted under Article 7 that is not intended to be an Incentive Option.

(t) Option

An Award described in Article 7.

(u) Other Stock Unit Award

An Award described in Article 11.

(v) Participant

An Employee who is selected by the Committee to receive an Award under the Plan.

(w) Performance Award

An Award described in Article 10.

(x) Performance Period

That period, established by the Committee at or after the time any Performance Award is granted, during which any performance goals specified by the Committee with respect to such Award are to be measured.

(y) Person

Any individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization, limited liability company, other entity or government or political subdivision.

(aa) Plan

The Avaya Inc. 2000 Long Term Incentive Plan.

(bb) Restricted Stock

An Award described in Article 9.

(cc) Retirement

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Termination of the employment of a Participant with the Company or any Subsidiary under circumstances where the Participant qualifies for benefits under a retirement plan as provided in the Participant's Award Agreement.

(dd) Share

A share of the common stock of the Company, par value $.01 per share.

(ee) Stock Appreciation Right

An Award described in Article 8.

(ff) Stock Award Committee

A committee of one or more directors appointed by the Committee pursuant to Article 4.

(gg) Subsidiary

A "subsidiary corporation" of the Company as defined in Section 424(f) of the Code, an entity in which the Company directly or indirectly owns 50% or more of the voting interests or an entity in which the Company has a significant equity interest, as determined by the Committee.

(hh) Substitute Award

An Award granted in lieu of an Option or Stock Appreciation Right pursuant to Article 17.

(ii) Term

The period beginning on October 1, 2000, and ending on October 1, 2005.

Article 3−Shares Available for Option; Adjustments

(a) Subject to adjustment as provided in Article 3(b), the aggregate number of Shares which may be made subject to Awards granted under this Plan shall not exceed 25 million (25,000,000); *provided*, that if any Shares are subject to an Award that is forfeited, settled in cash, expires, or is otherwise terminated without issuance of Shares, such Shares shall again be available for Awards under the Plan if no Participant shall have received any benefits of ownership in respect thereof; and *provided, further*, that no more than two million (2,000,000) Shares shall be available for the grant of Incentive Options under the Plan during the Term; *and provided, further*, that no Participant may be granted Awards with respect to more than 5,000,000 Shares in the aggregate during the Term. In addition, the number of Shares available for grants under the Plan or to a Participant in any fiscal year shall not be reduced by Awards granted or Shares issued by the Company through the assumption of, or in substitution or exchange for awards or the right or obligation to make future grants of awards in connection with the acquisition of another corporation or business entity or in connection with the assumption of any Award granted by Lucent Technologies Inc. ("Lucent") to an Employee who becomes an Avaya Individual as defined in the Employee Benefits agreement dated as of October 1, 2000 between the Company and Lucent. Any Shares issued under the Plan may consist, in whole or in part, of authorized and unissued Shares, Shares purchased in the open market or otherwise, treasury Shares, or any combination of the foregoing, as the Board or the Committee may from time to time determine.

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(b) In the event of any merger, reorganization, consolidation, recapitalization, stock dividend, stock split, reverse stock split, spin off or similar transaction or other change in corporate structure affecting the Shares, such adjustments and other substitutions shall be made to the Plan, and to Awards as the Committee in its sole discretion deems equitable or appropriate, including: such adjustments in the aggregate number, class and kind of Shares or other consideration which may be delivered under the Plan, in the aggregate or to any one Participant; in the number, class, kind and option or exercise price of Shares subject to outstanding Awards granted under the Plan; and in the number, class and kind of Shares subject to Awards granted under the Plan (including, if the Committee deems appropriate, the substitution of similar options to purchase the shares of, or other awards denominated in the shares of, another company) *provided*, *however,* that the number of Shares or other securities subject to any Award shall always be a whole number.

(c) Except as provided in Article 21, the Committee shall be authorized to make adjustments in Performance Award criteria or in the terms and conditions of other Awards in recognition of unusual or nonrecurring events affecting the Company or its financial statements, or changes in applicable laws, regulations or accounting principles. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award in the manner and to the extent it shall deem desirable. In the event the Company shall assume outstanding employee benefit awards or the right or obligation to make future such awards in connection with the

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acquisition of another corporation or business entity, the Committee may, in its discretion, make such adjustments in the terms of Awards under the Plan as it shall deem appropriate.

Article 4−Administration

The Plan shall be administered by the Committee. The Committee shall be responsible to the Board for the operation of the Plan. The Committee may appoint one or more Directors to serve as the Stock Award Committee to make grants of Options, administer the Plan, discharge the duties of the Committee under Articles 5, 6, 7, 8, 9 and 14 with respect to Employees other than officers and directors of the Company, and adopt rules and regulations under the Plan and make interpretations of the Plan with respect to such Employees. If the Committee does not appoint a Stock Award Committee, the Plan shall be administered by the Committee. The Committee or the Stock Award Committee may appoint a Delegate to administer and interpret the provisions of the Plan, promulgate rules and regulations under the Plan, discharge the duties of the Committee under Articles 9 and 14, designate employees to perform ministerial functions under this Plan and execute documents on behalf of the Company; *provided*, *however*, that any Delegate appointed pursuant to this Article 4 who is a Participant in the Plan shall not participate in making any decision that would benefit such Delegate, except to the extent such decision would only incidentally benefit the Delegate and would also generally benefit a larger class of Employees.

The interpretations and construction of any provision of the Plan by the Committee, the Stock Award Committee, or the Delegate, as the case may be, as well as any factual determinations, shall be final, unless otherwise determined by the Board. No member of the Board, the Committee, the Stock Award Committee or any Delegate shall be liable for any action or determination made by him or her in good faith.

Article 5−Eligibility

(a) The Committee, in its sole discretion, may grant an Award to any Employee who is actively employed by the Company or a Subsidiary. The adoption of this Plan shall not be deemed to give any Employee any right to be granted an Award, except and to the extent and upon such terms and conditions as may be determined by the Committee.

(b) Neither this Plan nor any Award shall be construed as giving any person the right to be retained in the employ of the Company or any Subsidiary. No Employee or Participant shall have any claim to be granted any Award under the Plan, and there is no obligation of uniformity of treatment of Employees or Participants under the Plan. This Plan creates no ongoing obligation of the Company to provide any future benefit of similar value. The provisions of any Award need not be the same with respect to each recipient of an Award of the same type.

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Article 6−Awards−General

(a) Awards may be granted to Participants either alone or in addition to any other type of Award granted under the Plan. Awards may be granted for no consideration, for such minimum consideration as is required by applicable law or for such other consideration as the Committee may determine. Any Award granted under the Plan shall be evidenced by an Award Agreement in such form as the Committee may from time to time approve. The prospective recipient of any Award shall not, with respect to such Award, be deemed to have become a Participant, or to have any rights with respect to such Award, until and unless such recipient shall have executed and delivered to the Company an Award Agreement evidencing the Award, and otherwise complied with the then applicable terms and conditions. The term of each Award shall be for such period of months or years from the date of its grant as may be determined by the Committee; provided that in no event shall the term of any Incentive Option or any Stock Appreciation Right related to any Incentive Option exceed a period of ten (10) years from its Grant Date. The Committee may impose such conditions on the exercise or vesting of any Award as it shall deem appropriate.

(b) Subject to the provisions of this Plan and any Award Agreement, the recipient of an Award (including, without limitation, any deferred Award) may, if so determined by the Committee, be entitled to receive, currently or on a deferred basis, interest or dividends, or interest or dividend equivalents (collectively, "Dividend Equivalents"), with respect to the number of Shares covered by the Award, as determined by the Committee, in its sole discretion, and the Committee may provide that such amounts (if any) shall be deemed to have been reinvested in additional Shares or otherwise reinvested.

Article 7−Options

An Option is a right to purchase Shares subject to the following terms and conditions and to such additional terms and conditions, not inconsistent with the provisions of the Plan, as the Committee shall deem desirable:

(a) Option Price. The exercise price per Share under an Option shall be determined by the Committee in its sole discretion; provided that except in the case of an Option pursuant to a Substitute Award, such exercise price shall not be less than the Fair Market Value of a Share on the date of the grant of the Option.

(b) Exercisability. Options shall be exercisable at such time or times as determined by the Committee at or subsequent to grant. Unless otherwise determined by the Committee at or subsequent to grant, no Incentive Option shall be exercisable during the year ending on the day before the first anniversary date of the granting of the Incentive Option.

(c) Method Of Exercise. Subject to the other provisions of the Plan and any applicable Award Agreement, any Option may be exercised by the Participant in whole or in part at such time or times, and the Participant may make payment of the option price in such form or forms, including, without limitation, payment by delivery of cash, Shares or other consideration (including, where permitted by law and the Committee, Awards) having a fair market value on the exercise date equal to the total option price, or by any combination of cash, Shares and other consideration as the Committee may specify in the applicable Award Agreement.

(d) Incentive Options. In accordance with rules and procedures established by the Committee, the aggregate Fair Market Value (determined as of the time of grant) of the Shares with respect to which Incentive Options held by any Participant which are exercisable for the first time by such Participant during any calendar year under the Plan (and under any other benefit plans of the Company or of any parent or Subsidiary of the Company) shall not exceed $100,000 or, if different, the maximum limitation in effect at the time of grant under Section 422 of the Code, or any successor provision, and any regulations promulgated thereunder. The terms of any Incentive Option shall comply in all respects with the provisions of Section 422 of the Code, or any successor provision, and any regulations promulgated thereunder.

(e) Form Of Settlement. In its sole discretion, the Committee may provide, at the time of grant, that the Shares to be issued upon an Option's exercise shall be in the form of Restricted Stock or other similar securities, or may reserve the right so to provide after the time of grant.

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Article 8−Stock Appreciation Rights

A Stock Appreciation Right is a right to receive in cash the difference between the Fair Market Value of a Share on the exercise date and the Grant Date. A Stock Appreciation Right shall otherwise have the same terms and conditions as an Option. Any Stock Appreciation Right related to a Nonstatutory Option may be granted at the same time such Option is granted or at any time thereafter before exercise or expiration of such Option. Any Stock Appreciation Right related to an Incentive Option must be granted at the same time such Option is granted. In the case of any Stock

Appreciation Right related to any Option, the Stock Appreciation Right or applicable portion thereof shall terminate and no longer be exercisable upon the termination or exercise of the related Option, except that a Stock Appreciation Right granted with respect to less than the full number of Shares covered by a related Option shall not be reduced until the exercise or termination of the related Option exceeds the number of Shares not covered by the Stock Appreciation Right. Any Option related to any Stock Appreciation Right shall no longer be exercisable to the extent the related Stock Appreciation Right has been exercised.

Article 9−Restricted Stock

Restricted Stock is an Award in the form of Shares issued with the restriction that the Participant may not sell, transfer, pledge or assign the Shares and with any other restrictions that the Committee may impose (including restrictions on the right to vote or receive cash dividends on the Shares) which restrictions may lapse separately or in combination at such time or times, in installments or otherwise, as the Committee shall determine. A Restricted Stock Award may be evidenced in such manner as the Committee in its sole discretion shall deem appropriate, including, without limitation, book-entry registration or issuance of a stock certificate or certificates. In the event any stock certificate is issued in respect of a Restricted Stock Award, such certificate shall be registered in the name of the Participant, and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Award.

Article 10−Performance Awards

A Performance Award is an Award of Performance Units or Performance Shares which vests and becomes non-forfeitable based on performance criteria determined by the Committee to be achieved over a prescribed Performance Period. An Award of Performance Shares is a number of units valued by reference to a designated number of Shares, and an Award of Performance Units is a number of units valued by reference to a designated amount of property other than Shares. The performance criteria to be achieved during any Performance Period and the length of the Performance Period shall be determined by the Committee upon the grant of each Performance Award or at any time thereafter. Except as provided in Articles 12 and 14, Performance Awards will be distributed only after the end of the relevant Performance Period.

Performance Awards may be paid in cash, Shares, other property or any combination of the foregoing, in the sole discretion of the Committee upon the grant of the Performance Award. The performance levels which have been achieved for each Performance Period and the amount of the Award to be distributed shall be conclusively determined by the Committee. Performance Awards may be paid in a lump sum or in installments following the close of the Performance Period.

Article 11−Other Stock Unit Awards

Other Awards of Shares and other Awards that are valued in whole or in part by reference to, or are otherwise based on, Shares ("Other Stock Unit Awards") may be paid in Shares, other securities of the Company, cash or any other form of property as the Committee shall determine upon the grant of the Other Stock Unit Award. Other Stock Unit Awards may be issued with such restrictions that the Committee may impose which restrictions may lapse separately or in combination at such time or times, in installments or otherwise, as the Committee shall determine. Shares purchased pursuant to other Stock Unit Awards shall be purchased for such consideration as the Committee shall in its sole discretion determine, which shall not be less than the Fair Market Value of such Shares as of the date such Award is granted.

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Article 12−Termination of Employment

Except as shall otherwise be provided in an Award Agreement, the provisions of this Article 12 shall govern rights of Participants to exercise Options following termination of employment. If a Participant terminates employment for any reason other than Retirement, Disability or death (i) any portion of the Participant's Options which are exercisable on the date employment terminates may be exercised until the earlier of ninety days following termination of employment or the original Expiration Date of the Option, and (ii) any portion of an Option that is not exercisable on the date employment terminates shall be forfeited and canceled, except that if the reason for the termination of employment is a Company Action, then the Option shall become immediately exercisable for the period specified in clause (i) with respect to the number of Shares determined by the following formula, and shall be forfeited and canceled with respect to the remaining Shares:

Shares	Original Shares	X	Number of Completed Months Prior to Termination of Employment Since Granted
Exercisable =	Granted		Number of Months from Grant Date to Full Exercisability of Option
		Minus: Number of Shares Exercisable or Exercised Prior to Termination of Employment	

Upon termination of employment by reason of Retirement or Disability, any portion of a Participant's Option that is then outstanding shall, to the extent not then exercisable, be immediately, forfeited and canceled in its entirety. To the extent that an Option is exercisable on the date of a Participant's Retirement or Disability, the Option will remain exercisable until the original Expiration Date of the Option. Notwithstanding the foregoing, if a Participant terminates employment pursuant to a Company Action under circumstances that also constitute Retirement for such Participant, then any portion of any Option of the Participant which becomes exercisable by reason of this Article 12 along with any portion of any Option of the Participant which is exercisable on the date of termination of employment shall be exercisable, until the original Expiration Date of the relevant Option. Upon the death of a Participant, the outstanding portion of such Participant's Option shall, to the extent not then exercisable, become immediately exercisable in full and the Option shall remain exercisable until the original Expiration Date of the Option. The Committee or its Delegate may, in its sole discretion, waive or modify the application of this Article 12 in the case of any individual Participant. This Article 12 applies only to Options; however the Committee may provide for similar treatment of other forms of Awards at the time that the Award is granted.

Article 13−Nonassignability

No award granted under the Plan shall be assigned or transferred by the Participant otherwise than by will or by the laws of descent and distribution, and such Award shall be exercisable, during the Participant's lifetime, only by the Participant.

Article 14−Change in Control Provisions

Notwithstanding any other provision of the plan to the contrary, unless the Committee shall determine otherwise at the time of grant with respect to a particular Award, in the event of a Change in Control any Options and Stock Appreciation Rights outstanding as of the date such Change in Control is determined to have occurred, and which are not then exercisable and vested, shall become fully exercisable and vested to the full extent of the original grant and any Restricted Stock or Other

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Stock Unit Awards which are not then vested shall become vested and non-forfeitable to the full extent of the Original Grant. If a Change in Control occurs or is to occur during a Performance Period, the Committee shall determine the extent to which Performance Awards shall vest or shall be adjusted in accordance with Article 3(c) in the event of a Change in Control. This determination shall be made by individuals who are members of the Incumbent Board as defined in the definition of a Change in Control in Article 1(d).

Article 15−Reservation of Shares

The Company, during the term of this Plan, will at all times reserve and keep available, and will seek or obtain from any regulatory body having jurisdiction any requisite authority necessary to issue and to sell, the number of Shares that shall be sufficient to satisfy the requirements of this Plan. The inability of the Company to obtain from any regulatory body having jurisdiction the authority deemed necessary by counsel for the Company for the lawful issuance and sale of Shares shall relieve the Company of any liability in respect of the failure to issue or sell Shares as to which the requisite authority has not been obtained.

Article 16−Taxes

The Company and any Subsidiary shall have the right to condition the grant or exercise of any Award on a Participant's payment of any applicable amounts required by a governmental agency to be withheld from payment to the Participant or paid or deducted by the Company or a Subsidiary in connection with an Award ("withholding tax"). The Company and any Subsidiary shall also have the right to deduct any withholding tax from a Participant's other compensation or to make any other arrangements to satisfy withholding tax obligations, including arrangements with one or more brokerage firms pursuant to cashless exercise procedures. The Company and any Subsidiary shall further have the right to deduct from any payment under an Award under the Plan or from a Participant's other compensation any tax or social insurance payment imposed on the Company or Subsidiary in connection with such Award.

Article 17−Employees Based Outside of the United States

Notwithstanding any provision of the Plan to the contrary, in order to foster and promote achievement of the purposes of the Plan or to comply with the provisions of laws in other countries in which the Company and its Subsidiaries operate or have Employees, the Committee or its Delegate, in its sole discretion, shall have the power and authority to (1) determine which Employees that are subject to the tax laws of nations other than the United States are eligible to participate in the Plan, (2) modify the terms and conditions of any Awards granted to such Employees (including the grant of Stock Appreciation Rights or some other comparable form of award ("Substitute Award") in lieu of Options, and (3) establish subplans, modified Option exercise procedures and other terms and procedures to the extent such actions may be necessary or advisable; *provided*, *however*, that the Committee may not grant such Awards that do not comply with the limitations of Article 3. Any subplans established under this Article 17 by the Committee shall be attached to this Plan as appendices. The terms of this Plan applicable to Options shall apply with like effect to Stock Appreciation Rights, Restricted Stock Awards, Performance Awards, Other Stock Unit Awards and Substitute Awards to the extent legally permissible.

Article 18−Rights to Continued Employment

Neither this Plan nor any Option shall be construed as giving any person the right to be retained in the employ of the Company or any Subsidiary. No Employee or Participant shall have any claim to be granted any Option under the Plan or to include any Option or its value in any form of severance or similar pay, or in any benefit plan or program which by its terms does not specifically include the

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value of the Option. There is no obligation of uniformity of treatment of Employees or Participants under the Plan. This Plan is of limited duration and creates no ongoing obligation of the Company to provide any future benefit of similar nature or value.

Article 19−Amendment of Plan

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The Board may amend the Plan at any time and from time to time. The Board may, at any time or from time to time, suspend or terminate this Plan in whole or in part.

No such amendment, suspension or termination of the Plan may, however, impair any Award granted prior to such amendment, suspension or termination, without the written consent of the affected Participant.

Article 20−Term of Plan

The Plan shall become effective as of October 1, 2000.

The Plan shall terminate on October 1, 2005 or at such earlier date as may be determined by the Board of Directors. Termination of the Plan, however, shall not affect the rights of Participants under Awards previously granted to them, and all unexpired Awards shall continue in force and operation after termination of the Plan except as they may lapse or be terminated pursuant to this Plan.

Article 21−Code Section 162(m) Provisions

(a) Notwithstanding any other provision of this Plan, if the Committee determines at the time Restricted Stock, a Performance Award or an Other Stock Unit Award is granted to a Participant that such Participant is, or may be as of the end of the tax year for which the Company would claim a tax deduction in connection with such Award, a Covered Employee, then the Committee may provide that this Article 21 is applicable to such Award under such terms as the Committee shall determine.

(b) If an Award is subject to this Article 21, then the lapsing of restrictions thereon and the distribution of cash, Shares or other property pursuant thereto, as applicable, shall be subject to the Company having a level of Net Income for the fiscal year preceding lapse or distribution set by the Committee within the time prescribed by Section 162(m) of the Code or the regulations thereunder in order for the level to be considered "pre-established". The Committee may, in its discretion, reduce the amount of any Performance Award or Other Stock Unit Award subject to this Article 24 at any time prior to payment based on such criteria as it shall determine, including but not limited to individual merit and the attainment of specified levels of one or any combination of the following: net cash provided by operating activities, earnings per Share from continuing operations, operating income, revenues, gross margin, return on operating assets, return on equity, economic value added, stock price appreciation, total shareowner return (measured in terms of stock price appreciation and dividend growth), or cost control, of the Company or the Subsidiary or division of the Company for or within which the Participant is primarily employed.

(c) Notwithstanding any contrary provision of the Plan other than Article 14, the Committee may not adjust upwards the amount payable pursuant to any Award subject to this Article 21, nor may it waive the achievement of the Net Income requirement contained in Article 21(b), except in the case of the death or disability of a Participant.

(d) Prior to the payment of any Award subject to this Article 21, the Committee shall certify in writing that the Net Income requirement applicable to such Award was met.

(e) The Committee shall have the power to impose such other restrictions on Awards subject to this Article 21 as it may deem necessary or appropriate to ensure that such Awards satisfy all requirements for "performance-based compensation" within the meaning of Section 162(m)(4)(C) of the Code, the regulations promulgated thereunder, and any successors thereto.

Article 22−Governing Law

The Plan, and the validity and construction of any Awards granted hereunder shall be governed by the laws of the State of Delaware.

IN WITNESS WHEREOF, the Company has caused this Plan, as amended, to be executed as of this 1st day of November, 2003.

For Avaya Inc.

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By: /s/ MARYANNE DIMARZO

Maryanne DiMarzo
Senior Vice President–Human Resources

Attest: /s/ PAMELA CRAVEN

Pamela Craven
Senior Vice President, General Counsel & Secretary

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Exhibit 10.38

AVAYA INC. LONG TERM INCENTIVE PLAN
FOR MANAGEMENT EMPLOYEES
Amended as of November 1, 2003

Article 1−Background and Purpose

The purpose of the Avaya Inc. Long Term Incentive Plan for Management Employees is to enhance shareholder value by reinforcing the Company's efforts to motivate Employees to contribute to the Company's growth and performance, and enabling the Company to attract and retain individuals of exceptional managerial talent upon whom, in large measure, the sustained progress, growth and profitability of the Company depend.

Article 2−Definitions

For the purposes of this Plan, the following words shall have the meanings ascribed to them below:

(a) Award

Any Option, Dividend Equivalent, Other Stock Unit Award, Substitute Award or any other right, interest, or option relating to Shares or other securities of the Company granted pursuant to the provisions of the Plan.

(b) Board

The Board of Directors of the Company.

(c) Change in Control

The happening of any of the following events:

(i) An acquisition by any individual, entity or group (within the meaning of Section 13 (d)(3) or 14 (d)(2) of the Exchange Act) (an "Entity") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of either (A) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); excluding, however, the following: (1) any acquisition directly from the Company, other than an acquisition by virtue of the exercise of a conversion privilege unless the security so being converted was itself acquired directly from the Company, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (4) any acquisition by any corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (iii) of this Article 2(c); or

(ii) A change in the composition of the Board such that the individuals who, as of the effective date of this Plan, as set forth in Article 17 (the "Effective Date"), constitute the Board (such Board shall be hereinafter referred to as the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; *provided*, *however*, that for purposes of this definition, that any individual who becomes a member of the Board subsequent to the Effective Date, whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who

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were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; and *provided*, *further however*, that any such individual whose initial assumption of office occurs as a result of or in connection with either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of an Entity other than the Board shall not be so considered as a member of the Incumbent Board; or

(iii) The approval by the stockholders of the Company of a merger, reorganization or consolidation or sale or other disposition of all or substantially all of the assets of the Company (each, a "Corporate Transaction") or, if consummation of such Corporate Transaction is subject, at

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the time of such approval by stockholders, to the consent of any government or governmental agency, the obtaining of such consent (either explicitly or implicitly by consummation); excluding however, such a Corporate Transaction pursuant to which (A) all or substantially all of the individuals and entities who are beneficial owners, respectively, of the Outstanding Company Stock and Outstanding Company Voting Securities immediately prior to such Corporate Transaction will beneficially own, directly or indirectly, more than 60% of, respectively, the outstanding shares of common stock, and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Corporate Transaction (including, without limitation, a corporation or other Person which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries (a "Parent Company")) in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (B) no Entity (other than the Company, any employee benefit plan (or related trust) of the Company, such corporation resulting from such Corporate Transaction or, if reference was made to equity ownership of any Parent Company for purposes of determining whether clause (A) above is satisfied in connection with the applicable Corporate Transaction, such Parent Company) will beneficially own, directly or indirectly, 50% or more of, respectively, the outstanding shares of common stock of the corporation resulting from such Corporate Transaction or the combined voting power of the outstanding voting securities of such corporation entitled to vote generally in the election of the directors unless such ownership resulted solely from ownership of securities of the Company prior to the Corporate Transaction, and (C) individuals who were members of the Incumbent Board will immediately after the consummation of the Corporate Transaction constitute at least a majority of the members of the board of directors of the corporation resulting from such Corporate Transaction (or, if reference was made to equity ownership of any Parent Company for purposes of determining whether clause (A) above is satisfied in connection with the applicable Corporate Transaction, of the Parent Company); or

(iv) The approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

(d) Code

The Internal Revenue Code of 1986, as amended.

(e) Committee

The Corporate Governance and Compensation Committee (or any successor committee) of the Board.

(f) Company

Avaya Inc., a Delaware corporation.

(g) Company Action

A Company or Subsidiary declared or initiated (i) termination from service under a force management program, (ii) sale of a unit or portion of a unit, (iii) transfer of a Participant to a corporation, partnership, limited liability company or other business entity in which the Company has a direct or indirect equity interest and which does not constitute a Subsidiary or (iv) placement of the job function of a

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Participant with an outsourcing contractor unless the successor employer has assumed the Awards of Participants who are employed by the successor employer after an event described in (ii), (iii) or (iv).

(h) Delegate

The person or committee authorized by the Committee or the Board to exercise specified authority under this Plan.

(i) Dividend Equivalent

Has the meaning assigned in Article 6(b).

(j) Disability or Disabled

Termination of employment under circumstances where the Participant qualifies for benefits under a long-term disability pay plan as provided in the Participant's Award.

(k) Employee

Any employee of the Company or any Subsidiary, excluding leased employees within the meaning of Section 414(n) of the Code.

(l) Exchange Act

The Securities Exchange Act of 1934, as amended.

(m) Expiration Date

The date specified in the Award after which rights under the Award expire.

(n) Fair Market Value

The average of the high and low sales prices of a Share as reported on the New York Stock Exchange on the Grant Date, or if no sales of Shares were reported on such date, the average of the high and low sales prices of a Share on the next preceding day on which sales were reported.

(o) Grant Date

The Grant Date shall be the date an Award is granted as set forth in the Award.

(p) Incentive Option

An Option granted under Article 7 that is intended to meet the requirements of Section 422 of the Code or any successor provision thereto.

(q) Option

An Award described in Article 7.

(r) Other Stock Unit Award

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An Award described in Article 8.

(s) Participant

An Employee who is selected by the Committee to receive an Award under the Plan.

(t) Person

Any individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization, limited liability company, other entity or government or political subdivision.

(u) Plan

The Avaya Long Term Incentive Plan for Management Employees.

(v) Retirement

Termination of the employment of a Participant with the Company or any Subsidiary under circumstances where the Participant qualifies for benefits under a retirement plan as provided in the Participant's Award.

(w) Share

A share of the common stock of the Company, par value $.01 per share.

(x) Stock Award Committee

A committee of one or more directors appointed by the Committee pursuant to Article 4.

(y) Subsidiary

A "subsidiary corporation" of the Company as defined in Section 424(f) of the Code, an entity in which the Company directly or indirectly owns 50% or more of the voting interests or an entity in which the Company has a significant equity interest, as determined by the Committee.

(z) Substitute Award

An Award granted in lieu of an Option pursuant to Article 14.

(aa) Term

The period beginning on October 1, 2000, and ending on October 1, 2007.

Article 3−Shares Available for Option; Adjustments

(a) Subject to adjustment as provided in Article 3(b), the aggregate number of Shares which may be made subject to Awards granted under this Plan during each calendar year shall not exceed 5% of the Shares issued and outstanding on the last day of the immediately preceding calendar year; (or, during the period beginning October 1, 2000, and ending on December 31, 2000, 5% of the Shares issued and

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outstanding on October 1, 2000) *provided that* such number shall, except as may otherwise be determined by the Committee, be increased in any year by the number of Shares available for grant under the Plan in previous years but not covered by Awards granted under the Plan in such years; *provided*, *further*, that if any Shares are subject to an Award that is forfeited, settled in cash, expires, or is otherwise terminated without issuance of Shares, such Shares shall again be available for Awards under the Plan if no Participant shall have received any benefits of ownership in respect thereof; *provided*, *further*, that no more than two million (2,000,000) Shares shall be available for the grant of Incentive Options under the Plan during the Term. In addition, the number of Shares available for grants under the Plan in any calendar year shall not be reduced by Awards granted or Shares issued by the Company through the assumption of, or in substitution or exchange for awards or the right or obligation to make future grants of awards in connection with the acquisition of another corporation or business entity or in connection with the assumption of any Award granted by Lucent Technologies Inc.

("Lucent") to an Employee who becomes an Avaya Individual as defined in the Employee Benefits Agreement dated as of October 1, 2000 between the Company and Lucent. Any Shares issued under the Plan may consist, in whole or in part, of authorized and unissued Shares, Shares purchased in the open market or otherwise, treasury Shares, or any combination of the foregoing, as the Board or the Committee may from time to time determine.

(b) In the event of any merger, reorganization, consolidation, recapitalization, stock dividend, stock split, reverse stock split, spin off or similar transaction or other change in corporate structure affecting the Shares, such adjustments and other substitutions shall be made to the Plan, and to Awards as the Committee in its sole discretion deems equitable or appropriate, including: such adjustments in the aggregate number, class and kind of Shares or other consideration which may be delivered under the Plan, in the aggregate or to any one Participant; in the number, class, kind and option or exercise price of Shares subject to outstanding Awards granted under the Plan; and in the number, class and kind of Shares subject to Awards granted under the Plan (including, if the Committee deems appropriate, the substitution of similar options to purchase the shares of, or other awards denominated in the shares of, another company); *provided*, *however*, that the number of Shares or other securities subject to any Award shall always be a whole number.

(c) The Committee shall be authorized to make adjustments in the terms and conditions of other Awards in recognition of unusual or nonrecurring events affecting the Company or its financial statements, or changes in applicable laws, regulations or accounting principles. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award in the manner and to the extent it shall deem desirable. In the event the Company shall assume outstanding employee benefit awards or the right or obligation to make future such awards in connection with the acquisition of another corporation or business entity, the Committee may, in its discretion, make such adjustments in the terms of Awards under the Plan as it shall deem appropriate.

Article 4−Administration

The Plan shall be administered by the Committee. The Committee shall be responsible to the Board for the operation of the Plan. The Committee may appoint one or more directors to serve as the Stock Award Committee to make grants of Awards, administer the Plan, discharge the duties of the Committee under Articles 5, 6, 7, 8, 9, and 14 with respect to Employees other than officers and directors of the Company, and adopt rules and regulations under the Plan and make interpretations of the Plan with respect to such Employees. If the Committee does not appoint a Stock Award Committee, the Plan shall be administered by the Committee. The Committee or the Stock Award Committee may appoint a Delegate, to administer and interpret the provisions of the Plan, promulgate rules and regulations under the Plan, discharge the duties of the Committee under Articles 9 and 14, designate employees to perform ministerial functions under this Plan and execute documents on behalf of the Company; *provided*, *however*, that any Delegate appointed pursuant to this Article 4 who is a Participant in the Plan shall not participate in making any decision that would benefit such Delegate, except to the extent such decision would only incidentally benefit the Delegate and would also generally benefit a larger class of Participants.

The interpretations and construction of any provision of the Plan by the Committee, the Stock Award Committee, or the Delegate, as the case may be, as well as any factual determinations, shall be final, unless otherwise determined by the Board. No member of the Board, the Committee, the Stock Award Committee or any Delegate shall be liable for any action or determination made by him or her in good faith.

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Article 5−Eligibility

The Committee, in its sole discretion, may grant an Award to any Employee who is actively employed by the Company or a Subsidiary. The adoption of this Plan shall not be deemed to give any Employee any right to be granted an Award, except and to the extent and upon such terms and conditions as may be determined by the Committee.

Article 6−Awards−General

(a) Awards may be granted to Participants either alone or in addition to any other type of Award granted under the Plan. Awards may be granted for no consideration, for such minimum consideration as is required by applicable law or for such other consideration as the Committee may determine. Any Award granted under the Plan shall be evidenced by documentation in such form as the Committee may from time to time approve. The prospective recipient of any Award shall not, with respect to such Award, be deemed to have become a Participant, or to have any rights with respect to such Award, until and unless such recipient has complied with the then applicable terms and conditions. The term of each Award shall be for such period of months or years from the Grant Date as may be determined by the Committee; *provided that* in no event shall the term of any Incentive Option exceed a period of ten (10) years from its Grant Date. The Committee may impose such conditions on the exercise or vesting of any Award as it shall deem appropriate.

(b) Subject to the provisions of this Plan and any Award, the recipient of an Award may, if so determined by the Committee, be entitled to receive, currently or on a deferred basis, interest or dividends, or interest or dividend equivalents (collectively, "Dividend Equivalents"), with respect to the number of Shares covered by the Award, as determined by the Committee, in its sole discretion, and the Committee may provide that such amounts (if any) shall be deemed to have been reinvested in additional Shares or otherwise reinvested.

Article 7−Options

An Option is a right to purchase Shares subject to the following terms and conditions and to such additional terms and conditions, not inconsistent with the provisions of the Plan, as the Committee shall deem desirable:

(a) **Option Price.** The exercise price per Share under an Option shall be determined by the Committee in its sole discretion; *provided that* except in the case of an Option pursuant to a Substitute Award, such option price shall not be less than the Fair Market Value of a Share on the Grant Date of the Option.

(b) **Exercisability.** Options shall be exercisable at such time or times as determined by the Committee at or subsequent to grant. Unless otherwise determined by the Committee at or subsequent to grant, no Incentive Option shall be exercisable prior to the first anniversary of the Grant Date of the Incentive Option.

(c) **Method Of Exercise.** Subject to the other provisions of the Plan and any applicable Award, any Option may be exercised by the Participant in whole or in part at such time or times, and the Participant may make payment of the option price in such form or forms, including, without limitation, payment by delivery of cash, Shares or other consideration (including, where permitted by law and the Committee, Awards) having a Fair Market Value on the exercise date equal to the total option price, or by any combination of cash, Shares and other consideration as the Committee may specify in the applicable Award.

(d) **Form of Options.** Each Option granted pursuant to the Plan shall be a nonqualified stock Option within the meaning of the Code unless specifically identified by the Committee as an Incentive

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Option at the time the Option is granted. In accordance with rules and procedures established by the Committee, the aggregate Fair Market Value (determined as of the time of grant) of the Shares with respect to which Incentive Options held by any Participant which are exercisable for the first time by such Participant during any calendar year under the Plan (and under any other benefit plans of the Company or of any parent or Subsidiary of the Company) shall not exceed $100,000 or, if different, the maximum limitation in effect at the time of grant under Section 422 of the Code, or any successor provision, and any regulations promulgated thereunder. The terms of any Incentive Option shall comply in all respects with the provisions of Section 422 of the Code, or any successor provision, and any regulations promulgated thereunder.

(e) **Form Of Settlement.** In its sole discretion, the Committee may provide, at the time of grant, that the Shares to be issued upon an Option's exercise shall be in the form of restricted stock or other similar securities, or may reserve the right so to provide after the time of grant.

Article 8−Other Stock Unit Awards

Other Awards of Shares ("Other Stock Unit Awards") may be paid in Shares, other securities of the Company, cash or any other form of property as the Committee shall determine upon the grant of the Other Stock Unit Award. Other Stock Unit Awards may be issued with such restrictions that the Committee may impose which restrictions may lapse separately or in combination at such time or times, in installments or otherwise, as the Committee shall determine. Shares purchased pursuant to Other Stock Unit Awards shall be purchased for such consideration as the Committee shall in its sole discretion determine, which shall not be less than the Fair Market Value of such Shares as of the Grant Date of such Award.

Article 9−Termination of Employment

Except as shall otherwise be provided in an Award, the provisions of this Article 9 shall govern rights of Participants to exercise Options following termination of employment. If a Participant terminates employment for any reason other than Retirement, Disability or death (i) any portion of the Participant's Options which are exercisable on the date employment terminates may be exercised until the earlier of ninety days following termination of employment or the original Expiration Date of the Option, and (ii) any portion of an Option that is not exercisable on the date employment terminates shall be forfeited and canceled, except that if the reason for the termination of employment is a Company Action, then the Option shall become immediately exercisable for the period specified in clause (i) with respect to the number of Shares determined by the following formula, and shall be forfeited and canceled with respect to the remaining Shares:

$$\text{Shares Exercisable} = \left(\text{Original Shares Granted} \times \frac{\text{Number of Completed Months Prior to Termination of Employment Since Granted}}{\text{Number of Complete Months from Grant Date to Full Exercisability of Option}} \right)$$

Minus: Number of Shares Exercisable Prior to Termination of Employment

Upon termination of employment by reason of Retirement or Disability, any portion of a Participant's Option that is then outstanding shall, to the extent not then exercisable, be immediately, forfeited and canceled in its entirety. To the extent that an Option is exercisable on the date of a Participant's Retirement or Disability, the Option will remain exercisable until the original Expiration Date of the Option. Notwithstanding the foregoing, if a Participant terminates employment pursuant to a Company Action under circumstances that also constitute Retirement for such Participant, then any

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portion of any Option of the Participant which becomes exercisable by reason of this Article 9 along with any portion of any Option of the Participant which is exercisable on the date of termination of employment shall be exercisable, until the original Expiration Date of the relevant Option. Upon the death of a Participant, the outstanding portion of such Participant's Option shall, to the extent not then exercisable, become immediately exercisable in full and the Option shall remain exercisable until the original Expiration Date of the Option. The Committee or its Delegate may, in its sole discretion, waive or modify the application of this Article 9 in the case of any individual Participant. This Article 9 applies only to Options; however the Committee may provide for similar treatment of other forms of Awards at the time that the Award is granted.

Article 10−Nonassignability

No award granted under the Plan shall be assigned or transferred by the Participant otherwise than by will or by the laws of descent and distribution, and such Award shall be exercisable, during the Participant's lifetime, only by the Participant.

Article 11−Change in Control Provisions

Notwithstanding any other provision of the plan to the contrary, unless the Committee shall determine otherwise at the time of grant with respect to a particular Award, in the event of a Change in Control any Options outstanding as of the date such Change in Control is determined to have occurred, and which are not then exercisable and vested, shall become fully exercisable and vested to the full extent of the original grant and any Other Stock Unit Awards which are not then vested shall become vested and non-forfeitable to the full extent of the original grant.

Article 12−Reservation of Shares

The Company, during the term of this Plan, will at all times reserve and keep available, and will seek or obtain from any regulatory body having jurisdiction any requisite authority necessary to issue and to sell, the number of Shares that shall be sufficient to satisfy the requirements of this Plan. The inability of the Company to obtain from any regulatory body having jurisdiction the authority deemed necessary by counsel for the Company for the lawful issuance and sale of Shares shall relieve the Company of any liability in respect of the failure to issue or sell Shares as to which the requisite authority has not been obtained.

Article 13−Taxes

The Company and any Subsidiary shall have the right to condition the grant or exercise of any Award on a Participant's payment of any applicable amounts required by a governmental agency to be withheld from payment to the Participant or paid or deducted by the Company or a Subsidiary in connection with an Award ("withholding tax"). The Company and any Subsidiary shall also have the right to deduct any withholding tax from a Participant's other compensation or to make any other arrangements to satisfy withholding tax obligations, including arrangements with one or more brokerage firms pursuant to cashless exercise procedures. The Company and any Subsidiary shall further have the right to deduct from any payment under an Award under the Plan or from a Participant's other compensation any tax or social insurance payment imposed on the Company or Subsidiary in connection with such Award.

Article 14−Employees Based Outside of the United States

Notwithstanding any provision of the Plan to the contrary, in order to foster and promote achievement of the purposes of the Plan or to comply with the provisions of laws in other countries in which the Company and its Subsidiaries operate or have Employees, the Committee or its Delegate, in

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its sole discretion, shall have the power and authority to (1) determine which Employees that are subject to the tax laws of nations other than the United States are eligible to participate in the Plan, (2) modify the terms and conditions of any Awards granted to such Employees (including the grant of stock appreciation rights or some other comparable form of award ("Substitute Award") in lieu of Options, and (3) establish subplans, modified Option exercise procedures and other terms and procedures to the extent such actions may be necessary or advisable; *provided*, *however*, that the Committee may not grant such Awards that do not comply with the limitations of Article 3. The terms of this Plan applicable to Options shall apply with like effect to Other Stock Unit Awards and Substitute Awards to the extent legally permissible. A stock appreciation right is a right to receive in cash the amount by which the Fair Market Value of a Share on the exercise date exceeds the value specified in the terms of the grant. A stock appreciation right shall otherwise have the same terms and conditions as an Option granted under this Plan.

Article 15−Rights to Continued Employment

Neither this Plan nor any Award shall be construed as giving any person the right to be retained in the employ of the Company or any Subsidiary. No Employee or Participant shall have any claim to be granted any Award under the Plan or to include any Award or its value in any form of severance or similar pay, or in any benefit plan or program which by its terms does not specifically include the value of the Award. There is no obligation of uniformity of treatment of Employees or Participants under the Plan. This Plan is of limited duration and creates no ongoing obligation of the Company to provide any future benefit of similar nature or value.

Article 16−Amendment of Plan

The Board may amend the Plan at any time and from time to time. The Board may, at any time or from time to time, suspend or terminate this Plan in whole or in part.

No such amendment, suspension or termination of the Plan may, however, impair any Award granted prior to such amendment, suspension or termination, without the written consent of the affected Participant.

Article 17−Term of Plan

The Plan shall become effective as of October 1, 2000.

The Plan shall terminate on October 1, 2007 or at such earlier date as may be determined by the Board of Directors. Termination of the Plan, however, shall not affect the rights of Participants under Awards previously granted to them, and all unexpired Awards shall continue in force and operation after termination of the Plan except as they may lapse or be terminated pursuant to this Plan.

Article 18−Governing Law

The Plan, and the validity and construction of any Awards granted hereunder shall be governed by the laws of the State of Delaware.

IN WITNESS WHEREOF, the Company has caused this Plan, as amended, to be executed on this 1st day of November, 2003.

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For Avaya Inc.

By: /s/ MARYANNE DIMARZO

Maryanne DiMarzo
Senior Vice President–Human Resources

Attest: /s/ PAMELA CRAVEN

Pamela Craven
Senior Vice President, General Counsel & Secretary

QuickLinks

AVAYA INC. LONG TERM INCENTIVE PLAN FOR MANAGEMENT EMPLOYEES Amended as of November 1, 2003
Article 1–Background and Purpose
Article 2–Definitions
Article 3–Shares Available for Option; Adjustments
Article 4–Administration
Article 5–Eligibility
Article 6–Awards–General
Article 7–Options
Article 8–Other Stock Unit Awards
Article 9–Termination of Employment
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Exhibit 13

FINANCIAL REVIEW
Avaya Inc. and Subsidiaries

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SELECTED FINANCIAL DATA

The following table sets forth selected financial information derived from our audited consolidated financial statements as of and for the fiscal years ended September 30, 2003, 2002, 2001, 2000 and 1999. On September 30, 2000, we were spun off from Lucent Technologies Inc. The consolidated financial statements as of and for each of the fiscal years ended prior to September 30, 2001 include allocations of certain Lucent corporate headquarters' assets, liabilities, and expenses relating to the businesses that were transferred to us from Lucent. Therefore, the selected financial information for the fiscal years ended September 30, 2000 and 1999, during which time we were a business unit of Lucent, may not be indicative of our future performance as an independent company. The selected financial information for all periods should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," and the consolidated financial statements and the notes included elsewhere in this annual report.

In reviewing the selected financial information, please note the following:

Commencing in fiscal 2002, we discontinued amortization of goodwill pursuant to the adoption of a new accounting pronouncement.

Purchased in-process research and development is attributable to the acquisitions of VPNet Technologies, Inc. and substantially all of the assets and certain liabilities of Quintus Corporation in fiscal 2001.

In October 2000, we sold four million shares of our Series B convertible participating preferred stock and warrants to purchase our common stock for $400 million. In March 2002, all shares of the Series B preferred stock were converted into approximately 38 million shares of our common stock, warrants for 286,682 shares of our common stock were exercised, and we sold an additional 14,383,953 shares of our common stock. The conversion of the Series B preferred stock and the exercise of warrants resulted in a charge to accumulated deficit of $125 million, which was included in the calculation of net income (loss) available to common stockholders for fiscal 2002.

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Total debt as of September 30, 2000 represents commercial paper obligations we assumed following the separation from Lucent and debt attributable to our foreign entities. During fiscal 2002, we repaid our commercial paper obligations and issued long-term convertible debt and senior secured notes.

In October 1999, we adopted Statement of Position 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use," and prospectively capitalized certain costs of computer software developed or obtained for internal use, which had been previously expensed as incurred. Accordingly, we began amortizing these costs on a straight-line basis over three to seven years.

	Year Ended September 30,				
	2003	2002	2001	2000	1999
	(dollars in millions, except per share amounts)				
Statement of operations information:					
Revenue	$ 4,338	$ 4,956	$ 6,793	$ 7,732	$ 8,268
Business restructuring charges (reversals) and related expenses, net	(5)	209	837	684	(33)
Goodwill and intangibles impairment charge	–	71	–	–	–
Purchased in-process research and development	–	–	32	–	–
Income (loss) before cumulative effect of accounting change	(88)	(666)	(352)	(375)	186
Cumulative effect of accounting change	–	–	–	–	96
Net income (loss)	$ (88)	$ (666)	$ (352)	$ (375)	$ 282
Earnings (loss) per common share–basic:					
Income (loss) available to common stockholders	$ (0.23)	$ (2.44)	$ (1.33)	$ (1.39)	$ 0.72
Cumulative effect of accounting change	–	–	–	–	0.37
Net income (loss) available to common stockholders	$ (0.23)	$ (2.44)	$ (1.33)	$ (1.39)	$ 1.09
Earnings (loss) per common share–diluted:					
Income (loss) available to common stockholders	$ (0.23)	$ (2.44)	$ (1.33)	$ (1.39)	$ 0.68
Cumulative effect of accounting change	–	–	–	–	0.35
Net income (loss) available to common stockholders	$ (0.23)	$ (2.44)	$ (1.33)	$ (1.39)	$ 1.03

	As of September 30,				
	2003	2002	2001	2000	1999
	(dollars in millions)				
Balance sheet information:					
Total assets	$ 4,057	$ 3,897	$ 4,648	$ 5,037	$ 4,239
Total debt	953	933	645	793	10
Series B convertible participating preferred stock	–	–	395	–	–

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Item 2. ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

The following section should be read in conjunction with the consolidated financial statements and the notes included elsewhere in this annual report. The matters discussed in "Management's Discussion and Analysis of Financial Condition and Results of Operations" contain certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Statements made that are not historical facts are forward-looking and are based on estimates, forecasts and assumptions involving risks and uncertainties that could cause actual results or outcomes to differ materially from those expressed in the forward-looking statements. The risks and uncertainties referred to above include, but are not limited to those described under "Forward-Looking Statements" in our fiscal 2003 Annual Report on Form 10-K.

Overview

We are a leading provider of communications systems, applications and services for enterprises, including businesses, government agencies and other organizations. Our product offerings include:

- Internet Protocol, or IP, telephony systems that converge voice, data and other traffic across a single unified network,
- traditional voice communication systems,
- contact center infrastructure and applications in support of customer relationship management,
- unified communications applications, which include voice and multi-media messaging, and
- structured cabling products.

We support our broad customer base with comprehensive global service offerings that help our customers plan, design, implement and manage their communications networks. We believe our global service organization is an important consideration for customers purchasing our products and applications and is a source of significant revenue for us, primarily from maintenance contracts.

Our revenue has declined significantly during the past several years. Revenue for the fiscal years ended September 30, 2001, 2002 and 2003 was $6,793 million, $4,956 million and $4,338 million, respectively. The decline in revenue is attributable primarily to declines in the market for our traditional business, enterprise voice communications systems, and the effect of general economic conditions on our customers' willingness to spend on enterprise communications technology during the last several years. Although revenue has declined over this three year period, the quarterly revenue trend in fiscal 2003 generally stabilized. The stabilization of revenue can be attributed to our products and services that support the market for converged communications. Specifically, revenue from the sale of our IP telephony systems increased throughout fiscal 2003, mitigating the decline in sales of our traditional voice systems. As described in more detail below, however, we cannot provide assurance that our revenue will not decline in the future as we believe enterprises may continue to be reluctant to increase spending on enterprise communications technology significantly in the near term.

The decline in revenue from enterprise voice communications systems is attributable in part to the significant investments in these systems made by enterprises in the late 1990s in anticipation of Year 2000. We believe enterprises have been reluctant to make additional investments in enterprise communications systems until their existing investments have been fully amortized over their 7-10 year useful life. In addition, we believe many customers are hesitant to invest in traditional voice communication systems as they are anticipating the widespread adoption of next-generation communications systems, such as IP telephony systems.

The adverse effect of the decline in revenue from our traditional business has been exacerbated by the continuing effect of the economic slowdown that began in 2001. As a result of the uncertain

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economic environment, we believe that enterprises continue to be concerned about their ability to increase revenues and thereby increase their profitability. Accordingly, they have tried to maintain or improve profitability through cost reduction and reduced capital spending. Because it is not clear that enterprise communications spending will improve significantly in the near term, we expect there to be continued pressure on our ability to generate revenue. Although we believe enterprises will ultimately invest in next-generation communications systems, we cannot predict the nature, timing and extent of those investments and as a result, if and when our revenue will increase.

Operating Segments

The following table sets forth the allocation of our revenue among our operating segments, expressed as a percentage of total revenue:

	Year Ended September 30,		
	2003	2002	2001
Revenue			
Operating Segments:			
Enterprise Communications Group	40.1%	42.0%	42.3%
Small and Medium Business Solutions	5.2	4.8	4.6
Services	42.2	41.7	33.6
Connectivity Solutions	12.5	11.5	19.5
Total	100.0%	100.0%	100.0%

Our four operating segments include the Enterprise Communications Group, Small and Medium Business Solutions, Services and Connectivity Solutions. In the third quarter of fiscal 2003, we changed the name of our Converged Systems and Applications segment to Enterprise Communications Group, or ECG. The ECG segment is focused on the sale of communications systems, products and applications to our large enterprise customers. Our primary offerings for this segment include IP telephony systems and traditional voice communications systems, contact center infrastructure and applications in support of customer relationship management, unified communications applications, and appliances, such as telephone sets. ECG's operating results also include our professional services organization that provides services required to customize our communication application solutions for individual customer needs. The Small and Medium Business Solutions, or SMBS, segment develops, markets and sells communications products and applications for small and medium-sized businesses including IP telephony systems, traditional voice communications systems, and unified communication and contact center applications. Traditional voice communications systems designed for small and medium-sized businesses are also known as Key and hybrid telephony systems. The Services segment offers a comprehensive portfolio of services that enable customers to plan, design, build and manage their communications networks. The Connectivity Solutions segment, which we agreed to sell in October 2003, provides structured cabling systems and electronic cabinets to our customers.

Collective Bargaining Agreements

Effective June 1, 2003, we renewed our collective bargaining agreements with the Communications Workers of America and the International Brotherhood of Electrical Workers. The renewed agreements are for a term of three years, ending May 31, 2006. The agreements provide for a 3% per year wage increase for employees during the duration of the agreements, and a 3% increase per year to employees' pension benefits for the duration of the agreements. The agreements also included additional cost-sharing by employees and retirees for certain medical health benefit co-payments. The renewed collective bargaining agreements continue our variable workforce arrangement that gives eligible employees who retired from Lucent as of September 30, 2000 the ability to continue working as

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on-call support service technicians at Avaya. This arrangement is intended to give us flexibility to match our workforce needs with our customers' cyclical service demands for the design, installation and maintenance of their communications systems.

Goodwill and Intangible Assets

Effective October 1, 2001, we adopted Statement of Financial Accounting Standards, or SFAS, No. 142, "Goodwill and Other Intangible Assets," or SFAS 142, which requires that goodwill and certain other intangible assets having indefinite lives no longer be amortized to earnings, but instead be subject to periodic testing for impairment. Intangible assets determined to have definite lives will continue to be amortized over their remaining useful lives. In connection with the adoption of SFAS 142, we reviewed the classification of our goodwill and other intangible assets, reassessed the useful lives previously assigned to other intangible assets, and discontinued amortization of goodwill. We also tested goodwill for impairment by comparing the fair values of our reporting units to their carrying values as of October 1, 2001 and determined that there was no goodwill impairment at that time. Based on this review, as of September 30, 2001, we classified $175 million as goodwill, $78 million as intangible assets, net and $2 million as other assets. We did not identify any intangible assets having indefinite lives.

For the fiscal year ended September 30, 2001, goodwill amortization, net of tax, amounted to $38 million. If we had adopted SFAS 142 at the beginning of fiscal 2001 and discontinued goodwill amortization, our net loss and loss per common share on a pro forma basis would have been as follows:

		Year Ended September 30, 2001
Pro Forma Results (dollars in millions, except per share amounts)		
Net loss, as reported	$	(352)
Goodwill amortization, net of tax		38
Adjusted net loss		(314)
Accretion of Series B preferred stock		(27)
Adjusted loss available to common stockholders	$	(341)
Adjusted loss per common share:		
Basic and Diluted	$	(1.20)

We conducted the required annual impairment review during the fourth quarter of fiscal 2003 and 2002. Updated valuations were completed for all reporting units with goodwill as of September 30, 2003 and 2002 using a discounted cash flow approach based on forward-looking information regarding market shares, revenues and costs for each reporting unit as well as appropriate discount rates. For fiscal 2003, we did not identify a goodwill impairment. For fiscal 2002, due to a significant downward movement in the U.S. stock market and, in particular, communications technology stocks, we experienced a decline in our market capitalization that negatively impacted the fair value of our reporting units. As a result, we recorded a goodwill impairment charge of $44 million as an operating expense in fiscal 2002 related to our SMBS operating segment.

As a result of the significant downturn in the communications technology industry, we noted a steep decline in the marketplace assumptions for virtual private networks in the fourth quarter of fiscal 2002 as compared with the assumptions used when we acquired this existing technology through our acquisition of VPNet Technologies, Inc., or VPNet, in February 2001. These circumstances caused us to review the recoverability of our acquired intellectual property and trademarks. We applied the provisions of SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived

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Assets to Be Disposed Of," or SFAS 121, to our intangible assets with definite lives and determined that the carrying value of these assets was impaired. Accordingly, we recorded a $27 million intangibles impairment charge as an operating expense in fiscal 2002 to write-down the carrying value of these intangible assets to an amount representing their discounted future cash flows. The $27 million impairment charge, which was recorded as accumulated amortization on the Consolidated Balance Sheet, was attributed $24 million to ECG and $3 million to SMBS.

Acquired intangible assets with definite lives are amortized over a period of three to six years. Amortization expense for such intangible assets was $12 million, $35 million and $32 million for the fiscal years ended September 30, 2003, 2002 and 2001, respectively. As of September 30, 2003, we estimate remaining amortization expense to be $4 million in 2004, and $2 million in 2005.

In addition, included in other assets as of September 30, 2003 and 2002 is an intangible asset of $63 million and $35 million, respectively, representing unrecognized prior service costs associated with the recording of a minimum pension liability in fiscal 2003 and 2002. This intangible asset may be eliminated or adjusted as necessary when the amount of minimum pension liability is reassessed, which is conducted at least annually. Based on our fiscal 2003 annual assessment of our minimum pension liability, the intangible asset increased by $28 million.

Internal Use Software

In the first quarter of fiscal 2003, we changed the estimated useful life of certain internal use software that is currently in service from seven to five years since a newer version of the software is expected to be implemented in fiscal 2004, which is two years earlier than we originally anticipated. This change increased amortization expense, net of tax, by approximately $9 million, equivalent to $0.02 per basic and diluted share, for the fiscal year ended September 30, 2003.

In the second quarter of fiscal 2002, we changed the estimated useful life of certain internal use software from three to seven years to reflect actual experience as a stand-alone company based on the utilization of such software. This change lowered amortization expense, net of tax, by approximately $8 million, equivalent to $0.02 per basic and diluted share, for the fiscal year ended September 30, 2002.

Business Restructuring Reserve

The business restructuring reserve reflects the remaining balance associated with the business restructuring charges recorded in fiscal 2000 through 2002. The following table summarizes the status of our business restructuring reserve and other related expenses during fiscal 2003, 2002 and 2001:

	Business Restructuring Reserve				Other Related Expenses		
	Employee Separation Costs	Lease Termination Obligations	Other Exit Costs	Total Business Restructuring Reserve	Asset Impairments	Incremental Period Costs	Total Business Restructuring Reserve and Related Expenses
	(dollars in millions)						
FISCAL 2001:							
Balance as of October 1, 2000	$ 345	$ 127	$ 27	$ 499	$ –	$ –	$ 499

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Charges	650	24	–	674	20	178	872
Reversals	(17)	(7)	(11)	(35)	–	–	(35)
Decrease in prepaid benefit costs/ increase in benefit obligations, net	(577)	–	–	(577)	–	–	(577)
Cash payments	(250)	(66)	(11)	(327)	–	(178)	(505)
Asset impairments	–	–	–	–	(20)	–	(20)
Reclassification	(55)	–	–	(55)	–	–	(55)
Balance as of September 30, 2001	$ 96	$ 78	$ 5	$ 179	$ –	$ –	$ 179
FISCAL 2002:							
Charges	116	84	1	201	7	21	229
Reversals	(13)	(4)	(3)	(20)	–	–	(20)
Net increase in benefit obligations	(3)	–	–	(3)	–	–	(3)
Cash payments	(128)	(56)	(3)	(187)	–	(21)	(208)
Asset impairments	–	–	–	–	(7)	–	(7)
Balance as of September 30, 2002	$ 68	$ 102	$ –	$ 170	$ –	$ –	$ 170
FISCAL 2003:							
Charges	–	–	–	–	–	16	16
Reversals	(19)	(2)	–	(21)	–	–	(21)
Cash payments	(45)	(38)	–	(83)	–	(16)	(99)
Balance as of September 30, 2003	$ 4	$ 62	$ –	$ 66	$ –	$ –	$ 66

Fiscal 2003

During fiscal 2003, we recorded reversals to income of $21 million primarily attributable to fewer involuntary employee separations than originally anticipated. Additionally, in fiscal 2003 we incurred $16 million in other related expenses associated with our fourth quarter of fiscal 2002 restructuring initiative. These expenses were primarily attributable to information technology, or IT, costs incurred to relocate the development of certain IT applications to India.

Fiscal 2002

During fiscal 2002, we experienced a decrease in our revenue as a result of the continued decline in spending on IT by our customers, specifically for enterprise communications products and services. Despite the unpredictability of the business environment, we remained focused on our strategy to return to profitability by focusing on sustainable cost and expense reduction, among other things. To achieve that goal, we initiated restructuring actions in fiscal 2002 to enable us to reduce costs and expenses further in order to lower the amount of revenue needed to reach our profitability break-even point. As a result, we recorded a pretax charge of $229 million in fiscal 2002 for business restructuring and related expenses. The components of the charge included $116 million of employee separation

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costs, $84 million of lease termination costs, $1 million of other exit costs, and $28 million of other related expenses. This charge was partially offset by a $20 million reversal to income primarily attributable to fewer involuntary employee separations than originally anticipated.

The charge for employee separation costs was composed of $113 million for severance and other related costs and $3 million primarily related to the cost of curtailment in accordance with SFAS No. 88, "Employers' Accounting for Settlements and Curtailments of Defined Benefit Pension Plans and for Termination Benefits," or SFAS 88. Lease termination costs included approximately $72 million of real estate, net of sublease income that management believed was probable, and $12 million of IT lease termination payments. The $28 million of other related expenses included relocation and consolidation costs, computer system transition expenditures, and asset impairments associated with our ongoing restructuring initiatives.

The employee separation costs were incurred in connection with the elimination of approximately 4,240 management and union-represented employee positions worldwide. As of September 30, 2003, this workforce reduction had been completed. Employee separation payments included in the business restructuring reserve were made either through a lump sum or a series of payments extending over a period of up to two years from the date of departure, which was an option available to certain union-represented employees. Payments to employees who elected to receive severance through a series of payments will extend through fiscal 2004.

The $72 million charge for real estate lease termination obligations includes approximately one million square feet of excess sales and services support, research and development, call center and administrative offices located primarily in the U.S., which had been entirely vacated as of September 30, 2003. The real estate charge also included an adjustment to increase the accrued amount for previously reserved sites due to a deterioration in the commercial real estate market. As a result, we extended our estimates as to when we will be able to begin subleasing certain vacated sites and established an additional accrual for lease payments originally estimated to have been offset by sublease rental income. Payments on lease obligations, net of estimated sublease income, will extend through 2011 because, in certain circumstances, the remaining lease payments were less than the termination fees.

Fiscal 2001

In fiscal 2001, we outsourced certain manufacturing facilities and accelerated our restructuring plan that was originally adopted in September 2000 to improve profitability and business performance as a stand-alone company. As a result, we recorded a pretax charge of $872 million in fiscal 2001 for business restructuring and related expenses. This charge was partially offset by a $35 million reversal to income primarily attributable to fewer involuntary employee separations than originally anticipated and more favorable than expected real estate lease termination costs.

The components of the fiscal 2001 charge included $650 million of employee separation costs, $24 million of lease termination costs, and $198 million of other related expenses. The charge for employee separation costs was composed of $577 million primarily related to enhanced pension and postretirement benefits, which represented the cost of curtailment in accordance with SFAS 88, and $73 million for severance, special benefit payments and other employee separation costs. The $198 million of other related expenses was composed of $178 million for incremental period expenses primarily to facilitate the separation from Lucent, including computer system transition costs, and $20 million for an asset impairment charge related to buildings and equipment at the Shreveport manufacturing facility. Employee separation costs of $55 million established in fiscal 2000 for union-represented employees at Shreveport were paid as enhanced severance benefits from existing pension and benefit assets and, accordingly, such amount was reclassified in fiscal 2001 out of the business restructuring reserve and recorded as a reduction to prepaid benefit costs.

The employee separation costs in fiscal 2001 were incurred in connection with the elimination of 6,810 employee positions of which 5,600 were through a combination of involuntary and voluntary separations, including an early retirement program targeted at U.S. management employees, and a workforce reduction of 1,210 employees due to the outsourcing of certain of our manufacturing operations. Employee separation payments included in the business restructuring reserve were made either through a lump sum or a series of payments

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extending over a period of up to two years from the date of departure, which was an option available to certain union-represented employees. This workforce reduction was completed as of September 30, 2002.

Real estate lease termination costs were incurred primarily in the U.S., Europe and Asia, and were reduced for sublease income that management believed was probable. Payments on lease obligations, which consisted of real estate and equipment leases, will extend through fiscal 2005. In fiscal 2001, accrued costs for lease obligations represented approximately 666,000 square feet of excess sales and services support offices, materials, stocking and logistics warehouses, and Connectivity Solutions facilities. As of September 30, 2002, we had entirely vacated this space.

Outsourcing of Certain Manufacturing Operations

We have outsourced all of the manufacturing operations related to our ECG and SMBS segments. Substantially all of these operations have been outsourced to Celestica Inc. The remaining portions of our manufacturing operations, other than the manufacturing of our Connectivity Solutions product offerings, are outsourced to a number of other contract manufacturers. We believe that outsourcing these operations will allow us to improve our cash flow over the next few years through a reduction of inventory and reduced capital expenditures.

We are not obligated to purchase products from Celestica in any specific quantity, except as we outline in forecasts or orders for products. In addition, we may be obligated to purchase certain excess inventory levels from Celestica that could result from our actual sales of product varying from forecast. Our outsourcing agreement with Celestica results in a concentration that, if suddenly eliminated, could have an adverse effect on our operations. While we believe that alternative sources of supply would be available, disruption of our primary source of supply could create a temporary, adverse effect on product shipments. There is no other significant concentration of business transacted with a particular supplier that could, if suddenly eliminated, have a material adverse effect on our financial position, results of operations or cash flows.

Acquisitions and Divestiture

Acquisition of Expanets

In November 2003, we acquired substantially all of the assets and assumed certain liabilities of Expanets, Inc., a subsidiary of NorthWestern Corporation. Expanets is a nationwide provider of networked communications and data products and services to small and mid-sized businesses and, prior to the acquisition, was one of our largest dealers. Under the terms of the asset purchase agreement, we paid NorthWestern approximately $55 million in cash. In addition, we paid approximately $39 million to creditors of Expanets to satisfy certain debt obligations of Expanets and deposited approximately $13.5 million into an escrow account to satisfy certain liabilities of Expanets. The purchase price is subject to adjustment within 90 days after the closing. We will include Expanets in our consolidated results of operations and financial position beginning in November 2003.

A substantial amount of Expanets' business was from Avaya-related product and service offerings. Since we do not expect to continue to sell other manufacturers' products that were previously distributed by Expanets, we expect to divest or eliminate the portion of the business that focused on distributing these products. We plan to report this portion of Expanets' business as discontinued operations beginning in our first quarter of fiscal 2004, and to have completely divested or eliminated

these discontinued operations by the end of the second quarter of fiscal 2004. We anticipate the discontinued operations to have marginal cash requirements and operating losses during this disposal period.

From a continuing operations perspective, we expect during the first two quarters of fiscal 2004, Expanets will have only a marginally negative impact on our results of operations. We expect that Expanets will be neutral or accretive to our earnings by no later than the end of our third quarter of fiscal 2004.

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Sale of Connectivity Solutions

In October 2003, we agreed to sell certain assets and liabilities of our Connectivity Solutions segment to CommScope, Inc. Under the terms of the agreement, we will receive a purchase price of $263 million, subject to adjustment, consisting of approximately $210 million of cash, a note in the amount of $18 million that is convertible into CommScope common stock one year after the closing, and CommScope common stock having a market value, at the time of the agreement, of $35 million. In addition, CommScope assumed approximately $75 million of primarily employee-related liabilities of Connectivity Solutions. The waiting period applicable to the sale under the Hart-Scott-Rodino Antitrust Improvements Act, as amended, has expired. We expect the sale of Connectivity Solutions to close no later than the second quarter of fiscal 2004. Because the products offered by Connectivity Solutions do not fit strategically with the rest of our product portfolio, we believe the sale will enable us to strengthen our focus on our core product offerings.

The carrying value of the net assets included in the disposal group was $293 million as of September 30, 2003. The final carrying values of the assets and liabilities to be transferred to Commscope will be determined upon the closing date, with the exception of the benefit obligations noted below.

Based upon an actuarial calculation using data as of September 30, 2003, we estimate that we will recognize a pension and postretirement curtailment loss of approximately $26 million upon the closing of the transaction and a settlement loss of approximately $37 million upon the transfer of pension and postretirement benefit assets and liabilities to Commscope. The estimated curtailment and settlement losses are subject to change based upon intervening events that may occur up to the closing date and the date on which the pension and postretirement benefit assets and liabilities are transferred, respectively. These losses will be recorded as a loss from discontinued operations. Additionally, these losses will increase the benefit obligation being transferred to Commscope by approximately $52 million and will remove an intangible asset of approximately $11 million that relates to unrecognized prior service costs associated with the benefit obligation.

On October 30, 2003, in exchange for the International Brotherhood of Electrical Worker's agreement to withdraw numerous pending and threatened grievances and arbitration demands against us in connection with the Connectivity Solutions business, we agreed to provide a one-time payment of five thousand dollars to certain employees and offer an enhanced retirement incentive for those employees who are pension eligible as of December 2, 2003. The settlement agreement is contingent upon the closing of the sale of Connectivity Solutions to CommScope. Total payments, excluding the retirement incentive offer, are not expected to exceed $7 million. We expect to take a one-time charge in the first quarter of fiscal 2004 of approximately $4 million related to the acceptance by 124 employees of the retirement incentive offer.

Other Acquisitions

As part of our continued efforts to broaden our portfolio of product offerings, we completed the following acquisitions during fiscal 2001. There were no material acquisitions in fiscal 2003 and 2002.

April 2001−Acquisition of substantially all of the assets, including $10 million of cash acquired, and the assumption of $20 million of certain liabilities of Quintus Corporation, a provider of comprehensive electronic customer relationship management solutions. We paid $29 million in cash for these assets. This transaction was accounted for as a purchase combination.

February 2001−Acquisition of VPNet, a privately held distributor of virtual private network solutions and devices. The total purchase price of $117 million was paid in cash and stock options. This transaction was accounted for as a purchase combination.

Results of Operations

The following table sets forth certain line items from our Consolidated Statements of Operations as a percentage of revenue for the periods indicated:

Year Ended September 30,

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	2003	2002	2001
Revenue	100.0%	100.0%	100.0%
Costs	58.8	60.7	57.4
Gross margin	41.2	39.3	42.6
Operating expenses:			
Selling, general and administrative	30.3	31.4	30.3
Business restructuring charges (reversals) and related expenses, net	(0.1)	4.2	12.3
Goodwill and intangibles impairment charge	–	1.4	–
Research and development	8.4	9.3	7.9
Purchased in-process research and development	–	–	0.5
Total operating expenses	38.6	46.3	51.0
Operating income (loss)	2.6	(7.0)	(8.4)
Other income (expense), net	(0.7)	(0.1)	0.5
Interest expense	(1.8)	(1.0)	(0.5)
Provision (benefit) for income taxes	2.1	5.3	(3.2)
Net loss	(2.0)%	(13.4)%	(5.2)%

Fiscal Year Ended September 30, 2003 Compared with Fiscal Year Ended September 30, 2002

Revenue

The following table presents our U.S. and non-U.S. revenue:

	Year Ended September 30,		Change	
	2003	2002	$	%
	(dollars in millions)			
Revenue:				
U.S. revenue	$ 3,204	$ 3,647	$ (443)	(12.2)%
Non-U.S. revenue	1,134	1,309	(175)	(13.4)%
Total revenue	$ 4,338	$ 4,956	$ (618)	(12.5)%

Revenue decreased 12.5%, or $618 million, to $4,338 million in fiscal 2003 from $4,956 million in fiscal 2002. Revenue decreased both in the U.S. and internationally as well as across all of our operating segments. The weak economy coupled with the downturn in the industry resulted in significant reductions in capital investments by enterprises of information technology and communications products and services. The protracted economic and business uncertainty resulted in hesitation by our customers to resume capital spending for telephony products and services. The decline in our revenue also reflects widespread layoffs, high vacancy rates in commercial real estate, a lack of business start-ups and excess capacity within the communications technology industry.

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Although revenue declined when comparing fiscal 2003 to fiscal 2002, the quarterly revenue trend in fiscal 2003 generally stabilized and was driven primarily by increases in our ECG and Connectivity Solutions segments. The trends underlying this stabilization of revenue can be attributed to our

products and services that support the market for converged communications products. Specifically, revenue from the sale of our IP hardware and software products had increased throughout fiscal 2003, mitigating the decline in sales of our traditional voice systems. See "Overview" for a discussion of our outlook for revenue trends in the future.

Costs and Gross Margin**−**Our costs of products consist primarily of materials and components, labor and manufacturing overhead. Our costs of services consist primarily of labor, parts and service overhead. Total costs decreased 15.2%, or $458 million, to $2,552 million in fiscal 2003 from $3,010 million in fiscal 2002. Gross margin percentage increased in fiscal 2003 to 41.2% as compared with 39.3% in fiscal 2002 attributable primarily to improvements in gross margin in our Connectivity Solutions and SMBS operating segments. Gross margin on products increased to 42.8% in fiscal 2003 from 39.5% in fiscal 2002. Our ECG and Services segments were the significant contributors to gross margin. ECG's gross margin percentage deteriorated slightly in fiscal 2003 from fiscal 2002, while Services' gross margin remained unchanged at 39.0% for both fiscal years. The overall improvement in gross margin percentage was attributable to lower production costs of our SYSTIMAX cabling products, a favorable product mix, the impact of our continuing cost reductions and restructuring activities, and benefits realized from our manufacturing outsourcing agreement with Celestica. In addition, gross margin was positively impacted by a curtailment gain of $15 million from freezing management pension benefit and postretirement health benefit accruals. All segments were adversely impacted by the decline in U.S. sales, which typically have higher margins than sales made outside of the U.S.

See "Results of Operations by Segment" for a discussion of segment revenue and operating income (loss).

Selling, General and Administrative**−**Our selling, general and administrative expenses consist primarily of salaries, commissions, benefits and other items. SG&A expenses decreased by 15.5%, or $241 million, to $1,314 million in fiscal 2003 from $1,555 million in fiscal 2002. The decrease was primarily due to savings associated with our business restructuring initiatives, which contributed to a reduction of $62 million in compensation expense, $33 million in reduced IT expenses, and a $7 million decrease in rental expense in connection with terminated real estate lease obligations. The reduction in IT expenses also reflects a favorable renegotiated agreement related to the outsourcing of certain IT functions and lower networking costs. In addition, our provision for uncollectible receivables decreased by $43 million due, in part, to a change in the methodology used to calculate bad debt expense that was effective in the third quarter of fiscal 2002. The decrease in our provision for uncollectible receivables also reflects the implementation of billing and collections process improvements. Furthermore, SG&A was positively impacted by a curtailment gain of $25 million from freezing management pension benefit and postretirement health benefit accruals. We also had a reduction of $23 million in our current year's amortization expense for intangible assets due to a lower amount of intangible assets being amortized as a result of both the write-down of intangibles recorded in the fourth quarter of fiscal 2002 and to the fact that certain assets became fully amortized at the end of fiscal 2002.

These decreases in SG&A were partially offset by an increase in amortization expense of $9 million resulting from a decrease in the estimated useful life of certain internal use software that occurred in the first quarter of fiscal 2003.

Business Restructuring Charges (Reversals) and Related Expenses, Net**−**For fiscal 2003, $5 million of business restructuring reversals, net of related expenses, included reversals of $21 million of business restructuring liabilities established in prior periods, partially offset by $16 million of other related expenses associated with our fourth quarter of fiscal 2002 business restructuring initiative. These expenses were primarily attributable to information technology costs incurred to relocate the

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development of certain IT applications to India. The reversal was attributable primarily to fewer involuntary employee separations than originally anticipated.

Business restructuring charges and related expenses of $209 million in fiscal 2002 included primarily (1) $116 million of charges related to employee separations, (2) $84 million of real estate and IT lease terminations, (3) $21 million for incremental period costs, which included relocation and consolidation costs and computer system transition expenditures, and (4) $7 million of asset impairments, partially offset by (5) a $20 million reversal of business restructuring liabilities primarily related to fewer involuntary employee separations than originally anticipated.

Goodwill and Intangibles Impairment Charge**−**A $71 million impairment charge for goodwill and intangibles was recorded in the fourth quarter of fiscal 2002 to write down the carrying value of goodwill and intangible assets to an amount representing their discounted future cash flows in accordance with SFAS 142 and SFAS 121. The charge was composed of $44 million for goodwill attributed to SMBS, and $27 million for intangibles of which $24 million was attributed to ECG and $3 million was attributed to SMBS. There was no impairment of goodwill or intangibles in fiscal 2003.

Research and Development**−**Our research and development expenses consist primarily of salaries and benefits. R&D expenses decreased 20.9%, or $96 million, to $363 million in fiscal 2003 from $459 million in fiscal 2002 attributed mainly to lower staffing levels in our R&D organization. In addition, R&D was positively impacted by a curtailment gain of $6 million from freezing management pension benefit and postretirement health benefit accruals. Investments in R&D have been focused on the high growth areas of our business while spending on our more mature product lines has decreased.

Other Income (Expense), Net−

	Year Ended September 30,	
	2003	**2002**
	(dollars in millions)	
Loss on foreign currency transactions	$ (2)	$ (6)
Gain on assets sold	14	2
Interest income(a)	15	20
Impairment of investments(b)	−	(17)
Loss on long-term debt extinguishment, net(c)	(34)	−
Lucent securities litigation charge(d)	(25)	−
Miscellaneous, net	1	(1)
Total other income (expense), net	$ (31)	$ (2)

(a) The decrease in interest income is due primarily to a lower outstanding balance on a term loan, formerly a line of credit, to Expanets.

(b) The $17 million impairment charge was related to investments that were generally concentrated in the emerging communications technology industry.

(c) The $34 million loss on long-term debt was attributable primarily to a $36 million loss recorded in January 2003 resulting from the exchange of a portion of our Liquid Yield Option™ Notes due 2021, or LYONs, having an accreted value of $43 million, or an aggregate principal amount at maturity of $84 million. This loss was partially offset by a $2 million gain recognized as a result of the repurchase of LYONs for cash in a series of open market transactions during fiscal 2003. The LYONs repurchased in these open market transactions had an accreted value of $160 million or an aggregate principal amount at maturity of $310 million.

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(d) See "Legal Proceedings−Lucent Securities Litigation" for a description of this charge.

Interest Expense−Interest expense increased by $27 million to $78 million in fiscal 2003 from $51 million in fiscal 2002. Interest expense for fiscal 2003 includes $58 million of interest on $640 million aggregate principal amount of 11 $^{1}/_{8}$% Senior Secured Notes due April 2009, or senior secured notes, $440 million of which were issued in March 2002 and $200 million of which were issued in May 2003. In addition, we recorded interest expense of $20 million for the amortization of debt discount, premium and deferred financing costs related primarily to our LYONs, which were issued in October 2001, and $3 million related to commitment and financing fees on our credit facility. Interest expense was partially offset by $3 million of income related to the amortization of a gain resulting from the termination of our interest rate swaps in December 2002.

Interest expense for fiscal 2002 included $25 million of interest expense on our senior secured notes, $21 million of amortization of both debt discount and deferred financing costs related primarily to our LYONs, and $9 million for interest on commercial paper and other short-term borrowings. Interest expense was partially offset by $4 million of income related to the hedging of the senior secured notes with our interest rate swaps.

Provision (Benefit) for Income Taxes−In fiscal 2003, we recorded a provision for income taxes of $93 million as compared with $265 million for fiscal 2002. The provision for fiscal 2003 of $93 million included an $83 million provision to increase the deferred tax asset valuation allowance, a $22 million provision for state and foreign income taxes, a $4 million provision for other adjustments, a $10 million benefit related to the early extinguishment in January 2003 of a portion of our LYONs, and a $6 million benefit related to a favorable audit settlement. The $83 million provision for the increase in the deferred tax asset valuation allowance reflects the difference between the actual and expected tax gain associated with the LYONs exchange offer.

The provision for fiscal 2002 of $265 million included a $364 million provision related to the establishment of a deferred tax asset valuation allowance, a provision of $57 million related to an unfavorable geographic distribution of earnings and losses, and a benefit of $156 million attributable to operational losses incurred for the year.

Fiscal Year Ended September 30, 2002 Compared with Fiscal Year Ended September 30, 2001

Revenue

The following table presents our U.S. and non-U.S. revenue:

	Year Ended September 30,		Change	
	2002	2001	$	%
	(dollars in millions)			
Revenue:				
U.S. revenue	$ 3,647	$ 5,158	$ (1,511)	(29.3)%
Non-U.S. revenue	1,309	1,635	(326)	(19.9)
Total revenue	$ 4,956	$ 6,793	$ (1,837)	(27.0)%

Revenue decreased 27.0%, or $1,837 million, to $4,956 million for fiscal 2002 from $6,793 million in fiscal 2001, due to decreases across each of our operating segments. Revenue declines in our core business, which is made up of ECG, SMBS, and Services, reflects a continued decline in spending on enterprise information technology in general, and on communications products and services in particular. In fiscal 1999 and 2000, the communications technology industry experienced strong economic growth and significant investing by enterprises in

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related products and services. In fiscal 2001, growth within this industry began to slow particularly in the U.S. as our customers' focus changed from building new networks to limiting capital spending and concentrating on extracting maximum value from existing systems. This trend continued in fiscal 2002 as the protracted economic and business

uncertainty led to reluctance by our customers to resume capital spending for telephony products and services. In addition, widespread layoffs, high vacancy rates in commercial real estate, a lack of business start-ups and excess capacity within the communications technology industry adversely impacted our revenues.

Costs and Gross Margin−Total costs decreased 22.8%, or $887 million, to $3,010 million in fiscal 2002 from $3,897 million in fiscal 2001. Gross margin percentage decreased to 39.3% in fiscal 2002 from 42.6% in fiscal 2001. The decrease in gross margin was attributable to ECG, Connectivity Solutions, and SMBS, partially offset by an increase in Services' gross margin. Because sales within the U.S., including both direct and indirect channels, typically have higher margins than those sales made internationally, the drop in U.S. sales adversely impacted all segments.

See "Results of Operations by Segment" for a discussion of segment revenue and operating income (loss).

Selling, General and Administrative−SG&A expenses decreased 24.3%, or $500 million, to $1,555 million in fiscal 2002 from $2,055 million in fiscal 2001. The decrease was primarily due to savings associated with our business restructuring initiatives, including a reduction of $301 million in salaries and other employee related expenses as a result of lower staffing levels and a $49 million decrease in rental expense in connection with terminated real estate lease obligations. The decline was also due to higher costs incurred during fiscal 2001 including higher incentive compensation expense of $16 million related to performance bonuses and higher marketing and promotional costs of $103 million related to enhancing awareness of the Avaya brand. During fiscal 2001, we also incurred start-up expenses of $48 million related to launching our brand in the marketplace.

The decrease in SG&A is also attributable to our adoption of SFAS 142. Accordingly, we did not record any goodwill amortization in fiscal 2002 as compared with $40 million in fiscal 2001. In addition, we increased the estimated useful life of certain internal use software during the second quarter of fiscal 2002, which lowered depreciation expense by $13 million in fiscal 2002.

The reduction in SG&A expenses were partially offset by an increase of $16 million of IT related expenses primarily attributable to higher telecommunication expenses.

Business Restructuring Charges (Reversals) and Related Expenses, Net−Business restructuring charges and related expenses of $209 million in fiscal 2002 included primarily (1) $116 million of charges related to employee separations, (2) $84 million of real estate and IT lease terminations, (3) $21 million for incremental period costs, which included relocation and consolidation costs and computer system transition expenditures, and (4) $7 million of asset impairments, partially offset by (5) a $20 million reversal of business restructuring liabilities primarily related to fewer involuntary employee separations than originally anticipated.

The $837 million of business restructuring charges and related expenses in fiscal 2001 included (1) $540 million for our accelerated restructuring plan, which was composed primarily of enhanced pension and healthcare benefits that were offered through an early retirement program, severance and terminated lease obligations, (2) $134 million primarily for employee separation costs associated with the outsourcing of certain manufacturing operations to Celestica, (3) $178 million representing incremental period costs largely associated with our separation from Lucent including computer system transition costs such as data conversion activities, asset transfers and training, and (4) a $20 million asset impairment charge related to assets to be disposed of in connection with our manufacturing outsourcing initiative, partially offset by (5) a $35 million reversal of business restructuring liabilities originally recorded in September 2000, primarily related to fewer involuntary employee separations than originally anticipated.

Goodwill and Intangibles Impairment Charge−A $71 million impairment charge for goodwill and intangibles was recorded in the fourth quarter of fiscal 2002 to write down the carrying value of

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goodwill and intangible assets to an amount representing their discounted future cash flows in accordance with SFAS 142 and SFAS 121. The charge was composed of $44 million for goodwill attributed to SMBS, and $27 million for intangibles of which $24 million was attributed to ECG and $3 million was attributed to SMBS.

Research and Development–R&D expenses decreased 14.4%, or $77 million, to $459 million in fiscal 2002 from $536 million in fiscal 2001. Although R&D spending decreased, our R&D expense as a percentage of total revenue increased from 7.9% in fiscal 2001 to 9.3% in fiscal 2002 due to a greater rate of decline in our revenue than in R&D spending.

Purchased In-Process Research and Development–The $32 million expense recorded in fiscal 2001 reflects charges associated with our acquisitions of VPNet in February 2001, and the purchase of substantially all of the assets and certain liabilities of Quintus in April 2001. The purchase price for these acquisitions included certain technologies that had not reached technological feasibility and had no future alternative use and, accordingly, the value allocated to these technologies was capitalized and immediately expensed at acquisition. There was no charge in fiscal 2002 for purchased in-process research and development.

Other Income (Expense), Net–

	Year Ended September 30,	
	2002	**2001**
	(dollars in millions)	
Loss on foreign currency transactions	$ (6)	$ (5)
Gain on assets sold	2	6
Interest income(a)	20	27
Impairment of investments(b)	(17)	–
Miscellaneous, net	(1)	3
Total other income (expense), net	$ (2)	$ 31

(a) Interest income in fiscal 2002 included $11 million of interest earned on a line of credit extended to Expanets and $9 million of interest on cash balances. Fiscal 2001 interest income included $4 million of interest on the Expanets line of credit and $23 million of interest on cash balances. The decrease in interest on cash balances was due to lower interest rates in fiscal 2002.

(b) The $17 million impairment charge was related to investments that were generally concentrated in the emerging communications technology industry.

Interest Expense–Interest expense increased 37.8%, or $14 million, to $51 million in fiscal 2002 from $37 million in fiscal 2001. The increase in interest expense is largely attributed to a higher amount of weighted average debt outstanding. During the first and second quarters of fiscal 2002, we replaced our commercial paper with long-term debt, which carried a higher rate of interest. During fiscal 2002, we recorded interest expense of $41 million relating to our LYONs and senior secured notes. In addition, we incurred $22 million of issuance costs in fiscal 2002 related to these debt issuances, which have been deferred and $5 million had been amortized to interest expense in fiscal 2002. The increase in interest expense was partially offset by a $4 million favorable impact resulting from the hedging of our senior secured notes with interest rate swaps.

Provision (Benefit) for Income Taxes–The effective tax provision rate for fiscal 2002 was higher than the U.S. statutory rate due to an increase in the net deferred tax asset valuation allowance of $364 million. The effective tax benefit rate excluding this charge would have been

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24.7%, which was substantially lower than the U.S. statutory rate primarily due to an unfavorable geographic distribution of earnings and losses.

The effective tax benefit rate of 38.3% in fiscal 2001 was higher than the U.S. statutory rate primarily due to acquisition related costs.

Results of Operations by Segment

Operating Segments

We manage our operations in four segments including ECG, SMBS, Services and Connectivity Solutions. Other expenses that are not identified with the operating segments such as business restructuring charges and related expenses and costs incurred to maintain vacant real estate facilities are included in corporate.

Fiscal Year Ended September 30, 2003 Compared with Fiscal Year Ended September 30, 2002

	Year Ended September 30,		Change	
	2003	2002	$	%
	(dollars in millions)			
Revenue:				
Enterprise Communications Group	$ 1,738	$ 2,080	$ (342)	(16.4)%
Small and Medium Business Solutions	225	236	(11)	(4.7)
Services	1,833	2,068	(235)	(11.4)
Connectivity Solutions	542	572	(30)	(5.2)
Total revenue	$ 4,338	$ 4,956	$ (618)	(12.5)%

	Year Ended September 30,		
	2003	2002	$ Change
	(dollars in millions)		
Operating Income (Loss):			
Enterprise Communications Group	$ (62)	$ (205)	$ 143
Small and Medium Business Solutions	(3)	(24)	21
Services	157	271	(114)
Connectivity Solutions	3	(72)	75
Total segment operating income (loss)	95	(30)	125
Corporate:			
Business restructuring (charges) reversals and related expenses, net	5	(209)	214
Other unallocated amounts	14	(109)	123
Total operating income (loss)	$ 114	$ (348)	$ 462

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ECG

ECG's revenue, which represented 40.1% and 42.0% of our total revenue in fiscal 2003 and 2002, respectively, decreased by $342 million, or 16.4%, from fiscal 2002 due primarily to declines of $287 million in our converged systems and communication appliances division and $66 million in applications. During the fourth quarter of fiscal 2003, we realigned the components of our ECG operating segment. As a result, we merged most of our multi-media contact center, which we formerly referred to as customer relationship management, or CRM, and unified communications and formed a new division referred to as applications. We also formed a division referred to as communications appliances, which consists mainly of hardware such as telephone sets and software that resides on alternative endpoints, such as our IP Softphone which provides the functionality of a digital telephone

on a personal computer or handheld device. The appliances division now includes portions of the divisions formerly referred to as converged enterprise systems and CRM. To date, our communication appliances have typically been sold as components of a larger sale of a converged system.

The reduction in this segment's revenue was due primarily to the restraint on capital spending by our customers, which resulted in lower sales volumes compounded by increased pricing pressures. Although total revenue declined when comparing fiscal 2003 to fiscal 2002, the quarterly revenue trend in fiscal 2003 steadily improved, with the exception of the third quarter in which revenues dipped to their lowest level for the year. Upon our introduction of next generation enterprise class IP telephony solutions in February 2002, we initially saw cautiousness among our customers to transition to these IP-based telecommunications systems. In fiscal 2003, however, we saw an increased willingness by our customers to invest in IP telephony systems as revenue from our IP portfolio grew as a percentage of our overall revenue. Our IP portfolio is made up of hardware and software and includes mainly gateways, servers, Avaya Communication Manager software and IP phones. Sales of gateways have increased at a faster rate than sales of communications servers which we believe indicates that customers who have already deployed our IP systems are now adding additional sites to their IP networks, and larger customers are beginning larger deployments of our IP offerings across their businesses. This trend is partially attributable to our ability to migrate our customers to IP telephony while preserving their existing telecommunications investments. In fiscal 2003, ECG's sales through the indirect channel increased to 47.9% of total ECG revenue from 46.8% in fiscal 2002.

Despite the decrease in revenue, ECG's operating loss in fiscal 2003 improved by $143 million as compared with fiscal 2002. This improvement was attributable to declines in SG&A and R&D expenses due primarily to savings associated with our business restructuring initiatives related to headcount. Additionally, our continued focus on productivity and effectiveness led to less, but more targeted spending on advertising and marketing. R&D expenses also declined due to the shift away from investing in mature product lines and focusing investments primarily on strategic and higher growth areas of our business. These expense reductions were partially offset by a slight decline in gross margin percentage. This decline was primarily due to increased discounts resulting from pricing pressures and a higher mix of indirect sales, partially offset by efficiencies gained in our manufacturing process through our outsourcing agreement with Celestica.

SMBS

SMBS' revenue represented 5.2% and 4.8% of our total revenue in fiscal 2003 and 2002, respectively. Revenue in this segment declined by $11 million from fiscal 2002, of which a significant portion occurred in the U.S. This reduction was mitigated by the impact of the introduction in the second quarter of fiscal 2002 of IP Office, our IP telephony offering for small and mid-sized enterprises. Revenue from IP Office represented 22% of total SMBS' revenue in fiscal 2003 compared to 10% in fiscal 2002. Sales from our SMBS segment were generated almost entirely through the indirect channel.

SMBS' operating loss in fiscal 2003 improved by $21 million compared with fiscal 2002. This improvement was due primarily to savings associated with the development of a more cost effective support organization within the SMBS segment. Furthermore, gross margin percentage increased due to a favorable product mix, which included an increase in sales of IP Office, and operational efficiencies gained through outsourcing of manufacturing.

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Services

Services' revenue, which represented 42.2% and 41.7% of our total revenue in fiscal 2003 and 2002, respectively, decreased by $235 million, of which a large portion occurred within the U.S. This decline was largely due to a decline in maintenance contract renewals caused by the softened economy,

customer cost cutting initiatives and the decline in fiscal 2002 product sales. Because maintenance contracts take effect after a one-year warranty period ends, declines in product sales have a direct effect on maintenance contract revenue in the year following the product sales. The decline in Services' revenue also reflects the full effect in fiscal 2003 of the loss of a major services contract in our Europe/Middle East/ Africa region in the second quarter of fiscal 2002, and the renegotiation of a maintenance contract with Expanets, in March 2002, which extended the term of the agreement but lowered the monthly revenue. In addition, we saw a decline in our maintenance services billed on a time and materials basis due also to customer cost reduction initiatives and reduced demand for equipment adds, moves and changes. Lower product sales in our ECG segment resulted in fewer installations of communication networks. Outsourcing, which is part of our contract-based revenue, declined primarily due to reduced pricing on renewal contracts, the consolidation of call centers by our customers and fewer active ports. While revenue in our Services segment declined on a year over year basis, revenue on a quarterly basis in fiscal 2003 remained steady and primarily reflects a stabilization of our contract-based revenue. Services revenue generated through our direct channel represented 84.6% of this segment's revenue in fiscal 2003 as compared with 83.1% in fiscal 2002.

Services' operating income in fiscal 2003 decreased by $114 million compared with fiscal 2002 driven primarily by revenue erosion. Despite this revenue decline, gross margin percentage remained unchanged in fiscal 2003 versus fiscal 2002 and reflects our cost reduction initiatives including headcount reductions associated with business restructuring activities and improved utilization of our technician workforce. R&D expenses increased primarily from investments in the enhancement and further development of service diagnostic tools. Additionally, a small increase in SG&A was primarily due to the creation of a dedicated sales organization in the first quarter of fiscal 2003. This increase is net of a reduction in fiscal 2003 in bad debt expense resulting from billing and collection process improvements.

Connectivity Solutions

Connectivity Solutions' revenue, which represented 12.5% and 11.5% of our total revenue in fiscal 2003 and 2002, respectively, decreased by $30 million due to declines of $34 million in sales of ExchangeMAX® cabling for telecommunications services providers and $16 million in sales related to electronic cabinets, a service provider offering, partially offset by an increase of $20 million in sales of SYSTIMAX® structured cabling systems for enterprises. These revenue declines, which occurred predominantly in the U.S., were due to a continued constraint on the capital budgets of telecommunications service providers. Revenue generated from SYSTIMAX represented $434 million, or 80.1%, and $414 million, or 72.4%, of Connectivity Solutions' total revenue in fiscal 2003 and 2002, respectively. The $20 million increase in SYSTIMAX revenue, which reflects a $15 million increase internationally, was a result of our strategy implemented at the beginning of the market recession to redesign our product and reduce standard pricing. While Connectivity Solutions' revenue declined in fiscal 2003 as compared with fiscal 2002, revenue on a quarterly basis steadily increased throughout fiscal 2003. Sales through our indirect channel increased to 85.0% of Connectivity Solutions' revenue in fiscal 2003 from 78.6% in fiscal 2002.

Despite the decline in revenue, Connectivity Solutions' operating income in fiscal 2003 improved by $75 million compared with fiscal 2002 due primarily to an increase in gross margin percentage, which more than doubled year over year. The increase in gross margin percentage was primarily attributable to reduced headcount and lower production costs of SYSTIMAX cabling as a result of efficiencies gained from capital expenditures made during fiscal 2002 that focused on automation of processes. Additionally, cost savings related to purchased materials were generated by negotiating more favorable pricing terms with vendors.

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Fiscal Year Ended September 30, 2002 Compared with Fiscal Year Ended September 30, 2001

	Year Ended September 30,		Change	
	2002	2001	$	%
	(dollars in millions)			
Revenue:				
Enterprise Communications Group	$ 2,080	$ 2,871	$ (791)	(27.6)%
Small and Medium Business Solutions	236	313	(77)	(24.6)
Services	2,068	2,286	(218)	(9.5)
Connectivity Solutions	572	1,323	(751)	(56.8)
Total Revenue	$ 4,956	$ 6,793	$ (1,837)	(27.0)%

	Year Ended September 30,		
	2002	2001	$ Change
	(dollars in millions)		
Operating Income (Loss):			
Enterprise Communications Group	$ (205)	$ 10	$ (215)
Small and Medium Business Solutions	(24)	(13)	(11)
Services	271	168	103
Connectivity Solutions	(72)	257	(329)
Total segment operating income (loss)	(30)	422	(452)
Business restructuring (charges) reversals and related (expenses), net	(209)	(885)	676
Other unallocated amounts	(109)	(101)	(8)
Total operating loss	$ (348)	$ (564)	$ 216

ECG

ECG's revenue, which represented 42.0% and 42.3% of our total revenue in fiscal 2002 and 2001, respectively, declined by $791 million in fiscal 2002 predominantly due to declines of $551 million in converged systems, $158 million in CRM, and $63 million in unified communications. Although revenue in regions outside of the U.S. declined, the majority of the reduction was seen in the U.S. This was consistent with the industry trend occurring in the U.S. at the time as enterprises restrained capital spending due to economic uncertainty. In addition, enterprises were hesitant to commit to investments in next-generation products as they evaluated technological advances made in the industry and several new IP telephony products introduced by us and certain competitors in fiscal 2002. In particular, in February 2002, we introduced our next generation enterprise class IP telephony solutions. This trend was compounded by the continued decline in demand for our traditional, more mature product lines. Sales through our indirect channel increased to 46.8% of total ECG revenue in fiscal 2002 from 43.0% in fiscal 2001.

ECG's operating loss worsened by $215 million, to $205 million of operating loss in fiscal 2002 from $10 million of operating income in fiscal 2001. This change was primarily attributable to a lower gross margin associated with the decline in revenue in fiscal 2002. Gross margin percentage declined due to an unfavorable geographic sales mix, which was attributable to a decline in sales in the U.S., and an unfavorable channel mix as sales from our indirect channel increased. The declines in revenue and gross margin percentage were partially offset by lower SG&A and R&D expenses. The decreases in SG&A and R&D expenses were primarily due to savings associated with our business restructuring

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initiatives. Sales and marketing costs within SG&A expenses decreased due to a stronger concentration of sales through the indirect channel.

SMBS

Although revenue in this segment declined by $77 million from fiscal 2001, the reduction was mitigated partially by the impact of the introduction in the second quarter of fiscal 2002 of IP Office, our IP telephony offering for small and mid-sized enterprises. More than half of the revenue decline was seen in the U.S. Sales from the SMBS segment, which were almost entirely indirect, represented 4.8% and 4.6% of our total revenue in fiscal 2002 and 2001, respectively.

SMBS' operating loss worsened by $11 million to $24 million in fiscal 2002 from $13 million in fiscal 2001. This decline was primarily attributable to a lower gross margin percentage due to a reduction in revenue, along with increases in standard material costs. This decline was partially offset by a reduction in SG&A expenses due to cost savings associated with our business restructuring initiatives predominantly associated with headcount reductions.

Services

Services' revenue, which represented 41.7% and 33.6% of our total revenue in fiscal 2002 and 2001, respectively, decreased by $218 million from fiscal 2001 largely as a result of the renegotiation of a maintenance contract with Expanets in March 2002, which extended the term of the agreement but lowered the monthly revenues, and the loss of a major services contract in our Europe/Middle East/Africa region during the second quarter of fiscal 2002. In addition, the economic constraint on discretionary spending resulted in a depressed demand for maintenance billed on a time and materials basis, and cuts in capital expenditures resulted in lower demand for equipment adds, moves and changes. Lower product sales and financial difficulties of certain service providers resulted in fewer installations as well as less training and consulting services delivered to our customers. Sales through our indirect channel decreased to 16.8% of total Services' revenue in fiscal 2002 from 20.1% in fiscal 2001. The $218 million decline in this segment's revenue was seen almost entirely in the U.S.

Services' operating income increased by $103 million, to $271 million in fiscal 2002 from $168 million in fiscal 2001. This increase was primarily attributed to improved gross margin percentage due to efficiencies gained from reducing headcount and employing a variable workforce approach to meet periods of high demand.

Connectivity Solutions

Connectivity Solutions' revenue, which represented 11.5% and 19.5% of our total revenue in fiscal 2002 and 2001, respectively, decreased by $751 million due to declines of $303 million in sales of ExchangeMAX® cabling for service providers, $283 million in sales of SYSTIMAX® structured cabling systems for enterprises, and $165 million in sales related to electronic cabinets. ExchangeMAX sales, which accounted for $87 million of total Connectivity Solutions' revenue in fiscal 2002, dropped significantly due to a decline in sales volumes caused by a lack of capital spending by telecommunications service providers. The main contributors to the decline in SYSTIMAX revenue, which represented $414 million of total Connectivity Solutions' revenue in fiscal 2002, were a constraint on spending by our customers on large infrastructure projects, combined with the implementation of our strategic initiative that began in the first half of fiscal 2002 to lower cable prices. Pricing pressure resulting from excess cable manufacturing capacity was another contributing factor. Revenue from electronic cabinets, a service provider offering, was $71 million in fiscal 2002. In response to a decline in DSL (Digital Subscriber Line) and wireless site installations, which are two main drivers behind sales of electronic cabinets, service providers reduced spending related to electronic cabinets. Sales through our indirect channel increased to 78.6% of total Connectivity Solutions' revenue in fiscal 2002 from 60.9% in fiscal 2001. The majority of the decline in this segment's revenue occurred within the U.S.

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Connectivity Solutions' operating loss worsened by $329 million, from $257 million of operating income in fiscal 2001, to $72 million of operating loss in fiscal 2002. This change was driven by a lower gross margin predominantly attributable to the sharp decline in sales volume while factory costs remained relatively fixed. The decline in gross margin was partially offset by lower SG&A and R&D expenses, which were due to savings associated with lower staffing levels as a result of our business restructuring initiatives.

Liquidity and Capital Resources

Our cash and cash equivalents increased to $1,192 million at September 30, 2003 from $597 million at September 30, 2002. The $595 million increase resulted primarily from an increase in net cash provided by financing and operating activities of $421 million and $197 million, respectively, partially offset by $34 million of cash used for investing activities. In fiscal 2002, cash and cash equivalents increased to $597 million as of September 30, 2002 from $250 million at September 30, 2001. The $347 million increase resulted primarily from $255 million and $198 million of net cash provided by financing and operating activities, respectively, partially offset by $109 million of net cash used for investing activities.

Operating Activities

Our net cash provided by operating activities was $197 million in fiscal 2003 compared with $198 million in fiscal 2002. In fiscal 2003, net cash provided by operating activities was comprised of a net loss of $88 million adjusted for non-cash items of $310 million and net cash used for changes in operating assets and liabilities of $25 million. Included in the non-cash items was $418 million of charges that increased our net loss, but did not result in the usage of cash, which consisted mainly of depreciation and amortization, an increase to our deferred tax asset valuation allowance, the loss on the extinguishment of a portion of our LYONs, amortization of restricted stock units, and a charge for our estimated liability related to the Lucent securities litigation. Also included in such non-cash items was $108 million of amounts that generated net income, but did not provide cash from operations including a gain on curtailment of our pension and postretirement plans, an increase in our deferred income taxes, and a reversal of certain business restructuring reserves. Net cash used for operating assets and liabilities was attributed mainly to a $105 million voluntary pension contribution made during the fourth quarter of fiscal 2003, as well as payments made for business restructuring activities and accounts payable. These usages of cash were partially offset by receipts of cash on amounts due from our customers, which included proceeds of $26 million from a third party financial institution for the sale of a term loan due from Expanets and a decrease in our inventory balance.

In the first quarter of fiscal 2003, we changed the way in which we calculate days sales outstanding from the two-point method to the one-point method, which represents the industry standard. The one-point method uses accounts receivable outstanding at the end of a reporting period, whereas the two-point method uses an average of accounts receivable outstanding at the beginning and at the end of a reporting period. Under the one-point method, our days sales outstanding in accounts receivable for the fourth quarter of fiscal 2003 was 57 days versus 69 days for the same period in fiscal 2002. The improvement in our days sales outstanding is attributable primarily to the implementation of process improvements whereby we have simplified our billing process and strengthened our collections of accounts receivable.

In the second quarter of fiscal 2003, we also changed the way in which we calculate days sales of inventory on-hand from the two-point method to the one-point method in order to be consistent with the other metrics we use to assess operational performance. The one-point method uses the inventory balance at the end of a reporting period, whereas the two-point method uses an average inventory amount based on such balances at the beginning and at the end of a reporting period. Under the

one-point method, days sales of inventory on-hand for the fourth quarter of fiscal 2003 was 56 days versus 59 days for the same quarter of fiscal 2002.

In fiscal 2002, our net cash provided by operating activities was $198 million compared with net cash used for operating activities of $133 million in fiscal 2001. Net cash provided by operating activities in fiscal 2002 was comprised of a net loss of $666 million adjusted for non-cash items of $878 million, and net cash used for changes in operating assets and liabilities of $14 million. Included in the non-cash items are $999 million of charges that increased our net loss, but did not result in the usage of cash. These charges consisted mainly of the

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establishment of a deferred tax asset valuation allowance, depreciation and amortization, business restructuring charges, the impairment of certain assets, and a provision for uncollectible receivables. Also included in such non-cash items is a $121 million increase to our deferred income taxes that generated net income, but did not provide cash. Net cash used for operating assets and liabilities was attributed primarily to cash payments made on our accounts payable and other short term liabilities, business restructuring activities, and payroll related liabilities. These usages of cash were mostly offset by receipts of cash on amounts due from our customers and a decrease in our inventory balance, as well as $82 million of installment payments of principal and interest received from Expanets pursuant to a credit line.

Days sales outstanding in accounts receivable for the fourth quarter of fiscal 2002, excluding the effect of the securitization transaction discussed below, was 69 days versus 95 days for the same period in fiscal 2001. The improvement in the level of days sales outstanding is primarily attributable to the implementation of process improvements that resulted in increased collections on past due amounts and lower sales. Days sales of inventory on-hand for the fourth quarter of fiscal 2002 was 59 days versus 68 days for the same period in fiscal 2001. This decrease is primarily due to improved inventory management as a result of outsourcing our contract manufacturing, as well as a decrease in unit costs.

Investing Activities

Our net cash used for investing activities was $34 million in fiscal 2003 compared with $109 million in fiscal 2002. The usage of cash in each year resulted primarily from capital expenditures, which amounted to $60 million and $111 million in fiscal 2003 and 2002, respectively. Capital expenditures in fiscal 2003 related primarily to IT investments. This was partially offset by the receipt of $21 million in proceeds from the sale of property, plant and equipment. Capital expenditures in fiscal 2002 were largely made for the renovation of our corporate headquarters facility, purchase of a corporate aircraft as a result of the termination of an aircraft sale-leaseback agreement, and upgrades to our IT systems, including the purchase of internal use software. In addition, in the third quarter of fiscal 2002, we used $6 million of cash for our acquisition of Conita Technologies, a leading supplier of voice-driven software applications for business. The reduction in capital expenditures in fiscal 2003 as compared to fiscal 2002 was due to a continuing effort to limit spending as a result of declines in our revenue.

Financing Activities

Net cash provided by financing activities was $421 million in fiscal 2003 compared with $255 million in fiscal 2002. Cash flows from financing activities in the current year were mainly attributed to the issuance of common stock and long-term debt. During fiscal 2003, we received cash proceeds from the issuance of common stock amounting to $368 million in connection with (i) the sale of 34.5 million shares for $10.20 per share in a public offering, resulting in gross proceeds of approximately $352 million and (ii) $16 million primarily in connection with the sale of shares under our employee stock purchase plan. In addition, we received gross proceeds of $216 million from the issuance of senior secured notes. The receipt of cash from these debt and equity offerings was partially offset by the payment of $9 million of issuance costs. In addition, we made cash payments of $156 million related to the repurchase of LYONs during fiscal 2003.

In fiscal 2002, net cash provided by financing activities was $255 million compared with $483 million in fiscal 2001. Cash flows from financing activities in fiscal 2002 were mainly attributed to the issuance of long-term debt and common stock. During fiscal 2002, we received gross proceeds of $460 million from the issuance of LYONs, and $435 million from the issuance of senior secured notes. Cash proceeds received from the issuance of common stock amounted to $235 million in connection with (i) the sale of 19.55 million shares for $5.90 per share in a public offering, resulting in gross proceeds of approximately $115 million, (ii) the equity transactions entered into with the Warburg Entities described below, resulting in gross proceeds of $100 million, and (iii) $20 million primarily in connection with the sale of shares under our employee stock purchase plan. The receipt of cash from these debt and equity offerings was partially offset by the payment of $29 million of issuance costs. In addition, we made net payments of $432 million for the retirement of commercial paper, $200 million towards the repayment of borrowings under our five-year credit facility, and $13 million for the repayment of other short-term borrowings. In connection with our election to terminate an accounts receivable securitization in March 2002, $200 million of collections of qualified trade accounts receivable were used to liquidate the financial institution's investment as described below in "Securitization of Accounts Receivable."

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Securitization of Accounts Receivable

In June 2001, we entered into a receivables purchase agreement and transferred a designated pool of qualified trade accounts receivable to a special purpose entity, or SPE, which in turn sold an undivided ownership interest in the pool of receivables to an unaffiliated financial institution for cash proceeds of $200 million. The receivables purchase agreement was terminated in March 2002 as described below. The designated pool of qualified receivables held by the SPE was pledged as collateral to secure the obligations to the financial institution. During the term of the receivables purchase agreement, we, through the SPE, had a retained interest in the designated pool of receivables, representing collateral for the sale, to the extent the value of the receivables exceeded the outstanding amount of the financial institution's investment. The fair value of our retained interest, which approximated its carrying amount because of the short-term nature of the receivables, was recorded in other current assets.

In March 2002, we elected to terminate the receivables purchase agreement, which was scheduled to expire in June 2002. As a result of the early termination, purchases of interests in receivables by the financial institution ceased, and collections on receivables that constituted the designated pool of trade accounts receivable were used to repay the financial institution's $200 million investment, which had been entirely liquidated as of September 30, 2002. No portion of the retained interest was used to liquidate the financial institution's investment. Upon liquidation in full in April 2002, we had reclassified the remaining $109 million retained interest to receivables.

Expanets Arrangements

Following the sale by Lucent in March 2000 of the primary distribution function for our voice communications systems for small and mid-sized enterprises to Expanets, we agreed in May 2001 to provide a $125 million short-term secured line of credit to Expanets. The line of credit applied to certain unpaid amounts and outstanding receivables due to us by Expanets and was secured by a first priority lien on Expanets' receivables and inventory. In March 2002, we entered into an amended Dealer Credit Agreement with Expanets and its parent company, NorthWestern, to provide for installment payments under the line of credit with the final balance due to us on December 31, 2002.

We had been engaged in discussions with Expanets regarding certain operating issues and customer data and billing management services related to the March 2000 sale to Expanets. Although these issues were unrelated to Expanets' and NorthWestern's obligations under the Dealer Credit Agreement, we agreed in December 2002, because of the importance of our relationship with Expanets and the

customer base served by Expanets, to extend the term of the final installment payment of $27 million to February 2003.

In March 2003, we entered into a restructured agreement with Expanets and NorthWestern to resolve matters related to the March 2000 sale to Expanets and to set payment terms for the remaining amounts due to us under the line of credit. In exchange for the companies providing mutual general releases of liability concerning the outstanding operational issues, the parties agreed to, among other things, the following:

> We canceled the notes receivable and surrendered the preferred equity interests delivered to us by Expanets in March 2000 in partial payment of the purchase price for the sale of the distribution function to Expanets. We did not record a charge in our Consolidated Statement of Operations during the second quarter of fiscal 2003 related to this transaction because no value was ascribed to these securities in our financial statements. We had written off the value of these securities at the time of the sale primarily because the notes were by their terms subordinated to Expanets' senior debt, collection of the notes was unlikely, and the preferred equity was junior to Expanets' senior debt and the notes receivable, as well as Expanets' other series of preferred equity.

> We converted the $27 million owed to us by Expanets under the line of credit, initially due in December 2002, to a term loan, which was to be repaid in three equal installments of $9 million on January 1, April 1, and July 1, 2004.

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In the fourth quarter of fiscal 2003, we sold the $27 million term loan due from Expanets to a third party financial institution for $26 million.

Debt Ratings

Our ability to obtain external financing and the related cost of borrowing is affected by our debt ratings, which are periodically reviewed by the major credit rating agencies. During the first quarter of fiscal 2003, our long-term debt ratings were downgraded. Debt ratings and outlooks as of September 30, 2003 and 2002 are as follows:

	As of September 30,			
	2003		2002	
	Debt Ratings	Outlook	Debt Ratings	Outlook
Moody's:				
Long-term senior unsecured debt	B3	Negative	Ba3	Negative
Senior secured notes	B2	Stable	Ba2	Negative
Corporate credit	B3	Stable	No Rating	
Standard & Poor's:				
Long-term senior unsecured debt	B	Stable	B	Negative
Senior secured notes	B+	Stable	B+	Negative
Corporate credit	B+	Stable	BB-	Negative

Any increase in our level of indebtedness or deterioration of our operating results may cause a further reduction in our current debt ratings. A further reduction in our current long-term debt rating by Moody's or Standard & Poor's could affect our ability to access the long-term debt markets, significantly increase our cost of external financing, and result in additional restrictions on the way we operate and finance our business.

A security rating by the major credit rating agencies is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating agencies. Each rating should be evaluated independently of any other rating.

Credit Facility

In April 2003, we and the lenders under our five-year revolving credit agreement amended the credit facility to reduce the size of the facility to $250 million and amend certain covenants included in the credit facility. As of September 30, 2003 and 2002, there were no amounts outstanding under the credit facility, which expires in September 2005.

The credit facility contains covenants, including a requirement that we maintain certain financial covenants relating to a minimum amount of earnings before interest, taxes, depreciation and amortization, or EBITDA, adjusted for certain exclusions as summarized below, or Adjusted EBITDA, and a minimum ratio of adjusted EBITDA to interest expense. The covenants permit us to exclude up to a certain amount of business restructuring charges and related expenses, including asset impairment charges, from the calculation of adjusted EBITDA. The definition of adjusted EBITDA in the credit facility also excludes certain other non-cash charges.

For the four quarter period ending September 30, 2003, we were required to maintain a minimum adjusted EBITDA of $220 million and a ratio of adjusted EBITDA to interest expense of 2.70 to 1. We were in compliance with all required covenants as of September 30, 2003.

The amended credit facility requires us to maintain a ratio of consolidated adjusted EBITDA to interest expense of:

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2.90 to 1 for the four quarter period ending December 31, 2003;

3.20 to 1 for the four quarter period ending March 31, 2004;

3.50 to 1 for the four quarter period ending June 30, 2004; and

4.00 to 1 for each four quarter period thereafter.

Upon the sale of our Connectivity Solutions segment, for purposes of these calculations, the ratios above will be reduced (i) by 0.20 for the fiscal quarter in which our Connectivity Solutions segment is sold, (ii) by 0.40 for the fiscal quarter following the fiscal quarter referred to in (i) above, (iii) by 0.60 for the fiscal quarter following the fiscal quarter referred to in (ii) above, and (iv) by 0.80 for each fiscal quarter thereafter.

We are required to maintain consolidated adjusted EBITDA of:

$230 million for the four quarter period ending December 31, 2003;

$270 million for the four quarter period ending March 31, 2004;

$300 million for the four quarter period ending June 30, 2004;

$330 million for the four quarter period ending September 30, 2004; and

$350 million for each four quarter period thereafter.

Upon the sale of our Connectivity Solutions segment, for purposes of these calculations, the minimum adjusted EBITDA amounts will be reduced (i) by $15 million for the fiscal quarter in which our Connectivity Solutions segment is sold, (ii) by $30 million for the fiscal quarter following the fiscal quarter referred to in (i) above, (iii) by $45 million for the fiscal quarter following the fiscal quarter referred to in (ii) above, and (iv) by $60 million for each fiscal quarter thereafter.

Prior to the amendment, our credit facility prohibited us from using more than $100 million in cash to redeem or repurchase the LYONs, prior to the October 31, 2004 put date described under "Conversion of LYONs." However, under the amended credit facility, this limitation may be increased, up to a maximum of $400 million, by an amount equal to 100% of the net cash proceeds of equity and debt issuances in the capital markets and 50% of the net cash proceeds from the sale of our Connectivity Solutions segment and our corporate aircraft. The $216 million issuance of senior secured

notes in May 2003 and the $349 million of net proceeds resulting from the equity offering in September 2003 increased the amount of cash we may use to repurchase LYONs to the $400 million maximum amount allowable under the credit facility. As of September 30, 2003, we had used approximately $156 million in cash to repurchase LYONs and, as a result of the amendments to the credit facility, the May 2003 public

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offering of senior secured notes and the September 2003 equity offering, we have the ability under the amended credit facility to use an additional $244 million in cash to repurchase LYONs.

In connection with the October 31, 2004 put obligation described under "Conversion of LYONs," the amended credit facility also requires us to maintain, as of each day in the period commencing September 30, 2004 until the later of (a) the date that the put obligation under the LYONs is satisfied and (b) the date upon which we deliver to the lenders under the amended credit facility a certificate certifying our compliance with the covenants included in the amended credit facility for the fiscal quarter ended September 30, 2004, liquidity of not less than $300 million on a pro forma basis as if the put obligation under the LYONs had been satisfied as of such day. For purposes of this calculation, liquidity is defined as the sum of the unused commitments under our amended credit facility plus domestic cash, to the extent free and clear of any liens other than liens under the collateral arrangements securing our obligations to the lenders under the amended credit facility, less our obligations under our senior secured notes and the put obligation related to the LYONs had it been satisfied as of such day. To the extent we can satisfy this liquidity test, we may use cash to satisfy any put obligation with respect to the LYONs.

The credit facility was also amended to permit us to issue up to $200 million in debt provided such debt is junior to the amended credit facility and matures not less than 90 days after the amended credit facility matures in September 2005. Pursuant to this provision of the amended credit facility, in May 2003, we issued $200 million aggregate principal amount of senior secured notes as described below. In addition, the credit facility was amended to reduce our ability to incur other secured and unsecured debt, make investments, and to prohibit us from prepaying long-term debt other than the LYONs.

In October 2003, the credit facility was amended to increase the amount allowed for external investments from $50 million, by an additional $100 million, if the increased amount is to be used for the purchase of the stock or substantially all of the assets and certain liabilities of Expanets prior to December 31, 2003.

LYONs Convertible Debt

In the first quarter of fiscal 2002, we sold through an underwritten public offering under a shelf registration statement an aggregate principal amount at maturity of approximately $944 million of LYONs. The proceeds of approximately $448 million, net of a $484 million discount and $12 million of underwriting fees, were used to refinance a portion of our outstanding commercial paper. The underwriting fees of $12 million were recorded as deferred financing costs and are being amortized to interest expense over a three-year period through October 31, 2004, which represents the first date holders may require us to purchase all or a portion of their LYONs.

The original issue discount of $484 million accretes daily at a rate of 3.625% per year calculated on a semiannual bond equivalent basis. We do not make periodic cash payments of interest on the LYONs. Instead, the amortization of the discount is recorded as interest expense and represents the accretion of the LYONs issue price to their maturity value. The discount will cease to accrete on the LYONs upon maturity, conversion, purchase by us at the option of the holder, or redemption by us. The LYONs are unsecured obligations that rank equally in right of payment with all our existing and future unsecured and unsubordinated indebtedness.

Interest expense related to the amortization of the discount on the LYONs amounted to $14 million and $16 million for fiscal 2003 and 2002, respectively. In addition, interest expense related to the amortization of deferred financing costs on the LYONs amounted to $4 million in each of the fiscal years ended September 30, 2003 and 2002.

LYONs Exchange Offer

In December 2002, we, together with Warburg Pincus Equity Partners L.P. and affiliated investment funds, or the Warburg Entities, commenced an exchange offer to purchase up to approximately $661 million aggregate principal amount at maturity, or 70%, of our outstanding LYONs. Under the terms of the exchange offer, holders of LYONs could elect to receive, for each $1,000 aggregate principal amount at maturity of LYONs exchanged, either (i) $389.61 in cash, which we refer to as cash consideration or (ii) a combination of $208.40 in cash plus 77 shares of our common stock, which we refer to as mixed consideration.

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Avaya and the Warburg Entities entered into a Backstop Agreement, as amended, which contains the terms relating to the Warburg Entities' participation in the exchange offer. Under the terms of the backstop agreement, we granted the Warburg Entities series C warrants described below, and reduced the exercise price of 5,581,101 of the 6,724,665 series A warrants held by the Warburg Entities to $0.01 per share. In January 2003, following the completion of the exchange offer, the Warburg Entities exercised the 5,581,101 series A warrants for aggregate cash consideration of $55,811 and converted the LYONs they acquired in the exchange offer into shares of our common stock, as described below.

In January 2003, the exchange offer expired and an aggregate principal amount at maturity of LYONs of $84,426,000, representing approximately 8.9% of the outstanding LYONs, or approximately $43 million in accreted value, was tendered. Of these LYONs, $84,416,000 aggregate principal amount at maturity were tendered for the mixed consideration and $10,000 aggregate principal amount at maturity were tendered for the cash consideration. In exchange for the LYONs accepted in the exchange offer, the Warburg Entities paid an aggregate amount of approximately $18 million in cash and we delivered 6,500,032 shares of our common stock. We delivered an additional 1,588,548 shares of our common stock to the Warburg Entities upon conversion of LYONs acquired by them in the exchange offer.

In the second quarter of fiscal 2003, we recognized in the Consolidated Statement of Operations a pre-tax charge of $36 million for the loss on long-term debt extinguishment related to the exchange offer, which was included in other income (expense), net. This charge reflects a $26 million loss related to the retirement of LYONs and $10 million of expenses related to (i) series C warrants issued to the Warburg Entities; (ii) common stock issued to the Warburg Entities; (iii) transaction costs; and (iv) the unamortized deferred financing costs from the original issuance of LYONs that were retired.

In the first quarter of fiscal 2003, we recorded a deferred income tax valuation allowance through a non-cash income tax charge of $83 million in the Consolidated Statement of Operations. This amount increased the deferred tax asset valuation allowance to reflect the difference between the actual and expected tax gain associated with the LYONs exchange offer.

Warrants to Purchase Common Stock

In consideration of their agreement to participate in the LYONs exchange offer, in December 2002, we granted the Warburg Entities series C warrants that have a four-year term and are exercisable for an aggregate of 7,355,824 shares of our common stock at an exercise price of $3.50 per share. The fair value of these warrants was estimated to be $5 million and was included in additional paid-in capital. During the second quarter of fiscal 2003, upon completion of the exchange offer, we recognized the cost of these warrants as a commitment fee and recorded the amount in loss on long-term debt extinguishment, net which is a component of other income (expense), net.

As of September 30, 2003, the Warburg Entities hold warrants to purchase the following additional shares of our common stock:

Warrants	Number of Shares	Exercise Price	Expiration Date
Series A	1,143,564	$ 34.73	October 2, 2004
Series B	5,379,732	$ 34.73	October 2, 2005
Series C	7,355,824	$ 3.50	December 23, 2006
Total	13,879,120		

Repurchases of LYONs

During fiscal 2003, we repurchased $310 million aggregate principal amount at maturity of LYONs, or $160 million in accreted value, in a series of open market transactions. We used a total of approximately $156 million in cash to repurchase these LYONs. We recognized a pre-tax gain of approximately $2 million, net of the write-off of deferred financing costs related to the LYONs repurchased.

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Conversion of LYONs

As of September 30, 2003, the 549,022 of outstanding LYONs are convertible into 20,557,415 shares of our common stock at any time on or before the maturity date. The conversion rate of 37.4437 will not be adjusted for accrued original issue discount. Upon conversion, the holder will not receive any cash payment representing accrued original issue discount. Accrued original issue discount will be considered paid by the shares of common stock received by the holder of the LYONs upon conversion.

We will adjust the conversion rate for:

dividends or distributions on our common stock payable in our common stock or other capital stock of Avaya;

subdivisions, combinations or certain reclassifications or our common stock;

distributions to all holders of our common stock of certain rights to purchase our common stock for a period expiring within 60 days at less than the current sale price; and

distributions to the holders of our common stock of a portion of our assets (including shares of capital stock of, or similar equity interests in, our subsidiary or other business unit) or debt securities issued by us or certain rights to purchase our securities (excluding cash dividends or other cash distributions from current or retained earnings unless the annualized amount thereof per share exceeds 5% of the sale price of our common stock on the day preceding the date of declaration of the dividend or other distribution).

We and the trustee under the indenture governing the LYONs may modify or amend the LYONs or the indenture with the consent of the holders of not less than a majority in aggregate principal amount at maturity of the LYONs then outstanding. However, the consent of the holders of each outstanding LYON would be required to make certain changes to the terms of the indenture and the LYONs, including any change that adversely affects the rights of a holder to convert a LYON.

We may redeem all or a portion of the LYONs for cash at any time on or after October 31, 2004 at a price equal to the sum of the issue price and accrued original issue discount on the LYONs as of the applicable redemption date. Conversely, holders may require us to purchase all or a portion of their LYONs on October 31, 2004, 2006 and 2011 at a price per LYON of $542.95, $583.40 and $698.20, respectively. We may, at our option, elect to pay the purchase price in cash or shares of our common stock, or any combination thereof. If we were to purchase all of the 549,022 LYONs outstanding as of

September 30, 2003 at the option of the holders, the aggregate purchase price would be approximately $298 million on October 31, 2004, $320 million on October 31, 2006, and $383 million on October 31, 2011. If we elected to pay the purchase price in shares of our common stock, the number of shares would be equal to the purchase price divided by the average of the market prices of our common stock for the five trading day period ending on the third business day prior to the applicable purchase date.

The indenture governing the LYONs includes certain covenants, including a limitation on our ability to grant liens on significant domestic real estate properties or the stock of our subsidiaries holding such properties.

Senior Secured Notes

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In March 2002, we issued through an underwritten public offering $440 million aggregate principal amount of 11 1/8% Senior Secured Notes due April 2009, or senior secured notes, and received net proceeds of approximately $425 million, net of a $5 million discount and $10 million of issuance costs. Interest on the senior secured notes is payable on April 1 and October 1 of each year beginning on October 1, 2002. The $5 million discount is being amortized to interest expense over the seven-year term to maturity. The $10 million of issuance costs were recorded as deferred financing costs and are also being amortized to interest expense over the term of the senior secured notes. The proceeds from the issuance were used to repay amounts outstanding under the five-year credit facility and for general corporate purposes.

We may redeem the senior secured notes, in whole or from time to time in part, at the redemption prices expressed as a percentage of the principal amount plus accrued and unpaid interest to the applicable redemption date, if redeemed during the twelve-month period beginning on April 1 of the following years: (i) 2006 at 105.563%; (ii) 2007 at 102.781%; and (iii) 2008 at 100.0%.

The senior secured notes are secured by a second priority security interest in the collateral securing our obligations under the five-year credit facility. In the event that (i) our corporate credit is rated at least BBB by Standard & Poor's and our long-term senior unsecured debt is rated at least Baa2 by Moody's, each without a negative outlook or its equivalent, or (ii) subject to certain conditions, at least $400 million of unsecured indebtedness is outstanding or available under the credit facilities or a bona fide successor credit facility, the security interest in the collateral securing the senior secured notes will terminate. The indenture governing the senior secured notes includes negative covenants that limit our ability to incur secured debt and enter into sale/leaseback transactions. In addition, the indenture also includes conditional covenants that limit our ability to incur debt, enter into affiliate transactions, or make restricted payments or investments and advances. These conditional covenants will apply to us until such time that the senior secured notes are rated at least BBB- by Standard & Poor's and Baa3 by Moody's, in each case without a negative outlook or its equivalent.

In May 2003, we sold an additional $200 million aggregate principal amount of 11 1/8% Senior Secured Notes due April 2009, at a price of 108% of par, resulting in net proceeds of approximately $212 million, which included approximately $2 million in accrued interest and a $16 million premium, partially offset by $6 million of issuance costs. The issuance costs, which were recorded as deferred financing costs, and premium are being amortized to interest expense over the term of the notes. These notes constitute a further issuance of, and form a single series with, the 11 1/8% senior secured notes due April 2009 that we issued in March 2002.

We recorded interest expense related to the senior secured notes of $58 million and $25 million for the fiscal years ended September 30, 2003 and 2002, respectively. In addition, we recorded interest expense related to the amortization of discount, premium and deferred financing costs on the senior secured notes of $2 million and $1 million for the fiscal years ended September 30, 2003 and 2002, respectively.

Fair Value of Financial Instruments

The estimated aggregate fair market value of the senior secured notes increased from September 30, 2002 by $463 million to $742 million as of September 30, 2003, which reflects an increase in the fair market value of the initial senior secured note offering and the fair market value of the add-on public offering which was $232 million. With regard to the LYONs, the estimated aggregate fair value as of September 30, 2003 increased from September 30, 2002 by $112 million to $305 million, which reflects an increase in the fair market value per LYON, partially offset by a reduction in the aggregate fair market value of LYONs extinguished in connection with the exchange offer and repurchases during fiscal 2003. The fair market values are based upon quoted market prices and yields obtained through independent pricing sources for the same or similar types of borrowing arrangements taking into consideration the underlying terms of the debt. The following table summarizes the number of outstanding LYONs and senior secured notes, their aggregate accreted value and their related fair market values as of September 30, 2003 and 2002:

	As of September 30, 2003			As of September 30, 2002		
	Number of Notes Outstanding	Accreted Value	Fair Value	Number of Notes Outstanding	Accreted Value	Fair Value

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			(dollars in millions)				
LYONs	549,022	$ 287	$ 305	943,632	$ 476	$ 193
$11^1/8$% Senior Secured Notes	640,000	$ 650	$ 742	440,000	$ 435	$ 279

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate fair value because of their short-term maturity and variable rates of interest.

As of September 30, 2003 and 2002, the estimated fair values of our foreign currency forward contracts and options were $11 million and $10 million, respectively, and were included in other current assets. The estimated fair values of these forward contracts and options were based on market quotes obtained through independent pricing sources.

Grants of Stock Option and Restricted Stock Units

During the period from October 1, 2003 through December 1, 2003, we granted to eligible employees approximately 8 million stock options at a weighted average exercise price of $13.24 and approximately 401 thousand restricted stock units at a weighted average market value of $13.28.

Public Offerings of Common Stock

In September 2003, we sold 34.5 million shares of common stock for $10.20 per share in a public offering. We received proceeds of approximately $349 million, which was net of approximately $3 million of underwriting discounts and commissions reflected as a reduction to additional paid-in capital.

In March 2002, we sold 19.55 million shares of common stock for $5.90 per share in a public offering. We received proceeds of approximately $112 million, which was net of approximately $3 million of underwriting fees reflected as a reduction to additional paid-in capital.

Warburg Transactions

In October 2000, we sold to the Warburg Entities four million shares of our Series B convertible participating preferred stock and series A and series B warrants to purchase our common stock for an aggregate purchase price of $400 million. The Series B preferred stock had an aggregate initial liquidation value of $400 million and accreted at an annual rate of 6.5%, compounded quarterly. The

$400 million of proceeds were initially allocated between the Series B preferred stock and warrants based upon the relative fair market value of each security. The fair value allocated to the Series B preferred stock of $368 million was recorded in the mezzanine section of the Consolidated Balance Sheet and the fair value allocated to the warrants of $32 million was included in additional paid-in capital.

In March 2002, we completed a series of transactions pursuant to which the Warburg Entities acquired 53 million shares of our common stock by (i) converting all four million shares of the Series B preferred stock into 38,329,365 shares of our common stock based on a conversion price of $11.31 per share, which was reduced from the original conversion price of $26.71 per share, (ii) exercising 286,682 warrants at an exercise price of $34.73 per share resulting in gross proceeds of approximately $10 million, and (iii) purchasing 14,383,953 shares of our common stock for $6.26 per share, which was the reported closing price of our common stock on the New York Stock Exchange on March 8, 2002, resulting in gross proceeds of approximately $90 million. In connection with these transactions, we incurred approximately $4 million of transaction costs, which were recorded as a reduction to additional paid-in capital. Following these transactions, there were no shares of Series B preferred stock outstanding.

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The conversion of the Series B preferred stock and the exercise of the warrants resulted in a charge to accumulated deficit of approximately $125 million, which primarily represented the impact of reducing the preferred stock conversion price from $26.71 per share to $11.31 per share. We also recorded as a reduction to accumulated deficit a total of $12 million and $27 million of accretion for the period from October 1, 2001 through the date of conversion and for fiscal 2001, respectively.

Future Cash Needs

Our primary future cash needs will be to fund working capital, capital expenditures, debt service, employee benefit obligations, strategic acquisitions, and our business restructuring liabilities. We foresee an increase in cash usage for capital expenditures in fiscal 2004 as compared with fiscal 2003. We expect to make cash payments of approximately $100 million for capital expenditures in fiscal 2004, of which more than half will be related to IT investments. In fiscal 2004, we will make two semi-annual interest payments on our fixed interest rate senior secured notes each amounting to approximately $36 million. Since we have made a $105 million voluntary contribution to our pension plan in the fourth quarter of fiscal 2003, we will not be required to make any contributions in fiscal 2004. We made payments in the first quarter of fiscal 2004 of $55 million in cash for the acquisition of substantially all of the assets and the assumption of certain liabilities of Expanets. In addition, we paid approximately $39 million to creditors of Expanets to satisfy certain debt obligations of Expanets and deposited approximately $13.5 million into an escrow account to satisfy certain liabilities of Expanets. The purchase price is subject to adjustment within 90 days after the closing. We also expect to make cash payments related to our business restructuring initiatives of approximately $29 million in fiscal 2004. These restructuring related payments are expected to be composed of $4 million for employee separation costs and $25 million for lease obligations.

In conjunction with our agreement in October 2003 to sell certain assets and liabilities of our Connectivity Solutions segment to CommScope, we expect to receive a purchase price of $263 million, subject to adjustment, consisting of approximately $210 million of cash, a note in the amount of $18 million that is convertible into CommScope common stock one year after the closing, and CommScope common stock having a market value, at the time of the agreement, of $35 million.

We believe that our existing cash and cash flows from operations will be sufficient to meet our future cash needs. If we do not generate sufficient cash from operations, we may need to incur additional debt or issue equity. In order to meet our cash needs, we may from time to time, borrow under our credit facility or issue other long- or short-term debt or equity securities, if the market

permits. In May 2003, we completed the sale of $200 million aggregate principal amount of senior secured notes. We intend to use the net proceeds of this offering for general corporate purposes, which may include the repurchase of LYONs in the open market or otherwise. In September 2003, we received net proceeds of $349 million relating to the sale of common stock. We used $105 million of these net proceeds to fund a voluntary contribution to our pension plan and the remainder of the net proceeds will be used for general corporate purposes. We cannot assure you that any other financings will be available to us on acceptable terms or at all. Our ability to make payments on and to refinance our indebtedness, and to fund working capital, capital expenditures, debt service, employee benefit obligations, strategic acquisitions, and our business restructuring liabilities will depend on our ability to generate cash in the future, which is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. Our credit facility and the indentures governing the LYONs and the senior secured notes impose, and any future indebtedness may impose, various restrictions and covenants which could limit our ability to respond to market conditions, to provide for unanticipated capital investments or to take advantage of business opportunities. Discussion regarding the restrictions and covenants for the credit facility, LYONs and senior secured notes can be found in the respective sections above.

We may from time to time seek to retire additional amounts of our outstanding debt through cash purchases and/or exchanges for equity securities, in open market purchases, privately negotiated transactions or otherwise. Such repurchases or exchanges, if any, will depend on the prevailing market conditions, our liquidity requirements, contractual restrictions and other factors. The amounts involved may be material.

Guarantees of Indebtedness and Other Off-Balance Sheet Arrangements

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Irrevocable Letters of Credit and Other Arrangements

We have entered into several uncommitted credit facilities totaling $53 million and other arrangements similar to irrevocable letters of credit that vary in term totaling $10 million, of which an aggregate of $29 million in irrevocable letters of credit and other arrangements were outstanding as of September 30, 2003. Letters of credit are purchased guarantees that ensure our performance or payment to third parties in accordance with specified terms and conditions.

Surety Bonds

We acquire various types of surety bonds, such as license, permit, bid and performance bonds, which are irrevocable undertakings by us to make payment in the event we fail to perform our obligations. These bonds vary in duration although most are issued and outstanding from one to three years. As of September 30, 2003, the maximum potential payment under these surety bonds is approximately $7 million. Historically, no surety bonds have been drawn upon and there is no future expectation that these surety bonds will be drawn upon.

Purchase Commitments and Termination Fees

We have commitment contracts with certain suppliers in which we are obligated to purchase a specified amount of inventory based on our forecasts, or pay a charge in the event we do not meet our designated purchase commitments. Additionally, certain agreements call for an early termination fee, obligating us to make a payment to the supplier. As of September 30, 2003, the maximum potential payment under these commitments was approximately $82 million, of which we recorded a liability in the amount of $8 million. We classified this liability as $3 million in other current liabilities and $5 million in other liabilities.

Product Financing Arrangements

We sell products to various resellers that may obtain financing from certain unaffiliated third party lending institutions.

For our U.S. product financing arrangement with resellers, in the event the lending institution repossesses the reseller's inventory of our products, we are obligated under certain circumstances to repurchase such inventory from the lending institution. Our obligation to repurchase inventory from the lending institution terminates 180 days from the date of invoicing by us to the reseller. The repurchase amount is equal to the price originally paid to us by the lending institution for the inventory. During the third quarter of fiscal 2003, one of the resellers that previously participated in this type of arrangement established a direct line of credit with us. The remaining reseller has financed inventory purchases under this agreement of approximately $35 million as of September 30, 2003. There have not been any repurchases made by us since we entered into this agreement in March 2001. We have estimated the fair value of this guarantee as of September 30, 2003 and have adequately provided for this guarantee in our financial statements at September 30, 2003. The fair value of the guarantee is not significant. There can be no assurance that we will not be obligated to repurchase inventory under this arrangement in the future.

For our product financing arrangement with resellers outside the U.S., in the event participating resellers default on their payment obligation to the lending institution, we are obligated under certain circumstances to guarantee repayment to the lending institution. The repayment amount fluctuates with the level of product financing activity. The guarantee repayment amount reported to us from the lending institution was approximately $8 million as of September 30, 2003. We review and set the maximum credit limit for each reseller participating in this financing arrangement. There have not been any guarantee repayments by us since we entered in this arrangement in October 2000. We have estimated the fair value of this guarantee as of September 30, 2003 and have adequately provided for this guarantee in our financial statements at September 30, 2003. The fair value of the guarantee is not significant. There can be no assurance that we will not be obligated to repurchase inventory under this arrangement in the future.

Credit Facility Indemnification

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In connection with our obligations under the amended credit facility described above, we have agreed to indemnify the third party lending institutions for costs incurred by the institutions related to changes in tax law or other legal requirements. While there have been no amounts paid to the lenders pursuant to this indemnity in the past, there can be no assurance that we will not be obligated to indemnify the lenders under this arrangement in the future.

Transactions with Lucent

In connection with our spin-off from Lucent in September 2000, we and Lucent executed and delivered the Contribution and Distribution Agreement and certain related agreements.

Pursuant to the Contribution and Distribution Agreement, Lucent contributed to us substantially all of the assets, liabilities and operations associated with our enterprise networking businesses, or our businesses. The Contribution and Distribution Agreement, among other things, provides that, in general, we will indemnify Lucent for all liabilities including certain pre-distribution tax obligations of Lucent relating to our businesses and all contingent liabilities primarily relating to our businesses or otherwise assigned to us. In addition, the Contribution and Distribution Agreement provides that certain contingent liabilities not allocated to one of the parties will be shared by Lucent and us in prescribed percentages. The Contribution and Distribution Agreement also provides that each party will share specified portions of contingent liabilities based upon agreed percentages related to the business of the other party that exceed $50 million. In the second quarter of fiscal 2003, we recorded a charge

of $25 million representing our estimate of the amount of our liability associated with the settlement by Lucent of the securities litigation described below. We recently reached agreement with Lucent to pay $24 million in shares of our common stock in full satisfaction of our obligations under the settlement. The terms of the settlement will be subject to a fairness hearing scheduled for December 2003. We are unable to determine the maximum potential amount of other future payments, if any, that we could be required to make under this agreement.

In addition, if the separation from Lucent fails to qualify as a tax-free distribution under Section 355 of the Internal Revenue Code because of an acquisition of our stock or assets, or some other actions of ours, then we will be solely liable for any resulting corporate taxes.

Purchased In-Process Research and Development

In connection with our acquisitions in fiscal 2001, a portion of the purchase price, $31 million for VPNet and $1 million for Quintus, was allocated to purchased in-process research and development, or IPR&D. As part of the process of analyzing these acquisitions, we made a decision to buy technology that had not yet been commercialized rather than develop the technology internally. We based this decision on a number of factors including the amount of time it would take to bring the technology to market. We also considered our internal research resource allocation and our progress on comparable technology, if any. We expect to use a similar decision process in the future.

At the date of each acquisition, the IPR&D projects had not yet reached technological feasibility and had no future alternative use. Accordingly, the value allocated to these projects was capitalized and immediately expensed at acquisition.

The value allocated to purchased IPR&D for the acquisitions was determined using an income approach. This involved estimating the fair value of the IPR&D, using the present value of the estimated after-tax cash flows expected to be generated by the purchased IPR&D, using risk-adjusted discount rates and revenue forecasts as appropriate. Where appropriate, we deducted an amount reflecting the contribution of the core technology from the anticipated cash flows from an IPR&D project. The selection of the discount rate was based on consideration of our weighted average cost of capital, as well as other factors, including the useful life of each technology, profitability levels of each technology, the uncertainty of technological advances that were known at the time, and the stage of completion of each technology. We believe that the estimated IPR&D amounts so determined represent the fair value and do not exceed the amount a third party would have paid for the projects.

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Revenue forecasts were estimated based on relevant market size and growth factors, expected industry trends, individual product sales cycles and the estimated life of each product's underlying technology. Estimated operating expenses, income taxes, and charges for the use of contributory assets were deducted from estimated revenue to determine estimated after-tax cash flows for each project. Estimated operating expenses include cost of goods sold, selling, general and administrative expenses, and research and development expenses. The research and development expenses include estimated costs to maintain the products once they have been introduced into the market and generate revenue and costs to complete the purchased IPR&D.

The actual results to date have been consistent, in all material respects, with our assumptions at the time of the acquisition, except as noted below.

Set forth below are descriptions of the significant acquired IPR&D projects related to our acquisition of VPNet.

In February 2001, we completed the purchase of VPNet and allocated approximately $31 million to IPR&D projects, using the income approach described above, to the following projects: low-end technologies for $5 million and high-end technologies for $26 million. These projects under

development at the valuation date represent next-generation technologies that are expected to address emerging market demands for low- and high-end network data security needs.

At the acquisition date, the low-end technologies under development were approximately 80% complete based on engineering data and technological progress. Revenue attributable to the developmental low-end VPNet technologies was estimated to be $8 million in 2002 and $13 million in 2003. Revenue was estimated to grow at a compounded annual growth rate of approximately 60% for the six years following introduction, assuming the successful completion and market acceptance of the major research and development programs. Revenue was expected to peak in 2004 and decline thereafter through the end of the technologies' life in 2007 as new product technologies were expected to be introduced.

At the acquisition date, the high-end technologies under development were approximately 60% complete, based on engineering data and technological progress. Revenue attributable to the developmental high-end VPNet technologies was estimated to be $52 million in 2002 and $86 million in 2003. Revenue was estimated to grow at a compounded annual growth rate of approximately 50% for the seven years following introduction, assuming the successful completion and market acceptance of the major research and development programs. Revenue was expected to peak in 2004 and decline thereafter through the end of the technologies' life in 2008 as new product technologies were expected to be introduced.

VPNet had spent approximately $4 million on these in-process technology projects, and expected to spend approximately $4 million to complete all phases of research and development. The rates utilized to discount the net cash flows to their present value were based on estimated cost of capital calculations. Due to the nature of the forecasts and the risks associated with the successful development of the projects, a discount rate of 25% was used to value the IPR&D. The discount rate utilized was higher than our weighted average cost of capital due to the inherent uncertainties surrounding the successful development of the purchased in-process technology, the useful life of such technology, the profitability levels of the technology, and the uncertainty of technological advances that were unknown at that time.

During fiscal 2002, the business environment in which the acquired VPNet technologies were to be commercialized changed and the marketplace assumptions originally utilized in the acquisition models were updated accordingly. Consequently, we did not realize all of the original forecasted revenues in fiscal 2002, and we do not expect to realize all of the forecasted revenues in subsequent fiscal years from these acquired technologies. As a result, during fiscal 2002, we wrote off $21 million of net acquired intangible assets related to the purchase of VPNet, which was included in the $71 million goodwill and intangibles impairment charge included in our Consolidated Statement of Operations.

Environmental, Health and Safety Matters

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We are subject to a wide range of governmental requirements relating to employee safety and health and to the handling and emission into the environment of various substances used in our operations. We are subject to certain provisions of environmental laws, particularly in the United States, governing the cleanup of soil and groundwater contamination. Such provisions impose liability for the costs of investigating and remediating releases of hazardous materials at currently or formerly owned or operated sites. In certain circumstances, this liability may also include the cost of cleaning up historical contamination, whether or not caused by us. We are currently conducting investigation and/or cleanup of known contamination at approximately seven of our facilities either voluntarily or pursuant to government directives. None of the sites are reasonably likely to generate environmental costs that will be individually material nor will environmental costs for all sites in the aggregate be material. There are no known third parties who may be responsible for investigation and/or cleanup at these sites and therefore, for purposes of assessing the adequacy of financial reserves for these liabilities, we have

not assumed that we will recover amounts from any third party, including under any insurance coverage or indemnification arrangement. Although we do not separately track recurring costs of managing hazardous substances and pollutants in ongoing operations, we do not believe them to be material.

It is often difficult to estimate the future impact of environmental matters, including potential liabilities. We have established financial reserves to cover environmental liabilities where they are probable and reasonably estimable. Reserves for estimated losses from environmental matters are undiscounted and consist primarily of estimated remediation and monitoring costs and are, depending on the site, based primarily upon internal or third-party environmental studies and the extent of contamination and the type of required cleanup. We are not aware of, and have not included in reserves any provision for, any unasserted environmental claims.

The reliability and precision of estimates of our environmental costs may be affected by a variety of factors, including whether the remediation treatment will be effective, contamination sources have been accurately identified and assumptions regarding the movement of contaminants are accurate. In addition, estimates of environmental costs may be affected by changes in law and regulation, including the willingness of regulatory authorities to conclude that remediation and/or monitoring performed by us is adequate.

We assesses the adequacy of environmental reserves on a quarterly basis. For the fiscal years ended September 30, 2003 and 2002, respectively, no amounts were charged to our Statements of Operations for environmental costs as reserves were deemed to be adequate. Expenditures for environmental matters for the fiscal years ended September 30, 2003 and 2002 were not material to our financial position, results of operations or cash flows. Payment for the environmental costs covered by the reserves may be made over a 30-year period.

Legal Proceedings

From time to time, we are involved in legal proceedings arising in the ordinary course of business. Other than as described below, we believe there is no litigation pending against us that could have, individually or in the aggregate, a material adverse effect on our financial position, results of operations or cash flows.

Year 2000 Actions

Three separate purported class action lawsuits are pending against Lucent, our former parent, one in state court in West Virginia, one in federal court in the Southern District of New York and another in federal court in the Southern District of California. The case in New York was filed in January 1999 and, after being dismissed, was refiled in September 2000. The case in West Virginia was filed in April 1999 and the case in California was filed in June 1999, and amended in 2000 to include us as a defendant. We may also be named a party to the other actions and, in any event, have assumed the obligations of Lucent for all of these cases under the Contribution and Distribution Agreement, as described in "Transactions with Lucent" above between us and Lucent. All three actions are based upon claims that Lucent sold products that were not Year 2000 compliant, meaning that the products were designed and developed without considering the possible impact of the change in the calendar from December 31, 1999 to January 1, 2000. The complaints allege that the sale of these products violated statutory consumer protection laws and constituted breaches of implied warranties.

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A class has been certified in the West Virginia state court matter. The certified class in the West Virginia matter includes those persons or entities that purchased, leased or financed the products in question. In addition, the court also certified as a subclass all class members who had service protection plans or other service or extended warranty contracts with Lucent in effect as of April 1, 1998, as to which Lucent failed to offer a free Year 2000-compliant solution. The Fourth Circuit Court of Appeals recently denied the defendant's attempt to have the Federal District Court in West Virginia retain

jurisdiction in this matter. This matter is now in West Virginia state court. The federal court in the New York action has issued a decision and order denying class certification, dismissing all but certain fraud claims by one representative plaintiff. No class claims remain in this case at this time. The federal court in the California action has issued an opinion and order granting class certification. The class includes any entities that purchased or leased certain products on or after January 1, 1990, excluding those entities who did not have a New Jersey choice of law provision in their contracts and those who did not purchase equipment directly from defendants. The federal court in the California action has issued an order staying the action pending the outcome of the West Virginia matter. The complaints seek, among other remedies, compensatory damages, punitive damages and counsel fees in amounts that have not yet been specified. At this time, we cannot determine whether the outcome of these actions will have a material adverse effect on our financial position, results of operations or cash flows. These cases have required in the past, and may require in the future, expenditure of significant legal costs related to their defense.

Lucent Securities Litigation

In November 2000, three purported class actions were filed against Lucent in the Federal District Court for the District of New Jersey alleging violations of the federal securities laws as a result of the facts disclosed in Lucent's announcement on November 21, 2000 that it had identified a revenue recognition issue affecting its financial results for the fourth quarter of fiscal 2000. The actions purport to be filed on behalf of purchasers of Lucent common stock during the period from October 10, 2000 (the date Lucent originally reported these financial results) through November 21, 2000.

The above actions have been consolidated with other purported class actions filed against Lucent on behalf of its stockholders in January 2000 and are pending in the Federal District Court for the District of New Jersey. The consolidated cases were initially filed on behalf of stockholders of Lucent who bought Lucent common stock between October 26, 1999 and January 6, 2000, but the consolidated complaint was amended to include purported class members who purchased Lucent common stock up to December 20, 2000. A class has not yet been certified in the consolidated actions. The plaintiffs in all of these stockholder class actions seek compensatory damages plus interest and attorneys' fees.

In March 2003, Lucent announced that it had entered into a $420 million settlement of all pending shareholder and related litigation. Certain cases which are the subject of the settlement are shared contingent liabilities under the Contribution and Distribution Agreement and accordingly, we are responsible for 10% of our liabilities attributable to those cases, including 10% of the legal costs associated with the portion of the litigation for which we share liability. In the second quarter of fiscal 2003, we recorded a charge of $25 million representing an estimate of our liability in this matter. We recently reached agreement with Lucent to pay $24 million in shares of our common stock in full satisfaction of our obligations under the settlement. The terms of the settlement will be subject to a fairness hearing scheduled for December 2003.

Commissions Arbitration Demand

In July 2002, Communications Development Corporation, or CDC, a British Virgin Islands corporation, made formal demand for arbitration for alleged unpaid commissions in an amount in excess of $10 million, stemming from the sale of products from our businesses that were formerly owned by Lucent involving the Ministry of Russian Railways. In April 2003, CDC initiated the arbitration before the American Arbitration Association. The plaintiff alleges that as a result of agreements entered into between the plaintiff and us, it is owed commissions on sales by us to the Ministry of Russian Railways on a continuing basis. We believe that the agreements relating to their claim have expired

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or do not apply to the products in question. As the sales of products continue, CDC may likely increase its commission demand. The parties are in the process of selecting arbitrators.

Lucent Consumer Products Class Actions

In several class action cases (the first of which was filed on June 24, 1996), plaintiffs claim that AT&T and Lucent engaged in fraud and deceit in continuing to lease residential telephones to consumers without adequate notice that the consumers would pay well in excess of the purchase price of a telephone by continuing to lease. The cases were removed and consolidated in federal court in Alabama, and were subsequently remanded to their respective state courts (Illinois, Alabama, New Jersey, New York and California). In July 2001, the Illinois state court certified a nationwide class of plaintiffs. The case in Illinois was scheduled for trial on August 5, 2002. Prior to commencement of trial, however, the parties agreed to a settlement of the claims on a class-wide basis. The settlement was approved by the court on November 4, 2002. Claims from Class members were required to be filed on or about January 15, 2003.

Any liability incurred by Lucent in connection with these class action cases will be considered an exclusive Lucent liability under the Contribution and Distribution Agreement between Lucent and us and, as a result, we are responsible for 10% of any such liability in excess of $50 million. We recently agreed with Lucent to pay $6 million in satisfaction of our liability in this matter, although Lucent has notified us that we may be responsible for some additional costs that may be incurred in connection with the conclusion of the claims administration. Based on our discussions with Lucent, we do not expect those additional costs to be material.

Patent Infringement Claim

AudioFAX IP, LLC has filed an action against us in the U.S. District Court for the Northern District of Georgia, alleging that we have infringed five of its patents relating to facsimile products in violation of federal patent laws. This matter is in the early stages of litigation and we cannot determine whether the outcome of this action will have a material adverse effect on our financial position, results of operations or cash flows.

Financial Instruments

We conduct our business on a multi-national basis in a wide variety of foreign currencies. We are, therefore, subject to the risk associated with foreign currency exchange rates and interest rates that could affect our results of operations, financial position or cash flows. We manage our exposure to these market risks through our regular operating and financing activities and, when deemed appropriate, through the use of derivative financial instruments. We use derivative financial instruments to reduce earnings and cash flow volatility associated with foreign exchange rate changes. Specifically, we utilize foreign currency forward contracts, and to a lesser extent, foreign currency options to mitigate the effects of fluctuations of exchange rates associated with certain existing assets and liabilities that are denominated in non-functional currencies, and periodically to reduce anticipated net foreign currency cash flows resulting from normal business operations. In addition, we use interest rate swap agreements to manage our proportion of fixed and floating rate debt and to reduce interest expense. Derivative financial instruments are used as risk management tools and not for speculative or trading purposes.

We engage in foreign currency hedging activities to reduce our risk that changes in exchange rates will adversely affect the eventual net cash flows resulting from the sale of products to foreign customers and purchases from foreign suppliers. We believe that we have achieved risk reduction and hedge effectiveness because the gains and losses on our derivative instruments substantially offset the losses and gains on the assets, liabilities and transactions being hedged. Hedge effectiveness is periodically measured by comparing the change in fair value of each hedged foreign currency exposure at the applicable market rate with the change in market value of the corresponding derivative instrument.

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Foreign Currency Transactions

Recorded Transactions−We utilize foreign currency forward contracts primarily to manage short-term exchange rate exposures on certain receivables, payables and loans residing on foreign subsidiaries' books, which are denominated in currencies other than the subsidiary's functional currency. When these items are revalued into the subsidiary's functional currency at the month-end exchange rates, the fluctuations in the exchange rates are recognized in earnings as other income or expense. Changes in the fair value of our foreign currency forward and option contracts used to offset these exposed items are also recognized in earnings as other income or expense in the period in which the exchange rates change. For the fiscal years ended September 30, 2003 and 2002, the changes in the fair value of the foreign currency forward and option contracts were substantially offset by changes resulting from the revaluation of the hedged items.

The fair value of foreign currency forward contracts is sensitive to changes in foreign currency exchange rates. As of September 30, 2003 and 2002, a 10% appreciation in foreign currency exchange rates from the prevailing market rates would have increased our related net unrealized gain for fiscal 2003 and 2002 by $19 million and $6 million, respectively. Conversely, a 10% depreciation in these currencies from the prevailing market rates would have decreased our related net gain for fiscal 2003 and 2002 by $19 million and $6 million, respectively. Consistent with the nature of the economic hedge of such foreign currency forward contracts, such unrealized gains or losses would be offset by corresponding decreases or increases, respectively, of the underlying asset, liability or transaction being hedged.

Forecasted Transactions−From time to time, we use foreign currency forward and option contracts to offset certain forecasted foreign currency transactions primarily related to the purchase or sale of product expected to occur during the ensuing twelve months. The change in the fair value of foreign currency forward and option contracts is recognized as other income or expense in the period in which the exchange rates change. For the fiscal year ended September 30, 2003, these gains and losses were not material to our results of operations. We did not use any foreign currency forward or option contracts for forecasted transactions in fiscal 2002. As permitted under SFAS 133, we have elected not to designate our forward and option contracts as hedges thereby precluding the use of hedge accounting for these instruments. Such treatment could result in a gain or loss from fluctuations in exchange rates related to a derivative contract that is different from the loss or gain recognized from the underlying forecasted transaction. However, we have procedures to manage the risks associated with our derivative instruments, which include limiting the duration of the contracts, typically six months or less, and the amount of the underlying exposures that can be economically hedged. Historically, the gains and losses on these transactions have not been significant.

By their nature, all derivative instruments involve, to varying degrees, elements of market risk and credit risk not recognized in our financial statements. The market risk associated with these instruments resulting from currency exchange rate movements is expected to offset the market risk of the underlying transactions, assets and liabilities being economically hedged. The counterparties to the agreements relating to our foreign exchange instruments consist of a diversified group of major financial institutions. We do not believe that there is significant risk of loss in the event of non-performance of the counterparties because we control our exposure to credit risk through credit approvals and limits, and continual monitoring of the credit ratings of such counterparties. In addition, we limit the financial exposure and the amount of agreements entered into with any one financial institution.

Interest Rate Swap Agreements

In April 2002, we entered into two interest rate swap agreements with a total notional amount of $200 million that were to mature in April 2009 and were executed in order to: (i) convert a portion of

the senior secured notes fixed-rate debt into floating-rate debt; (ii) maintain a capital structure containing appropriate amounts of fixed and floating-rate debt; and (iii) reduce net interest payments and expense in the near-term.

In December 2002, we cancelled both interest rate swap agreements. The cancellation resulted in a reduction to other assets for the removal of the fair market value of the interest rate swaps and cash proceeds of $19 million representing a deferred gain, which is being recognized as a reduction to interest expense over the remaining term to maturity of the senior secured notes. We recognized $3 million in

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fiscal 2003, as a reduction to interest expense related to this deferred gain. The unamortized balance of the deferred gain is included in long-term debt on the Consolidated Balance Sheet and amounted to $16 million as of September 30, 2003.

Under these agreements, we received a fixed interest rate of $11^1/8$% and paid a floating interest rate based on the six-month LIBOR (in arrears) plus an agreed-upon spread, which was equal to a weighted average interest rate of 6.8% as of September 30, 2002. The amounts paid and received were calculated based on the total notional amount of $200 million. Since the relevant terms of the swap agreements matched the corresponding terms of the senior secured notes, there was no hedge ineffectiveness. Accordingly, as required by SFAS 133, gains and losses on the swap agreements fully offset the losses and gains on the hedged portion of the senior secured notes, which were marked to market at each reporting date. As of September 30, 2002, we recorded the fair market value of the swaps of $22 million as other assets along with a corresponding increase to the hedged debt with equal and offsetting unrealized gains and losses included in other income (expense), net.

Interest payments were recognized through interest expense and were to be made and received on the first day of each April and October, commencing on October 1, 2002 and ending on the maturity date. On the last day of each semi-annual interest payment period, the interest payment for the previous six months was to be made based upon the six-month LIBOR rate (in arrears) on that day, plus the applicable spread, as shown in the table below. Since the interest rate was not known until the end of each semi-annual interest period, estimates were used during such period based upon published forward-looking LIBOR rates. Any differences between the estimated interest expense and the actual interest payment were recorded to interest expense at the end of each semi-annual interest period. These interest rate swaps resulted in a reduction to actual interest expense in fiscal 2002 of $4 million.

The following table outlines the terms of the swap agreements:

Maturity Date	Notional Amount (dollars in millions)		Receive Fixed Interest Rate	Pay Variable Interest Rate
April 2009	$	150	$11^1/8$%	Six month LIBOR (in arrears) plus 5.055% spread
April 2009		50	$11^1/8$%	Six month LIBOR (in arrears) plus 5.098% spread
Total	$	200		

Each counterparty to the swap agreements was a lender under our five-year credit facility. Our obligations under these swap agreements was secured on the same basis as our obligations under the five-year credit facility.

During the period from October 1, 2003 through December 11, 2003, we entered into three interest rate swap agreements each having a notional amount of $50 million and a maturity date of April 2009. These interest rate swap agreements have the same terms as the interest rate swap agreements entered into in April 2002, with the exception of the agreed upon spread of 6.55%, 6.8575% and 6.94%, respectively, that is added to the six month LIBOR (in arrears) used to calculate the variable interest rate that we will pay.

Recent Accounting Pronouncement

FASB Interpretation No. 46

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities, an interpretation of Accounting Research Bulletin No. 51," or FIN 46. FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the other equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. The disclosure and

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consolidation requirements of FIN 46 for variable interest entities created or acquired subsequent to January 31, 2003 became effective for financial statements issued by us beginning in the second quarter of fiscal 2003. For variable interest entities created or acquired prior to February 1, 2003, the consolidation requirements of FIN 46 become effective for us in the first quarter of fiscal 2004. The adoption of FIN 46 did not have a material effect on our consolidated results of operations, financial position or cash flows.

The Application of Critical Accounting Policies

Our consolidated financial statements are based on the selection and application of accounting principles generally accepted in the United States of America, which require us to make estimates and assumptions about future events that affect the amounts reported in our financial statements and the accompanying notes. Future events and their effects cannot be determined with absolute certainty. Therefore, the determination of estimates requires the exercise of judgment. Actual results could differ from those estimates, and any such differences may be material to the financial statements. We believe that the following policies may involve a higher degree of judgment and complexity in their application and represent the critical accounting policies used in the preparation of our financial statements. If different assumptions or conditions were to prevail, the results could be materially different from our reported results.

Revenue Recognition

We derive revenue primarily from the sale and service of communication systems and applications. In accordance with SEC Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements," revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed and determinable, collectibility is reasonably assured, contractual obligations have been satisfied, and title and risk of loss have been transferred to the customer.

Our products are sold directly through our worldwide sales force and indirectly through our global network of distributors, dealers, value-added resellers and system integrators. The purchase price of our systems and applications typically includes installation and a warranty of up to one year. Revenue from the direct sales of products that include installation services is recognized at the time the products are installed, after satisfaction of all the terms and conditions of the underlying customer contract. When we provide a combination of products and services to customers, the arrangement is evaluated under Emerging Issues Task Force Issue No. 00-21, "Revenue Arrangements with Multiple Deliverables," or EITF 00-21, which is effective for us for transactions entered into after July 1, 2003. EITF 00-21 addresses certain aspects of accounting by a vendor for arrangements under which the vendor will perform multiple revenue generating activities. The application of EITF 00-21 did not have a material effect on our consolidated results of operations, financial position or cash flows. Our indirect sales to distribution partners are generally recognized at the time of shipment if all contractual obligations have been satisfied. We accrue a provision for estimated sales returns and other allowances and deferrals as a reduction of revenue at the time of revenue recognition, as required.

We also derive revenue from: (i) maintenance services, including services provided under contracts and on a time and materials basis; (ii) professional services for customer relationship management,

converged voice and data networks, network security, and unified communications; and (iii) outsourcing services for messaging and other parts of communication systems. Maintenance contracts typically have terms that range from one to five years. Contracts for professional services typically have terms that range from two to four weeks for standard solutions and from six months to one year for customized solutions. Contracts for outsourcing services typically have terms that range from one to seven years. Revenue from services performed under outsourcing services arrangements, professional services and services performed under maintenance contracts is deferred and recognized ratably over the term of the underlying customer contract or at the end of the contract, when obligations have been satisfied. For services performed on a time and materials basis, revenue is recognized upon performance.

Most of our sales require judgments principally in the areas of customer acceptance, returns assessments and collectibility. The assessment of collectibility is particularly critical in determining whether or not revenue should be recognized. We assess collectibility based primarily on the creditworthiness of the customer as determined by credit checks and analysis, as well as the customer's payment history. In addition, a significant amount of our revenue is generated from sales of product to distributors. As such, our provision for estimated sales

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returns and other allowances and deferrals requires significant judgment. We provide for estimated sales returns and other allowances and deferrals as a reduction of revenue at the time of revenue recognition, as required. If these estimates, which are based on historical experience, are significantly below the actual amounts, our revenue could be adversely affected.

Collectibility of Accounts Receivable

In order to record our accounts receivable at their net realizable value, we must assess their collectibility. A considerable amount of judgment is required in order to make this assessment including an analysis of historical bad debts and other adjustments, a review of the aging of our receivables and the current creditworthiness of our customers. We have recorded allowances for receivables which we feel are uncollectible, including amounts for the resolution of potential credit and other collection issues such as disputed invoices, customer satisfaction claims and pricing discrepancies. However, depending on how such potential issues are resolved, or if the financial condition of any of our customers was to deteriorate and their ability to make required payments became impaired, increases in these allowances may be required. We actively manage our accounts receivable to minimize credit risk and as of September 30, 2003, we have no individual customer that constitutes more than 10% of our accounts receivable.

Inventories

In order to record our inventory at its lower of cost or market, we regularly assess the ultimate realizability of our inventory. We adjust our inventory balance based on historical usage, inventory turnover and product life cycles through the recording of a provision which we include in cost of sales. In certain circumstances such as the introduction of a new product, we may make judgments as to future demand and compare that with the current or committed inventory levels. Where we have determined that the future demand is lower than our current inventory levels, we adjust our inventory balance accordingly. In addition, we have outsourced the manufacturing of substantially all of our ECG and SMBS products. We are not obligated to purchase products from our outsourced manufacturer in any specific quantity, except as we outline in forecasts or orders for products required to be manufactured by the outsourced manufacturer. We may be obligated to purchase certain excess inventory levels from our outsourced manufacturer that could result from our actual sales of product varying from forecast, in which case we may need to record additional inventory provisions in the future.

Deferred Tax Assets

As of September 30, 2003, we had $439 million in net deferred tax assets resulting from tax credit carryforwards, net operating losses and other deductible temporary differences, which are available to reduce taxable income in future periods. We recorded an increase of $202 million to our net deferred tax assets valuation allowance during fiscal 2003. The increase in the valuation allowance is comprised of an $83 million provision for income taxes to reflect the difference between the actual and expected tax gain associated with the LYONs exchange offer, a $93 million reduction in accumulated other comprehensive loss associated with the minimum pension liability recorded in accordance with SFAS No. 87, "Employers' Accounting for Pensions," and a $3 million adjustment related to the exercise of stock options which served to decrease taxable income for the year. In addition, the valuation allowance balance increased by $32 million related to the reversal of certain deferred tax liabilities related to pre-spin federal income tax audits. The increase in the valuation allowance was partially offset by a $9 million benefit included in the tax provision as a result of having positive book taxable income for the year including certain other tax adjustments. The valuation allowance was calculated in accordance with the provisions of SFAS No. 109, "Accounting for Income Taxes," which place primary importance on a company's cumulative operating results for the current and preceding years.

We intend to maintain a valuation allowance until sufficient positive evidence exists to support its reversal. Although realization is not assured, we have concluded that the remaining net deferred tax assets as of September 30, 2003 will be realized based on the scheduling of deferred tax liabilities and on certain distinct tax planning strategies that we intend to implement in a timely manner, if necessary, which will allow us to recognize the future tax attributes. The amount of net deferred tax assets determined to be realizable was measured by calculating the tax effect of the planning strategies, which include the potential sale of assets and liabilities. The amount of the deferred tax assets actually realized, however, could vary if there are differences in the timing or amount of future reversals of existing deferred tax liabilities or in future

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income. If we determine that we will not be able to realize all or part of our deferred tax assets in the future, an adjustment to the deferred tax assets valuation allowance would be charged to income in the period such determination was made.

Long-Lived Assets

We have recorded property, plant and equipment, intangible assets, and capitalized software costs at cost less accumulated depreciation or amortization. The determination of useful lives and whether or not these assets are impaired involves significant judgment. Goodwill impairment is determined using a two-step approach. The first step of the goodwill test is used to identify potential impairment by comparing the fair value of a reporting unit, which is one level below our operating segments, with its carrying amount, including goodwill. The second step of the goodwill impairment test compares the implied fair value of the reporting unit's goodwill with the carrying amount of that goodwill. If the carrying amount of the reporting unit's goodwill exceeds the implied fair value of that goodwill, an impairment loss is recognized in an amount equal to that excess.

We conducted the required annual goodwill impairment review during the fourth quarter of fiscal 2003. Due to upward movement in our stock value we experienced an increase in our market capitalization that positively impacted the fair value of our reporting units as determined in accordance with the provisions of SFAS 142. Updated valuations were completed for all reporting units with goodwill as of September 30, 2003 using a discounted cash flow approach based on forward-looking information regarding market share, revenues and costs for each reporting unit as well as appropriate discount rates. As a result, no goodwill impairment charge was recorded in fiscal 2003. A considerable amount of judgment is required in calculating this impairment charge, principally in determining discount rates, market premiums, financial forecasts, and allocation methodology.

Business Restructuring Charges

During each of fiscal 2002 and 2001, we recorded $201 million and $674 million, respectively, of charges and established related business restructuring reserves related to the outsourcing of certain manufacturing facilities, the acceleration of our restructuring plan originally adopted in September 2000, and our efforts to improve our business performance in response to the continued industry-wide slowdown. These reserves include estimates related to employee separation costs, lease termination obligations and other exit costs. In fiscal years 2003, 2002 and 2001, we reversed $21 million, $20 million and $35 million, respectively, of business restructuring reserves primarily related to fewer involuntary employee separations than originally anticipated.

Estimates used to establish reserves related to real estate lease obligations have been reduced for sublease income that we believe is probable. Because certain of our real estate lease obligations extend for many years past fiscal 2003, assumptions were made as to the timing, availability and amount of sublease income that we expect to receive. In making these assumptions, we considered many variables such as the vacancy rates of commercial real estate in the local markets and the market rate for sublease rentals. Because we are required to project sublease income for many years into the future, our estimates and assumptions regarding the commercial real estate market that we used to calculate future sublease income may be materially different from actual sublease income. If our sublease income estimates were too high, we would incur additional real estate lease obligation charges. Conversely, if our sublease income estimates were too low, we would be required to reverse charges and recognize income.

Pension and Postretirement Benefit Costs

We maintain defined benefit pension plans covering the majority of our employees and retirees, and postretirement benefit plans for retirees that include healthcare benefits and life insurance coverage. In fiscal 2003, we adopted amendments to our pension and postretirement plans. Effective December 31, 2003, we froze the benefit accruals and additional participation in our plans for our management employees. We also enhanced our 401(k) savings plan for our management employees effective January 1, 2004. The changes in the pension and postretirement plans were accounted for as curtailments in accordance with SFAS No. 88, "Employers' Accounting for Settlements and Curtailments of Defined Benefit Pension Plans and for Termination Benefits." Effective June 1, 2003, we entered into new collective bargaining agreements with the Communications Workers of America and the International Brotherhood of Electrical Workers, which

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included pension increases and postretirement healthcare limitation increases over the term of the 3 year agreements. Additionally, we provided current retirees of the management pension plan with a one-time opportunity to take a full or partial lump sum distribution from the plan with a payout date of December 1, 2003.

Our pension and postretirement benefit costs are developed from actuarial valuations. Inherent in these valuations are key assumptions, including the discount rate and expected long-term rate of return on plan assets. Material changes in our pension and postretirement benefit costs may occur in the future due to changes in these assumptions, changes in the number of plan participants, changes in the level of benefits provided, and changes in asset levels.

The discount rate is subject to change each year, consistent with changes in applicable high-quality, long-term corporate bond indices. Based on the expected duration of the benefit payments for our pension plans, we refer to applicable indices such as the Moody's AA Corporate Bond Index and the Salomon Brothers Pension Discount Curve to select a rate at which we believe the pension benefits could be effectively settled. Based on the published rates as of September 30, 2003, we used a discount rate of 6.0%, a decline of 50 basis points from the 6.5% rate used in fiscal year 2002. This had the effect of increasing our accumulated pension benefit obligation by approximately $178 million for the

fiscal year ended September 30, 2003, and increasing our estimated pension expense for fiscal 2004 by $10 million.

The expected long-term rate of return on pension plan assets is selected by taking into account the expected duration of the projected benefit obligation for the plans, the asset mix of the plans, and the fact that the plan assets are actively managed. The forward-looking assumptions underlying our expected long-term rate of return are developed by our investment adviser and reviewed by us for reasonableness. The return and risk assumptions consider such factors as expected future earnings growth, dividend yields and inflation rates. The returns are reviewed for reasonableness by comparison to published long-term historical market returns. Based on these factors, our expected long-term rate of return as of September 30, 2003 is 9%, consistent with the prior year. A 25 basis point change in the expected long-term rate of return would result in approximately a $7 million change in our pension expense.

Avaya employs an asset allocation strategy whereby the assets in our portfolio are periodically rebalanced to maintain the desired target asset mix. Therefore, the actual asset allocation does not stray significantly from the targeted asset allocation. Based on our asset allocation strategy, and the correlation of the asset classes in our portfolio, the variability of returns around the mean, as measured by standard deviation, is approximately 9 percentage points. Therefore, in a normal probability distribution, about two-thirds of our returns will fall between plus and minus one standard deviation (9 percentage points) from the mean.

The market-related value of our plan assets is developed using a 5-year smoothing technique. The market-related value as of the measurement date is calculated as follows: (1) A preliminary market-related value is calculated by adjusting the market-related value at the beginning of the year for payments to and from plan assets and the expected return on assets during the year. The expected return on assets represents the expected long-term rate of return on plan assets adjusted plus or minus 2% based on the actual 10-year average rate of return on plan assets. (2) The final market-related value is determined as the preliminary market-related value from (1) above, plus 20% of the difference between the actual return and expected return for each of the past five years.

For the fiscal year ended September 30, 2003, we recorded a net pension credit of $8 million, which included a $31 million curtailment gain from freezing management pension benefit accruals, and a $7 million charge for special termination benefits offered to represented employees as a result of the new collective bargaining agreements. We also recorded a net postretirement benefit expense of $18 million, which included a $15 million gain related to the curtailment. During fiscal 2003, the projected benefit obligation decreased by $55 million as a result of the amendments to our pension plan for the curtailment of benefit accruals, the new collective bargaining agreements, and the lump sum distribution for our retirees. The projected postretirement benefit obligation increased by $98 million as a result of the amendment to our postretirement plan for the collective bargaining agreements.

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On September 30, 2003, our annual measurement date, the accumulated benefit obligation related to our pension plans exceeded the fair value of the pension plan assets (such excess is referred to as an unfunded accumulated benefit obligation). This difference reflects an increase in the accumulated benefit obligation that resulted from a decrease in the interest rate used to discount the projected benefit obligation to its present settlement amount. The unfunded accumulated benefit obligation exceeded our accrued pension liability by $813 million, an increase of $265 million from September 30, 2002. As a result, in accordance with SFAS 87, we recorded an adjustment to increase the additional minimum pension liability from $548 million at September 30, 2002 to $813 million at September 30, 2003. This resulted in a $237 million increase to accumulated other comprehensive loss from $513 million at September 30, 2002 to $750 million at September 30, 2003, and a $28 million increase

to intangible assets from $35 million at September 30, 2002 to $63 million at September 30, 2003. The charge to stockholders' equity represents a net loss not yet recognized as pension expense.

Commitments and Contingencies

We are subject to legal proceedings related to environmental, product, employment, intellectual property, licensing and other matters. In addition, we are subject to indemnification and liability sharing claims by Lucent under the terms of the Contribution and Distribution Agreement. In order to determine the amount of reserves required, we assess the likelihood of any adverse judgments or outcomes to these matters as well as potential ranges of probable losses. A determination of the amount of reserves required for these contingencies is made after analysis of each individual issue. The required reserves may change in the future due to new developments in each matter or changes in approach such as a change in settlement strategy. Assessing the adequacy of any reserve for matters for which we may have to indemnify Lucent is especially difficult, as we do not control the defense of those matters. In addition, estimates are made for our repurchase obligations related to products sold to various distributors who obtain financing from certain third party lending institutions.

REPORT OF INDEPENDENT AUDITORS

To the Board of Directors and Stockholders of
Avaya Inc.:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of changes in stockholders' equity and of comprehensive loss, and of cash flows present fairly, in all material respects, the financial position of Avaya Inc. and its subsidiaries (the "Company") at September 30, 2003 and 2002, and the results of their operations and their cash flows for each of the three years in the period ended September 30, 2003, in conformity with accounting principles generally accepted in the United States of America. 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 of these statements in accordance with auditing standards generally accepted in the United States of America, which 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, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 2 to the consolidated financial statements, on October 1, 2001, the Company adopted the provisions of Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets."

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/s/ PricewaterhouseCoopers LLP
PricewaterhouseCoopers LLP
Florham Park, New Jersey
October 21, 2003, except
for Note 20 as to which the
date is December 11, 2003

AVAYA INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

(dollars in millions, except per share amounts)

	Year Ended September 30,		
	2003	**2002**	**2001**
REVENUE			
Products	$ 2,505	$ 2,888	$ 4,507
Services	1,833	2,068	2,286
	4,338	4,956	6,793
COSTS			
Products	1,433	1,748	2,331
Services	1,119	1,262	1,566
	2,552	3,010	3,897
GROSS MARGIN	1,786	1,946	2,896
OPERATING EXPENSES			
Selling, general and administrative	1,314	1,555	2,055
Business restructuring charges (reversals) and related expenses, net	(5)	209	837
Goodwill and intangibles impairment charge	–	71	–
Research and development	363	459	536
Purchased in-process research and development	–	–	32
TOTAL OPERATING EXPENSES	1,672	2,294	3,460
OPERATING INCOME (LOSS)	114	(348)	(564)
Other income (expense), net	(31)	(2)	31
Interest expense	(78)	(51)	(37)
INCOME (LOSS) BEFORE INCOME TAXES	5	(401)	(570)
Provision (benefit) for income taxes	93	265	(218)
NET LOSS	$ (88)	$ (666)	$ (352)

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Net Loss Available to Common Stockholders:			
Net loss	$ (88)	$ (666)	$ (352)
Accretion of Series B preferred stock	–	(12)	(27)
Conversion charge related to Series B preferred stock and warrants	–	(125)	–
Net loss available to common stockholders	$ (88)	$ (803)	$ (379)
Loss Per Common Share:			
Basic and Diluted	$ (0.23)	$ (2.44)	$ (1.33)

See Notes to Consolidated Financial Statements.

AVAYA INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(dollars in millions, except per share amounts)

	As of September 30,	
	2003	**2002**
ASSETS		
Current assets:		
Cash and cash equivalents	$ 1,192	$ 597
Receivables, less allowances of $87 and $121 as of September 30, 2003 and 2002, respectively	710	876
Inventory	406	467
Deferred income taxes, net	69	160
Other current assets	192	203
TOTAL CURRENT ASSETS	2,569	2,303
Property, plant and equipment, net	783	896
Deferred income taxes, net	370	372
Goodwill	146	144
Other assets	189	182
TOTAL ASSETS	$ 4,057	$ 3,897
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 359	$ 404
Business restructuring reserve	66	170
Payroll and benefit obligations	278	309

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Deferred revenue	137	91
Other current liabilities	328	350
TOTAL CURRENT LIABILITIES	1,168	1,324
Long-term debt	953	933
Benefit obligations	1,238	1,110
Other liabilities	498	530
TOTAL NON-CURRENT LIABILITIES	2,689	2,573
Commitments and contingencies		
STOCKHOLDERS' EQUITY		
Series A junior participating preferred stock, par value $1.00 per share, 7.5 million shares authorized; none issued and outstanding	–	–
Common stock, par value $0.01 per share, 1.5 billion shares authorized, 419,434,414 and 364,752,178 issued (including 878,254 and 557,353 treasury shares) as of September 30, 2003 and 2002, respectively	4	4
Additional paid-in capital	2,151	1,693
Accumulated deficit	(1,270)	(1,182)
Accumulated other comprehensive loss	(679)	(512)
Less treasury stock at cost	(6)	(3)
TOTAL STOCKHOLDERS' EQUITY	200	–
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$ 4,057	$ 3,897

See Notes to Consolidated Financial Statements.

AVAYA INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY AND OF COMPREHENSIVE LOSS

(dollars in millions)

	Year Ended September 30,		
	2003	**2002**	**2001**
COMMON STOCK:			
Beginning balance	$ 4	$ 3	$ 3
Issuance of stock	–	1	–
Ending balance	$ 4	$ 4	$ 3
ADDITIONAL PAID-IN CAPITAL:			
Beginning balance	$ 1,693	$ 905	$ 825

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Issuance of warrants	5	–	32
Issuance of common stock for options exercised	–	2	7
Issuance of common stock to employees under the stock purchase plan	16	18	33
Issuance of other stock unit awards	31	24	28
Issuance of common stock in connection with Warburg transactions	–	628	–
Issuance of common stock in connection with the LYONs Exchange Offer, net of tax	57	–	–
Issuance of common stock through public offering	349	112	–
Other stock transactions	–	4	22
Adjustment to Lucent capital contribution	–	–	(42)
Ending balance	$ 2,151	$ 1,693	$ 905
ACCUMULATED DEFICIT:			
Beginning balance	$ (1,182)	$ (379)	$ –
Preferred stock accretion	–	(12)	(27)
Preferred stock conversion and exercise of warrants charge	–	(125)	–
Net loss	(88)	(666)	(352)
Ending balance	$ (1,270)	$ (1,182)	$ (379)
ACCUMULATED OTHER COMPREHENSIVE LOSS:			
Beginning balance	$ (512)	$ (46)	$ (64)
Foreign currency translation	70	47	18
Minimum pension liability	(237)	(513)	–
Tax effect of minimum pension liability	93	202	–
Valuation allowance related to minimum pension liability	(93)	(202)	–
Ending balance	$ (679)	$ (512)	$ (46)
TREASURY STOCK:			
Beginning balance	$ (3)	$ (2)	$ –
Purchase of treasury stock at cost	(3)	(1)	(2)
Ending balance	$ (6)	$ (3)	$ (2)
TOTAL STOCKHOLDERS' EQUITY	$ 200	$ –	$ 481
COMPREHENSIVE LOSS:			
Net loss	$ (88)	$ (666)	$ (352)
Minimum pension liability, net of tax and valuation allowance	(237)	(513)	–
Foreign currency translations	70	47	18
Comprehensive loss	$ (255)	$ (1,132)	$ (334)

See Notes to Consolidated Financial Statements.

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AVAYA INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(dollars in millions)

	Year Ended September 30,		
	2003	2002	2001
OPERATING ACTIVITIES:			
Net loss	$ (88)	$ (666)	$ (352)
Adjustments to reconcile net loss to net cash provided by (used for) operating activities:			
Business restructuring charges, net of reversals	(21)	188	659
Depreciation and amortization	201	229	273
Provision for uncollectible receivables	10	53	53
Deferred income taxes	(41)	(121)	(264)
Deferred tax asset valuation allowance	109	364	–
Gain on curtailment of pension and postretirement plans	(46)	–	–
Loss on extinguishment of debt, net	34	–	–
Lucent securities litigation charge	25	–	–
Amortization of restricted stock units	31	23	10
Impairment of goodwill, intangible assets and investments	–	88	–
Purchased in-process research and development	–	–	32
Adjustments for other non-cash items, net	8	54	16
Changes in operating assets and liabilities, net of effects of acquired businesses:			
Receivables	160	586	198
Inventory	64	133	(6)
Accounts payable	(59)	(260)	(124)
Payroll and benefits, net	(14)	(98)	(215)
Voluntary pension contribution	(105)	–	–
Business restructuring reserve	(83)	(187)	(327)
Deferred revenue	22	(98)	(132)
Other assets and liabilities	(10)	(90)	46
NET CASH PROVIDED BY (USED FOR) OPERATING ACTIVITIES	197	198	(133)
INVESTING ACTIVITIES:			
Capital expenditures	(60)	(111)	(341)
Proceeds from the sale of property, plant and equipment	21	5	108
Acquisition of businesses, net of cash acquired	–	(6)	(120)
Other investing activities, net	5	3	(12)
NET CASH USED FOR INVESTING ACTIVITIES	(34)	(109)	(365)
FINANCING ACTIVITIES:			
Issuance of convertible participating preferred stock	–	–	368
Issuance of warrants	–	–	32
Issuance of common stock	368	235	40
Net decrease in commercial paper	–	(432)	(348)
Issuance of long-term borrowings	216	895	–

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Repayment of long-term borrowings	(156)	−	(9)
Payment of issuance costs related to debt and equity offerings	(9)	(29)	−
Borrowings (repayments) under the credit facility	−	(200)	200
Proceeds from (termination of) accounts receivable securitization	−	(200)	200
Other financing activities, net	2	(14)	−
NET CASH PROVIDED BY FINANCING ACTIVITIES	421	255	483
Effect of exchange rate changes on cash and cash equivalents	11	3	(6)
Net increase (decrease) in cash and cash equivalents	595	347	(21)
Cash and cash equivalents at beginning of fiscal year	597	250	271
Cash and cash equivalents at end of fiscal year	$ 1,192	$ 597	$ 250

See Notes to Consolidated Financial Statements.

AVAYA INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Description of Business

Avaya Inc. (the "Company" or "Avaya") provides communication systems, applications and services for enterprises, including businesses, government agencies and other organizations. The Company's product offerings include Internet Protocol ("IP") telephony systems that converge voice, data and other traffic across a single unified network, traditional voice communication systems, contact center infrastructure and applications in support of customer relationship management, unified communications applications and structured cabling products. The Company supports its broad customer base with comprehensive global service offerings that enable customers to plan, design, implement and manage their communications networks.

2. Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of Avaya and its subsidiaries. All intercompany transactions and balances have been eliminated.

Use of Estimates

The consolidated financial statements and related disclosures are prepared in conformity with accounting principles generally accepted in the United States of America. Management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and revenue and expenses during the period reported. These estimates include assessing the collectibility of accounts receivable, the use and recoverability of inventory, the realization of deferred tax assets, restructuring reserves, pension and postretirement obligations, and useful lives and impairment of tangible and intangible assets, among others. The markets for the Company's products are characterized by intense competition, rapid technological development and frequent new product introductions, all of which could affect the future realizability of the Company's assets. Estimates and assumptions are

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reviewed periodically and the effects of revisions are reflected in the consolidated financial statements in the period they are determined to be necessary. Actual results could differ from these estimates.

Foreign Currency Translation

Balance sheet accounts of the Company's foreign operations are translated from foreign currencies into U.S. dollars at period-end exchange rates while income and expenses are translated at average exchange rates during the period. Translation gains or losses related to net assets located outside the U.S. are shown as a component of accumulated other comprehensive loss in stockholders' equity. Gains and losses resulting from foreign currency transactions, which are denominated in currencies other than the entity's functional currency, are included in the Consolidated Statements of Operations.

Revenue Recognition

The Company derives revenue primarily from the sale and service of communication systems and applications. In accordance with SEC Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements," revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed and determinable, collectibility is reasonably assured, contractual obligations have been satisfied, and title and risk of loss have been transferred to the customer.

The Company's products are sold directly through our worldwide sales force and indirectly through our global network of distributors, dealers, value-added resellers and system integrators. The purchase price of the Company's systems and applications typically includes installation and a warranty for up to one year. Revenue from the direct sales of products that include installation services is recognized at the time the products are installed, after satisfaction of all the terms and conditions of the underlying customer contract. When the Company provides a combination of products and services to customers, the arrangement is evaluated under Emerging Issues Task Force Issue ("EITF") No. 00-21, "Revenue Arrangements with Multiple Deliverables," ("EITF 00-21"), which is effective for the Company for transactions entered into after July 1, 2003. EITF 00-21 addresses certain aspects of accounting by a vendor for arrangements under which the vendor will perform multiple revenue generating activities. The application of EITF 00-21 did not have a material effect on the Company's consolidated results of operations, financial position or cash flows. The Company's indirect sales to distribution partners are generally recognized at the time of shipment if all contractual obligations have been satisfied. The Company accrues a provision for estimated sales returns and other allowances and deferrals as a reduction of revenue at the time of revenue recognition, as required.

The Company also derives revenue from: (i) maintenance services, including services provided under contracts and on a time and materials basis; (ii) professional services for customer relationship management, converged voice and data networks, network security, and unified communications; and (iii) outsourcing services for messaging and other parts of communication systems. Maintenance contracts typically have terms that range from one to five years. Contracts for professional services typically have terms that range from two to four weeks for standard solutions and from six months to one year for customized solutions. Contracts for outsourcing services typically have terms that range from one to seven years. Revenue from services performed under outsourcing services arrangements, professional services and services performed under maintenance contracts is deferred and recognized ratably over the term of the underlying customer contract or at the end of the contract, when obligations have been satisfied. For services performed on a time and materials basis, revenue is recognized upon performance.

Research and Development Costs and Software Development Costs

Research and development costs are charged to expense as incurred. The costs incurred for the development of computer software that will be sold, leased or otherwise marketed, however, are capitalized when technological feasibility has been established. These capitalized costs are subject to an ongoing assessment of recoverability based on anticipated future revenues and changes in hardware and software technologies. Costs that are capitalized include direct labor and related overhead.

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Amortization of capitalized software development costs begins when the product is available for general release to customers. Amortization is recognized on a product-by-product basis on the greater of either the ratio of current gross revenues to the total of current and anticipated future gross revenues, or the straight-line method over a period of up to three years. Unamortized capitalized software development costs determined to be in excess of net realizable value of the product are expensed immediately. As of September 30, 2003 and 2002, the Company had unamortized software development costs of $43 million and $47 million, respectively.

Cash and Cash Equivalents

All highly liquid investments with original maturities of three months or less are considered to be cash equivalents. These short-term investments are stated at cost, which approximates market value. The Company's cash and cash equivalents are invested in various investment grade institutional money market accounts.

Inventory

Inventory is stated at the lower of cost, determined on a first-in, first-out basis, or market.

Property, Plant and Equipment

Property, plant and equipment are stated at cost less accumulated depreciation. Depreciation is determined using a straight-line method over the estimated useful lives of the various asset classes. Estimated lives range from three to 10 years for machinery and equipment, and up to 40 years for buildings.

Major improvements are capitalized and minor replacements, maintenance and repairs are charged to expense as incurred. Upon retirement or disposal of assets, the cost and related accumulated depreciation are removed from the Consolidated Balance Sheets and any gain or loss is reflected in the Consolidated Statements of Operations.

Certain costs of computer software developed or obtained for internal use are capitalized and amortized on a straight-line basis over three to seven years. Costs for general and administrative, overhead, maintenance and training, as well as the cost of software that does not add functionality to the existing system, are expensed as incurred. As of September 30, 2003 and 2002, the Company had unamortized internal use software costs of $95 million and $71 million, respectively.

In the first quarter of fiscal 2003, the Company changed the estimated useful life of certain internal use software that is currently in service from seven to five years since a newer version of the software is expected to be implemented in fiscal 2004, which is two years earlier than originally anticipated. This change increased amortization expense, net of tax, by approximately $9 million, equivalent to $0.02 per basic and diluted share, for the fiscal year ended September 30, 2003.

In the second quarter of fiscal 2002, the Company changed the estimated useful life of certain internal use software from three to seven years to reflect actual experience as a stand-alone company based on the utilization of such software. This change lowered amortization expense, net of tax, by approximately $8 million, equivalent to $0.02 per basic and diluted share, for the fiscal year ended September 30, 2002.

Goodwill, Other Intangible and Long-lived Assets

Goodwill is the excess of the purchase price over the fair value of identifiable net assets acquired in business combinations accounted for as purchases. The Company adopted Statement of Financial Accounting Standards ("SFAS") No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142") in October 2001. Goodwill and certain other intangible assets having indefinite lives, which were previously amortized on a straight-line basis over the periods benefited, are no longer being amortized to earnings, but instead are subject to periodic testing for impairment. Intangible assets determined to

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have definite lives are amortized over their remaining useful lives. Goodwill of a reporting unit, which is one level below the Company's operating segments, is tested for impairment on an annual basis or between annual tests if an event occurs or circumstances change that would reduce the fair value of a reporting unit below its carrying amount.

Goodwill impairment is determined using a two-step approach. The first step of the goodwill test is used to identify potential impairment by comparing the fair value of a reporting unit with its carrying amount, including goodwill. If the fair value of a reporting unit exceeds its carrying amount, goodwill of the reporting unit is not considered impaired and the second step of the impairment test is unnecessary. However, if the carrying amount of a reporting unit exceeds its fair value, the second step of the goodwill impairment test is performed to measure the amount of impairment, if any. The second step of the goodwill impairment test compares the implied fair value of the reporting unit's goodwill with the carrying amount of that goodwill. If the carrying amount of the reporting unit's goodwill exceeds the implied fair value of that goodwill, an impairment loss is recognized in an amount equal to that excess.

Intangible and other long-lived assets are reviewed for impairment whenever events such as product discontinuance, plant closures, product dispositions or other changes in circumstances indicate that the carrying amount may not be recoverable. In reviewing for impairment, the Company compares the carrying value of such assets to the estimated undiscounted future cash flows expected from the use of the assets and their eventual disposition. When the estimated undiscounted future cash flows are less than their carrying amount, an impairment loss is recognized equal to the difference between the assets' fair value and their carrying value.

Investments

The Company's investment portfolio consists primarily of investments accounted for under the cost and equity methods that are generally concentrated in the emerging communications technology industry. The carrying value of these investments is included in other assets. The Company's share of earnings or losses from equity method investments is recorded in other income (expense), net. All investments are periodically reviewed for impairment and a write down is recorded whenever declines in fair value below carrying value are considered to be other than temporary. In making this determination, the Company considers, among other factors, sustained decreases in quoted market prices and a series of historic and projected operating losses by the investee. If the decline in fair value is determined to be other than temporary, an impairment loss is recorded and the respective investment is written down to an adjusted carrying value. As of September 30, 2003 and 2002, the Company had investments of $10 million and $12 million, respectively. In fiscal 2002, the Company recorded impairment charges of $17 million in other income (expense), net related to investments accounted for under the cost method, after the Company determined the investments were permanently impaired.

Financial Instruments

The Company uses various financial instruments, including interest rate swap agreements and foreign currency forward and option contracts, to manage and reduce risk to the Company by generating cash flows which offset the cash flows of certain transactions in foreign currencies or underlying financial instruments in relation to their amount and timing. The Company's derivative

financial instruments are used as risk management tools and not for speculative or trading purposes. Although not material, these derivatives represent assets and liabilities and are classified as other current assets or other current liabilities on the accompanying Consolidated Balance Sheets, except for the interest rate swaps discussed below. Gains and losses on the changes in the fair values of the Company's derivative instruments are included in other income (expense), net.

As permitted under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," ("SFAS 133"), the Company has elected not to designate its forward and option contracts as hedges thereby precluding the use of hedge accounting for these instruments. Such

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treatment could result in a gain or loss from fluctuations in exchange rates related to a derivative contract which is different from the loss or gain recognized from the underlying forecasted transaction. However, the Company has procedures to manage risks associated with its derivative instruments, which include limiting the duration of the contracts, typically six months or less, and the amount of the underlying exposures that can be economically hedged. Historically, the gains and losses on these transactions have not been significant.

In April 2002, the Company entered into two interest rate swap agreements with a total notional amount of $200 million that qualify and are designated as fair value hedges in accordance with SFAS 133. These arrangements generally involve the exchange of fixed and floating rate interest payments without the exchange of the underlying principal. Net amounts paid or received are reflected as adjustments to interest expense. The Company records the fair market value of the swaps as other assets along with a corresponding increase to the hedged debt, both of which are recorded through other income (expense), net. In December 2002, the Company cancelled the interest rate swap agreements. The cancellation resulted in a $19 million deferred gain, which is being recognized as a reduction to interest expense over the remaining term to maturity of the Senior Secured Notes. See Note 10−Derivatives and Other Financial Instruments for a further discussion.

The Company also utilizes non-derivative financial instruments including letters of credit and commitments to extend credit.

Business Restructuring Charges and Related Expenses

The Company accounts for exit or disposal activities initiated after December 31, 2002, in accordance with SFAS No. 146, "Accounting For Costs Associated With Exit Or Disposal Activities" ("SFAS 146"). Prior to December 31, 2002, the Company accounted for its restructuring activities in accordance with EITF No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)" ("EITF 94-3"). The principle difference between SFAS 146 and EITF 94-3 is that SFAS 146 requires that a liability for exit or disposal activities be recognized when the liability is incurred, whereas under EITF 94-3, a liability was recognized at the date an entity committed to an exit plan.

In accordance with SFAS 146, a business restructuring is defined as a program that is planned and controlled by management, and materially changes either the scope of a business or the manner in which that business is conducted. Business restructuring charges include (i) one-time termination benefits related to employee separations, (ii) contract termination costs, and (iii) other associated costs such as consolidating or closing facilities and relocating employees.

A liability is recognized and measured at its fair value for one-time termination benefits once the plan of termination is communicated to employees and it meets all of the following criteria: (i) management commits to a plan of termination, (ii) the plan identifies the number of employees to be terminated, their job classifications or functions, locations and the expected completion date, (iii) the plan establishes the terms of the benefit arrangement, and (iv) it is unlikely that significant changes to the plan will be made or the plan will be withdrawn. Contract termination costs include costs to terminate a contract or costs that will continue to be incurred under the contract without benefit to the Company. A liability is recognized and measured at its fair value when the Company either terminates the contract or ceases using the rights conveyed by the contract. A liability is recognized and measured at its fair value for other associated costs in the period in which the liability is incurred.

The Company periodically evaluates its business restructuring reserve to ensure that any accrued amount no longer needed for its originally intended purpose is reversed in a timely manner. A reversal of the liability, if any, is recorded through the same statement of operations line item that was used when the liability was initially recorded.

Pension and Postretirement Benefit Obligations

The Company maintains defined benefit pension plans covering the majority of its employees, which provide benefit payments to vested participants upon retirement. The Company also provides certain postretirement healthcare and life insurance benefits to eligible employees. The plans use different factors, including age, years of service, and eligible compensation, to determine the benefit amount for eligible participants. The Company funds its pension plans in compliance with applicable law. See Note 14−Benefit Obligations, for a discussion of

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amendments made to the Company's pension and postretirement plans which froze benefits accruals and additional participation in the plans for its management employees, effective December 31, 2003.

Stock Compensation

The Company's employees participate in stock option plans, which are described more fully in Note 15−Stock Compensation Plans. The Company applies the recognition and measurement principles of Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related interpretations in accounting for such stock compensation. Accordingly, no stock-based employee compensation cost related to stock options is reflected in the Company's Statements of Operations, as all options granted under the plan had an exercise price equal to or greater than the market value of the underlying common stock on the date of grant. The Company records compensation expense for the amortization of restricted stock units issued to employees based on the fair market value of the restricted stock units at the date of grant over the vesting period, which is typically three years. The following table illustrates the effect on net loss available to common stockholders and loss per share as if the Company had applied the fair value

recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation" as amended by SFAS No. 148, "Accounting for Stock-Based Compensation−Transition and Disclosure."

	Year Ended September 30,		
	2003	2002	2001
	(dollars in millions, except per share amounts)		
Net loss available to common stockholders, as reported	$ (88)	$ (803)	$ (379)
Total stock-based employee compensation income (expense) determined under fair value based method, net of related tax effect	39	(35)	(77)
Pro forma net loss available to common stockholders	$ (49)	$ (838)	$ (456)
Loss per share−Basic and Diluted			
As reported	$ (0.23)	$ (2.44)	$ (1.33)
Pro forma	$ (0.13)	$ (2.54)	$ (1.60)

The fair value of stock options used to compute pro forma net loss resulted in additional income in fiscal 2003 because a substantial number of previously granted options had been forfeited/expired and the cumulative reversal of pro forma expense related to these options exceeded the pro forma expense related to the remaining outstanding options.

The fair value of stock options used to compute pro forma net loss disclosures is the estimated fair value at grant date using the Black-Scholes option-pricing model with the following assumptions:

	Year Ended September 30,		
	2003	2002	2001
WEIGHTED AVERAGE ASSUMPTIONS			
Dividend yield	0%	0%	0%
Expected volatility	75.0%	61.5%	50.4%
Risk-free interest rate	2.7%	4.3%	5.7%
Expected holding period (in years)	3.8	3.9	3.3

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Income Taxes

Income taxes are accounted for under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the Consolidated Statement of Operations in the period that includes the enactment date. A valuation allowance is recorded to reduce the carrying amounts of deferred tax assets if it is more likely than not that such assets will not be realized.

Other Comprehensive Income (Loss)

Other comprehensive income (loss) is recorded directly to a separate section of stockholders' equity in accumulated other comprehensive loss and includes unrealized gains and losses excluded from the Consolidated Statements of Operations. These unrealized gains and losses consist of adjustments to the minimum pension liability, net of income taxes, and foreign currency translation, which are not adjusted for income taxes since they primarily relate to indefinite investments in non-U.S. subsidiaries. The minimum pension liability adjustment represents the excess of the additional pension liability over the unrecognized prior service cost.

Reclassifications

Certain prior year amounts have been reclassified to conform to the current year presentation.

3. Recent Accounting Pronouncement

FASB Interpretation No. 46

In January 2003, the Financial Accounting Standards Board ("FASB") issued Interpretation No. 46, "Consolidation of Variable Interest Entities, an interpretation of Accounting Research Bulletin No. 51" ("FIN 46"). FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the other equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. The disclosure and consolidation requirements of FIN 46 for variable interest entities created or acquired subsequent to January 31, 2003 became effective for financial statements issued by the Company beginning in the second quarter of fiscal 2003. For variable interest entities created or acquired prior to February 1, 2003, the consolidation requirements of FIN 46 become effective for the Company in the first quarter of fiscal 2004. The adoption of FIN 46 did not have a material effect on the Company's consolidated results of operations, financial position or cash flows.

4. Goodwill and Intangible Assets

In connection with the Company's adoption of SFAS 142 on October 1, 2001, the Company reviewed the classification of its goodwill and other intangible assets, reassessed the useful lives previously assigned to other intangible assets, and discontinued amortization of goodwill. The Company also tested goodwill for impairment by comparing the fair values of the Company's reporting units to their carrying values as of October 1, 2001 and determined that there was no goodwill impairment at that time. Based on this review, as of September 30, 2001, the Company classified $175 million as goodwill, $78 million as intangible assets, net and $2 million as other assets. The Company did not identify any intangible assets having indefinite lives.

The Company conducted the required annual impairment review during the fourth quarter of fiscal 2003 and 2002. Updated valuations were completed for all reporting units with goodwill as of September 30, 2003 and 2002 using a discounted cash flow approach based on forward-looking information regarding market shares, revenues and costs for each reporting unit as well as appropriate discount rates. For

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fiscal 2003, the Company did not identify any goodwill impairment. For fiscal 2002, due to a significant downward movement in the U.S. stock market and, in particular, communications

technology stocks, the Company experienced a decline in its market capitalization that negatively impacted the fair value of its reporting units. As a result, the Company recorded a goodwill impairment charge of $44 million as an operating expense in fiscal 2002 related to its Small and Medium Business Solutions ("SMBS") operating segment.

The changes in the carrying value of goodwill for fiscal 2003 and 2002 by operating segment are as follows:

	Enterprise Communications Group	Small and Medium Business Solutions	Total
		(dollars in millions)	
Balance as of September 30, 2001	$ 108	$ 67	$ 175
Goodwill acquired	6	–	6
Purchase accounting adjustment	5	–	5
Impact of foreign currency exchange rate fluctuations	(1)	3	2
Impairment loss	–	(44)	(44)
Balance as of September 30, 2002	$ 118	$ 26	$ 144
Impact of foreign currency exchange rate fluctuations	–	2	2
Balance as of September 30, 2003	$ 118	$ 28	$ 146

For the fiscal year ended September 30, 2001, goodwill amortization, net of tax, amounted to $38 million. If the Company had adopted SFAS 142 at the beginning of fiscal 2001 and discontinued goodwill amortization, the Company's net loss and loss per common share on a pro forma basis would have been as follows:

	Year Ended September 30, 2001
Pro Forma Results (dollars in millions, except per share amounts)	
Net loss, as reported	$ (352)
Goodwill amortization, net of tax	38
Adjusted net loss	(314)
Accretion of Series B preferred stock	(27)
Adjusted loss available to common stockholders	$ (341)
Adjusted loss per common share:	
Basic and Diluted	$ (1.20)

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The Company includes its acquired intangible assets with definitive lives in other assets on the Consolidated Balance Sheets. As of September 30, 2003 and 2002, such amortized intangible assets included existing technology and amounted to $6 million and $18 million, net of accumulated amortization of $117 million and $105 million, respectively.

Acquired intangible assets with definite lives are amortized over a period of three to six years. Amortization expense for such intangible assets was $12 million, $35 million and $32 million for the

fiscal years ended September 30, 2003, 2002 and 2001, respectively. Foreign currency exchange rate fluctuations accounted for a minimal decrease in intangibles assets, net as of September 30, 2003, and a $2 million increase as of September 30, 2002. As of September 30, 2003, the Company estimates remaining amortization expense to be $4 million in 2004 and $2 million in 2005.

In addition, included in other assets in the Consolidated Balance Sheets as of September 30, 2003 and 2002 is an intangible asset of $63 million and $35 million, respectively, representing unrecognized prior service costs associated with the recording of a minimum pension liability in fiscal 2003 and 2002. This intangible asset may be eliminated or adjusted as necessary when the amount of minimum pension liability is reassessed, which is conducted at least annually. Based on the Company's fiscal 2003 annual assessment of its minimum pension liability, the intangible asset increased by $28 million.

As a result of the significant downturn in the communications technology industry, the Company noted a steep decline in the marketplace assumptions for virtual private networks in the fourth quarter of fiscal 2002 as compared with the assumptions used when Avaya acquired this existing technology through its acquisition of VPNet Technologies, Inc. ("VPNet") in February 2001. These circumstances caused the Company to review the recoverability of its acquired intellectual property and trademarks. The Company applied the provisions of SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" ("SFAS 121") to its intangible assets with definite lives and determined that the carrying value of these assets was impaired. Accordingly, the Company recorded a $27 million intangibles impairment charge as an operating expense in fiscal 2002 to write-down the carrying value of these intangible assets to an amount representing their discounted future cash flows. At the same time, the Company removed $49 million from its Consolidated Balance Sheet representing the gross carrying amount and accumulated amortization of the related impaired intangible assets. The $27 million impairment charge, which was recorded as accumulated amortization on the Consolidated Balance Sheet, was attributed $24 million to Enterprise Communications Group ("ECG") and $3 million to SMBS.

5. Business Combinations and Other Transactions

Acquisitions

The following table presents historical information about certain acquisitions made by the Company during fiscal 2001. These acquisitions were accounted for under the purchase method of accounting, and the acquired technology valuation included existing technology, purchased in-process research and development ("IPR&D") and other intangibles. The consolidated financial statements include the results of operations and the estimated fair values of the assets and liabilities assumed from the respective dates of acquisition. All charges related to the write-off of purchased IPR&D were

recorded in the quarter in which the transaction was completed. There were no material acquisitions accounted for under the purchase method in fiscal 2003 and 2002.

	Allocation of Purchase Price(1)	Amortization Period (in years)

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	Acquisition Date	Purchase Price	Goodwill	Existing Technology	Other Intangibles	Purchased IPR&D	Existing Technology	Other Intangibles
				(dollars in millions)				
Quintus(2)	April 11, 2001	$ 29	$ 11	$ 9	$ −	$ 1	3	3
VPNet(3)	February 6, 2001	$ 117	$ 60	$ 30	$ 6	$ 31	5	5

(1) Excludes amounts allocated to specific tangible assets and liabilities. All amounts reflect the historical carrying values from the date of acquisition, adjusted to reflect the Company's review of the classification of its goodwill and intangible assets in connection with its adoption of SFAS 142 in fiscal 2002.

(2) Acquisition of substantially all of the assets, including $10 million of cash acquired, and the assumption of $20 million of certain liabilities of Quintus Corporation ("Quintus"), a provider of comprehensive electronic customer relationship management solutions. The Company paid $29 million in cash for these assets. As a result of finalizing acquisition related liabilities, a purchase accounting adjustment was recorded in fiscal 2002 that increased the historical carrying value of goodwill by $5 million.

(3) Acquisition of VPNet, a privately held distributor of virtual private network solutions and devices. The total purchase price of $117 million was paid in cash and stock options. In fiscal 2002, the Company recorded a goodwill and intangibles impairment charge, which included $21 million in existing technology and $3 million in other intangibles related to the VPNet acquisition. This impairment charge is not reflected in the allocation of purchase price.

Included in the purchase price for each of the above acquisitions was purchased IPR&D. At the date of each acquisition, the IPR&D projects had not yet reached technological feasibility and had no future alternative use. Accordingly, the value allocated to these projects was capitalized and immediately expensed at acquisition. The charge related to VPNet purchased IPR&D was not tax-deductible. The remaining purchase price was allocated to tangible and intangible assets, goodwill, and existing technology, less liabilities assumed.

The value allocated to purchased IPR&D for the acquisitions was determined using an income approach. This involved estimating the fair value of the IPR&D, using the present value of the estimated after-tax cash flows expected to be generated by the purchased IPR&D, using risk-adjusted discount rates and revenue forecasts as appropriate. Where appropriate, the Company deducted an amount reflecting the contribution of the core technology from the anticipated cash flows from an IPR&D project. The selection of the discount rate was based on consideration of the Company's weighted average cost of capital, as well as other factors, including the useful life of each technology, profitability levels of each technology, the uncertainty of technological advances that were known at the time, and the stage of completion of each technology. The Company believes that the estimated IPR&D amounts so determined represent the fair value and do not exceed the amount a third party would have paid for the projects.

Revenue forecasts were estimated based on relevant market size and growth factors, expected industry trends, individual product sales cycles and the estimated life of each product's underlying technology. Estimated operating expenses, income taxes, and charges for the use of contributory assets were deducted from estimated revenue to determine estimated after-tax cash flows for each project. Estimated operating expenses include cost of goods sold, selling, general and administrative expenses, and research and development expenses. The research and development expenses include estimated costs to maintain the products once they have been introduced into the market and generate revenue and costs to complete the purchased IPR&D.

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Management is primarily responsible for estimating the fair value of the assets and liabilities acquired, and has conducted due diligence in determining the fair value. Management has made estimates and assumptions that affect the reported amounts of assets, liabilities and expenses resulting from such acquisitions. Actual results could differ from these amounts.

Other Transactions

Aircraft Sale-Leaseback−In June 2001, the Company sold a corporate aircraft for approximately $34 million and subsequently entered into an agreement to lease it back over a five-year period. In March 2002, the Company elected to terminate the aircraft sale-lease-back agreement and, pursuant to the terms of the agreement, purchased the aircraft in April 2002 from the lessor for a purchase price equal to the unamortized lease balance of approximately $33 million.

Outsourcing of Certain Manufacturing Facilities−In May 2001, the Company closed the first phase of a five-year strategic manufacturing agreement to outsource most of the manufacturing operations related to its ECG and SMBS segments to Celestica Inc. ("Celestica"). The Company received $200 million in proceeds for assets transferred to Celestica and deferred $100 million of these proceeds, which are being recognized on a straight-line basis over the term of the agreement. As of September 30, 2003 and 2002, the unamortized portion of these proceeds amounted to $20 million in other current liabilities for both periods and $30 million and $52 million in other liabilities, respectively. The remaining phases of the transaction, which included closing the Shreveport, Louisiana facility, were completed in the first quarter of fiscal 2002.

See Note 20−Subsequent Events for disclosure regarding the sale of Connectivity Solutions and the acquisition of Expanets.

6. Supplementary Financial Information

Statements of Operations Information

	Year Ended September 30,		
	2003	2002	2001
	(dollars in millions)		
DEPRECIATION AND AMORTIZATION:			
INCLUDED IN COSTS:			
Amortization of software development costs	$ 25	$ 20	$ 24
INCLUDED IN SELLING, GENERAL AND ADMINISTRATIVE EXPENSES:			
Amortization of goodwill	−	−	40
Amortization of intangible assets	12	35	32
INCLUDED IN COSTS AND OPERATING EXPENSES:			
Depreciation and amortization of property, plant and equipment and internal use software	164	174	177
Total depreciation and amortization	$ 201	$ 229	$ 273
OTHER INCOME (EXPENSE), NET			
Loss on foreign currency transactions	$ (2)	$ (6)	$ (5)
Gain on assets sold	14	2	6
Interest income	15	20	27
Impairment of investments	−	(17)	−
Loss on long-term debt extinguishment, net	(34)	−	−

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Lucent securities litigation charge	(25)	–	–
Miscellaneous, net	1	(1)	3
Total other income (expense), net	$ (31)	$ (2)	$ 31

Balance Sheet Information

	As of September 30,	
	2003	2002
	(dollars in millions)	
INVENTORY		
Finished goods	$ 300	$ 347
Work in-process and raw materials	106	120
Total inventory	$ 406	$ 467
PROPERTY, PLANT AND EQUIPMENT, NET		
Land and improvements	$ 39	$ 45
Buildings and improvements	500	531
Machinery and equipment	967	1,001
Assets under construction	8	16
Internal use software	158	119
Total property, plant and equipment	1,672	1,712
Less: Accumulated depreciation and amortization	(889)	(816)
Property, plant and equipment, net	$ 783	$ 896

Supplemental Cash Flow Information

	Year Ended September 30,	
	2002	2001
	(dollars in millions)	
ACQUISITION OF BUSINESSES:		
Fair value of assets acquired, net of cash acquired	$ 8	$ 192
Less: Fair value of liabilities assumed	(2)	(72)
Acquisition of businesses, net of cash acquired	$ 6	$ 120

In the second quarter of fiscal 2001, the Company paid off $9 million of debt assumed from its acquisition of VPNet.

Year Ended September 30,		
2003	2002	2001

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	(dollars in millions)		
OTHER PAYMENTS:			
Interest payments, net of amounts capitalized	$ 52	$ 8	$ 41
Income tax payments	$ 17	$ 20	$ 66

	Year Ended September 30,		
	2003	2002	2001
	(dollars in millions)		
NON-CASH TRANSACTIONS:			
Issuance of common stock in connection with the LYONs Exchange Offer	$ 67	$ –	$ –
Warrants to purchase common stock issued in LYONs Exchange Offer	5	–	–
Accretion of Series B preferred stock	–	12	27
Book value of converted Series B preferred stock	–	395	–
Conversion charge related to Series B preferred stock	–	125	–
Issuance of common stock in connection with the Warburg transactions	–	(532)	–
Deferred taxes on stock options	–	4	–
Fair market value of stock options issued in connection with acquisition	–	–	16
Adjustments to Contribution by Lucent:			
Accounts receivable	–	–	8
Property, plant and equipment, net	–	–	7
Net benefit assets	–	–	27
Total non-cash transactions	$ 72	$ 4	$ 85

7. Securitization of Accounts Receivable

In June 2001, the Company entered into a receivables purchase agreement and transferred a designated pool of qualified trade accounts receivable to a special purpose entity ("SPE"), which in

turn sold an undivided ownership interest in the pool of receivables to an unaffiliated financial institution for cash proceeds of $200 million. The receivables purchase agreement was terminated in March 2002 as described below. The designated pool of qualified receivables held by the SPE was pledged as collateral to secure the obligations to the financial institution. During the term of the receivables purchase agreement, the Company, through the SPE, had a retained interest in the designated pool of receivables, representing collateral for the sale, to the extent the value of the receivables exceeded the outstanding amount of the financial institution's investment. The financial institution had no recourse to the Company's other assets for failure of customers to pay when due and the assets of the SPE were not available to pay creditors of the Company.

The Company was responsible for defined fees payable monthly to the financial institution for costs associated with the outstanding capital issued by the financial institution to fund the purchase of receivables. The Company continued to service, administer and collect the receivables on behalf of the financial institution and received a fee for performance of these services. Collections of receivables were used by the SPE to repay the financial institution's investment in accordance with the receivables purchase agreement, and the financial institution in turn purchased, from time to time, new interests in receivables up to an aggregate investment at any time of $200 million.

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The transfer of accounts receivable was accounted for as a sale and, accordingly, during the term of the securitization, the accounts receivable balances were removed from the Consolidated Balance Sheet and the proceeds received from the sale were reflected as cash provided by financing activities in the Consolidated Statement of Cash Flows. The fair value of the Company's retained interest, which approximated its carrying amount because of the short-term nature of the receivables, was recorded in other current assets. The Company reviewed the fair value assigned to retained interests at each reporting date using similar valuation techniques as those used to initially measure the retained interest. The Company did not record an asset or liability related to any servicing obligations because the servicing fee received was determined to be just adequate to compensate the Company for its servicing responsibilities. Although not material, costs associated with the sales of the receivables were recorded in other income (expense), net in the Consolidated Statement of Operations in fiscal 2001. No significant gains or losses resulted from these transactions.

In March 2002, the Company elected to terminate the receivables purchase agreement, which was scheduled to expire in June 2002. As a result of the early termination, purchases of interests in receivables by the financial institution ceased, and collections on receivables that constituted the designated pool of trade accounts receivable were used to repay the financial institution's $200 million investment, which had been entirely liquidated as of September 30, 2002. No portion of the retained interest was used to liquidate the financial institution's investment. Upon liquidation in full in April 2002, the Company had reclassified the remaining $109 million retained interest to receivables.

8. Business Restructuring Reserve

The business restructuring reserve reflects the remaining balance associated with the business restructuring charges recorded in fiscal 2000 through 2002. The following table summarizes the status

of the Company's business restructuring reserve and other related expenses during fiscal 2003, 2002 and 2001:

	Business Restructuring Reserve				Other Related Expenses		
	Employee Separation Costs	Lease Termination Obligations	Other Exit Costs	Total Business Restructuring Reserve	Asset Impairments	Incremental Period Costs	Total Business Restructuring Reserve and Related Expenses
	(dollars in millions)						
FISCAL 2001:							
Balance as of October 1, 2000	$ 345	$ 127	$ 27	$ 499	$ −	$ −	$ 499
Charges	650	24	−	674	20	178	872
Reversals	(17)	(7)	(11)	(35)	−	−	(35)
Decrease in prepaid benefit costs/increase in benefit obligations, net	(577)	−	−	(577)	−	−	(577)
Cash payments	(250)	(66)	(11)	(327)	−	(178)	(505)
Asset impairments	−	−	−	−	(20)	−	(20)
Reclassification	(55)	−	−	(55)	−	−	(55)
Balance as of September 30, 2001	$ 96	$ 78	$ 5	$ 179	$ −	$ −	$ 179
FISCAL 2002:							
Charges	116	84	1	201	7	21	229

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Reversals	(13)	(4)	(3)	(20)	–	–	(20)
Net increase in benefit obligations	(3)	–	–	(3)	–	–	(3)
Cash payments	(128)	(56)	(3)	(187)	–	(21)	(208)
Asset impairments	–	–	–	–	(7)	–	(7)
Balance as of September 30, 2002	$ 68	$ 102	$ –	$ 170	$ –	$ –	$ 170
FISCAL 2003:							
Charges	–	–	–	–	–	16	16
Reversals	(19)	(2)	–	(21)	–	–	(21)
Cash payments	(45)	(38)	–	(83)	–	(16)	(99)
Balance as of September 30, 2003	$ 4	$ 62	$ –	$ 66	$ –	$ –	$ 66

Fiscal 2003

During fiscal 2003, the Company recorded reversals to income of $21 million primarily attributable to fewer involuntary employee separations than originally anticipated. Additionally, in fiscal 2003 the Company incurred $16 million in other related expenses associated with our fourth quarter of fiscal 2002 restructuring initiative. These expenses were primarily attributable to information technology ("IT") costs incurred to relocate the development of certain IT applications to India.

Fiscal 2002

During fiscal 2002, the Company experienced a decrease in its revenue as a result of the continued decline in spending on IT by its customers, specifically for enterprise communications products and services. Despite the unpredictability of the business environment, the Company remained focused on its strategy to return to profitability by focusing on sustainable cost and expense reduction, among other things. To achieve that goal, the Company initiated restructuring actions in fiscal 2002 to enable it to reduce costs and expenses further in order to lower the amount of revenue needed to reach the

Company's profitability break-even point. As a result, the Company recorded a pretax charge of $229 million in fiscal 2002 for business restructuring and related expenses. The components of the charge included $116 million of employee separation costs, $84 million of lease termination costs, $1 million of other exit costs, and $28 million of other related expenses. This charge was partially offset by a $20 million reversal to income primarily attributable to fewer involuntary employee separations than originally anticipated.

The charge for employee separation costs was composed of $113 million for severance and other related costs and $3 million primarily related to the cost of curtailment in accordance with SFAS No. 88, "Employers' Accounting for Settlements and Curtailments of Defined Benefit Pension Plans and for Termination Benefits" ("SFAS 88"). Lease termination costs included approximately $72 million of real estate, net of sublease income that management believed was probable, and $12 million of IT lease termination payments. The $28 million of other related expenses include relocation and consolidation costs, computer system transition expenditures, and asset impairments associated with the Company's ongoing restructuring initiatives.

The employee separation costs were incurred in connection with the elimination of approximately 4,240 management and union-represented employee positions worldwide. As of September 30, 2003, this workforce reduction had been completed. Employee separation

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payments included in the business restructuring reserve were made either through a lump sum or a series of payments extending over a period of up to two years from the date of departure, which was an option available to certain union-represented employees. Payments to employees who elected to receive severance through a series of payments will extend through fiscal 2004.

The $72 million charge for real estate lease termination obligations includes approximately one million square feet of excess sales and services support, research and development, call center and administrative offices located primarily in the U.S., which had been entirely vacated as of September 30, 2003. The real estate charge also included an adjustment to increase the accrued amount for previously reserved sites due to a deterioration in the commercial real estate market. As a result, the Company had extended its estimates as to when it will be able to begin subleasing certain vacated sites and established an additional accrual for lease payments originally estimated to have been offset by sublease rental income. Payments on lease obligations, net of estimated sublease income, will be extended through 2011 because, in certain circumstances, the remaining lease payments were less than the termination fees.

Fiscal 2001

In fiscal 2001, the Company outsourced certain manufacturing facilities and accelerated its restructuring plan that was originally adopted in September 2000 to improve profitability and business performance as a stand-alone company. As a result, the Company recorded a pretax charge of $872 million in fiscal 2001 for business restructuring and related expenses. This charge was partially offset by a $35 million reversal to income primarily attributable to fewer involuntary employee separations than originally anticipated and more favorable than expected real estate lease termination costs.

The components of the fiscal 2001 charge included $650 million of employee separation costs, $24 million of lease termination costs, and $198 million of other related expenses. The charge for employee separation costs was composed of $577 million primarily related to enhanced pension and

postretirement benefits, which represented the cost of curtailment in accordance with SFAS 88, and $73 million for severance, special benefit payments and other employee separation costs. The $198 million of other related expenses was composed of $178 million for incremental period expenses primarily to facilitate the separation from Lucent, including computer system transition costs, and $20 million for an asset impairment charge related to buildings and equipment at the Shreveport manufacturing facility. Employee separation costs of $55 million established in fiscal 2000 for union-represented employees at Shreveport were paid as enhanced severance benefits from existing pension and benefit assets and, accordingly, such amount was reclassified in fiscal 2001 out of the business restructuring reserve and recorded as a reduction to prepaid benefit costs.

The employee separation costs in fiscal 2001 were incurred in connection with the elimination of 6,810 employee positions of which 5,600 were through a combination of involuntary and voluntary separations, including an early retirement program targeted at U.S. management employees, and a workforce reduction of 1,210 employees due to the outsourcing of certain of the Company's manufacturing operations. Employee separation payments included in the business restructuring reserve were made either through a lump sum or a series of payments extending over a period of up to two years from the date of departure, which was an option available to certain union-represented employees. This workforce reduction was completed as of September 30, 2002.

Real estate lease termination costs were incurred primarily in the U.S., Europe and Asia, and were reduced for sublease income that management believed was probable. Payments on lease obligations, which consisted of real estate and equipment leases, will extend through fiscal 2005. In fiscal 2001, accrued costs for lease obligations represented approximately 666,000 square feet of excess sales and services support offices, materials, stocking and logistics warehouses, and Connectivity Solutions facilities. As of September 30, 2002, the Company had entirely vacated this space.

9. Long-Term Debt

Long-term debt outstanding consists of the following:

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	As of September 30,	
	2003	2002
	(dollars in millions)	
LYONs convertible debt, net of discount	$ 287	$ 476
$11^{1}/8$% Senior Secured Notes, net of discount and premium	666(1)	457(2)
Total long-term debt	$ 953	$ 933

(1) As of September 30, 2003, the Senior Secured Notes had an aggregate principal amount of $640 million and included $16 million representing the unamortized deferred gain related to the termination of the Company's interest rate swap agreements in December 2002. Upon termination of the agreements, the Company received cash proceeds of $19 million representing a deferred gain, which is being amortized as a reduction to interest expense over the remaining term of the Senior Secured Notes.

(2) As of September 30, 2002, the Senior Secured Notes had an aggregate principal amount of $440 million and included $22 million representing the corresponding increase of the hedged portion of the debt attributable to the interest rate swap agreements.

Debt Ratings

The Company's ability to obtain external financing and the related cost of borrowing is affected by the Company's debt ratings, which are periodically reviewed by the major credit rating agencies. During the first quarter of fiscal 2003, the Company's long-term debt ratings were downgraded. Debt ratings and outlooks as of September 30, 2003 and 2002 are as follows:

	As of September 30,			
	2003		2002	
	Debt Ratings	Outlook	Debt Ratings	Outlook
Moody's:				
Long-term senior unsecured debt	B3	Negative	Ba3	Negative
Senior secured notes	B2	Stable	Ba2	Negative
Corporate credit	B3	Stable	No Rating	
Standard & Poor's:				
Long-term senior unsecured debt	B	Stable	B	Negative
Senior secured notes	B+	Stable	B+	Negative
Corporate credit	B+	Stable	BB-	Negative

LYONs Convertible Debt

In the first quarter of fiscal 2002, the Company sold through an underwritten public offering under a shelf registration statement an aggregate principal amount at maturity of approximately $944 million of Liquid Yield Option™ Notes due 2021 ("LYONs"). The proceeds of approximately $448 million, net of a $484 million discount and $12 million of underwriting fees, were used to refinance a portion of the Company's outstanding commercial paper. The underwriting fees of $12 million were recorded as deferred financing costs and are being amortized to interest expense over a three-year period through October 31, 2004, which represents the first date holders may require the Company to purchase all or a portion of their LYONs.

The original issue discount of $484 million accretes daily at a rate of 3.625% per year calculated on a semiannual bond equivalent basis. The Company does not make periodic cash payments of interest on the LYONs. Instead, the amortization of the discount is recorded as interest expense and represents the accretion of the LYONs issue price to their maturity value. The discount will cease to accrete on the

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LYONs upon maturity, conversion, purchase by the Company at the option of the holder, or redemption by Avaya. The LYONs are unsecured obligations that rank equally in right of payment with all existing and future unsecured and unsubordinated indebtedness of the Company.

Interest expense related to the amortization of the discount on the LYONs amounted to $14 million and $16 million for fiscal 2003 and 2002, respectively. In addition, interest expense related to the amortization of deferred financing costs on the LYONs amounted to $4 million in each of the fiscal years ended September 30, 2003 and 2002.

LYONs Exchange Offer

In December 2002, the Company, together with Warburg Pincus Equity Partners L.P. and affiliated investment funds (the "Warburg Entities"), commenced an exchange offer to purchase up to approximately $661 million aggregate principal amount at maturity, or 70%, of the Company's outstanding LYONs (the "Exchange Offer"). Under the terms of the Exchange Offer, holders of LYONs could elect to receive, for each $1,000 aggregate principal amount at maturity of LYONs exchanged, either (i) $389.61 in cash (the "Cash Consideration") or (ii) a combination of $208.40 in cash plus 77 shares of the Company's common stock (the "Mixed Consideration").

Avaya and the Warburg Entities entered into a Backstop Agreement, as amended (the "Backstop Agreement"), which contains the terms relating to the Warburg Entities' participation in the Exchange Offer. Under the terms of the Backstop Agreement, the Company granted the Warburg Entities series C warrants described in Note 11−Convertible Participating Preferred Stock and Other Equity Transactions, and reduced the exercise price of 5,581,101 of the 6,724,665 series A warrants held by the Warburg Entities to $0.01 per share. In January 2003, following the completion of the Exchange Offer, the Warburg Entities exercised the 5,581,101 series A warrants for aggregate cash consideration of $55,811 and converted the LYONs they acquired in the Exchange Offer into shares of the Company's common stock, as described below.

In January 2003, the Exchange Offer expired and an aggregate principal amount at maturity of LYONs of $84,426,000, representing approximately 8.9% of the outstanding LYONs, or approximately $43 million in accreted value, was tendered. Of these LYONs, $84,416,000 aggregate principal amount at maturity were tendered for the Mixed Consideration and $10,000 aggregate principal amount at maturity were tendered for the Cash Consideration. In exchange for the LYONs accepted in the Exchange Offer, the Warburg Entities paid an aggregate amount of approximately $18 million in cash and the Company delivered 6,500,032 shares of its common stock. The Company delivered an additional 1,588,548 shares of its common stock to the Warburg Entities upon conversion of LYONs acquired by them in the Exchange Offer.

In the second quarter of fiscal 2003, the Company recognized in the Consolidated Statement of Operations a pre-tax charge of $36 million for the loss on long-term debt extinguishment related to the Exchange Offer, which was included in other income (expense), net. This charge reflects a $26 million loss related to the retirement of LYONs and $10 million of expenses related to (i) series C warrants issued to the Warburg Entities; (ii) common stock issued to the Warburg Entities; (iii) transaction costs; and (iv) the unamortized deferred financing costs from the original issuance of LYONs that were retired.

Repurchases of LYONs

During fiscal 2003, the Company repurchased $310 million aggregate principal amount at maturity of LYONs, or $160 million in accreted value, in a series of open market transactions. The Company used a total of approximately $156 million in cash to repurchase these LYONs. The Company recognized a pre-tax gain of approximately $2 million, net of the write-off of deferred financing costs related to the LYONs repurchased.

Conversion of LYONs

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As of September 30, 2003, the 549,022 of outstanding LYONs are convertible into 20,557,415 shares of the Company's common stock at any time on or before the maturity date. The conversion rate of 37.4437 will not be adjusted for accrued original issue discount. Upon conversion, the holder will not receive any cash payment representing accrued original issue discount. Accrued original issue discount will be considered paid by the shares of common stock received by the holder of the LYONs upon conversion.

The Company will adjust the conversion rate for:

- dividends or distributions on its common stock payable in its common stock or other capital stock of Avaya;

- subdivisions, combinations or certain reclassifications or its common stock;

- distributions to all holders of its common stock of certain rights to purchase its common stock for a period expiring within 60 days at less than the current sale price; and

- distributions to the holders of its common stock of a portion of its assets (including shares of capital stock of, or similar equity interests in, a subsidiary or other business unit of the Company) or debt securities issued by the Company or certain rights to purchase its securities (excluding cash dividends or other cash distributions from current or retained earnings unless the annualized amount thereof per share exceeds 5% of the sale price of the Company's common stock on the day preceding the date of declaration of the dividend or other distribution).

The Company and the trustee under the indenture governing the LYONs may modify or amend the LYONs or the indenture with the consent of the holders of not less than a majority in aggregate principal amount at maturity of the LYONs then outstanding. However, the consent of the holders of each outstanding LYON would be required to make certain changes to the terms of the indenture and the LYONs, including any change that adversely affects the rights of a holder to convert a LYON.

The Company may redeem all or a portion of the LYONs for cash at any time on or after October 31, 2004 at a price equal to the sum of the issue price and accrued original issue discount on the LYONs as of the applicable redemption date. Conversely, holders may require the Company to purchase all or a portion of their LYONs on October 31, 2004, 2006 and 2011 at a price per LYON of $542.95, $583.40 and $698.20, respectively. The Company may, at its option, elect to pay the purchase price in cash or shares of common stock, or any combination thereof. If the Company were to purchase all of the 549,022 LYONs outstanding as of September 30, 2003 at the option of the holders, the aggregate purchase price would be approximately $298 million on October 31, 2004, $320 million on October 31, 2006, and $383 million on October 31, 2011. If the Company elected to pay the purchase price in shares of Avaya common stock, the number of shares would be equal to the purchase price divided by the average of the market prices of Avaya common stock for the five trading day period ending on the third business day prior to the applicable purchase date.

The indenture governing the LYONs includes certain covenants, including a limitation on the Company's ability to grant liens on significant domestic real estate properties or the stock of its subsidiaries holding such properties.

Senior Secured Notes

In March 2002, the Company issued through an underwritten public offering $440 million aggregate principal amount of $11^{1}/8$% Senior Secured Notes due April 2009 ("Senior Secured Notes") and received net proceeds of approximately $425 million, net of a $5 million discount and $10 million of issuance costs. Interest on the Senior Secured Notes is payable on April 1 and October 1 of each year beginning on October 1, 2002. The $5 million discount is being amortized to interest expense over the seven-year term to maturity. The $10 million of

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issuance costs were recorded as deferred financing costs and are also being amortized to interest expense over the term of the Senior Secured Notes. The proceeds from the issuance were used to repay amounts outstanding under the five-year Credit Facility and for general corporate purposes.

The Company may redeem the Senior Secured Notes, in whole or from time to time in part, at the redemption prices expressed as a percentage of the principal amount plus accrued and unpaid interest to the applicable redemption date, if redeemed during the twelve-month period beginning on April 1 of the following years: (i) 2006 at 105.563%; (ii) 2007 at 102.781%; and (iii) 2008 at 100.0%.

The Senior Secured Notes are secured by a second priority security interest in the collateral securing the Company's obligations under the five-year Credit Facility. In the event that (i) the Company's corporate credit is rated at least BBB by Standard & Poor's and its long-term senior unsecured debt is rated at least Baa2 by Moody's, each without a negative outlook or its equivalent, or (ii) subject to certain conditions, at least $400 million of unsecured indebtedness is outstanding or available under the Credit Facilities or a bona fide successor credit facility, the security interest in the collateral securing the Senior Secured Notes will terminate. The indenture governing the Senior Secured Notes includes negative covenants that limit the Company's ability to incur secured debt and enter into sale/leaseback transactions. In addition, the indenture also includes conditional covenants that limit the Company's ability to incur debt, enter into affiliate transactions, or make restricted payments or investments and advances. These conditional covenants will apply to the Company until such time that the Senior Secured Notes are rated at least BBB- by Standard & Poor's and Baa3 by Moody's, in each case without a negative outlook or its equivalent.

In May 2003, the Company sold an additional $200 million aggregate principal amount of 11 1/8% Senior Secured Notes due April 2009, at a price of 108% of par, resulting in net proceeds of approximately $212 million, which included approximately $2 million in accrued interest and a $16 million premium, partially offset by $6 million of issuance costs. The issuance costs, which were recorded as deferred financing costs, and premium are being amortized to interest expense over the term of the Notes. These Notes constitute a further issuance of, and form a single series with, the 11 1/8% Senior Secured Notes due April 2009 that the Company issued in March 2002.

The Company recorded interest expense related to the Senior Secured Notes of $58 million and $25 million for the fiscal years ended September 30, 2003 and 2002, respectively. In addition, the Company recorded interest expense related to the amortization of discount, premium and deferred financing costs on the Senior Secured Notes of $2 million and $1 million for the fiscal years ended September 30, 2003 and 2002, respectively.

Fair Value of Long-Term Debt

The estimated aggregate fair market value of the Senior Secured Notes increased from September 30, 2002 by $463 million to $742 million as of September 30, 2003, which reflects an increase in the fair market value of the initial Senior Secured Note offering and the fair market value of the add-on public offering which was $232 million. With regard to the LYONs, the estimated aggregate fair value as of September 30, 2003 increased from September 30, 2002 by $112 million to $305 million, which reflects an increase in the fair market value per LYON, partially offset by a reduction in the aggregate fair market value of LYONs extinguished in connection with the Exchange Offer and repurchases during fiscal 2003. The fair market values are based upon quoted market prices and yields obtained through independent pricing sources for the same or similar types of borrowing arrangements taking into consideration the underlying terms of the debt. The following table summarizes the number of outstanding LYONs and Senior Secured Notes, their aggregate accreted value and their related fair market values as of September 30, 2003 and 2002:

As of September 30, 2003			As of September 30, 2002		
Number of Notes Outstanding	Accreted Value	Fair Value	Number of Notes Outstanding	Accreted Value	Fair Value
(dollars in millions)					

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LYONs	549,022	$	287	$	305	943,632	$	476	$	193
Senior Secured Notes	640,000	$	650	$	742	440,000	$	435	$	279

Credit Facility

In April 2003, the Company and the lenders under the Company's five-year revolving credit agreement ("Credit Facility") amended the Credit Facility to reduce the size of the facility to $250 million and amend certain covenants included in the Credit Facility. As of September 30, 2003 and 2002, there were no amounts outstanding under the Credit Facility, which expires in September 2005.

The Credit Facility contains covenants, including a requirement that the Company maintains certain financial covenants relating to a minimum amount of earnings before interest, taxes, depreciation and amortization ("EBITDA"), adjusted for certain exclusions as summarized below ("Adjusted EBITDA") and a minimum ratio of Adjusted EBITDA to interest expense. The covenants permit the Company to exclude up to a certain amount of business restructuring charges and related expenses, including asset impairment charges, from the calculation of Adjusted EBITDA. The definition of Adjusted EBITDA in the Credit Facility also excludes certain other non-cash charges.

For the four quarter period ending September 30, 2003, the Company was required to maintain a minimum Adjusted EBITDA of $220 million and a ratio of Adjusted EBITDA to interest expense of 2.70 to 1. The Company was in compliance with all required covenants as of September 30, 2003.

The amended Credit Facility requires the Company to maintain a ratio of consolidated Adjusted EBITDA to interest expense of:

2.90 to 1 for the four quarter period ending December 31, 2003;

3.20 to 1 for the four quarter period ending March 31, 2004;

3.50 to 1 for the four quarter period ending June 30, 2004; and

4.00 to 1 for each four quarter period thereafter.

Upon the sale of the Company's Connectivity Solutions segment (see Note 20-Subsequent Events), for purposes of these calculations, the ratios above will be reduced (i) by 0.20 for the fiscal quarter in which the Company's Connectivity Solutions segment is sold, (ii) by 0.40 for the fiscal quarter following the fiscal quarter referred to in (i) above, (iii) by 0.60 for the fiscal quarter following the fiscal quarter referred to in (ii) above and (iv) by 0.80 for each fiscal quarter thereafter.

The Company is required to maintain consolidated Adjusted EBITDA of:

$230 million for the four quarter period ending December 31, 2003;

$270 million for the four quarter period ending March 31, 2004;

$300 million for the four quarter period ending June 30, 2004;

$330 million for the four quarter period ending September 30, 2004; and

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$350 million for each four quarter period thereafter.

Upon the sale of the Company's Connectivity Solutions segment, for purposes of these calculations, the minimum Adjusted EBITDA amounts will be reduced (i) by $15 million for the fiscal quarter in which the Company's Connectivity Solutions segment is sold, (ii) by $30 million for the fiscal quarter following the fiscal quarter referred to in (i) above, (iii) by $45 million for the fiscal quarter following the fiscal quarter referred to in (ii) above, and (iv) by $60 million for each fiscal quarter thereafter.

Prior to the amendment, the Company's Credit Facility prohibited the Company from using more than $100 million in cash to redeem or repurchase the LYONs, prior to the October 31, 2004 put date. However, under the amended Credit Facility, this limitation may be increased, up to a maximum of $400 million, by an amount equal to 100% of the net cash proceeds of equity and debt issuances in the capital markets and 50% of the net cash proceeds from the sale of the Company's Connectivity Solutions segment and its corporate aircraft. The $216 million issuance of Senior Secured Notes in May 2003 and the $349 million of net proceeds resulting from the equity offering in September 2003, described in Note 11−Convertible Participating Preferred Stock and Other Equity Transactions, increased the amount of cash the Company may use to repurchase LYONs to the $400 million maximum amount allowable under the Credit Facility. As of September 30, 2003, the Company had used approximately $156 million in cash to repurchase LYONs and, as a result of the amendments to the Credit Facility, the May 2003 public offering of Senior Secured Notes and the September 2003 equity offering, the Company has the ability under the amended Credit Facility to use an additional $244 million in cash to repurchase LYONs.

In connection with the October 31, 2004 put obligation, the amended Credit Facility also requires the Company to maintain, as of each day in the period commencing September 30, 2004 until the later of (a) the date that the put obligation under the LYONs is satisfied and (b) the date upon which the Company delivers to the lenders under the amended Credit Facility a certificate certifying the Company's compliance with the covenants included in the amended Credit Facility for the fiscal quarter ended September 30, 2004, liquidity of not less than $300 million on a pro forma basis as if the put obligation under the LYONs had been satisfied as of such day. For purposes of this calculation,

liquidity is defined as the sum of the unused commitments under the Company's amended Credit Facility plus domestic cash, to the extent free and clear of any liens other than liens under the collateral arrangements securing the Company's obligations to the lenders under the amended Credit Facility, less its obligations under its Senior Secured Notes and the put obligation related to the LYONs had it been satisfied as of such day. To the extent the Company can satisfy this liquidity test, it may use cash to satisfy any put obligation with respect to the LYONs.

The Credit Facility was also amended to permit the Company to issue up to $200 million in debt provided such debt is junior to the amended Credit Facility and matures not less than 90 days after the amended Credit Facility matures in September 2005. Pursuant to this provision of the amended Credit Facility, in May 2003, the Company issued $200 million aggregate principal amount of Senior Secured Notes as described above. In addition, the Credit Facility was amended to reduce the Company's ability to incur other secured and unsecured debt, make investments, and to prohibit the Company from prepaying long-term debt other than the LYONs.

See Note 20−Subsequent Events for disclosure regarding an amendment made to the Credit Facility in October 2003.

10. Derivatives and Other Financial Instruments

The Company conducts its business on a multi-national basis in a wide variety of foreign currencies and, as such, uses derivative financial instruments to reduce earnings and cash flow volatility associated with foreign exchange rate changes. Specifically, the Company uses foreign currency forward contracts, and to a lesser extent, foreign currency options to mitigate the effects of fluctuations of exchange rates associated with certain existing assets and liabilities that are denominated in non-functional currencies and, from time to time, to reduce anticipated net foreign currency cash flows resulting from normal business operations. In addition, the Company uses interest rate swap agreements to manage its proportion of fixed and floating rate debt and to reduce interest expense.

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The Company engages in foreign currency hedging activities to reduce the risk that changes in exchange rates will adversely affect the eventual net cash flows resulting from the sale of products to foreign customers and purchases from foreign suppliers. The Company believes that it has achieved risk reduction and hedge effectiveness because the gains and losses on its derivative instruments substantially offset the losses and gains on the assets, liabilities and transactions being hedged. Hedge effectiveness is periodically measured by comparing the change in fair value of each hedged foreign currency exposure at the applicable market rate with the change in market value of the corresponding derivative instrument.

Recorded Transactions

The Company utilizes foreign currency forward contracts primarily to manage short-term exchange rate exposures on certain receivables, payables and loans residing on foreign subsidiaries' books, which are denominated in currencies other than the subsidiary's functional currency. When these items are revalued into the subsidiary's functional currency at the month-end exchange rates, the fluctuations in the exchange rates are recognized in earnings as other income or expense. Changes in the fair value of the Company's foreign currency forward and option contracts used to offset these exposed items are also recognized in earnings as other income or expense in the period in which the exchange rates change. For the fiscal years ended September 30, 2003 and 2002, the changes in the fair value of the

foreign currency forward and option contracts were substantially offset by changes resulting from the revaluation of the hedged items.

Forecasted Transactions

From time to time, the Company uses foreign currency forward and option contracts to offset certain forecasted foreign currency transactions primarily related to the purchase or sale of product expected to occur during the ensuing twelve months. The change in the fair value of foreign currency forward and option contracts is recognized as other income or expense in the period in which the exchange rates change. For the fiscal year ended September 30, 2003, these gains and losses were not material to the Company's results of operations. The Company did not use any foreign currency forward or option contracts for forecasted transactions in fiscal 2002. As permitted under SFAS 133, the Company has elected not to designate its forward and option contracts as hedges thereby precluding the use of hedge accounting for these instruments.

The notional amount of the Company's financial instruments represents the face amount of the contractual arrangements and the basis on which U.S. dollars are to be exchanged. They are not a measure of market or credit exposure. The notional amount as of September 30, 2003 and 2002 of the Company's foreign currency forward contracts were $472 million and $271 million, respectively. As of September 30, 2003, the Company did not hold any foreign currency option contracts. As of September 30, 2002, the notional amount of the Company's foreign currency option contracts were $20 million. In fiscal 2003, these notional amounts principally represent the equivalent in U.S. dollars for contracts in euros of $256 million, British pound sterling of $153 million, Australian dollars of $14 million, Mexican pesos of $12 million, Canadian dollars of $10 million and other foreign currencies of $27 million. In fiscal 2002, these notional amounts principally represented the equivalent in U.S. dollars for contracts in British pounds sterling of $121 million, euros of $116 million, Canadian dollars of $31 million and other foreign currencies of $23 million.

Fair Value

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate fair value because of their short-term maturity and variable rates of interest.

As of September 30, 2003 and 2002, the estimated fair values of forward contracts and options were $11 million and $10 million, respectively, and were included in other current assets. The estimated fair values of these forward contracts and options were based on market quotes obtained through independent pricing sources.

Interest Rate Swap Agreements

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In April 2002, the Company entered into two interest rate swap agreements with a total notional amount of $200 million that were to mature in April 2009 and were executed in order to: (i) convert a portion of the Senior Secured Notes fixed-rate debt into floating-rate debt; (ii) maintain a capital structure containing appropriate amounts of fixed and floating-rate debt; and (iii) reduce net interest payments and expense in the near-term.

In December 2002, the Company cancelled both interest rate swap agreements. The cancellation resulted in a reduction to other assets for the removal of the fair market value of the interest rate swaps and cash proceeds of $19 million representing a deferred gain, which is being recognized as a reduction to interest expense over the remaining term to maturity of the Senior Secured Notes. The Company recognized $3 million in fiscal 2003, as a reduction to interest expense related to this deferred gain. The unamortized balance of the deferred gain is included in long-term debt on the Consolidated Balance Sheet and amounted to $16 million as of September 30, 2003.

Under these agreements, the Company received a fixed interest rate of 11 1/8% and paid a floating interest rate based on the six-month LIBOR (in arrears) plus an agreed-upon spread, which was equal to a weighted average interest rate of 6.8% as of September 30, 2002. The amounts paid and received were calculated based on the total notional amount of $200 million. Since the relevant terms of the swap agreements matched the corresponding terms of the Senior Secured Notes, there was no hedge ineffectiveness. Accordingly, as required by SFAS 133, gains and losses on the swap agreements fully offset the losses and gains on the hedged portion of the Senior Secured Notes, which were marked to market at each reporting date. As of September 30, 2002, the Company recorded the fair market value of the swaps of $22 million as other assets along with a corresponding increase to the hedged debt with equal and offsetting unrealized gains and losses included in other income (expense), net.

Interest payments were recognized through interest expense and were to be made and received on the first day of each April and October, commencing on October 1, 2002 and ending on the maturity date. On the last day of each semi-annual interest payment period, the interest payment for the previous six months was to be made based upon the six-month LIBOR rate (in arrears) on that day, plus the applicable spread, as shown in the table below. Since the interest rate was not known until the end of each semi-annual interest period, estimates were used during such period based upon published forward-looking LIBOR rates. Any differences between the estimated interest expense and the actual interest payment were recorded to interest expense at the end of each semi-annual interest period. These interest rate swaps resulted in a reduction to actual interest expense in fiscal 2002 of $4 million.

The following table outlines the terms of the swap agreements:

Maturity Date	Notional Amount (dollars in millions)		Receive Fixed Interest Rate	Pay Variable Interest Rate
April 2009	$	150	11 1/8%	Six month LIBOR (in arrears) plus 5.055% spread
April 2009		50	11 1/8%	Six month LIBOR (in arrears) plus 5.098% spread
Total	$	200		

Each counterparty to the swap agreements was a lender under the five-year Credit Facility. The Company's obligations under these swap agreements were secured on the same basis as its obligations under the five-year Credit Facility.

Non-Derivative and Off-Balance-Sheet Instruments

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Requests for providing commitments to extend credit and financial guarantees are reviewed and approved by senior management. Management regularly reviews all outstanding commitments, letters of credit and financial guarantees, and the results of these reviews are considered in assessing the

adequacy of the Company's reserve for possible credit and guarantee losses. See Note 18-Commitments and Contingencies for the disclosure of these items.

11. Convertible Participating Preferred Stock and Other Equity Transactions

Warburg Transactions

Convertible Participating Preferred Stock

In October 2000, the Company sold to the Warburg Entities four million shares of the Company's Series B convertible participating preferred stock and series A and series B warrants to purchase the Company's common stock for an aggregate purchase price of $400 million. The Series B preferred stock had an aggregate initial liquidation value of $400 million and accreted at an annual rate of 6.5%, compounded quarterly. The $400 million of proceeds were initially allocated between the Series B preferred stock and warrants based upon the relative fair market value of each security. The fair value allocated to the Series B preferred stock of $368 million was recorded in the mezzanine section of the Consolidated Balance Sheet and the fair value allocated to the warrants of $32 million was included in additional paid-in capital.

In March 2002, the Company completed a series of transactions pursuant to which the Warburg Entities acquired 53 million shares of Avaya common stock by (i) converting all four million shares of the Series B preferred stock into 38,329,365 shares of the Company's common stock based on a conversion price of $11.31 per share, which was reduced from the original conversion price of $26.71 per share, (ii) exercising 286,682 warrants at an exercise price of $34.73 per share resulting in gross proceeds of approximately $10 million, and (iii) purchasing 14,383,953 shares of the Company's common stock for $6.26 per share, which was the reported closing price of Avaya's common stock on the New York Stock Exchange on March 8, 2002, resulting in gross proceeds of approximately $90 million. In connection with these transactions, the Company incurred approximately $4 million of transaction costs, which were recorded as a reduction to additional paid-in capital. Following these transactions, there were no shares of Series B preferred stock outstanding.

The conversion of the Series B preferred stock and the exercise of the warrants resulted in a charge to accumulated deficit of approximately $125 million, which primarily represented the impact of reducing the preferred stock conversion price from $26.71 per share to $11.31 per share. The Company also recorded as a reduction to accumulated deficit a total of $12 million and $27 million of accretion for the period from October 1, 2001 through the date of conversion and for fiscal 2001, respectively.

Warrants to Purchase Common Stock

In consideration of their agreement to participate in the LYONs Exchange Offer, in December 2002, the Company granted the Warburg Entities series C warrants that have a four-year term and are exercisable for an aggregate of 7,355,824 shares of Avaya common stock at an exercise price of $3.50 per share. The fair value of these warrants was estimated to be $5 million and was included in additional paid-in capital. During the second quarter of fiscal 2003, upon completion of the Exchange Offer, the Company recognized the cost of these warrants as a commitment fee and recorded the amount in loss on long-term debt extinguishment, net, which is a component of other income (expense), net.

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As of September 30, 2003, the Warburg Entities hold warrants to purchase the following additional shares of the Company's common stock:

Warrants	Number of Shares	Exercise Price		Expiration Date
Series A	1,143,564	$	34.73	October 2, 2004
Series B	5,379,732	$	34.73	October 2, 2005
Series C	7,355,824	$	3.50	December 23, 2006
Total	13,879,120			

Public Offerings of Common Stock

In September 2003, the Company sold 34.5 million shares of common stock for $10.20 per share in a public offering. The Company received proceeds of approximately $349 million, which was net of approximately $3 million of underwriting discounts and commissions reflected as a reduction to additional paid-in capital.

In March 2002, the Company sold 19.55 million shares of common stock for $5.90 per share in a public offering. The Company received proceeds of approximately $112 million, which was net of approximately $3 million of underwriting fees reflected as a reduction to additional paid-in capital.

12. Loss Per Share of Common Stock

Basic earnings (loss) per common share is calculated by dividing net loss available to common stockholders by the weighted average number of common shares outstanding during the year. Diluted earnings (loss) per common share is calculated by adjusting net loss available to common stockholders and weighted average outstanding shares, assuming conversion of all potentially dilutive securities including stock options, restricted stock units, warrants, convertible participating preferred stock and convertible debt.

Net loss available to common stockholders for both the basic and diluted loss per common share calculations for the fiscal year ended September 30, 2002 includes the $125 million conversion charge related to the Series B preferred stock.

	Year Ended September 30,		
	2003	2002	2001
	(dollars in millions, except per share amounts)		
Net loss available to common stockholders	$ (88)	$ (803)	$ (379)
Shares used in computing loss per common share:			
Basic and Diluted	378	330	284
Loss per common share:			
Basic and Diluted	$ (0.23)	$ (2.44)	$ (1.33)

Securities excluded from the computation of diluted loss per common share:

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Options(1)	43	45	52
Restricted stock units(1)	4	–	–
Series B preferred stock(2)	–	38	16
Warrants(1)	10	12	12
Common shares issuable upon conversion of LYONs:			
Settled in common shares(3)	136	93	–
Settled in cash(4)	20	–	–
Total	213	188	80

(1) These securities have been excluded from the diluted loss per common share calculation either because the respective exercise prices are greater than the average market value of the underlying stock, or their inclusion would have been antidilutive.

(2) As a result of the conversion of the Series B convertible participating preferred stock during fiscal 2002, the conversion price was decreased from $26.71 per share to $11.31 per share. When applying the "if-converted" method in fiscal 2002, the shares are assumed to have been converted from October 1, 2001 through the date of conversion.

(3) These securities represent the average number of shares issuable by the Company if it were required to purchase LYONs currently outstanding as of September 30, 2003 on the initial October 31, 2004 put date. However, such securities were excluded from the diluted loss per common share calculation as their inclusion would have been antidilutive.

(4) These securities have been excluded from the diluted loss per common share calculation due to the assumption that this portion of the debt would have been settled in cash.

13. Income Taxes

A reconciliation of the Company's income tax provision (benefit) at the federal statutory rate to the income tax provision (benefit) at the effective tax rate is as follows:

	Year Ended September 30,		
	2003	2002	2001
	(dollars in millions)		
Income tax provision (benefit) computed at the federal statutory rate	$ 2	$ (140)	$ (199)
State and local income taxes, net of federal income tax effect	2	(14)	(24)
Tax differentials on foreign earnings	17	55	(13)
Purchased in-process research and development and other acquisition related costs	–	(7)	2
Non-deductible restructuring costs	17	11	13
LYONs redemption	6	–	–
Audit settlements	(45)	(7)	–
Sale of investments	(5)	–	–
Non-deductible meals and entertainment and employee benefit costs	2	1	2
Other differences−net	(1)	2	1
Valuation allowance	98	364	–

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Provision (benefit) for income taxes	$ 93	$ 265	$ (218)

The following table presents the U.S. and foreign components of income (loss) before income taxes and the provision (benefit) for income taxes:

	Year Ended September 30,		
	2003	2002	2001
	(dollars in millions)		
INCOME (LOSS) BEFORE INCOME TAXES:			
U.S.	$ 2	$ (352)	$ (456)
Foreign	3	(49)	(114)
Income (loss) before income taxes	$ 5	$ (401)	$ (570)
PROVISION (BENEFIT) FOR INCOME TAXES:			
CURRENT			
Federal	$ –	$ –	$ –
State and local	3	–	–
Foreign	22	22	46
Subtotal	$ 25	$ 22	$ 46
DEFERRED			
Federal	$ 49	$ 199	$ (219)
State and local	22	45	(38)
Foreign	(3)	(1)	(7)
Subtotal	$ 68	$ 243	$ (264)
Provision (benefit) for income taxes	$ 93	$ 265	$ (218)

The components of deferred tax assets and liabilities as of September 30, 2003 and 2002 are as follows:

	As of September 30,	
	2003	2002
	(dollars in millions)	
DEFERRED INCOME TAX ASSETS		
Benefit obligations	$ 506	$ 523
Accrued liabilities	346	387
Net operating loss/credit carryforwards	436	241
Other	59	82
Gross deferred tax assets	$ 1,347	$ 1,233

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DEFERRED INCOME TAX LIABILITIES		
Property, plant and equipment	$ (41)	$ (5)
Other	(53)	(84)
Gross deferred tax liabilities	$ (94)	$ (89)
Valuation allowance	$ (814)	$ (612)
NET DEFFERED TAX ASSET	$ 439	$ 532

As of September 30, 2003, the Company had tax credit carryforwards of $37 million and federal, state and local and foreign net operating loss carryforwards (after-tax) of $399 million. The various tax credit carryforwards of $11 million, $16 million and $10 million expire within 5 years, between 5 and ten years, and in excess of ten years, respectively. Federal and state net operating loss carryforwards expire through the year 2023, the majority of which expire in excess of ten years. The majority of foreign net operating loss carryforwards have no expiration.

During fiscal 2003, the Company recorded an increase of $202 million to its net deferred tax asset valuation allowance. The increase in the valuation allowance is comprised of an $83 million provision for income taxes to reflect the difference between the actual and expected tax gain associated with the LYONs Exchange Offer, a $93 million reduction in accumulated other comprehensive loss associated with the minimum pension liability recorded in accordance with SFAS No. 87, "Employers' Accounting for Pensions," ("SFAS 87"), and a $3 million adjustment related to the exercise of stock options which served to decrease taxable income for the year. In addition, the valuation allowance balance increased by $32 million as a result of the reversal of certain deferred tax liabilities related to pre-spin federal income tax audits. The increase in the valuation allowance was partially offset by a $9 million benefit included in the tax provision as a result of having positive book taxable income for the year including certain other tax adjustments.

During fiscal 2002, the Company recorded an increase of $563 million to its net deferred tax asset valuation allowance. The increase in the valuation allowance was comprised of a $364 million charge included in the provision for income taxes and a $202 million reduction in accumulated other comprehensive loss associated with the minimum pension liability recorded in accordance with SFAS 87. The increase in the valuation allowance was partially offset with $3 million of net operating losses that expired during fiscal 2002.

The valuation allowances recorded in fiscal 2003 and 2002 were calculated in accordance with the provisions of SFAS No. 109, "Accounting for Income Taxes," which places primary importance on the Company's cumulative operating results.

In assessing the realizability of deferred tax assets, the Company considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The Company considered the scheduled reversal of deferred tax liabilities, projected future taxable income, and certain distinct tax planning strategies in making this assessment. The amount of net deferred tax determined to be realizable was measured by calculating the tax effect of the tax planning strategies, which include potential sale of assets and liabilities. Based on this assessment, as of September 30, 2003, the Company determined that it is more likely than not that $439 million of such assets will be realized, therefore resulting in a valuation allowance of $814 million. Based on the fiscal 2002 assessment, the Company had determined that it was more likely than not that $532 million of such assets were to be realized, therefore resulting in a valuation allowance of $612 million. If changes occur in the assumptions underlying the Company's tax planning strategies or in the scheduling of the reversal of the Company's deferred tax liabilities, the valuation allowance may need to be adjusted in the future.

The Company has not provided for U.S. deferred income taxes or foreign withholding taxes on $681 million and $632 million of undistributed earnings of its non-U.S. subsidiaries as of September 30, 2003 and 2002, respectively, since the Company intends to reinvest these earnings indefinitely.

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14. Benefit Obligations

Pension and Postretirement Benefits

The Company maintains defined benefit pension plans covering the majority of its employees and retirees, and postretirement benefit plans for retirees that include healthcare benefits and life insurance coverage. In fiscal 2003, the Company adopted amendments to its pension and postretirement plans. Effective December 31, 2003, the Company froze the benefit accruals and additional participation in the plans for its management employees. The Company also enhanced its 401(k) savings plan for its management employees, effective January 1, 2004. The changes in the pension and postretirement plans were accounted for as curtailments in accordance with SFAS 88. Effective June 1, 2003, the Company entered into new collective bargaining agreements with the Communications Workers of America and the International Brotherhood of Electrical Workers, which included pension increases and postretirement healthcare limitation increases over the term of the 3 year agreements. Additionally, the Company provided current retirees of the management pension plan with a one-time opportunity to take a full or partial lump sum distribution from the plan with a payout date of December 1, 2003.

For the fiscal year ended September 30, 2003, the Company recorded a net pension credit of $8 million, which included a $31 million curtailment gain from freezing management pension benefit accruals, and a $7 million charge for special termination benefits offered to represented employees as a result of the new collective bargaining agreements. The Company also recorded a net postretirement benefit expense of $18 million, which included a $15 million gain related to the curtailment. During fiscal 2003, the projected benefit obligation decreased by $55 million as a result of the amendments to the Company's pension plan for the curtailment of benefit accruals, the new collective bargaining agreements, and the lump sum distribution for its retirees. The projected postretirement benefit

obligation increased by $98 million as a result of the amendment to the Company's postretirement plan for the collective bargaining agreements.

In fiscal 2003, the Company made contributions totaling $155 million to its pension plans, which included $42 million under the minimum funding requirements of ERISA and a $105 million voluntary contribution to fund the pension obligation for management employees. This voluntary contribution eliminated the required contribution that was to be made in fiscal 2004.

On September 30, 2003, the Company's annual measurement date, the accumulated benefit obligation related to the Company's pension plans exceeded the fair value of the pension plan assets (such excess is referred to as an unfunded accumulated benefit obligation). This difference reflects an increase in the accumulated benefit obligation that resulted from a decrease from 6.5% to 6.0% in the interest rate used to discount the projected benefit obligation to its present settlement amount. The unfunded accumulated benefit obligation exceeded the Company's accrued pension liability by $813 million, an increase of $265 million from September 30, 2002. As a result, in accordance with SFAS 87, the Company recorded an adjustment to increase the additional minimum pension liability from $548 million at September 30, 2002 to $813 million at September 30, 2003. This resulted in a $237 million increase to accumulated other comprehensive loss, from $513 million at September 30, 2002 to $750 million at September 30, 2003, and a $28 million increase to intangible assets, from $35 million at September 30, 2002 to $63 million at September 30, 2003.

In conjunction with the recognition of the additional minimum pension liability, the Company also recorded in fiscal 2003 a deferred tax asset of $93 million for which a full valuation allowance was established. This increased the deferred tax asset related to the minimum pension liability from $202 million at September 30, 2002, to $295 million at September 30, 2003. Accordingly, both the deferred tax asset and related valuation allowance were recorded through accumulated other comprehensive loss.

In fiscal 2002, the Company recorded pension and postretirement expense of $6 million and $23 million, respectively, including charges for curtailment and special termination benefits of $1 million each related to its pension plan, in connection with the Company's business restructuring efforts. During fiscal 2002, the Company amended its pension plan for represented employees by increasing the pension benefit for certain employees, which resulted in an increase of $11 million to the projected benefit obligation.

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In fiscal 2001, the Company recorded pension and postretirement expense of $457 million and $138 million, respectively, including charges for curtailment and special termination benefits of $474 million and $112 million, respectively, in connection with the Company's business restructuring efforts. The Company's pension plans experienced significant decreases in the number of active employees due to these restructuring initiatives related to a manufacturing outsourcing transaction and an early retirement program. As a result, interim measurements were performed and curtailment accounting was implemented. The Company recognized a charge from curtailment and special termination benefits related to its pension plan of $26 million and $448 million, respectively. The Company has several non-pension postretirement benefit plans. Consistent with the curtailment accounting recorded for pensions during fiscal 2001, the Company recorded curtailment and special termination benefit charges of $91 million and $21 million, respectively. The special termination benefits provided employees with improved pension benefits and earlier eligibility for postretirement benefits.

The following table shows the activity in the Company's defined benefit and postretirement plans:

	Pension Benefits		Postretirement Benefits	
	As of September 30,		As of September 30,	
	2003	2002	2003	2002
	(dollars in millions)			
CHANGE IN BENEFIT OBLIGATION				
Benefit obligation as of October 1	$ 2,739	$ 2,518	$ 586	$ 513
Service cost	53	54	6	6
Interest cost	173	171	38	37
Amendments	(55)	11	98	–
Actuarial loss	316	177	48	58
Special termination benefits	7	1	–	–
Benefits paid	(193)	(193)	(40)	(28)
Benefit obligation as of September 30	$ 3,040	$ 2,739	$ 736	$ 586
CHANGE IN PLAN ASSETS				
Fair value of plan assets as of October 1	$ 1,941	$ 2,371	$ 147	$ 174
Actual return (loss) on plan assets	311	(241)	27	(13)
Employer contributions	155	4	21	14
Benefits paid	(193)	(193)	(40)	(28)
Fair value of plan assets as of September 30	$ 2,214	$ 1,941	$ 155	$ 147
UNFUNDED STATUS OF THE PLAN	$ (826)	$ (798)	$ (581)	$ (439)
Unrecognized prior service cost	39	1	94	(16)
Unrecognized transition asset	–	(1)	–	–
Unrecognized net loss	778	626	160	124
Accrued benefit cost	$ (9)	$ (172)	$ (327)	$ (331)
AMOUNT RECOGNIZED IN THE CONSOLIDATED BALANCE SHEETS CONSISTS OF:				

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Accrued benefit cost	$ (822)	$ (720)	$ (327)	$ (331)
Intangible asset	63	35	–	–
Accumulated other comprehensive loss	750	513	–	–
Net amount recognized	$ (9)	$ (172)	$ (327)	$ (331)

	As of September 30,	
	2003	2002
PENSION AND POSTRETIREMENT BENEFITS WEIGHTED AVERAGE ASSUMPTIONS		
Discount rate	6.0%	6.5%
Expected return on plan assets	9.0%	9.0%
Rate of compensation increase	4.0%	4.0%

For postretirement healthcare, a 10.3% annual rate of increase in the per capita cost of covered healthcare benefits was assumed for fiscal 2003. The rate was assumed to decline gradually to 5.0% by the year 2009, and remain at that level thereafter.

	Pension Benefits			Postretirement Benefits		
	Year ended September 30,			Year ended September 30,		
	2003	2002	2001	2003	2002	2001
	(dollars in millions)					
COMPONENTS OF NET PERIODIC BENEFIT (CREDIT) COST						
Service cost	$ 53	$ 54	$ 79	$ 6	$ 6	$ 11
Interest cost	173	171	128	38	37	30
Expected return on plan assets	(214)	(217)	(208)	(18)	(19)	(18)
Amortization of unrecognized prior service cost	5	4	16	4	–	5
Recognized net actuarial loss (gain)	–	(1)	(19)	3	(1)	(2)
Amortization of transition asset	(1)	(7)	(13)	–	–	–
Curtailment (gain) loss	(31)	1	26	(15)	–	91
Special termination benefits	7	1	448	–	–	21
Net periodic benefit (credit) cost	$ (8)	$ 6	$ 457	$ 18	$ 23	$ 138

As of September 30, 2003 and 2002, the Company's pension and postretirement plan assets did not hold any direct investment in the Company's common stock.

Postretirement health care trend rates have a slight effect on the amounts reported for the postretirement health care plan. A one-percentage-point increase in the Company's healthcare cost trend rates would have increased the postretirement benefit obligation by $1 million. Conversely, a one-percentage-point decrease would have decreased the postretirement benefit obligation by $1 million. A one-percentage-point change in the Company's healthcare cost trend rates would have had a minimal effect on the total of the service and interest cost components of net periodic benefit costs.

Savings Plans

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The majority of the Company's employees are eligible to participate in savings plans sponsored by the Company. The plans allow employees to contribute a portion of their compensation on a pre-tax and after-tax basis in accordance with specified guidelines. Avaya matches a percentage of employee contributions up to certain limits. The Company's expense related to these savings plans was $31 million, $24 million and $58 million in fiscal 2003, 2002 and 2001, respectively.

Effective January 1, 2004, the Company enhanced its savings plans for management employees that increased the value of the Company's contribution towards the plans.

15. Stock Compensation Plans

The Company has stock compensation plans, which provide for the issuance to eligible employees of nonqualified stock options and restricted stock units representing Avaya common stock. In addition,

the Company has a stock purchase plan under which eligible employees have the ability to purchase shares of Avaya common stock at 85% of market value.

Stock Options

Stock options are generally granted with an exercise price equal to or above the market value of a share of common stock on the date of grant, have a term of 10 years or less and vest within four years from the date of grant. As of September 30, 2003, there were approximately 42 million stock options authorized for grant to purchase Avaya common stock under the Company's stock compensation plans.

In connection with certain of the Company's acquisitions, outstanding stock options held by employees of acquired companies became exercisable for Avaya's common stock, according to their terms, effective at the acquisition date. For acquisitions accounted for as purchases, the fair value of these options was included as part of the purchase price.

The following table summarizes information concerning options outstanding including the related transactions for the fiscal years ended September 30, 2003, 2002 and 2001:

	Shares (000's)	Weighted Average Exercise Price
OPTIONS OUTSTANDING AS OF SEPTEMBER 30, 2000	44,971	$ 31.63
Granted/Assumed	31,626	15.00
Exercised	(1,384)	4.81
Forfeited/Expired/Exchanged(1)	(26,890)	30.35
OPTIONS OUTSTANDING AS OF SEPTEMBER 30, 2001	48,323	19.83
Granted	10,391	6.53
Exercised	(153)	3.84
Forfeited and Expired(2)	(13,733)	24.23
OPTIONS OUTSTANDING AS OF SEPTEMBER 30, 2002	44,828	15.46
Granted	14,076	3.26
Exercised	(1,087)	5.24
Forfeited and Expired	(6,115)	14.67
OPTIONS OUTSTANDING AS OF SEPTEMBER 30, 2003	51,702	$ 12.44

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(1) Includes the exchange of 19,506 employee stock options for restricted stock units, as noted below.

(2) Primarily represents normal option expiration and forfeitures attributed to employee departures resulting from the Company's business restructuring initiatives.

The weighted average fair value of the Company's stock options granted during the fiscal years ended September 30, 2003, 2002 and 2001, calculated using the Black-Scholes option-pricing model, was $1.80, $3.14, and $5.86 per share, respectively.

The following table summarizes the status of the Company's stock options as of September 30, 2003:

	Stock Options Outstanding			Stock Options Exercisable	
Range of Exercise Prices	Shares (000's)	Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Shares (000's)	Weighted Average Exercise Price
$ 0.01 to $ 3.25	12,611	6.13	$ 2.94	1,072	$ 2.78
$ 3.26 to $ 7.39	7,664	5.66	6.34	3,264	6.39
$ 7.40 to $11.75	3,003	6.75	10.48	1,525	10.91
$11.76 to $21.09	21,096	6.87	15.20	13,696	14.87
$21.10 to $51.21	7,328	5.23	28.08	7,184	27.88
Total	51,702		$ 12.44	26,741	$ 16.62

At September 30, 2002, there were 18.1 million exercisable outstanding stock options with a weighted average exercise price of $19.94. At September 30, 2001, there were 13.4 million exercisable outstanding stock options with a weighted average exercise price of $26.03.

Non-Employee Directors Plan

The Company also has a Stock Compensation Plan for Non-Employee Directors under which stock options have been granted. Stock options were granted to Non-Employee Directors in order to attract and retain qualified individuals to serve as members of the Board of Directors. The options granted were priced at the fair market value on the date of grant. These options generally became exercisable six months from the date of grant and expire after ten years. No options have been granted under this plan since December 2002.

As of September 30, 2003, there were approximately 915 thousand stock options outstanding under this plan with a weighted average exercise price of $10.08 issued to Non-Employee Directors.

Employee Stock Purchase Plan

Under the terms of the Company's employee stock purchase plan, eligible employees may have up to 10% of eligible compensation deducted from their pay to purchase Avaya common stock. The Avaya Inc. Employee Stock Purchase Plan ("2000 ESPP") was terminated on March 1, 2003 and replaced with the Avaya Inc. 2003 Employee Stock Purchase Plan ("2003 ESPP") which has terms virtually identical to the 2000 ESPP. The 2003 ESPP was approved by the Company's stockholders in February 2003, became effective January 1, 2003, and expires on March 1, 2006. All purchases of the Company's common stock made after December 31, 2002 were made under the 2003 ESPP.

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Under the 2003 and 2000 ESPPs, the per share purchase price is 85% of the average high and low per share trading price of Avaya's common stock on the New York Stock Exchange ("NYSE") on the last trading day of each month. During the fiscal years ended September 30, 2003, 2002 and 2001, 3.9 million, 3.8 million and 3.0 million shares were purchased under the 2003 and 2000 ESPPs at a weighted average price of $2.48, $4.85 and $10.95, respectively.

Restricted Stock Units

The Company's stock compensation plans permit the granting of restricted stock units to eligible employees at fair market value at the date of grant and typically become fully vested over a three-year period. Restricted stock units are payable in shares of the Company's common stock upon vesting. The Company records compensation expense for the amortization of restricted stock units issued to employees, utilizing the intrinsic-value method, which would result in the same amount of compensation expense that would be recognized as if the Company had applied the fair value recognition provisions of SFAS 123. Compensation expense recorded under APB 25 related to restricted stock units was $31 million, $24 million, and $17 million for the fiscal years ended September 30, 2003, 2002, and 2001, respectively, of which $1 million and $7 million was recorded as business restructuring charges in fiscal 2002 and 2001, respectively.

The following table presents the total number of shares of common stock represented by restricted stock units granted to Company employees, including those granted in connection with the Exchange described below:

	Year Ended September 30,		
	2003	2002	2001
Restricted stock units granted (000's)	6,247	526	4,394
Weighted average market value of shares granted during the period	$ 3.29	$ 7.11	$ 13.06

As of September 30, 2003, there were approximately 8 million restricted stock units not vested that are outstanding.

In connection with the amounts recorded as a business restructuring charge for the vesting of restricted stock units, the Company issued 93,000 and 326,000 common shares to employees who departed the business in fiscal 2002 and 2001, respectively.

In June 2001, the Company commenced an offer to eligible employees to exchange (the "Exchange") certain employee stock options for restricted stock units representing common shares. The Exchange was based on a predetermined exchange value divided by $12.85 per common share, which was the average of the high and low trading prices of Avaya common stock on the NYSE on July 26, 2001. As a result of the Exchange, approximately 19.5 million options were cancelled and approximately 3.4 million restricted stock units were granted on July 31, 2001. The restricted stock units resulting from the Exchange will vest in three succeeding annual anniversary dates beginning on August 1, 2002, subject to acceleration of vesting upon certain events.

The Company recorded approximately $43 million as non-cash deferred compensation for the intrinsic value of the restricted stock units on the effective date of the Exchange. This amount was calculated by multiplying the number of restricted stock units by $12.62, which was the average of the high and low trading price of the Company's common stock on the NYSE on July 31, 2001, the date of grant of the restricted stock units. The non-cash deferred compensation associated with the restricted stock units will be recognized as compensation expense recorded under APB 25, on a straight-line basis over the three-year vesting period.

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16. Operating Segments

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The Company reports its operations in four segments which include ECG, SMBS, Services and Connectivity Solutions. During the third quarter of fiscal 2003, the Company changed the name of the Converged Systems and Applications segment to ECG. The ECG segment is focused on the sale of communications products and applications to large enterprises and includes IP telephony, traditional voice communications systems, unified communications applications, multi-media contact center offerings, and appliances, such as telephone sets. ECG's operating results also include our professional services organization that provides services required to customize the Company's communications applications solutions for individual customer needs. The SMBS segment develops, markets and sells communications products and applications, including IP telephony systems, traditional voice systems, unified communication and contact center applications, for small and medium-sized businesses. Traditional voice communication systems designed for small and medium-sized businesses are also known as Key and hybrid telephony systems. The Services segment offers a comprehensive portfolio of services that enable customers to plan, design, build and manage their communications networks. The Connectivity Solutions segment, which the Company agreed to sell in October 2003, provides structured cabling systems and electronic cabinets to its customers.

The segments are managed as four functional businesses and, as a result, include certain allocated costs and expenses of shared services, such as information technology, human resources, legal and finance. Costs remaining in the other unallocated category represent expenses that are not identified with the operating segments and include costs incurred to maintain vacant real estate facilities. Intersegment sales approximate fair market value and are not significant.

Reportable Segments

Summarized financial information relating to the Company's reportable segments is shown in the following table:

	Reportable Segments				Corporate		
	Enterprise Communications Group	Small and Medium Business Solutions	Services	Connectivity Solutions	Business Restructuring (Charges), Reversals and Related (Expenses), Net	Other Unallocated Amounts	Total Consolidated
				(dollars in millions)			
2003							
Revenue	$ 1,738	$ 225	$ 1,833	$ 542	$ –	$ –	$ 4,338
Operating income (loss)	(62)	(3)	157	3	5	14	114
Capital expenditures(1)	5	–	4	3	–	48	60
Depreciation and amortization(1)	93	6	59	38	–	5	201
Assets:							
Receivables, less allowances(2)	–	–	–	66	–	644	710
Inventory	120	26	118	142	–	–	406
Goodwill	118	28	–	–	–	–	146
Corporate assets(3)	–	–	–	–	–	2,795	2,795
Total assets	$ 238	$ 54	$ 118	$ 208	$ –	$ 3,439	$ 4,057

2002							
Revenue	$ 2,080	$ 236	$ 2,068	$ 572	$ –	$ –	$ 4,956
Operating income (loss)(4)	(205)	(24)	271	(72)	(209)	(109)	(348)

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Capital expenditures(1)	6	–	5	7	–	93	111
Depreciation and amortization(1)	112	11	65	35	–	6	229
Assets:							
Receivables, less allowances(2)	–	–	–	42	–	834	876
Inventory	201	28	109	129	–	–	467
Goodwill	118	26	–	–	–	–	144
Corporate assets(3)	–	–	–	–	–	2,410	2,410
Total assets	$ 319	$ 54	$ 109	$ 171	$ –	$ 3,244	$ 3,897
2001							
Revenue	$ 2,871	$ 313	$ 2,286	$ 1,323	$ –	$ –	$ 6,793
Operating income (loss)(5)	10	(13)	168	257	(885)	(101)	(564)
Capital expenditures(1)	26	2	15	26	–	272	341
Depreciation and amortization(1)	142	26	58	42	–	5	273
Assets:							
Receivables, less allowances(2)	–	–	–	173	–	990	1,163
Inventory(6)	–	–	–	–	–	649	649
Goodwill	108	67	–	–	–	–	175
Corporate assets(3)	–	–	–	–	–	2,661	2,661
Total assets	$ 108	$ 67	$ –	$ 173	$ –	$ 4,300	$ 4,648

(1) Management does not allocate to the segments certain capital expenditures that are not directly managed by or identified with the reportable segments and, as such, has reported these amounts in the other unallocated category. However, the associated depreciation and amortization expense has been allocated to each segment since these amounts are included in each segment's results for purposes of evaluating performance.

(2) Although the ECG, SMBS and Services segments are managed separately due to their distinct product and service offerings, distribution channels and marketing strategies, the billing process is integrated for these three segments due to synergies including the combined sale of both product and services to individual customers. Management does not segregate receivables between these three segments for internal reporting, evaluating performance or allocating capital and, therefore, reports these amounts in the other unallocated category. The billing process and operations of Connectivity Solutions are managed and maintained separately from ECG, SMBS and Services and, accordingly, these receivables are reported separately.

(3) Corporate assets consist primarily of cash and cash equivalents, deferred income taxes, and property, plant and equipment. Corporate assets are included in the other unallocated category since they are managed at a corporate level and are not identified with the segments.

(4) Included in other unallocated amounts is a $71 million goodwill and intangibles impairment charge recorded in fiscal 2002 comprised of $47 million attributed to SMBS and $24 million related to ECG. These amounts have not been allocated to the segments because the charges were recorded at a corporate level and management views segment results independent of these charges.

(5) In fiscal 2001, the business restructuring category includes $48 million of start-up activities related to establishing independent operations.

(6) The Company is unable to restate inventory for fiscal 2001 into the current segment presentation as this would be impractical, involve excessive cost and require extensive estimation and, therefore, has included inventory in the other unallocated category for such periods.

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Geographic Information

Financial information relating to the Company's revenue by geographic area was as follows:

	External Revenue(1) Year Ended September 30,			Long-Lived Assets(2) As of September 30,	
	2003	2002	2001	2003	2002
	(dollars in millions)				
U.S.	$ 3,204	$ 3,647	$ 5,158	$ 689	$ 794
International	1,134	1,309	1,635	94	102
Total	$ 4,338	$ 4,956	$ 6,793	$ 783	$ 896

(1) Revenue is attributed to geographic areas based on the location of customers.

(2) Represents property, plant and equipment, net.

Concentrations

Following the sale by Lucent in March 2000 of its primary distribution function for voice communications systems for small and mid-sized enterprises to Expanets, Inc. ("Expanets"), the Company agreed in May 2001 to provide a $125 million short-term secured line of credit to Expanets. The line of credit applied to certain unpaid amounts and outstanding receivables due to the Company by Expanets and was secured by a first priority lien on Expanets' receivables and inventory. In March 2002, the Company entered into an amended Dealer Credit Agreement with Expanets and its parent company, NorthWestern Corporation ("NorthWestern") to provide for installment payments under the line of credit with the final balance due to the Company on December 31, 2002.

The Company had been engaged in discussions with Expanets regarding certain operating issues and customer data and billing management services related to the March 2000 sale to Expanets. Although these issues were unrelated to Expanets' and NorthWestern's obligations under the Dealer Credit Agreement, the Company agreed in December 2002, because of the importance of its relationship with Expanets and the customer base served by Expanets, to extend the term of the final installment payment of $27 million to February 2003.

In March 2003, the Company entered into a restructured agreement with Expanets and NorthWestern to resolve matters related to the March 2000 sale to Expanets and to set payment terms for the remaining amounts due to Avaya under the line of credit. In exchange for the companies providing mutual general releases of liability concerning the outstanding operational issues, the parties agreed to, among other things, the following:

The Company canceled the notes receivable and surrendered the preferred equity interests delivered to the Company by Expanets in March 2000 in partial payment of the purchase price for the sale of the distribution function to Expanets. The Company did not record a charge in its

Consolidated Statement of Operations during the second quarter of fiscal 2003 related to this transaction because no value was ascribed to these securities in the Company's financial statements. The Company had written off the value of these securities at the time of the sale primarily because the notes were by their terms subordinated to Expanets' senior debt,

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collection of the notes was unlikely, and the preferred equity was junior to Expanets' senior debt and the notes receivable, as well as Expanets' other series of preferred equity.

The Company converted $27 million owed to Avaya by Expanets under the line of credit, initially due in December 2002, to a term loan, which was to be repaid in three equal installments of $9 million on January 1, April 1, and July 1, 2004.

In the fourth quarter of fiscal 2003, the Company sold the $27 million term loan due from Expanets to a third party financial institution for $26 million.

For the fiscal year ended September 30, 2001, sales to Expanets, which are included in the ECG, SMBS and Services segments, were approximately 10% of the Company's revenue.

See Note 20−Subsequent Events for disclosure regarding the acquisition of Expanets.

17. Related Party Transactions

As of September 30, 2003, the Warburg Entities hold approximately 60 million shares of Avaya common stock, which represents approximately 14.4% of the Company's outstanding common stock, and warrants to purchase approximately 14 million additional shares of Avaya common stock. In October 2003, the Warburg Entities disposed of 25 million shares of the Company's common stock.

In connection with their agreement to participate in the LYONs Exchange Offer, the Company granted the Warburg Entities the right to designate one individual for election to Avaya's board of directors for so long as they hold a specified number of shares of the Company's common stock. In accordance with these provisions, in January 2003, Joseph P. Landy, Co-President of Warburg Pincus LLC, was appointed to the Company's board of directors.

18. Commitments and Contingencies

Legal Proceedings

From time to time, the Company is involved in legal proceedings arising in the ordinary course of business. Other than as described below, the Company believes there is no litigation pending against it that could have, individually or in the aggregate, a material adverse effect on its financial position, results of operations or cash flows.

Year 2000 Actions

Three separate purported class action lawsuits are pending against Lucent Technologies, Inc. ("Lucent"), the Company's former parent, one in state court in West Virginia, one in federal court in the Southern District of New York and another in federal court in the Southern District of California. The case in New York was filed in January 1999 and, after being dismissed, was refiled in September 2000. The case in West Virginia was filed in April 1999 and the case in California was filed in June 1999, and amended in 2000 to include the Company as a defendant. The Company may also be named a party to the other actions and, in any event, has assumed the obligations of Lucent for all of

these cases under the Contribution and Distribution Agreement, as described in "Transactions with Lucent" below between the Company and Lucent. All three actions are based upon claims that Lucent sold products that were not Year 2000 compliant, meaning that the products were designed and developed without considering the possible impact of the change in the calendar from December 31, 1999 to January 1, 2000. The complaints allege that the sale of these products violated statutory consumer protection laws and constituted breaches of implied warranties.

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A class has been certified in the West Virginia state court matter. The certified class in the West Virginia matter includes those persons or entities that purchased, leased or financed the products in question. In addition, the court also certified as a subclass all class members who had service protection plans or other service or extended warranty contracts with Lucent in effect as of April 1, 1998, as to which Lucent failed to offer a free Year 2000-compliant solution. The Fourth Circuit Court of Appeals recently denied the defendant's attempt to have the Federal District Court in West Virginia retain jurisdiction in this matter. This matter is now in West Virginia state court. The federal court in the New York action has issued a decision and order denying class certification, dismissing all but certain fraud claims by one representative plaintiff. No class claims remain in this case at this time. The federal court in the California action has issued an opinion and order granting class certification. The class includes any entities that purchased or leased certain products on or after January 1, 1990, excluding those entities who did not have a New Jersey choice of law provision in their contracts and those who did not purchase equipment directly from defendants. The federal court in the California action has issued an order staying the action pending the outcome of the West Virginia matter. The complaints seek, among other remedies, compensatory damages, punitive damages and counsel fees in amounts that have not yet been specified. At this time, the Company cannot determine whether the outcome of these actions will have a material adverse effect on its financial position, results of operations or cash flows. These cases have required in the past, and may require in the future, expenditure of significant legal costs related to their defense.

Lucent Securities Litigation

In November 2000, three purported class actions were filed against Lucent in the Federal District Court for the District of New Jersey alleging violations of the federal securities laws as a result of the facts disclosed in Lucent's announcement on November 21, 2000 that it had identified a revenue recognition issue affecting its financial results for the fourth quarter of fiscal 2000. The actions purport to be filed on behalf of purchasers of Lucent common stock during the period from October 10, 2000 (the date Lucent originally reported these financial results) through November 21, 2000.

The above actions have been consolidated with other purported class actions filed against Lucent on behalf of its stockholders in January 2000 and are pending in the Federal District Court for the District of New Jersey. The consolidated cases were initially filed on behalf of stockholders of Lucent who bought Lucent common stock between October 26, 1999 and January 6, 2000, but the consolidated complaint was amended to include purported class members who purchased Lucent common stock up to December 20, 2000. A class has not yet been certified in the consolidated actions. The plaintiffs in all of these stockholder class actions seek compensatory damages plus interest and attorneys' fees.

In March 2003, Lucent announced that it had entered into a $420 million settlement of all pending shareholder and related litigation. Certain cases which are the subject of the settlement are shared contingent liabilities under the Contribution and Distribution Agreement and accordingly, the Company

is responsible for 10% of the liabilities attributable to those cases, including 10% of the legal costs associated with the portion of the litigation for which the Company shares liability. In the second quarter of fiscal 2003, the Company recorded a charge of $25 million representing the Company's estimate of its liability in this matter. The Company recently reached agreement with Lucent to pay $24 million in shares of the Company's common stock in full satisfaction of its obligations under the settlement. The terms of the settlement will be subject to a fairness hearing scheduled for December 2003.

Commissions Arbitration Demand

In July 2002, Communications Development Corporation ("CDC"), a British Virgin Islands corporation, made formal demand for arbitration for alleged unpaid commissions in an amount in excess of $10 million, stemming from the sale of products from the Company's businesses that were formerly owned by Lucent involving the Ministry of Russian Railways. In April 2003, CDC initiated the arbitration before the American Arbitration Association. The plaintiff alleges that as a result of agreements entered into between the plaintiff and the Company, it is owed commissions on sales by the Company to the Ministry of Russian Railways on a continuing basis. The Company believes

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that the agreements relating to their claim have expired or do not apply to the products in question. As the sales of products continue, CDC may likely increase its commission demand. The parties are in the process of selecting arbitrators.

Lucent Consumer Products Class Actions

In several class action cases (the first of which was filed on June 24, 1996), plaintiffs claim that AT&T and Lucent engaged in fraud and deceit in continuing to lease residential telephones to consumers without adequate notice that the consumers would pay well in excess of the purchase price of a telephone by continuing to lease. The cases were removed and consolidated in federal court in Alabama, and were subsequently remanded to their respective state courts (Illinois, Alabama, New Jersey, New York and California). In July 2001, the Illinois state court certified a nationwide class of plaintiffs. The case in Illinois was scheduled for trial on August 5, 2002. Prior to commencement of trial, however, the parties agreed to a settlement of the claims on a class-wide basis. The settlement was approved by the court on November 4, 2002. Claims from Class members were required to be filed on or about January 15, 2003.

Any liability incurred by Lucent in connection with these class action cases will be considered an exclusive Lucent liability under the Contribution and Distribution Agreement between Lucent and the Company and, as a result, the Company would be responsible for 10% of any such liability in excess of $50 million. The Company recently agreed with Lucent to pay $6 million in satisfaction of its liability in this matter, although Lucent has notified the Company that it may be responsible for some additional costs that may be incurred in connection with the conclusion of the claims administration. Based on the Company's discussions with Lucent, it does not expect those additional costs to be material.

Patent Infringement Claim

AudioFAX IP, LLC has filed an action against the Company in the U.S. District Court for the Northern District of Georgia, alleging that the Company has infringed five of its patents relating to facsimile products in violation of federal patent laws. This matter is in the early stages of litigation and

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the Company cannot determine whether the outcome of this action will have a material adverse effect on its financial position, results of operations or cash flows.

Environmental, Health and Safety Matters

The Company is subject to a wide range of governmental requirements relating to employee safety and health and to the handling and emission into the environment of various substances used in its operations. The Company is subject to certain provisions of environmental laws, particularly in the United States, governing the cleanup of soil and groundwater contamination. Such provisions impose liability for the costs of investigating and remediating releases of hazardous materials at currently or formerly owned or operated sites. In certain circumstances, this liability may also include the cost of cleaning up historical contamination, whether or not caused by the Company. The Company is currently conducting investigation and/or cleanup of known contamination at approximately seven of its facilities either voluntarily or pursuant to government directives. None of the sites are reasonably likely to generate environmental costs that will be individually material nor will environmental costs for all sites in the aggregate be material. There are no known third parties who may be responsible for investigation and/or cleanup at these sites and therefore, for purposes of assessing the adequacy of financial reserves for these liabilities, the Company has not assumed that it will recover amounts from any third party, including under any insurance coverage or indemnification arrangement. Although the Company does not separately track recurring costs of managing hazardous substances and pollutants in ongoing operations, it does not believe them to be material.

It is often difficult to estimate the future impact of environmental matters, including potential liabilities. The Company has established financial reserves to cover environmental liabilities where they are probable and reasonably estimable. Reserves for estimated losses from environmental matters are undiscounted and consist primarily of estimated remediation and monitoring costs and are, depending on the site,

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based primarily upon internal or third-party environmental studies and the extent of contamination and the type of required cleanup. The Company is not aware of, and has not included in reserves any provision for, any unasserted environmental claims.

The reliability and precision of estimates of the Company's environmental costs may be affected by a variety of factors, including whether the remediation treatment will be effective, contamination sources have been accurately identified and assumptions regarding the movement of contaminants are accurate. In addition, estimates of environmental costs may be affected by changes in law and regulation, including the willingness of regulatory authorities to conclude that remediation and/or monitoring performed by the Company is adequate.

The Company assesses the adequacy of environmental reserves on a quarterly basis. For the fiscal years ended September 30, 2003 and 2002, respectively, no amounts were charged to the Statements of Operations for environmental costs as reserves were deemed to be adequate. Expenditures for environmental matters for the fiscal years ended September 30, 2003 and 2002 were not material to the Company's financial position, results of operations or cash flows. Payment for the environmental costs covered by the reserves may be made over a 30-year period.

Product Warranties

The Company recognizes a liability for the estimated costs that may be incurred to remedy certain deficiencies of quality or performance of the Company's products. These product warranties extend

over a specified period of time generally ranging up to one year from the date of sale depending upon the product subject to the warranty. The Company accrues a provision for estimated future warranty costs based upon the historical relationship of warranty claims to sales. The Company periodically reviews the adequacy of its product warranties and adjusts, if necessary, the warranty percentage and accrued warranty reserve, which is included in other current liabilities in the Consolidated Balance Sheets, for actual experience.

The following table reconciles the changes in the Company's product warranty reserve as of and for the fiscal year ended September 30, 2003:

	(dollars in millions)
Balance at September 30, 2002	$ 40
Warranties accrued during the fiscal year ended September 30, 2003	58
Less actual warranty expenses incurred during the fiscal year	(60)
Balance at September 30, 2003	$ 38

Guarantees of Indebtedness and Other Off-Balance Sheet Arrangements

Irrevocable Letters of Credit and Other Arrangements

The Company has entered into several uncommitted credit facilities totaling $53 million and other arrangements similar to irrevocable letters of credit that vary in term totaling $10 million, of which an aggregate of $29 million in irrevocable letters of credit and other arrangements were outstanding as of September 30, 2003. Letters of credit are purchased guarantees that ensure the Company's performance or payment to third parties in accordance with specified terms and conditions.

Surety Bonds

The Company acquires various types of surety bonds, such as license, permit, bid and performance bonds, which are irrevocable undertakings by the Company to make payment in the event the Company fails to perform its obligations. These bonds vary in duration although most are issued and outstanding from one to three years. As of September 30, 2003, the maximum potential payment under these

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surety bonds is approximately $7 million. Historically, no surety bonds have been drawn upon and there is no future expectation that these surety bonds will be drawn upon.

Purchase Commitments and Termination Fees

The Company has commitment contracts with certain suppliers in which Avaya is obligated to purchase a specified amount of inventory based on its forecasts, or pay a charge in the event the Company does not meet its designated purchase commitments. Additionally, certain agreements call for an early termination fee, obligating the Company to make a payment to the supplier. As of September 30, 2003, the maximum potential payment under these commitments was approximately $82 million, of which the Company recorded a liability in the amount of $8 million. The Company classified this liability as $3 million in other current liabilities and $5 million in other liabilities.

Product Financing Arrangements

The Company sells products to various resellers that may obtain financing from certain unaffiliated third party lending institutions.

For the Company's U.S. product financing arrangement with resellers, in the event the lending institution repossesses the reseller's inventory of the company's products, Avaya is obligated under certain circumstances to repurchase such inventory from the lending institution. The Company's obligation to repurchase inventory from the lending institution terminates 180 days from the date of invoicing by the Company to the reseller. The repurchase amount is equal to the price originally paid to the Company by the lending institution for the inventory. During the third quarter of fiscal 2003, one of the resellers that previously participated in this type of arrangement established a direct line of credit with the Company. The remaining reseller has financed inventory purchases under this agreement of approximately $35 million as of September 30, 2003. There have not been any repurchases made by Avaya since the Company entered into this agreement in March 2001. The Company has estimated the fair value of this guarantee as of September 30, 2003 and has adequately provided for this guarantee in its financial statements at September 30, 2003. The fair value of the guarantee is not significant. There can be no assurance that the Company will not be obligated to repurchase inventory under this arrangement in the future.

For the Company's product financing arrangement with resellers outside the U.S., in the event participating resellers default on their payment obligation to the lending institution, the Company is obligated under certain circumstances to guarantee repayment to the lending institution. The repayment amount fluctuates with the level of product financing activity. The guarantee repayment amount reported to the Company from the lending institution was approximately $8 million as of September 30, 2003. The Company reviews and sets the maximum credit limit for each reseller participating in this financing arrangement. There have not been any guarantee repayments by Avaya since the Company entered in this arrangement in October 2000. The Company has estimated the fair value of this guarantee as of September 30, 2003 and has adequately provided for this guarantee in its financial statements at September 30, 2003. The fair value of the guarantee is not significant. There can be no assurance that the Company will not be obligated to repurchase inventory under this arrangement in the future.

Credit Facility Indemnification

In connection with its obligations under the amended Credit Facility described in Note 9-Long-Tem Debt, the Company has agreed to indemnify the third party lending institutions for costs incurred by the institutions related to changes in tax law or other legal requirements. While there have been no amounts paid to the lenders pursuant to this indemnity in the past, there can be no assurance that the Company will not be obligated to indemnify the lenders under this arrangement in the future.

Transactions with Lucent

In connection with the Company's spin-off from Lucent in September 2000, the Company and Lucent executed and delivered the Contribution and Distribution Agreement and certain related agreements.

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Pursuant to the Contribution and Distribution Agreement, Lucent contributed to the Company substantially all of the assets, liabilities and operations associated with its enterprise networking businesses ("Company's Businesses"). The Contribution and Distribution Agreement, among other things, provides that, in general, the Company will indemnify Lucent for all liabilities including certain pre-distribution tax obligations of Lucent relating to the Company's Businesses and all contingent liabilities primarily relating to the Company's Businesses or otherwise assigned to the Company. In addition, the Contribution and Distribution Agreement provides that certain contingent liabilities not allocated to one of the parties will be shared by Lucent and the Company in prescribed percentages. The Contribution and Distribution Agreement also provides that each party will share specified portions of contingent liabilities based upon agreed percentages related to the business of the other party that exceed $50 million. In the second quarter of fiscal 2003, the Company recorded a charge of $25 million representing its estimate of the amount of its liability associated with the settlement by Lucent of the securities litigation described previously. The Company recently reached agreement with Lucent to pay $24 million in shares of the Company's common stock in full satisfaction of its obligations under the settlement. The terms of the settlement will be subject to a fairness hearing scheduled for December 2003. The Company is unable to determine the maximum potential amount of other future payments, if any, that it could be required to make under this agreement.

In addition, if the separation from Lucent fails to qualify as a tax-free distribution under Section 355 of the Internal Revenue Code because of an acquisition of the Company's stock or assets, or some other actions of the Company, then the Company will be solely liable for any resulting corporate taxes.

The Company has resolved all of the Contribution and Distribution issues with Lucent related to the settlement of certain employee obligations and the transfer of certain assets. Following the Distribution, the Company had identified approximately $15 million recorded in its Consolidated Balance Sheets that was primarily related to certain accounts receivable balances due from Lucent and certain fixed assets, which the Company agreed would remain with Lucent. Since these assets, among other resolved issues, relate to the original capital contribution by Lucent, the Company reduced additional paid-in capital in fiscal 2001 for the net effect of these adjustments.

Leases

The Company leases land, buildings and equipment under agreements that expire in various years through 2021. Rental expense under operating leases, excluding any lease termination costs incurred related to the Company's restructuring initiatives, was $167 million, $192 million, and $194 million for the years ended September 30, 2003, 2002, and 2001, respectively. The table below shows the future minimum lease payments due under non-cancelable operating leases, of which $40 million of such lease payments have been accrued as a business restructuring reserve, as of September 30, 2003.

Year Ended September 30,						
2004	2005	2006	2007	2008	Later Years	Total
(dollars in millions)						
$ 135	$ 87	$ 65	$ 55	$ 48	$ 218	$ 608

19. Quarterly Information (Unaudited)

	Fiscal Year Quarters				
	First	Second	Third	Fourth	Total
	(dollars in millions, except per share and stock price amounts)				
Year Ended September 30, 2003					
Revenue	$ 1,067	$ 1,081	$ 1,072	$ 1,118	$ 4,338

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Gross margin		423		456		442		465		1,786
Business restructuring charges (reversals) and related expenses, net(1)		4		(14)		7		(2)		(5)
Provision for deferred income tax asset valuation allowance(2)		83		–		–		–		83
Net income (loss)		(121)		(41)		8		66		(88)
Earnings (Loss) per share–Basic	$	(0.33)	$	(0.11)	$	0.02	$	0.17	$	(0.23)
Earnings (Loss) per share–Diluted	$	(0.33)	$	(0.11)	$	0.02	$	0.15	$	(0.23)
Stock price(3):										
High	$	3.70	$	3.09	$	8.06	$	11.23	$	11.23
Low	$	1.25	$	1.93	$	2.04	$	6.15	$	1.25
Year Ended September 30, 2002										
Revenue	$	1,306	$	1,279	$	1,219	$	1,152	$	4,956
Gross margin		517		506		481		442		1,946
Business restructuring charges and related expenses, net(1)		6		88		9		106		209
Goodwill and intangibles impairment charge		–		–		–		71		71
Provision for deferred income tax asset valuation allowance(2)		–		–		–		364		364
Net loss		(20)		(63)		(39)		(544)		(666)
Loss per share–Basic and Diluted(4)	$	(0.09)	$	(0.63)	$	(0.11)	$	(1.50)	$	(2.44)
Stock price(3):										
High	$	13.70	$	12.73	$	7.60	$	4.88	$	13.70
Low	$	8.50	$	4.68	$	4.15	$	1.12	$	1.12

(1) These charges represent costs associated with the Company's restructuring plan to improve profitability and business performance as a stand-alone company.

(2) Amount is included in provision (benefit) for income taxes.

(3) Shows the intraday high and low sales price per share of the Company's common stock as reported on the NYSE for the periods indicated.

(4) Includes a $125 million charge related to the conversion of four million shares of the Series B convertible preferred stock and the exercise of warrants in March 2002.

20. Subsequent Events

Sale of Connectivity Solutions

In October 2003, the Company agreed to sell certain assets and liabilities of the Connectivity Solutions segment to CommScope, Inc. ("CommScope"). Under the terms of the agreement, the Company will receive a purchase price of $263 million, subject to adjustment, consisting of approximately $210 million of cash, a note in the amount of $18 million that is convertible into CommScope common stock one year after the closing, and CommScope common stock having a market value, at the time of the agreement, of $35 million. In addition, CommScope assumed approximately $75 million of primarily employee-related liabilities of Connectivity Solutions. The waiting period applicable to the sale under the Hart-Scott Rodino Antitrust Improvements Act, as amended, has expired. We expect the sale to close no later

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than the second quarter of fiscal 2004. Because the products offered by Connectivity Solutions do not fit strategically with the rest of the Company's product portfolio, the Company believes the sale will enable it to strengthen its focus on its core products offerings.

Listed below are the major classes of assets and liabilities as of September 30, 2003 that are included as part of the disposal group:

($ in millions)

Assets			**Liabilities**		
Receivables	$	68	Accounts payable	$	54
Inventory		142	Payroll and benefit obligation		31
Property, plant and equipment, net		179	Other liabilities		24
Other assets		13	Total liabilities	$	109
Total assets	$	402			

The final carrying values of the assets and liabilities to be transferred to Commscope will be determined upon the closing date, with the exception of the benefit obligations noted below.

Based upon an actuarial calculation using data as of September 30, 2003, the Company estimates that it will recognize a pension and postretirement curtailment loss of approximately $26 million upon the closing of the transaction and a settlement loss of approximately $37 million upon the transfer of pension and postretirement benefit assets and liabilities to Commscope. The estimated curtailment and settlement losses are subject to change based upon intervening events that may occur up to the closing date and the date on which the pension and postretirement benefit assets and liabilities are transferred, respectively. These losses will be recorded as a loss from discontinued operations. Additionally, these losses will increase the benefit obligation being transferred to Commscope by approximately $52 million and will remove an intangible asset of approximately $11 million that relates to unrecognized prior service costs associated with the benefit obligation which is included in other assets in the table above.

On October 30, 2003, in exchange for the International Brotherhood of Electrical Worker's agreement to withdraw numerous pending and threatened grievances and arbitration demands against the Company in connection with the Connectivity Solutions business, the Company agreed to provide a one-time payment of five thousand dollars to certain employees and offer an enhanced retirement incentive for those employees who are pension eligible as of December 2, 2003. The settlement agreement is contingent upon the closing of the sale of Connectivity Solutions to CommScope. Total payments, excluding the retirement incentive offer, are not expected to exceed $7 million. The

Company expects to take a one-time charge in the first quarter of fiscal 2004 of approximately $4 million related to the acceptance by 124 employees of the retirement incentive offer.

Acquisition of Expanets

In November 2003, the Company acquired substantially all of the assets and assumed certain liabilities of Expanets, a subsidiary of NorthWestern. Expanets is a nationwide provider of networked communications and data products and services to small and mid-sized businesses and prior to the acquisition was one of the Company's largest dealer. Under the terms of the asset purchase agreement, the Company paid NorthWestern approximately $55 million in cash. In addition, the Company paid approximately $39 million to creditors of Expanets to satisfy certain debt obligations of Expanets and deposited approximately $13.5 million into an escrow account to satisfy certain liabilities of Expanets. The purchase price is subject to adjustment within 90 days after the closing. The Company will include Expanets in its consolidated results of operations and financial position beginning in November 2003. Certain information such as condensed balance sheet

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data of Expanets and the amount of any goodwill or intangibles assets identified is required to be disclosed for material acquisitions. However, due to the proximity of the closing date of the acquisition and the filing of the Company's financial statements, it was not practicable to determine such amounts.

Credit Facility Amendment

In October 2003, the Company and the lenders under the Company's Credit Facility amended the Credit Facility to increase the amount allowed for external investments from $50 million, by an additional $100 million, if the increased amount is to be used for the purchase of the stock or substantially all of the assets of Expanets prior to December 31, 2003.

Grants of Stock Options and Restricted Stock Units

During the period from October 1, 2003 through December 1, 2003, the Company granted to eligible employees approximately 8 million stock options at a weighted average exercise price of $13.24 and approximately 401 thousand restricted stock units at a weighted average market value of $13.28.

Interest Rate Swap Agreements

During the period from October 1, 2003 through December 11, 2003, the Company entered into three interest rate swap agreements each having a notional amount of $50 million and a maturity date of April 2009. These interest rate swap agreements have the same terms as the interest rate swap agreements entered into in April 2002, as discussed in Note 10−Derivatives and Other Financial Instruments, with the exception of the agreed upon spread of 6.55%, 6.8575% and 6.94%, respectively, that is added to the six month LIBOR (in arrears) used to calculate the variable interest rate that the Company will pay.

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Exhibit 13
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations
REPORT OF INDEPENDENT AUDITORS
AVAYA INC. AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF OPERATIONS (dollars in millions, except per share amounts)
AVAYA INC. AND SUBSIDIARIES CONSOLIDATED BALANCE SHEETS (dollars in millions, except per share amounts)
AVAYA INC. AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY AND OF COMPREHENSIVE LOSS (dollars in millions)
AVAYA INC. AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF CASH FLOWS (dollars in millions)
AVAYA INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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EXHIBIT 21

Subsidiary or Branch/Rep Office	Jurisdiction
Avaya Argentina S.R.L.	Argentina
Avaya Australia Pty. Ltd.	Australia
Avaya Austria GmbH	Austria
Avaya Middle East W.L.L.	Bahrain
Avaya Belgium SPRL	Belgium
Avaya Brasil Ltda.	Brazil
Avaya Canada Corp.	Canada
Soundlogic Acquisition ULC	Canada
Avaya Chile Limitada	Chile
Avaya Communication de Colombia S.A	Colombia
Avaya Czech Republic s.r.o.	Czech Republic
Avaya Denmark ApS	Denmark
Avaya EMEA Ltd.	Delaware
Avaya France S.A.	France
Avaya Deutschland GmbH	Germany
Avaya (Gibraltar) Investments Limited	Gibraltar
Avaya Hong Kong Company Ltd.	Hong Kong
Avaya Hungary Ltd/Avaya Hungary Communication Limited Liability Company	Hungary
Avaya India Pvt. Limited	India
Tata Telecom Ltd.	India
P.T. Avaya Indonesia	Indonesia
Avaya Cyprus Investments Limited	Cyprus
Avaya GCM Sales Limited	Ireland
Avaya Holdings Ltd.	Ireland
Avaya International Sales Limited − Moscow Branch − St. Petersburg Branch	Ireland
Avaya Ireland Limited	Ireland
Avaya Communication Israel Ltd.	Israel
Avaya Italia S.p.A.	Italy
Avaya Japan Ltd.	Japan
Avaya Nederland B.V. − Kazakhstan Rep Office − Lithuania Rep Office − Russia Rep Office − Turk Rep Office − U.A.E. Rep Office − Ukraine Rep Office	Netherlands
Avaya Korea Ltd.	Korea
Avaya Luxembourg Investments S.a.r.l.	Luxembourg
Avaya International Enterprises Limited	Ireland
Avaya (Malaysia) And. Bhd.	Malaysia
Avaya Communication de Mexico S.A. de C.V.	Mexico
Avaya (China) Communications Co., Ltd.	China
Avaya Tianjin Cable Company, Ltd.	China

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Avaya Panama Ltda.	Panama
Avaya Peru S.R.L.	Peru
Avaya Philippines Inc.	Philippines
Avaya Poland Sp. z.o.o.	Poland
Avaya Puerto Rico, Inc.	Puerto Rico
Zao Avaya	Russian Federation
Avaya Singapore Pte. Ltd.	Singapore
Avaya Slovakia s.r.o.	Slovak Republic
Avaya Holding EMEA B.V.	Nederlands
Avaya EMEA Ltd. − Portugal Branch − Saudi Arabia Branch − Greek Branch − Egypt Rep Office − South Africa Branch	Delaware
Avaya Communicacion Espana, S.L.	Spain
Avaya Sweden AB	Sweden
Avaya Switzerland GmbH	Switzerland
Avaya Asia Pacific Inc. − Taiwan Branch − Thailand Branch − Hanoi Rep Office − Ho Chi Mihn City	Delaware
Avaya UK Holdings Limited	United Kingdom
Avaya UK	United Kingdom
Avaya ECS Limited	United Kingdom
Mosaix Ltd. (non-operating entity)	United Kingdom
Avaya plc	United Kingdom
Avaya Capital Ireland	United Kingdom
Network Alchemy Ltd.	United Kingdom
Octel Communications Ltd. (non-operating entity)	United Kingdom
Octel Communications Services Ltd. (non-operating entity)	United Kingdom
Avaya Cala Inc.	Delaware
Rhetorex Europe Ltd. (non-operating entity)	
Avaya Inc.	Delaware
Avaya Holdings LLC	Delaware
Avaya Holdings One, LLC	Delaware
Avaya Holdings Two, LLC	Delaware
Octel Communications LLC	Delaware
Avaya Holdings Five, LLC	Delaware
Avaya International LLC	Delaware
Avaya Management Services Inc.	Delaware
Avaya Realty Inc.	Delaware
Avaya Receivables Funding LLC	Delaware
Avaya Technology Corp.	Delaware
Avaya Finance Inc.	Delaware
Avaya Licensing Corporation	Delaware
Avaya Venture Partners Inc.	Delaware
Avaya World Services Inc.	Delaware
Mercury Insurance Company	Delaware

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Avaya Integrated Cabinet Solutions Inc.	Delaware
Technology Corporation of America, Inc.	Delaware
VPNet Technologies, Inc.	Delaware
Avaya Venezuela S.A.	Venezuela
Avaya LLC	Delaware
Avaya Two LLC	Delaware
Avaya Three LLC	Delaware
Avaya Four LLC	Delaware
Avaya Five LLC	Delaware
Avaya Six LLC	Delaware
Avaya Seven Inc.	Delaware

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Exhibit 23

CONSENT OF INDEPENDENT AUDITORS

We hereby consent to the incorporation by reference in the Registration Statement on Form S-3 (Nos. 333-106378 and 333-107163) and the Registration Statements on Form S-8 (Nos. 333-45954, 333-45956, 333-55614, 333-55946 and 333-103475) of Avaya Inc. of our report dated October 21, 2003, except for Note 20 as to which the date is December 11, 2003, relating to the financial statements, which appears in the Annual Report to Shareholders, which is incorporated in this Annual Report on Form 10-K. We also consent to the incorporation by reference of our report dated October 21, 2003 relating to the financial statement schedule, which appears in this Form 10-K.

/s/ PRICEWATERHOUSECOOPERS LLP

PricewaterhouseCoopers LLP
Florham Park, New Jersey
December 12, 2003

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CONSENT OF INDEPENDENT AUDITORS

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Exhibit 24

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Avaya Inc., a Delaware corporation (hereinafter referred to as the "Company"), proposes to file with the Securities and Exchange Commission, under the provisions of the Securities Exchange Act of 1934, as amended, an Annual Report on Form 10-K for the fiscal year ended September 30, 2003; and

WHEREAS, the undersigned is a Director (and/or Officer) of the Company, as indicated below his or her signature.

NOW, THEREFORE, the undersigned hereby constitutes and appoints Garry K. McGuire Sr. and Amarnath K. Pai and each of them, as attorneys, with full power of substitution and resubstitution, for and in the name, place and stead of the undersigned, and in the capacity of the undersigned as a Director and Officer of the Company, to execute and file such Report and any amendments or supplements thereto, with all exhibits thereto, hereby giving and granting to said attorneys, and each of them, full power and authority to do and perform each and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as the undersigned might or could do if personally present at the doing thereof, hereby ratifying and confirming all that said attorneys may or shall lawfully do, or cause to be done, by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 11th day of December, 2003.

By:	/s/ DONALD K. PETERSON	By:	/s/ PHILIP A. ODEEN
Name:	Donald K. Peterson	Name:	Philip A. Odeen
Title:	Chairman of the Board and Chief Executive Officer	Title:	Director
By:	/s/ BRUCE R. BOND	By:	/s/ DANIEL C. STANZIONE
Name:	Bruce R. Bond	Name:	Daniel C. Stanzione
Title:	Director	Title:	Director
By:	/s/ JOSEPH P. LANDY	By:	/s/ PAULA STERN
Name:	Joseph P. Landy	Name:	Paula Stern
Title:	Director	Title:	Director
By:	/s/ MARK LESLIE	By:	/s/ ANTHONY P. TERRACCIANO
Name:	Mark Leslie	Name:	Anthony P. Terracciano
Title:	Director	Title:	Director
By:	/s/ HELLENE S. RUNTAGH	By:	/s/ RONALD L. ZARRELLA
Name:	Hellene S. Runtagh	Name:	Ronald L. Zarrella
Title:	Director	Title:	Director

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Exhibit 31.1

CERTIFICATION

I, Donald K. Peterson, certify that:

1. I have reviewed this annual report on Form 10-K of Avaya Inc.

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)) 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) 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

   c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter 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

Date: December 12, 2003

/s/ DONALD K. PETERSON

Donald K. Peterson
Chairman and Chief Executive Officer

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Exhibit 31.1
CERTIFICATION

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Exhibit 31.2

CERTIFICATION

I, Garry K. McGuire Sr., certify that:

1. I have reviewed this annual report on Form 10-K of Avaya Inc;

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 quarterly 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)) 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) 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

    c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter 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.

Date: December 12, 2003

/s/ GARRY K. MCGUIRE SR.

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Garry K. McGuire Sr.
Chief Financial Officer and Senior Vice President, Corporate Development

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Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Avaya Inc. (the "Company") on Form 10-K for the fiscal year ending September 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Donald K. Peterson, Chairman and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ DONALD K. PETERSON

Donald K. Peterson
Chairman and Chief Executive Officer
December 12, 2003

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Exhibit 32.1
CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

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Exhibit 32.2

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Avaya Inc. (the "Company") on Form 10-K for the fiscal year ending September 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Garry K. McGuire, Chief Financial Officer and Senior Vice President, Corporate Development of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ GARRY K. MCGUIRE SR.

Garry K. McGuire Sr.
Chief Financial Officer and Senior Vice President,
Corporate Development
December 12, 2003

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Exhibit 32.2
CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

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