

**IN THE MATTER OF** The Securities Legislation  
of Ontario, British Columbia, Alberta, Manitoba and Québec

AND

**IN THE MATTER OF** the Mutual Reliance Review  
System for Exemptive Relief Applications

AND

**IN THE MATTER OF** Avaya Inc.

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "**Decision Maker**") in each of Ontario, British Columbia, Alberta, Manitoba and Québec (the "**Jurisdictions**") has received an application from Avaya Inc. (the "Company") for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that:

(a) the requirements contained in the securities legislation in each of the Jurisdictions other than Ontario to be registered to trade in a security (the "**Registration Requirements**") shall not apply to certain trades under the Company's Long Term Incentive Plan for Management Employees ("**LTIP**"), 2000 Employee Stock Purchase Plan ("**ESPP**") and Broad-Based Stock Option Plan ("**BBSOP**") (collectively, the "**Plans**") to eligible employees of the Company and its affiliates (the "**Participants**") and the subsequent first trades in the Company's common shares ("**Shares**" or individually, a "**Share**") by Participants resident in the Provinces of British Columbia, Alberta, Manitoba and Québec; and

(b) the requirements relating to delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, taking up and paying for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, bid financing, identical consideration and collateral benefits (collectively, the "**Issuer Bid Requirements**") shall not apply to certain acquisitions by the Company of Shares pursuant to the LTIP in each of British Columbia, Alberta, Manitoba, Ontario and Québec,

(c) the requirements contained in the securities legislation of Québec to file and obtain a receipt for a preliminary prospectus shall not apply to trades in securities under the Plans.

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Commission des valeurs mobilières du Québec is the principal regulator for this application;

**AND WHEREAS** the Company has represented to the Decision Makers that:

1. The Company, a newly formed Delaware corporation, emerged as a result of the spin-off of the Enterprise Networks Group by Lucent Technologies Inc. ("**Lucent**") which was announced in March 2000 (the "**Spin-Off**"). The Spin-Off became effective as of September 30, 2000.
2. As a result of the Spin-Off, the Company commenced operations on September 30, 2000 as an independent company. The Company was incorporated to acquire and carry on the enterprise communications business previously carried on by the Enterprise Networks Group of Lucent.
3. The Company is registered with the Securities Exchange Commission in the United States of America under the United States *Securities Exchange Act of 1934* (the "**Exchange Act**") and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12G 3-2 made thereunder.
4. The authorized capital of the Company consists of 1,500,000,000 Shares and 200,000,000 preferred shares. As of September 30, 2000, approximately 282,027,939 Shares of the Company were distributed pursuant to the Spin-Off. Each shareholder of Lucent common stock received 1 Share of the Company for every 12 shares of Lucent common stock held as of the close of business on September 20, 2000.
5. The Company is not a reporting issuer or equivalent in any of the Jurisdictions and has no present intention of becoming a reporting issuer in any of the Jurisdictions
6. Shares subject to the Plans are listed and posted for trading in the United States on the New York Stock Exchange (the "**NYSE**").
7. Effective as of September 30, 2000, the Company and its Canadian affiliates employed approximately 390 employees in the Jurisdictions who are eligible to participate in the Plan (304 in Ontario, 36 in British Columbia, 16 in Alberta, 2 in Manitoba and 32 in Québec).
8. In order to continue offering similar compensation packages for its eligible employees as were offered prior to the Spin-Off, the Company has adopted equity incentive plans for its eligible employees which are comparable to those which were offered by Lucent to its employees prior to the Spin-Off.

### *The Plans*

1. The Plans were established to provide eligible employees of the Company and its affiliates with an opportunity to share in the ownership of the Company and to recognize the relationship between the Company's performance and the commitment of its eligible employees.
2. All eligible employees, as determined in accordance with the terms of the Plans, of the Company and its affiliates may participate in the Plans.
3. Pursuant to the LTIP and the BBSOP, eligible employees of the Company and its affiliates are granted options to purchase Shares ("**Options**"), which Options are non-transferable otherwise than by will or the laws of descent.

4. Additional awards which may be granted pursuant to the LTIP and BBSOP include Shares or preferred shares of the Company, Options to purchase preferred shares of the Company and stock appreciation rights.

5. Pursuant to the ESPP, eligible employees of the Company and its affiliates may have certain payroll deductions contributed to a periodic deposit account on behalf of such eligible employee, which cash amounts will be utilized to effect purchases of Shares of the Company on behalf of the eligible employee at prices below their fair market value (which amount is equal to 85% of the average of the high and low sale prices for Shares on the NYSE on the date on which the option is exercised and the stock subject to the option is purchased).

6. Participation in the Plans is voluntary and eligible employees are not induced to participate in the Plans by expectation of or as a condition of employment or continued employment with the Company or an affiliate.

7. All Participants will receive an information package concerning the Plans. In addition, Participants that are resident in the Jurisdictions who acquire Shares under the Plans will be provided with all disclosure material relating to the Company which is provided to holders of Shares resident in the United States.

8. The direct and indirect shareholders of the Company in each Jurisdiction, as at September 30, 2000, do not hold more than 10% of the outstanding Shares or preferred shares of the Company nor do such shareholders constitute more than 10% of all shareholders of the Company. If at any time during the effectiveness of the Plans the direct and indirect shareholders of the Company in any one Jurisdiction hold, in aggregate, greater than 10% of the total number of issued and outstanding Shares or preferred shares or if such shareholders constitute more than 10% of all shareholders of the Company, the Company will apply to the relevant Decision Maker for an order with respect to further trades to and by the Participants in that Jurisdiction in respect of Shares or preferred shares acquired under the Plans.

9. The Company has engaged agents to act as administrators under the Plans (the "Agents" or individually, "Agent") to administer the operation of the Plans, including the exercise of Options by Participants under the LTIP and BBSOP, the sale by Participants of Shares acquired pursuant to the exercise of Options under the LTIP and BBSOP, the sale of Shares acquired pursuant to the ESPP and if the Shares issued pursuant to the ESPP are acquired on the open market, the acquisition of such Shares.

10. Under both the LTIP and BBSOP, Salomon Smith Barney Inc. will act as Agent. Under the ESPP, Merrill Lynch & Co., Inc. will act as Agent. The Agents are not registrants under the Legislation but are registered to trade in securities under applicable legislation in the United States.

11. Pursuant to the LTIP, the acquisition of Shares by the Company in certain circumstances from LTIP participants in the Jurisdictions may constitute an "issuer bid" as defined under the Legislation. The terms of the LTIP permit LTIP participants to tender Shares to the Company as payment of the option price for Options granted pursuant to the LTIP.

12. There is no market in the Jurisdictions for the Shares and none is expected to develop.

13. The Legislation of certain of the Jurisdictions does not contain exemptions from the Prospectus Requirements and/or Registration Requirements for intended trades in Options, Shares or other awards ("**Awards**") under the Plans.

14. Where a U.S. registrant sells Shares on behalf of a Participant, neither the Participant nor the U.S. registrant is able to rely on the exemption from the Registration Requirements contained in the Legislation of certain of the Jurisdictions for trades made by a person acting solely through a registered dealer under the Legislation.

15. The Legislation of certain of the Jurisdictions deems any trade in Shares acquired under the Plans to be a distribution unless, among other things, the Company is a reporting issuer and has been a reporting issuer for the 12 months immediately preceding the trade.

16. The exemptions in the Legislation from the Issuer Bid Requirements may not be available for certain acquisitions by the Company of the Shares in accordance with the terms of the LTIP, since certain acquisitions may occur at a price that exceeds the "market price", as that term is defined in the Legislation. Under the LTIP, the Company will acquire such tendered Shares at the Shares' fair market value, which shall be an amount equal to the average of the high and low sales price of a Share as reported on the NYSE on the date of exercise (or on the next preceding day when sales were reported if no sales of Shares were reported on the date of exercise).

**AND WHEREAS** under the System this Decision Document evidences the decision of each Decision Maker (collectively, the "**Decision**");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met;

The Decision of the Decision Makers pursuant to the Legislation is that:

1. The Registration Requirements shall not apply to trades in Awards which may be made under the Plans where such trades are in accordance with the provisions of the Plans, as applicable.

2. The Registration Requirements shall not apply to the trades made by Agents or by Participants under the Plans through the Agents in Awards (or other securities issuable upon the exercise of the rights attaching to such Awards) acquired under the Plans where such trades are in accordance with the provisions of the Plans, as applicable.

3. An intended trade in Shares acquired by Participants under the Plans is a deemed distribution or a primary distribution to the public unless such trade is executed through the facilities of a stock exchange or on an organized market outside of Canada and in accordance with the laws applicable to such exchange or market.

4. Acquisitions of Shares by the Company from LTIP participants as a means of satisfying the exercise price for Options granted pursuant to the LTIP shall be exempt from the Issuer Bid Requirements where such acquisitions are effected in accordance with the provisions of the LTIP.

The further decision of the Decision Maker in the Province of Québec to file and obtain a receipt for a preliminary prospectus and prospectus shall not apply to trades in securities under the Plans where such trades are in accordance with the provisions of the Plans, as applicable.

**Dated** this 8th day of December, 2000.

Guy Lemoyne Viateur Gagnon