

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

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FILER

AVAYA INC

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): October 26, 2007

AVAYA INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-15951
(Commission File Number)

22-3713430
(IRS Employer
Identification Number)

211 Mount Airy Road
Basking Ridge, New Jersey
(Address of Principal Executive Office)

07920
(Zip Code)

Registrant's telephone number, including area code: (908) 953-6000

N/A

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Introductory Note

On October 26, 2007, Avaya Inc., a Delaware corporation (the “Company”), completed its merger (the “Merger”) with Sierra Merger Corp., a Delaware corporation (“Merger Sub”), a wholly-owned subsidiary of Sierra Holdings Corp., a Delaware corporation (“Parent”), pursuant to the terms and conditions of that certain Agreement and Plan of Merger, dated as of June 4, 2007, by and among Parent, Merger Sub and the Company (the “Merger Agreement”). As a result of the Merger, the Company became a wholly-owned subsidiary of Parent. Parent is controlled by investment funds affiliated with Silver Lake Partners and TPG Capital (the “Sponsors”).

Section 1 - Registrant’s Business and Operations

Item 1.01. Entry into a Material Definitive Agreement.

Senior Secured Multi-Currency Asset-Based Revolving Credit Facility

Overview. In connection with the Merger, the Company entered into a credit agreement and related security and other agreements for a senior secured multi-currency asset-based revolving credit facility with Citigroup Global Markets Inc., as joint lead arranger and joint bookrunner, Morgan Stanley Senior Funding, Inc., as joint lead arranger, joint bookrunner and syndication agent, J.P. Morgan Securities Inc., as joint lead arranger and joint bookrunner, JPMorgan Chase Bank, N.A., as documentation agent, Citicorp USA, Inc., as administrative agent and swing line lender and Citibank, N.A., as L/C issuer.

The senior secured multi-currency asset-based revolving credit facility provides senior secured financing of up to \$335.0 million, subject to availability under a borrowing base. No amounts under this facility were drawn at the closing of the Merger. The borrowing base at any time equals the sum of 85% of eligible accounts receivable plus 85% of the net orderly liquidation value of eligible inventory, subject to certain reserves and other adjustments. The senior secured multi-currency asset-based revolving credit facility includes borrowing capacity available for letters of credit and for short-term borrowings, referred to as swingline loans. Loans under this facility (other than swingline loans, which are available only in dollars), may be made in Euros in addition to dollars, and letters of credit may be issued in dollars, Euros or other currencies that may be approved under procedures set out in the credit agreement.

The senior secured multi-currency asset-based revolving credit facility provides the Company with the right to request up to \$100.0 million of additional commitments under this facility. The lenders under this facility are not under any obligation to provide any such additional commitments under this facility, and any increase in commitments is subject to certain conditions precedent. If the Company were to request any such additional commitments and the existing lenders or new lenders were to agree to provide such commitments, the facility size could be increased by up to \$100.0 million, but the Company’s ability to borrow under this facility would still be limited by the amount of the borrowing base.

Interest Rate and Fees. Borrowings under the Company’s senior secured multi-currency asset-based revolving credit facility bear interest at a rate per annum equal to, at the Company’s option, either (a) a base rate determined by reference to the higher of (1) the prime rate of

Citibank, N.A. and (2) the federal funds effective rate plus 0.5% or (b) a LIBOR rate determined by reference to the costs of funds for deposits of the relevant currency for the interest period relevant to such borrowing adjusted for certain additional costs, in each case plus an applicable margin. The initial applicable margin for borrowings under the Company's senior secured multi-currency asset-based revolving credit facility will be 0.75% per annum with respect to base rate borrowings and 1.75% per annum with respect to LIBOR borrowings. The applicable margin for borrowings under the Company's senior secured multi-currency asset-based revolving credit facility will be subject to a step down based on excess availability under that facility. Swingline loans bear interest at a rate per annum equal to the base rate plus the applicable margin.

In addition to paying interest on outstanding principal under the Company's senior secured multi-currency asset-based revolving credit facility, the Company is required to pay a commitment fee of 0.25% per annum in respect of the unutilized commitments thereunder. The Company must also pay customary letter of credit fees equal to the applicable margin on LIBOR loans and agency fees.

Mandatory Repayments. If at any time the aggregate amount of outstanding loans, unreimbursed letter of credit drawings and undrawn letters of credit under the Company's senior secured multi-currency asset-based revolving credit facility exceeds the lesser of (i) the commitment amount and (ii) the borrowing base, the Company is required to repay outstanding loans and cash collateralize letters of credit in an aggregate amount equal to such excess, with no reduction of the commitment amount. If the amount available under the Company's senior secured multi-currency asset-based revolving credit facility is less than \$33.5 million for five consecutive business days or a payment or bankruptcy event of default has occurred, the Company is required to deposit cash into certain blocked accounts subject to the control of the administrative agent, who may use the funds to repay outstanding loans and cash collateralize letters of credit, under the Company's senior secured multi-currency asset-based revolving credit facility.

Voluntary Repayments. The Company may voluntarily reduce the unutilized portion of the commitment amount and repay outstanding loans at any time without premium or penalty other than customary "breakage" costs with respect to LIBOR loans.

Amortization and Final Maturity. There is no scheduled amortization under the Company's senior secured multi-currency asset-based revolving credit facility. All outstanding loans under the facility are due and payable in full on the sixth anniversary of the closing date.

Co-Borrowers, Guarantees and Security. All obligations under the Company's senior secured multi-currency asset-based revolving credit facility are unconditionally guaranteed by Parent. In addition, all of the Company's existing wholly-owned domestic subsidiaries (with certain agreed-upon exceptions) (the "subsidiary borrowers") and certain of the Company's future domestic wholly-owned subsidiaries will act as co-borrowers under the facility. All obligations under the Company's senior secured multi-currency asset-based revolving credit facility, and the guarantees of those obligations, will be secured, subject to certain exceptions, by substantially all of the Company's assets and the assets of Parent and the subsidiary borrowers, including:

a first-priority security interest in personal property consisting of accounts receivable, inventory, cash, certain deposit accounts, and certain related assets and proceeds of the foregoing;

a second-priority pledge of all of the Company' s capital stock and all of the capital stock held by the Company and the Company' s subsidiary borrowers (which pledge, in the case of the capital stock of any foreign subsidiary or of any U.S. subsidiary that holds capital stock of a foreign subsidiary and is a disregarded entity for U.S. federal income tax purposes, is limited to 65% of the voting stock of such subsidiary); and

a second-priority security interest in, and mortgages on, substantially all other tangible and intangible assets of the Company, Parent and each subsidiary borrower, including substantially all of the Company' s material owned real property and equipment.

Certain Covenants and Events of Default. The Company' s senior secured multi-currency asset-based revolving credit facility contains a number of covenants that, among other things and subject to certain exceptions, restrict the Company' s ability and the ability of the Company' s subsidiaries to:

incur or guarantee additional debt and issue or sell certain preferred stock;

pay dividends on, redeem or repurchase the Company' s capital stock;

make certain acquisitions or investments;

incur or assume certain liens;

enter into transactions with affiliates;

merge or consolidate with another company;

transfer or otherwise dispose of assets;

redeem subordinated debt;

incur obligations that restrict the ability of the Company' s subsidiaries to make dividends or other payments to the Company; and

create or designate unrestricted subsidiaries.

The covenants limiting the incurrence of unsecured or subordinated debt; dividends and other restricted payments; investments, loans, advances and acquisitions; and prepayments or redemptions of the Company' s subordinated indebtedness, each permit the restricted actions in an unlimited amount, subject to the satisfaction of certain payment conditions, principally that the Company must have pro forma excess

availability greater than \$33.5 million under the senior secured multi-currency asset-based revolving credit facility and that the Company must be in pro forma compliance with the fixed charge coverage ratio described in the next paragraph.

Although the credit agreement governing the Company' s senior secured multi-currency asset-based revolving credit facility does not require the Company to comply with any financial ratio maintenance covenants, if the Company has excess availability under the Company' s senior secured multi-currency asset-based revolving credit facility of less than \$33.5 million at any time, the Company will not be permitted to borrow any additional amounts thereunder unless the

Company's pro forma consolidated Fixed Charge Coverage Ratio (as defined in the credit agreement governing the Company's senior secured multi-currency asset-based revolving credit facility) is at least 1.0 to 1.0.

The credit agreement governing the Company's senior secured multi-currency asset-based revolving credit facility also contain certain customary affirmative covenants and events of default.

Senior Secured Credit Facility

Overview. In connection with the Merger, the Company entered into a credit agreement and related security and other agreements for a senior secured credit facility with Citigroup Global Markets Inc., as joint lead arranger and joint bookrunner, Morgan Stanley Senior Funding, Inc., as joint lead arranger, joint bookrunner and syndication agent, J.P. Morgan Securities Inc., as joint lead arranger and joint bookrunner, JPMorgan Chase Bank, N.A., as documentation agent, and Citibank, N.A., as administrative agent, swing line lender and L/C issuer. The senior secured credit facility consists of (a) a \$3,800 million senior secured term loan and (b) a senior secured multi-currency revolver allowing for borrowings of up to \$200 million. The Company's senior secured multi-currency revolver includes borrowing capacity available for letters of credit and for short-term borrowings, referred to as swingline loans, and (other than for swingline loans, which are available only in dollars) is available in dollars, Euros and other currencies that may be approved under procedures set out in the credit agreement.

The senior secured credit facility provides that the Company has the right to request additional commitments under either or both of the term loan and the revolver up to \$1,000 million. The lenders under this facility are not under any obligation to provide any such additional commitments under this facility, and any increase in commitments is subject to several conditions precedent and limitations.

Interest Rate and Fees. Borrowings under the Company's senior secured credit facility bear interest at a rate per annum equal to (a) in the case of U.S. dollar-based loans, at the Company's option either a base rate or a LIBOR rate, and (b) in the case of loans in currencies other than U.S. dollars, a LIBOR rate. The base rate is determined by reference to the higher of (1) the prime rate of Citibank, N.A. and (2) the federal funds effective rate plus 1/2 of 1%. The LIBOR rate is determined by reference to the costs of funds for deposits in the relevant currency for the interest period relevant to such borrowing adjusted for certain additional costs, in each case plus an applicable margin. The initial applicable margin for borrowings under the Company's senior secured credit facility will be 1.75% per annum with respect to base rate borrowings and 2.75% per annum with respect to LIBOR borrowings. The applicable margin for borrowings under the Company's senior secured credit facility are subject to adjustment each fiscal quarter based on the Company's secured leverage ratio (as defined in the senior secured credit facility). Swingline loans bear interest at a rate per annum equal to the base rate plus the applicable margin.

In addition to paying interest on outstanding principal under the Company's senior secured credit facility, the Company is required to pay a commitment fee of 0.50% per annum in respect of the unutilized commitments under the senior secured multi-currency revolver. This

commitment fee is subject to adjustment each fiscal quarter based on the Company's secured leverage ratio. The Company is also required to pay customary letter of credit fees equal to the applicable margin on LIBOR loans and agency fees under this facility.

Mandatory Repayments. The Company is required to prepay outstanding term loans under the senior secured term loan with (x) 100% of the net cash proceeds of any debt issued by the Company or its subsidiaries (with exceptions for certain debt permitted to be incurred under the credit agreement), (y) commencing with the fiscal year ending September 30, 2008, 50% (which percentage will be reduced to 25% and to 0% if the Company's secured leverage ratio is less than specified ratios) of the Company's annual excess cash flow (as defined in the credit agreement governing the Company's senior secured credit facility), and (z) if the Company's secured leverage ratio exceeds a specified level, 100% of the net cash proceeds of all non-ordinary course asset sales or other dispositions of property by the Company or its subsidiaries, subject to reinvestment rights and certain other exceptions.

Voluntary Repayments. The Company may voluntarily prepay outstanding loans under the Company's senior secured credit facility and reduce the unutilized portion of the commitment amount in respect of the senior secured multi-currency revolver at any time without premium or penalty other than customary "breakage" costs with respect to LIBOR loans.

Amortization and Final Maturity. Beginning in March 2008, the Company is required to make scheduled quarterly payments under its senior secured term loan facility equal to 0.25% of the original principal amount of the term loans, with the balance paid on the seventh anniversary of the closing date of the Merger. The principal amount outstanding of the loans under the Company's senior secured multi-currency revolver is due and payable in full on the sixth anniversary of the closing date of the Merger.

Guarantees and Security. All obligations under the Company's senior secured credit facility are unconditionally guaranteed by Parent and all of the Company's existing wholly-owned domestic subsidiaries (with certain agreed-upon exceptions), and will be guaranteed by certain of the Company's future domestic wholly-owned subsidiaries. All obligations under the senior secured credit facility, and the guarantees of those obligations, are secured, subject to certain exceptions, by substantially all of the Company's assets and the assets of Parent and the subsidiary guarantors, including:

a second-priority security interest in personal property consisting of accounts receivable, inventory, cash, certain deposit accounts, and certain related assets and proceeds of the foregoing;

a first-priority pledge of all of the Company's capital stock and all of the capital stock held by the Company and its subsidiary guarantors (which pledge, in the case of the capital stock of any foreign subsidiary or of any U.S. subsidiary that holds capital stock of a foreign subsidiary and is a disregarded entity for U.S. federal income tax purposes, is limited to 65% of the voting stock of such subsidiary); and

a first-priority security interest in, and mortgages on, substantially all other tangible and intangible assets of the Company and each subsidiary guarantor, including substantially all of the Company's material owned real property and equipment.

Certain Covenants and Events of Default. The credit agreement governing the Company' s senior secured credit facility contains a number of covenants that, among other things and subject to certain exceptions, restrict the Company' s ability and the ability of its subsidiaries to:

incur or guarantee additional debt and issue or sell certain preferred stock;

pay dividends on, redeem or repurchase the Company' s capital stock;

make certain acquisitions or investments;

incur or assume certain liens;

enter into transactions with affiliates;

merge or consolidate with another company;

transfer or otherwise dispose of assets;

redeem subordinated debt;

incur obligations that restrict the ability of the Company' s subsidiaries to make dividends or other payments to us; and

create or designate unrestricted subsidiaries.

The credit agreement governing the Company' s senior secured credit facility also contains certain customary affirmative covenants and events of default.

Senior Unsecured Bridge Facility

Overview. In connection with the Merger, the Company entered into a senior unsecured bridge agreement with Morgan Stanley Senior Funding, Inc., as administrative agent. The senior unsecured bridge facility provides senior unsecured financing of \$1.45 billion, consisting of (a) a \$700.0 million senior unsecured cash-pay bridge loan with a term of one year; and (b) a \$750.0 million senior unsecured PIK-toggle bridge loan with a term of one year.

If any borrowings under the senior unsecured bridge facility remain outstanding on the one-year anniversary of the closing date of the senior unsecured bridge facility, the lenders in respect of the cash-pay bridge loan and the lenders in respect of the PIK-toggle bridge loan will have the option at any time or from time to time to exchange such senior unsecured bridge loans for senior cash-pay exchange notes or senior PIK-toggle exchange notes, respectively, that the Company will issue under a senior indenture. Any senior unsecured bridge loans that are not exchanged for senior exchange notes will automatically be converted into senior unsecured term loans maturing on the eighth anniversary of

the closing date of the senior unsecured bridge facility, and the senior exchange notes will also mature on such eighth anniversary. Holders of the senior exchange notes will have registration rights.

Interest Rate. Subject to specified caps, borrowings under the senior unsecured bridge facility for the first six-month period from the closing thereof will bear interest at a rate equal to a LIBOR rate determined by reference to the costs of funds for U.S. dollar deposits for a term

equivalent to a 3-month period plus an initial margin equal to (i) 362.5 basis points, in the case of the cash-pay bridge loan and (ii) 387.5 basis points, in the case of the PIK-toggle bridge loan. Interest for the three-month period commencing at the end of the initial six-month period, subject to specified caps, shall be payable at prevailing LIBOR for the interest period plus (A) the applicable initial margin plus (B) 50 basis points. Thereafter, subject to specified caps, interest will be increased by an additional 50 basis points at the beginning of each three-month period subsequent to the initial nine-month period, for so long as the loans under the senior unsecured bridge facility are outstanding. If issued, the interest rate on the senior exchange notes will be the same as the interest rate borne by the senior unsecured term loans; *provided*, that if any senior exchange notes are transferred by a lender to a third-party purchaser, the interest rate on those notes will be fixed at the interest rate in effect on the transfer date.

Mandatory Prepayments and Redemptions. The Company will be required to repay the senior unsecured bridge loans with the net cash proceeds of (x) any debt securities issued to refinance the senior unsecured bridge loans, and (y) after any payments required to be made to repay the senior secured credit facility, specified asset sales. Following the one year anniversary of the closing date of the senior unsecured bridge facility, the Company will be required to make an offer to repay the senior unsecured term loans and repurchase senior exchange notes with net proceeds from specified asset sales. In addition, the Company will be required to offer to repay senior unsecured bridge loans and senior unsecured term loans, and if issued, to repurchase the senior exchange notes, upon the occurrence of a change of control.

Voluntary Prepayments and Redemptions. The Company may voluntarily prepay outstanding senior unsecured bridge loans and senior unsecured term loans, in whole or in part, at its option at any time upon three business days' prior notice, at par plus accrued and unpaid interest and subject to customary LIBOR "breakage" costs. The Company may optionally redeem the senior exchange notes other than fixed-rate exchange notes, if issued, in whole or in part, at any time at par plus accrued and unpaid interest to the redemption date.

If any senior exchange note is transferred by a lender to a third-party purchaser, and the interest rate on such senior exchange note is fixed at the time of transfer, such senior exchange note will be non-callable for the first four years from the closing date of the senior unsecured bridge facility, subject to certain equity clawback and make-whole provisions, and will be callable thereafter at a specified premium. The premium will decline ratably on each yearly anniversary of the closing date of the senior unsecured bridge facility thereafter to zero two years prior to the final maturity of the senior exchange notes.

Guarantees. As of the closing date of the senior unsecured bridge facility, all obligations under the senior unsecured bridge facility (including the senior unsecured term loans thereunder) and, if the senior exchange notes are issued, the senior indenture, are jointly and severally guaranteed on a senior unsecured basis by each wholly owned domestic subsidiary of the Company that is a subsidiary guarantor of the Company' s obligations under the senior secured credit facility. In addition, the senior unsecured bridge loans are guaranteed on a senior unsecured basis by Parent.

Certain Covenants and Events of Default. The senior unsecured bridge facility and the senior indenture relating to the senior exchange notes contain a number of covenants that, among other things, restrict, subject to certain exceptions, the Company' s ability to:

incur additional indebtedness;

create liens;

engage in mergers or consolidations;

sell or transfer assets and subsidiary stock;

pay dividends and distributions or repurchase its capital stock;

make certain investments, loans or advances;

prepay certain indebtedness;

enter into agreements that restrict the payment of dividends by subsidiaries or the repayment of intercompany loans and advances;
and

engage in certain transactions with affiliates.

In addition, the senior unsecured bridge facility contains certain customary affirmative covenants and events of default consistent with those in the senior secured facilities that are applicable prior to the one year anniversary of the closing date of the senior unsecured bridge facility. Following such one year anniversary, the senior unsecured bridge facility contains certain affirmative covenants and events of default that are customary for high-yield debt securities and substantially similar to those in the senior indenture relating to the senior exchange notes.

Management Services Agreement

Parent and Merger Sub previously entered into a Management Services Agreement (the "Management Services Agreement") with Silver Lake Management Company III, L.L.C., and TPG Capital, L.P. (collectively referred to as the "Managers"). By virtue of the closing of the Merger, the Company assumed the obligations of Merger Sub under the Management Services Agreement. Under the Management Services Agreement, the Managers will provide management and financial advisory services to the Company. Upon consummation of the Merger, the Managers received a one-time transaction fee of \$75 million, and the Company reimbursed the Managers and their affiliates for their out-of-pocket expenses in connection with the Merger.

Pursuant to the Management Services Agreement, the Managers will receive a monitoring fee of \$7 million per annum (such fees collectively, the "Monitoring Fees") and reimbursement on demand for out-of-pocket expenses incurred in connection with the provision of such services. In the event of a financing, acquisition, disposition or change of control transaction involving the

Company during the term of the Management Services Agreement, the Managers will have the right to require the Company to pay to the Managers a fee equal to customary fees charged by internationally-recognized investment banks for serving as a financial advisor in similar transactions. The Management Services Agreement may be terminated at any time by the Managers, but will otherwise have an initial term ending on December 31, 2017 that will automatically be extended each December 31st for an additional year unless earlier terminated by the Company or the Managers. The Management Services Agreement will automatically terminate upon an initial public offering unless otherwise determined by the Managers, and, upon such a termination, the Managers will receive a one-time success fee in an amount equal to the net present values of the monitoring fees that would have been payable during the remaining term of the Management Services Agreement. The Management Services Agreement contains customary exculpation and indemnification provisions in favor of the Managers and their affiliates.

Item 1.02. Termination of a Material Definitive Agreement

\$400 Million Credit Agreement

On October 26, 2007, in connection with the Merger, the Company paid in full all outstanding amounts due in connection with the termination of the \$400,000,000 Credit Agreement, dated as of February 23, 2005, by and among the Company, Avaya International Sales Limited, a company incorporated in Ireland, Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as joint bookrunners and joint lead arrangers, JPMorgan Chase Bank, N.A., as syndication agent, Citicorp USA, Inc. as administrative agent, and the lenders from time to time party thereto (as amended and in effect from time to time, the “Existing \$400M Credit Facility”). No material penalties were due in connection with such termination. Interest rates for borrowings and fees for outstanding letters of credit under the Existing \$400M Credit Facility were based on market rates. The credit agreement governing the Existing \$400M Credit Facility contained customary covenants and events of default. There were no outstanding borrowings under the Existing \$400M Credit Facility.

Section 2 - Financial Information

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth relating to the Senior Secured Multi-Currency Asset-Based Revolving Credit Facility, the Senior Secured Credit Facility and the Senior Unsecured Bridge Facility in Item 1.01 of this Current Report on Form 8-K is incorporated by reference in this Item 2.03.

Section 3 - Securities and Trading Markets

Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

On October 26, 2007, the Company notified the New York Stock Exchange (the “NYSE”) of the

effectiveness of the Merger. In connection therewith, the Company informed the NYSE that each outstanding share of the Company's Common Stock (other than shares held by (i) the Company as treasury stock, (ii) Parent or Merger Sub and (iii) stockholders who properly exercised their appraisal rights under Delaware law) was converted into the right to receive \$17.50 without interest (the "Merger Consideration"), and requested that the NYSE file with the Securities and Exchange Commission an application on Form 25 to report that shares of the Company's Common Stock are no longer listed on the NYSE. Trading of the Company's Common Stock on the NYSE was suspended as of the opening of trading on October 26, 2007.

Item 3.03. Material Modification to Rights of Security Holders.

In connection with the consummation of the Merger, each share of the Company's Common Stock issued and outstanding immediately prior to the effective time of the Merger (other than shares held by (i) the Company as treasury stock, (ii) Parent or Merger Sub and (iii) stockholders who properly exercised their appraisal rights under Delaware law) was converted into the right to receive the Merger Consideration. Upon the effective time of the Merger, the Company's stockholders immediately prior to the effective time of the Merger ceased to have any rights as stockholders in the Company (other than their right to receive the Merger Consideration) and accordingly no longer have any interest in the Company's future earnings or growth.

Section 5 - Corporate Governance and Management

Item 5.01. Changes in Control of Registrant.

On October 26, 2007, pursuant to the terms of the Merger Agreement, the Merger was consummated. As a result of the Merger, the Company became a wholly-owned subsidiary of Parent, which is majority-owned by affiliates of the Sponsors. The aggregate purchase price paid for all equity securities of the Company was approximately \$8.3 billion. The purchase price was funded by the financing provided by the new credit facilities and loans described in Item 1.01 above, equity financing from the Sponsors, members of the Company's management and certain other indirect investors and cash of the Company.

Pursuant to a stockholders' agreement entered into by affiliates of the Sponsors, Parent and certain other investors in Parent, the funds affiliated with each Sponsor have the right to designate three of the Company's directors and three of the directors of the Company's parent company.

A copy of the joint press release issued by the Company and the Sponsors on October 26, 2007 announcing the consummation of the Merger is attached hereto as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 5.02. Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers; Compensatory Arrangements with Certain Officers.

Each of Bruce R. Bond, Frank J. Fanzilli, Joseph P. Landy, Mark Leslie, Philip A. Odeen, Hellene S. Runtagh, Daniel C. Stanzione, Paula Stern, Anthony P. Terracciano, Michael Thurk, Richard F. Wallman and Ronald L. Zarrella voluntarily resigned from the Company's board of directors effective as of the effective time of the Merger on October 26, 2007. The Company's

newly appointed board of directors is comprised of the following individuals: Louis J. D' Ambrosio, the Company's President and Chief Executive Officer, Dave Roux, Greg Mondre, Kevin Rollins, John Marren and Gene Frantz.

Pursuant to the stockholders' agreement described in Item 5.01, the funds affiliated with each Sponsor have the right to designate three of the Company's directors and three of the directors of the Company's parent company. Messrs. Roux and Mondre are affiliated with Silver Lake Partners. Silver Lake Partners expects to designate a third director in due course. Messrs. Rollins, Marren and Frantz are affiliated with TPG Capital.

As a result of their respective positions with the Sponsors, one or more of the directors of the Company may be deemed to have an indirect material interest in the Management Services Agreement. The information relating to the Management Services Agreement in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.02.

Item 5.03. Amendments to Articles of Incorporation or By-laws.

At the effective time of the Merger, the Company's certificate of incorporation and by-laws were amended and restated to be in the form of (except with respect to the name of the Company) the certificate of incorporation and by-laws of Merger Sub in accordance with the terms of the Merger Agreement. A copy of each of the Company's Amended and Restated Certificate of Incorporation and Amended and Restated By-Laws is attached hereto as Exhibit 3.1 and Exhibit 3.2, respectively, to this Current Report on Form 8-K and is incorporated herein by reference.

Section 9 - Financial Statements and Exhibits

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

3.1 Amended and Restated Certificate of Incorporation of Avaya Inc.

3.2 Amended and Restated By-Laws of Avaya Inc.

99.1 Joint Press Release, dated October 26, 2007, issued by the Company and the Sponsors relating to the consummation of the Merger.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: November 1, 2007

AVAYA INC.

By:

/s/ Eric M. Sherbet

Name: Eric M. Sherbet

Title: Vice President - Law,
Corporate and Securities, and
Corporate Secretary

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

OF

AVAYA INC.

ARTICLE I

The name of this corporation is Avaya Inc.

ARTICLE II

The registered office of this Corporation in the State of Delaware is located at 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

The purpose of this Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV

The total number of shares of stock that this Corporation shall have the authority to issue is 100 shares of Common Stock, \$0.01 par value per share. Each share of Common Stock shall be entitled to one vote.

ARTICLE V

Except as otherwise provided in the provisions establishing a class of stock, the number of authorized shares of any class or series of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the Corporation entitled to vote irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

ARTICLE VI

The election of directors need not be by written ballot unless the bylaws of the Corporation shall so require.

ARTICLE VII

In furtherance and not in limitation of the power conferred upon the Board of Directors by law, the Board of Directors shall have the power to make, adopt, alter, amend and repeal from time to time the bylaws of this Corporation, subject to the right of the stockholders entitled to vote with respect thereto to alter and repeal bylaws adopted by the Board of Directors.

ARTICLE VIII

A director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that exculpation from liability is not permitted under the General Corporation Law of the State of Delaware as in effect at the time such liability is determined. No amendment or repeal of this Article VIII shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

ARTICLE IX

This Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was or has agreed to be a director or officer of this Corporation or while a director or officer is or was serving at the request of this Corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including, without limitation, service with respect to employee benefit plans, against expenses (including, without limitation, attorney's fees and expenses), judgments, fines, penalties and amounts paid in settlement incurred in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require this Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding, claim or counterclaim initiated by or on behalf of such person.

Expenses (including attorneys' fees) incurred by an officer or director (including any person who was an officer or director) in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such officer or director to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation authorized in this Article IX. Such indemnification and advancement of expenses shall not be exclusive of other indemnification rights arising as a matter of law, under any bylaw, agreement, vote of directors or stockholders or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking indemnification under this Article IX shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established.

Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection of a director or officer of this Corporation with respect to any acts or omissions of such director or officer occurring prior to such repeal or modification.

ARTICLE X

To the maximum extent permitted from time to time under the law of the State of Delaware, this Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to its officers, directors or stockholders, other than those officers, directors or stockholders who are employees of this Corporation. No amendment or repeal of this Article X shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities of which such officer, director or stockholder becomes aware prior to such amendment or repeal.

ARTICLE XI

The books of this Corporation may (subject to any statutory requirements) be kept outside the State of Delaware as may be designated by the Board of Directors or in the bylaws of this Corporation.

**AMENDED AND RESTATED BY-LAWS
OF
AVAYA INC.**

APPROVED NOVEMBER 2, 2000

AS AMENDED OCTOBER 26, 2007

Section 1. OFFICES AND LAWS

1.1. Offices of the Corporation. The corporation may have such offices, either within or without the State of Delaware, as the board of directors may designate or as the business of the corporation may from time to time require.

1.2. Laws. These by-laws are subject to the certificate of incorporation of the corporation and any stockholders agreement then in effect to which the corporation's immediate parent entity is a party. In these by-laws, references to law, the certificate of incorporation and by-laws mean the law, the provisions of the certificate of incorporation and the by-laws as from time to time in effect.

Section 2. STOCKHOLDERS

2.1. Annual Meeting. The annual meeting of stockholders shall be held at a place and time designated by the board of directors and stated in the notice of the meeting provided pursuant to Section 2.4 of these by-laws. The stockholders shall elect a board of directors at the annual meeting and transact such other business as may be required by law or these by-laws or as may properly come before the meeting.

2.2. Special Meetings. A special meeting of the stockholders may be called at any time by the chairman of the board of directors, if any, the chief executive officer, the president or the board of directors. A special meeting of the stockholders shall be called by the secretary, or in the case of the death, absence, incapacity or refusal of the secretary, by an assistant secretary or some other officer, upon the written request of stockholders holding at least a majority of the capital stock issued, outstanding and entitled to vote. Any such application shall state the purpose or purposes of the proposed meeting. Any such call shall state the place, date, hour, and purposes of the meeting.

2.3. Place of Meeting. All meetings of the stockholders for the election of directors or for any other purpose shall be held at such place, within or without the State of Delaware, or, if so determined by the board of directors in its sole discretion, at no place (but rather by means of conference telephone or similar communications equipment by means of which all persons

participating in the meeting can hear each other or by any other means permitted by law), as may be determined from time to time by the chairman of the board of directors, if any, the chief executive officer, the president or the board of directors. Any adjourned session of any meeting of the stockholders shall be held at the place designated in the vote of adjournment.

2.4. Notice of Meetings. Except as otherwise provided by law, notice of each meeting of stockholders stating the place, if any, the day, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and hour thereof and, in the case of a special meeting, the purposes for which the meeting is called, shall be given not less than ten nor more than sixty days before the meeting, to each stockholder entitled to vote thereat, and to each stockholder who, by law, by the certificate of incorporation or by these by-laws, is entitled to notice, by leaving such notice with him or her or at his or her residence or usual place of business, or by depositing it in the United States mail, postage prepaid, and addressed to such stockholder at his or her address as it appears in the records of the corporation or, if such stockholder shall have filed with the secretary of the corporation a written request that notices be mailed to some other address, then to the address designated in such request. Such notice shall be given by the secretary, or by an officer or person designated by the board of directors, or in the case of a special meeting by the officer calling the meeting. As to any adjourned session of any meeting of stockholders, notice of the adjourned meeting need not be given if the time and place thereof are announced at the meeting at which the adjournment was taken except that if the adjournment is for more than thirty days or if after the adjournment a new record date is set for the adjourned session, notice of any such adjourned session of the meeting shall be given in the manner heretofore described. No notice of any meeting of stockholders or any adjourned session thereof need be given to a stockholder if a written waiver of notice, executed before or after the meeting or such adjourned session by such stockholder, is filed with the records of the meeting or if the stockholder attends such meeting without objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the stockholders or any adjourned session thereof need be specified in any written waiver of notice.

2.5. Quorum of Stockholders. At any meeting of the stockholders a quorum as to any matter shall consist of a majority of the votes entitled to be cast on the matter, except where a larger quorum is required by law, by the certificate of incorporation or by these by-laws. Any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, whether or not a quorum is present. If a quorum is present at an original meeting, a quorum need not be present at an adjourned session of that meeting. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

2.6. Action by Vote. When a quorum is present at any meeting, a plurality of the votes properly cast for election to any office shall elect to such office and a majority of the votes properly cast upon any question other than an election to an office shall decide the question, except when a larger vote is required by law, by the certificate of incorporation or by these by-laws. Voting at meetings of stockholders need not be by written ballot and may be by electronic means, as determined by the board of directors in its sole discretion.

2.7. Action without Meetings. Unless otherwise provided in the certificate of incorporation, any action required or permitted to be taken by stockholders for or in connection with any corporate action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State of Delaware by hand or certified or registered mail, return receipt requested, to its principal place of business or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Each such written consent shall bear the date of signature of each stockholder who signs the consent. No written consent shall be effective to take the corporate action referred to therein unless written consents signed by a number of stockholders sufficient to take such action are delivered to the corporation in the manner specified in this paragraph within sixty days of the earliest dated consent so delivered.

If action is taken by consent of stockholders and in accordance with the foregoing, there shall be filed with the records of the meetings of stockholders the writing or writings comprising such consent.

If action is taken by less than unanimous consent of stockholders, prompt notice of the taking of such action without a meeting shall be given to those who have not consented in writing and a certificate signed and attested to by the secretary that such notice was given shall be filed with the records of the meetings of stockholders.

In the event that the action which is consented to is such as would have required the filing of a certificate under any provision of the General Corporation Law of the State of Delaware, if such action had been voted upon by the stockholders at a meeting thereof, the certificate filed under such provision shall state, in lieu of any statement required by such provision concerning a vote of stockholders, that written consent has been given under Section 228 of said General Corporation Law and that written notice has been given as provided in such Section 228.

2.8. Proxy Representation. Every stockholder may authorize another person or persons to act for him or her by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, objecting to or voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the stockholder or by his or her attorney-in-fact. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally. The authorization of a proxy may but need not be limited to specified action, provided, however, that if a proxy limits its authorization to a meeting or meetings of stockholders, unless otherwise specifically provided such proxy shall entitle the holder thereof to vote at any adjourned session but shall not be valid after the final adjournment thereof.

2.9. Inspectors. The directors or the person presiding at the meeting may, and shall if required by applicable law, appoint one or more inspectors of election and any substitute inspectors to act at the meeting or any adjournment thereof. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them.

2.10. List of Stockholders. The officer or agent having charge of the stock transfer books shall prepare and make, at least ten days before each meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in his or her name. The stock ledger shall be the only evidence as to who are stockholders entitled to examine such list or to vote in person or by proxy at such meeting.

Section 3. BOARD OF DIRECTORS

3.1. Number. The corporation shall have one or more directors, the number of directors to be determined from time to time in accordance with any stockholders agreement then in effect to which the corporation' s immediate parent entity is a party or by vote of a majority of the directors then in office. At any time during any year, except as otherwise provided by law, the certificate of incorporation, these by-laws, any stockholders agreement then in effect to which the corporation' s immediate parent entity is a party, or otherwise, the number of directors may be increased or reduced, in each case by vote of a majority of the directors then in office. No director need be a stockholder.

3.2. Tenure. Except as otherwise provided by law, by the certificate of incorporation, by these by-laws or by any stockholders agreement then in effect to which the corporation' s immediate parent entity is a party, each director shall hold office until the next annual meeting and until his or her successor is elected and qualified, or until he or she sooner dies, resigns, is removed or becomes disqualified.

3.3. Powers. The business and affairs of the corporation shall be managed by or under the direction of the board of directors who shall have and may exercise all the powers of the corporation and do all such lawful acts and things as are not by law, the certificate of incorporation or these by-laws directed or required to be exercised or done by the stockholders.

3.4. Vacancies. Vacancies and any newly created directorships resulting from any increase in the number of directors shall be filled in accordance with any stockholders agreement then in effect to which the corporation's immediate parent entity is a party and may otherwise be filled by vote of the holders of the particular class or series of stock entitled to elect such director at a meeting called for the purpose, or by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, in each case elected by the particular class or series of stock entitled to elect such directors. When one or more directors shall resign from the board, effective at a future date, a majority of the directors then in office, including those who have resigned, who were elected by the particular class or series of stock entitled to elect such resigning director or directors shall have power to fill such vacancy or vacancies, the vote or action by writing thereon to take effect when such resignation or resignations shall become effective. The directors shall have and may exercise all their powers notwithstanding the existence of one or more vacancies in their number, subject to any requirements of law or of the certificate of incorporation or of these by-laws as to the number of directors required for a quorum or for any vote or other actions.

3.5. Committees. Subject to any stockholders agreement then in effect to which the corporation's immediate parent entity is a party, the board of directors may, by vote of a majority of the whole board, (a) designate, change the membership of or terminate the existence of any committee or committees, each committee to consist of one or more of the directors; (b) designate one or more directors as alternate members of any such committee who may replace any absent or disqualified member at any meeting of the committee; and (c) determine the extent to which each such committee shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, including the power to authorize the seal of the corporation to be affixed to all papers which require it and the power and authority to declare dividends or to authorize the issuance of stock; excepting, however, such powers which by law, by the certificate of incorporation or by these by-laws they are prohibited from so delegating. In the absence or disqualification of any member of such committee and his or her alternate, if any, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Except as the board of directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the board of directors or such rules, its business shall be conducted as nearly as may be in the same manner as is provided by these by-laws for the conduct of business by the board of directors. Each committee shall keep regular minutes of its meetings and report the same to the board of directors upon request.

3.6. Regular Meetings. Regular meetings of the board of directors may be held without call or notice at such places within or without the State of Delaware and at such times as the board of directors may from time to time determine, provided that notice of the first regular meeting following any such determination shall be given to absent directors. A regular meeting of the directors may be held without call or notice immediately after and at the same place as the annual meeting of stockholders.

3.7. Special Meetings. Special meetings of the board of directors may be held at any time and at any place within or without the State of Delaware designated in the notice of the

meeting, when called by the chairman of the board of directors, if any, the chief executive officer, the president, or by one-third or more in number of the directors, reasonable notice thereof being given to each director by the secretary or by the chairman of the board of directors, if any, the chief executive officer, the president or any one of the directors calling the meeting.

3.8. Notice. It shall be reasonable and sufficient notice to a director to send notice by mail at least forty-eight hours or by telegram at least twenty-four hours before the meeting addressed to him or her at his or her usual or last known business or residence address or to give notice to him or her in person or by telephone at least twenty-four hours before the meeting. Notice of a meeting need not be given to any director if a written waiver of notice, executed by him or her before or after the meeting, is filed with the records of the meeting, or to any director who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her. Neither notice of a meeting nor a waiver of a notice need specify the purposes of the meeting.

3.9. Quorum. Except as may be otherwise provided by law, by the certificate of incorporation or by these by-laws, at any meeting of the directors a majority of the directors then in office shall constitute a quorum; a quorum shall not in any case be less than one-third of the total number of directors constituting the whole board provided, however, that a quorum shall only exist if at least one director nominated by affiliates of Silver Lake Partners and one director nominated by affiliates of TPG Capital are present, in each case for so long as such party or an affiliate of such party is entitled to elect a director. Any meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

3.10. Action by Vote. Except as may be otherwise provided by law, by the certificate of incorporation, by these by-laws or by a stockholders agreement then in effect to which the corporation's immediate parent entity is a party, when a quorum is present at any meeting the vote of a majority of the directors present shall be the act of the board of directors.

3.11. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the board of directors or a committee thereof may be taken without a meeting if all the members of the board of directors or of such committee, as the case may be, consent thereto in writing, and such writing(s) are filed with the records of the meetings of the board of directors or of such committee. Such consent shall be treated for all purposes as the act of the board of directors or of such committee, as the case may be.

3.12. Participation in Meetings by Conference Telephone. Members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other or by any other means permitted by law. Such participation shall constitute presence in person at such meeting.

3.13. Compensation. In the discretion of the board of directors, each director may be paid such fees for his or her services as director and be reimbursed for his or her reasonable expenses incurred in the performance of his or her duties as director as the board of directors

from time to time may determine. Nothing contained in this section shall be construed to preclude any director from serving the corporation in any other capacity and receiving reasonable compensation therefor.

3.14. Interested Directors and Officers.

(a) No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of the corporation's directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if:

(1) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(2) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee thereof, or the stockholders.

(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

Section 4. OFFICERS AND AGENTS

4.1. Enumeration; Qualification. The officers of the corporation shall be a chief executive officer, a president, a treasurer, a secretary and such other officers (including, without limitation, a chairman of the board, senior vice presidents, executive vice presidents and vice presidents) as the board of directors from time to time may in its discretion elect or appoint. The corporation may also have such agents, if any, as the board of directors from time to time may in its discretion choose. Any officer may be but none need be a director or stockholder. Any two or more offices may be held by the same person. Any officer may be required by the board of directors to secure the faithful performance of his or her duties to the corporation by giving bond in such amount and with sureties or otherwise as the board of directors may determine.

4.2. Powers. Subject to law, to the certificate of incorporation and to the other provisions of these by-laws, each officer shall have, in addition to the duties and powers herein set forth, such duties and powers as are commonly incident to his or her office and such additional duties and powers as the board of directors may from time to time designate.

4.3. Election. The officers may be elected by the board of directors at their first meeting following the annual meeting of the stockholders or at any other time. At any time or from time to time the directors may delegate to any officer their power to elect or appoint any other officer or any agents.

4.4. Tenure. Each officer shall hold office until the first meeting of the board of directors following the next annual meeting of the stockholders and until his or her respective successor is chosen and qualified unless a shorter period shall have been specified by the terms of his or her election or appointment, or in each case until he or she sooner dies, resigns, is removed or becomes disqualified. Each agent shall retain his or her authority at the pleasure of the directors, or the officer by whom he or she was appointed or by the officer who then holds agent appointive power.

4.5. Chairman of the Board of Directors, Chief Executive Officer, President and Vice President. The chairman of the board of directors, if any, shall have such duties and powers as shall be designated from time to time by the board of directors. Unless the board of directors otherwise specifies, the chairman of the board of directors, or if there is none, the chief executive officer, shall preside, or designate the person who shall preside, at all meetings of the stockholders and of the board of directors.

Unless the board of directors otherwise specifies, the chief executive officer(s) shall have direct charge of all business operations of the corporation and, subject to the control of the directors, shall have general charge and supervision of the business of the corporation.

The president shall have such duties and powers as shall be set forth in these by-laws or as shall be designated from time to time by the board of directors, the chairman of the board or the chief executive officer. The president shall perform the duties and exercise the powers of the chief executive officer in the event of the chief executive officer's absence or disability.

Each senior vice president, executive vice president and any vice president shall have such powers and shall perform such duties as shall be assigned to him by the board of directors or by the president.

4.6. Treasurer and Assistant Treasurers. Unless the board of directors otherwise specifies, the treasurer shall be the chief financial officer of the corporation and shall be in charge of its funds and valuable papers. The treasurer shall cause the funds of the corporation to be deposited in such banks as may be authorized by the board of directors, or in such banks as may be designated as depositories in the manner provided by resolution of the board of directors. The treasurer shall have such other duties and powers as may be designated from time to time by the board of directors, the chairman of the board or the president.

The treasurer may designate one or more assistant treasurers who shall have such of the authority and perform such of the duties of the treasurer as may be assigned to them by the board of directors, the chairman of the board or the treasurer.

4.7. Secretary and Assistant Secretaries. The secretary shall record all proceedings of the stockholders, of the board of directors and of committees of the board of directors in a book or series of books to be kept therefor and shall file therein all actions by written consent of stockholders or directors. In the absence of the secretary from any meeting, an assistant secretary, or if there be none or he or she is absent, a temporary secretary chosen at the meeting, shall record the proceedings thereof. Unless a transfer agent has been appointed the secretary shall keep or cause to be kept the stock and transfer records of the corporation, which shall contain the names and record addresses of all stockholders and the number of shares registered in the name of each stockholder. He or she shall have such other duties and powers as may from time to time be designated by the board of directors, the chairman of the board or the president.

The secretary may designate one or more assistant secretaries who shall have such of the authority and perform such of the duties of the secretary as may be assigned to them by the board of directors, the chairman of the board or the secretary.

Section 5. RESIGNATIONS AND REMOVALS

5.1. Any director or officer may resign at any time by delivering his or her resignation in writing to the chairman of the board of directors, if any, the president, or the secretary or to a meeting of the board of directors. Such resignation shall be effective upon receipt unless specified to be effective at some other time, and without in either case the necessity of its being accepted unless the resignation shall so state. Except as may be otherwise provided by law, by the certificate of incorporation, by these by-laws or by a stockholders agreement then in effect to which the corporation's immediate parent entity is a party, a director (including persons elected by stockholders or directors to fill vacancies in the board) may be removed from office with or without cause by the vote of the holders of a majority of the issued and outstanding shares of the particular class or series entitled to vote in the election of such directors. The board of directors may at any time remove any officer either with or without cause. The board of directors may at any time terminate or modify the authority of any agent.

Section 6. VACANCIES

6.1. If the office of the chief executive officer, the president, the vice president, the treasurer or the secretary becomes vacant, the directors may elect a successor by vote of a majority of the directors then in office. If the office of any other officer becomes vacant, any person or body empowered to elect or appoint that officer may choose a successor. Each such successor shall hold office for the unexpired term, and in the case of the chief executive officer, the president, the vice president, the treasurer and the secretary until his or her successor is chosen and qualified or in each case until he or she sooner dies, resigns, is removed or becomes disqualified. Any vacancy of a directorship shall be filled as specified in Section 3.4 of these by-laws.

Section 7. CAPITAL STOCK

7.1. Stock Certificates. Each stockholder shall be entitled to a certificate stating the number and the class and the designation of the series, if any, of the shares held by him or her, in such form as shall, in conformity to law, the certificate of incorporation and the by-laws, be prescribed from time to time by the board of directors. Such certificate shall be signed by the chairman or vice chairman of the board of directors, if any, or the chief executive officer, president or a vice president and by the treasurer or an assistant treasurer or by the secretary or an assistant secretary. Any of or all the signatures on the certificate may be a facsimile. In case an officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent, or registrar at the time of its issue.

In lieu of issuing certificates for stock, the board of directors may either issue receipts therefor or may keep accounts upon the books of the corporation for the record holders of such shares, who shall in either case be deemed, for all purposes hereunder, to be the holders of certificates for such shares as if they had accepted such certificates and shall be held to have expressly assented and agreed to the terms hereof.

7.2. Loss of Certificates. In the case of the alleged theft, loss, destruction or mutilation of a certificate of stock, a duplicate certificate may be issued in place thereof, upon such terms, including receipt of a bond sufficient to indemnify the corporation against any claim on account thereof, as the board of directors or any financial officer may prescribe.

Section 8. TRANSFER OF SHARES OF STOCK

8.1. Transfer on Books. Subject to the restrictions, if any, stated or noted on the stock certificate, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate therefor properly endorsed or accompanied by a written assignment and power of attorney properly executed, with necessary transfer stamps affixed, and with such proof of the authenticity of signature as the board of directors or the transfer agent of the corporation may reasonably require. Except as may be otherwise required by law, by the certificate of incorporation or by these by-laws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to receive notice and to vote or to give any consent with respect thereto and to be held liable for such calls and assessments, if any, as may lawfully be made thereon, regardless of any transfer, pledge or other disposition of such stock until the shares have been properly transferred on the books of the corporation.

It shall be the duty of each stockholder to notify the corporation of his or her post office address.

8.2. Record Date. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no such record date is fixed by the board of directors, the record date for determining the stockholders

entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no such record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by the General Corporation Law of the State of Delaware, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware by hand or certified or registered mail, return receipt requested, to its principal place of business or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. If no record date has been fixed by the board of directors and prior action by the board of directors is required by the General Corporation Law of the State of Delaware, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such payment, exercise or other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

Section 9. CORPORATE SEAL

9.1. Subject to alteration by the directors, the seal of the corporation shall consist of a flat-faced circular die with the word "Delaware" and the name of the corporation cut or engraved thereon, together with such other words, dates or images as may be approved from time to time by the directors.

Section 10. EXECUTION OF PAPERS

10.1. Except as the board of directors may generally or in particular cases authorize the execution thereof in some other manner, all deeds, leases, transfers, contracts, bonds, notes, checks, drafts or other obligations made, accepted or endorsed by the corporation shall be signed by the chairman of the board of directors, if any, the chief executive officer, the president, a vice president or the treasurer.

Section 11. FISCAL YEAR

11.1. The fiscal year of the corporation shall end on September 30th in each year.

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Section 12. AMENDMENTS

12.1. Subject to any stockholders agreement then in effect to which the corporation' s immediate parent entity is a party, these by-laws may be made, adopted, altered, amended or repealed by vote of a majority of the directors then in office or by vote of a majority of the voting power of the stock outstanding and entitled to vote. Any by-law, whether made, adopted, altered, amended or repealed by the stockholders or directors, may be amended or reinstated by the stockholders or the directors.

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FOR IMMEDIATE RELEASE: Friday, October 26, 2007

SILVER LAKE AND TPG CAPITAL COMPLETE ACQUISITION OF AVAYA

BASKING RIDGE, NJ - October 26, 2007 - Avaya Inc., Silver Lake and TPG Capital today announced that Silver Lake and TPG Capital have completed the acquisition of Avaya in a transaction valued at approximately \$8.3 billion.

“Today marks the beginning of an exciting new era for Avaya,” said Lou D’ Ambrosio, president and CEO, Avaya. “As a private company, working with Silver Lake and TPG, we have an unprecedented opportunity to accelerate our strategy, act boldly in the marketplace, and serve our customers with even greater innovation and responsiveness.”

Under the terms of the merger agreement, which was adopted by Avaya’s stockholders at a special meeting held on September 28, 2007, Avaya stockholders are entitled to receive \$17.50 in cash, without interest and less any applicable withholding taxes, for each share of common stock they owned immediately prior to the effective time of the merger. Avaya common stock ceased trading on the NYSE before the commencement of trading on October 26, 2007 and will be delisted from the NYSE.

Stockholders of record as of the effective time of the merger who have stock certificates will receive a letter of transmittal and instructions on how to surrender their shares of Avaya common stock to receive the merger consideration. These certificated stockholders of record should wait to receive the letter of transmittal before surrendering their shares.

Stockholders of record as of the effective time of the merger whose shares are uncertificated and stockholders who hold shares through a bank or broker do not need to take any action for their shares to be converted into cash because the conversion will be handled automatically by Avaya’s transfer agent or their bank or broker, respectively.

Credit-Suisse acted as the financial advisor to Avaya in connection to the merger and Weil, Gotshal & Manges LLP acted as legal counsel to Avaya. Skadden, Arps, Slate, Meagher & Flom LLP acted as legal counsel to Avaya's Board of Directors. Citi and Morgan Stanley acted as financial advisors to Silver Lake and TPG. Ropes & Gray LLP acted as legal counsel to Silver Lake and TPG.

About Avaya

Avaya delivers Intelligent Communications solutions that help companies transform their businesses to achieve marketplace advantage. More than 1 million businesses worldwide, including more than 90 percent of the FORTUNE 500[®], use Avaya solutions for IP Telephony, Unified Communications, Contact Centers and Communications-Enabled Business Processes. Avaya Global Services provides comprehensive service and support for companies, small to large. For more information visit the Avaya Web site: <http://www.avaya.com>.

About Silver Lake

Silver Lake is the leading investment firm focused on large scale investments in technology, technology-enabled, and related growth industries. Silver Lake's mission is to function as a value-added partner to the management teams of the world's leading technology franchises. Its portfolio includes or has included technology industry leaders such as Ameritrade, Avago, Business Objects, Flextronics, Gartner, Instinet, IPC Systems, MCI, NASDAQ, Network General, NXP, Sabre Holdings, Seagate Technology, Serena Software, SunGard Data Systems, Thomson and UGS. For more information, please visit www.silverlake.com.

About TPG Capital

TPG Capital is the global buyout group of TPG, a leading private investment firm founded in 1992, with more than \$35 billion of assets under management and offices in San Francisco, London, Hong Kong, New York, Minneapolis, Fort Worth, Melbourne, Menlo Park, Moscow, Mumbai, Beijing, Shanghai, Singapore and Tokyo. TPG Capital has extensive experience with global public and private investments executed through leveraged buyouts, recapitalizations, spinouts, joint ventures and restructurings. TPG Capital's investments span a variety of industries including technology, financial services, retail/consumer, media and communications, travel, healthcare and industrials. Among TPG Capital's significant investments in telecommunications and technology are Eutelsat Communications, Freescale Semiconductor, Intergraph, Japan Telecom, Lenovo Group, MEMC Electronic Materials, ON Semiconductor Sabre Holdings, Seagate Technology, SunGard Data Systems and TIM Hellas. Please visit www.tpg.com.

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