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May 30, 1996

VIA OVERNIGHT DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

960685-TI

Re: Application for Authority for Avery Communications, Inc. to
Acquire Control of Home Owners Long Distance, Incorporated

Dear Ms. Bayo:

On behalf of Home Owners Long Distance, Incorporated ("HOLD"), enclosed for filing are an original and twelve (12) copies of the above-referenced application for authority for Avery Communications, Inc., to acquire control of Home Owners Long Distance, Incorporated.

Please date-stamp the enclosed extra copy of this filing and return it to the undersigned in the attached self-addressed, stamped envelope. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,


Julia A. Waysdorf

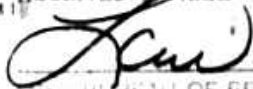
Counsel for
Home Owners Long Distance, Incorporated

Enclosures

cc: Joseph W. Webb
Thomas M. Lyons

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RECEIVED & FILED



FLORIDA BUREAU OF RECORDS

(202)424-7500

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DOCUMENT NUMBER-DATE

06010 MAY 31 86

PPS&R RECORDS/REPORTING

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

_____)
Application for Authority for)
Avery Communications, Inc.)
to Acquire Control of Home)
Owners Long Distance, Incorporated)
_____)

960685-TI

APPLICATION

Home Owners Long Distance, Incorporated ("HOLD") and Avery Communications, Inc. ("ACI") (collectively, "the Applicants"), pursuant to Florida Statutes section 364.335(4) and Florida Administrative Code Rule 25-24.473(1)-(2), hereby request Commission approval of a transaction whereby ACI will acquire ownership and control of HOLD. HOLD is a non-dominant carrier authorized by this Commission to provide resale interexchange telecommunications services within Florida. As described in detail below, Commission approval of the proposed transfer of control will permit ACI to acquire all of the outstanding stock of HOLD, and thus a controlling interest in, HOLD. ACI and HOLD currently are not affiliated with each other.

The Applicants respectfully request expedited treatment of this application to permit them to consummate the transfer of control transaction no later than August 1, 1996.

The Applicants submit the following information in support of this Application:

DOCUMENT NUMBER-DATE

06010 MAY 31 8

FPSC-RECORDS/REPORTING

I. **THE PARTIES**

A. **Home Owners Long Distance, Incorporated**

HOLD is a privately held Texas corporation whose principal offices are located at 8000 Vantage, Suite 2001, San Antonio, Texas 78269. Pursuant to a Certificate of Public Convenience and Necessity in Docket No. 930435-TI, issued by this Commission on July 26, 1993, HOLD is authorized to provide services as a reseller of interexchange telecommunications services within the State of Florida.

In addition to the services it provides to Florida subscribers, HOLD currently is authorized to provide intrastate service in a number of other states either pursuant to certification, registration or tariff requirements, or on an unregulated basis. HOLD is also authorized by the Federal Communications Commission ("FCC") to provide domestic interstate and international services as a non-dominant carrier in all 50 states and the District of Columbia.

Information concerning HOLD's legal, technical, managerial and financial qualifications to provide service, and a tariff of its Florida rates and charges, was submitted with HOLD's applications for certification filed with the Commission in Docket No. 930435-TI, and is, therefore, already a matter of record at the Commission, and is made part hereof by reference.

Upon consummation of the proposed transaction, HOLD not only expects to rely on many of its existing management and operational staff to provide service, but will also be able to draw upon the substantial expertise of its new parent company, ACI. Current financial information for HOLD is attached to this Application as Exhibit A.

B. Avery Communications, Inc.

ACI is a publicly traded Delaware corporation whose principal offices are located at 801 Greenview Drive, Grand Prairie, Texas 75050. ACI, a holding company, was formed in 1995 to provide residential and commercial telecommunications services. ACI is a regional telecommunications company that provides, through its subsidiaries, domestic resold, interstate and intrastate long distance services, international and cross border (Mexican) communications, and telecommunications and equipment installation. ACI's operations are based in Texas and span across the southern United States.

BorderComm, Inc. ("BCI"), a wholly-owned subsidiary of ACI, is based in Texas and provides cross border communications via digital microwave transmission. BCI operates five communications centers in border cities in Texas, Arizona, New Mexico, and California. BCI provides equipment installation, service and maintenance, and terminating points of presence for U.S. Companies who do not have locations near the U.S. side of the border.

American Telephone and Communications, Inc. ("ATAC"), a wholly-owned subsidiary of ACI, is based in Texas and provides switched access 1+, dedicated access, and calling card services statewide with domestic and international terminations.

Patrick J. Haynes III, Chairman of ACI, has extensive experience in management and in telecommunications. In 1992, Mr. Haynes founded and became president of American Communications Services, Inc. ("ACSI"), a fiber optic, competitive access provider. ACSI is now publicly traded with a market capitalization of approximately \$180 million. Mr. Haynes is the Senior Managing Director and co-founder of the Thurston Group, Inc., a private merchant

bank in Chicago. Previously, Mr. Haynes was associated with Merrill Lynch, Oppenheimer & Co. and Lehman Brothers as an investment banker.

ACI has the financial, technical and managerial qualifications to acquire control of HOLD. Current financial information for ACI is attached to this Application as Exhibit B.

C. Designated Contacts

The designated contacts for questions concerning this application are:

For HOLD:

Julia A. Waysdorf, Esq.
Kathy L. Cooper, Esq.
Jean M. Gibbons, Esq.
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7522 (telephone)
(202) 424-7645 (facsimile)

with a copy to:

Joseph W. Webb, President
Home Owners Long Distance, Incorporated
8000 Vantage, Suite 2001
P.O. Box 690670
San Antonio, Texas 78269
(210) 525-8152 (telephone)
(210) 525-0367 (facsimile)

For ACI:

Mr. Thomas M. Lyons, President
Avery Communications, Inc.
801 Greenview Drive
Grand Prairie, Texas 75050
(214) 623-0066

II. REQUEST FOR PERMISSION FOR ACI TO ACQUIRE CONTROL OF HOLD

HOLD and ACI have determined that they will realize significant economic and marketing efficiencies by establishing HOLD as a wholly-owned subsidiary of ACI. Accordingly, HOLD and ACI have negotiated an Agreement and Plan of Merger ("Agreement") whereby ACI intends to acquire HOLD. A copy of this Agreement is attached hereto as Exhibit C.

Pursuant to the proposed transaction, the stockholders of HOLD will tender all of the issued and outstanding shares of HOLD in exchange for cash and common stock in ACI as part of the merger between HOLD and Avery Acquisition Sub, Inc., a wholly-owned subsidiary of ACI created specifically for purposes of consummating the transaction. HOLD will be the surviving entity following the merger, and will become a wholly-owned subsidiary of ACI.

Joseph W. Webb, President of HOLD, will be appointed to the Board of Directors of ACI. Ed L. Dunn, Vice President of HOLD, and Joseph W. Webb, President of HOLD, will continue to be employed following the merger and will manage HOLD in that capacity.

Upon consummation of the transfer of control transaction described herein, the Applicants propose that HOLD will continue operating under its name and will remain the reseller certificate holder. The proposed transaction will not involve a change in the manner in which the company provides telecommunications services, and HOLD will continue to provide high quality, affordable resold telecommunications services to the public. As such, this transaction will not in any way disrupt service nor cause inconvenience or confusion to the customers of HOLD. Indeed, the transaction will be virtually transparent to HOLD customers in terms of the services they receive.

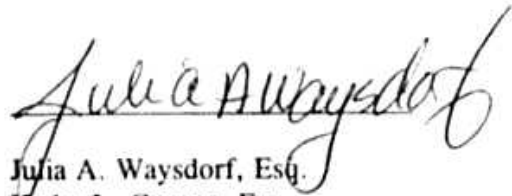
III. PUBLIC INTEREST CONSIDERATIONS

Consummation of the proposed transaction will serve the public interest in promoting competition among interexchange carriers by providing HOLD and ACI the opportunity to strengthen their competitive positions with greater financial resources. The proposed transaction will invigorate competition in Florida by enabling HOLD and ACI to pursue their marketing and business plans more effectively. Moreover, upon consummation of the transaction, HOLD and ACI expect to continue to rely on many of their existing management and operations staffs to provide service. The proposed acquisition, therefore, will benefit the public interest by enhancing HOLD's and ACI's flexibility and efficiency as well as their financial viability.

IV. CONCLUSION

For the reasons stated herein, Applicants respectfully request that the Commission authorize the transfer of control transaction described herein to permit them to consummate the transaction no later than August 1, 1996.

Respectfully submitted,



Julia A. Waysdorf, Esq.

Kathy L. Cooper, Esq.

Jean M. Gibbons, Esq.

SWIDLER & BERLIN, CHARTERED

3000 K Street, N.W.

Suite 300

Washington, D.C. 20007

(202) 424-7522

Its Counsel

Dated: May 30, 1996

EXHIBITS

Home Owners Long Distance, Incorporated
Financial Information A

Avery Communications, Inc.
Financial Information B

Agreement and Plan of Merger C

Verification of the Applicants

EXHIBIT A

Home Owners Long Distance, Incorporated
Financial Information

HOME OWNERS LONG DISTANCE
 INCOME STATEMENT
 PREPARED FROM INTERNAL RECORDS

Year to
 Date 1995

INCOME:

Domestic	14,051,255.53
International	4,430,056.76
Surcharge	930,765.92
LDDS 0+ Commissions	304,975.17
HOLD Reimbursement	270,323.77
Interest Income	133.62
Interest Income - HBS	5,110.54
Other Income	24,351.04
Total Income	<u>20,016,972.35</u>

MARKETING INCOME:

Mailing List Sales	33.71
Debit Card Revenue	1,855.43
Domestic MCI Revenue	82,037.57
Domestic MultiMedia Revenue	8,751.58
Int'l MCI Revenue	6,052.09
Int'l MultiMedia Revenue	585.79
Total Marketing Income	<u>99,316.17</u>

TOTAL REVENUE

20,116,288.52

DIRECT COSTS:

Line Costs - Domestic	7,101,069.97
Line Costs - International	3,418,148.53
Line Cost - Other	465.00
Line Cost - Credits	(515,961.87)
PIC Disputes - SWB	65,388.28
Promotional Billings - SWB	7,467.40
Promotional Billing - Bell South	326.81
PIC Disputes - Bell South	10,982.02
BNA Inquiry Services - Bell South	1.20
PIC Disputes - US West	7,807.63
Bad Debts	1,001,563.02
Unbillables	305,726.50
Adjustments	83,730.98
Billing Fees	1,364,702.03
Programing	10,883.70
Data Processing	107,289.02
Total Direct Costs	<u>12,969,590.22</u>

Gross Profit

7,146,698.30

HOME OWNERS LONG DISTANCE
 INCOME STATEMENT
 PREPARED FROM INTERNAL RECORDS

Year to
Date 1995

MARKETING COSTS:

Commissions	1,510,340.35
Commercial Advertising	2,500.00
Residential Advertising	4,589.45
Aerostar Van Lease	5,531.67
Office Expense	9,592.13
Postage	150,700.96
Printing Residential	236,324.97
Printing Commercial	16,258.20
Telephone	2,864.08
MCI 800 Expense	2,371.64
Bank Charges	542.00
Company Van Expense	2,298.15
Meals & Entertainment	1,794.59
Buick Lease	6,391.68
Delivery	75,812.48
Travel	6,387.38
L, F, & T - Other	2,916.88
Calling Cards	19,716.13
Debit Cards	16,419.28
National Missing Children	186,317.07
Auto Insurance	641.36
Health Insurance	3,375.74
Dental Insurance	257.00
Services - Office Staff	65.25
Miscellaneous	(3,161.87)
Cash Advance (Managers)	0.00
Salaries (Managers)	79,000.00
Bonuses (Managers)	127,977.50
Rent	15,949.33
Equipment Cost - Postage Machine	2,684.09
Promotional Items - Residential	4,164.23
Salaries & Wages	103,720.62
Production Costs - Commercial	14,022.24
Equipment Cost - Typewriter	63.04
Equipment Cost - Copy Machine	274.77
Equipment Cost - Currency Counter	388.62
Commercial LC - Multimedia	8,042.50
Travel Cards Line Cost MCI	315.90
Commercial - Data Processing	1,543.20
Trade Show	25,000.00
Car Allowance	210.00
TOTAL MARKETING COSTS	<u>2,644,202.61</u>

HOME OWNERS LONG DISTANCE
INCOME STATEMENT
PREPARED FROM INTERNAL RECORDS

Year to
Date 1995

GENERAL & ADMIN COSTS:

Advertising	855.18
Charitable Contributions	1,500.00
Coupon Credits	0.00
Customer Credits	497,638.75
Delivery Expense	5,080.48
Services - Payroll	4,619.83
Services - Equip. Repair	774.80
Services - Other	25,920.79
Depreciation & Amortization	69,838.94
Director Fees	0.00
Dues and Subscriptions	5,050.73
Equipment Costs	47,781.69
Auto Lease Costs	7,083.11
Insurance - Dental	6,958.11
Insurance - Workmans Comp.	4,726.47
Insurance - Medical	51,614.25
Insurance - Auto	2,057.30
Insurance-Life	7,444.48
Insurance - General	999.00
Interest	0.00
Miscellaneous\Licenses&Fees	42,435.88
Office	83,818.47
Professional	158,342.85
Pension Plan	127,460.00
Rent	68,018.27
Rent -(Hold Sublease)	0.00
Travel and Entertainment	49,167.30
Telephone	145,873.00
Salaries - Officers	288,043.20
Salaries - Others	655,951.99
Bonus-Officers	1,505,000.00
Bonus-Other	54,835.00
Taxes	131,570.55
Total General and Admin	<u>4,050,460.42</u>
NET INCOME	<u>452,035.27</u>

HOME OWNERS LONG DISTANCE
 BALANCE SHEET
 PREPARED FROM INTERNAL RECORDS

December '95

CURRENT ASSET	
CASH	100,301.98
CD-OKLAHOMA	535.34
CD-MISSOURI	684.62
ACCOUNTS RECEIVABLE	3,367,542.46
DEPOSITS	0.00
PREPAID AUTO LEASE (LIN.)	0.00
PREPAID AUTO LEASE (MZB)	9032.11
PREPAID AUTO LEASE (LEX)	5,000.00
A/R - EMPLOYEES (RACQUETBALLI)	69.44
A/R - EMPLOYEES	12125.00
A/R 0+ COMMISSIONS LDDS	38001.11
A/R MISCELLANEOUS	0.00
N/R - HOLD BILLING SVCS.	0.00
B&C COSTS	0.00
CURRENT ASSETS	<u>3,533,292.06</u>
EQUIPMENT	
FURNITURE & FIXTURE	88,201.20
LEASEHOLD IMPROVEMENTS	87,078.04
COMPUTER EQUIPMENT	202,272.57
COMPUTER SOFTWARE	16,981.40
ACCUMULATED DEPRECIATION	(187,023.15)
EQUIPMENT	207,510.06
TOTAL ASSETS	<u>3,740,802.12</u>
CURRENT LIABILITIES	
ACCOUNTS PAYABLE	3,311,435.07
ACCRUED EXPENSES	141,764.70
NOTE PAYABLE	200,000.00
TOTAL LIABILITIES	<u>3,653,199.77</u>
STOCKHOLDERS EQUITY	
CAPITAL STOCK	1,000.00
CAPITAL SURPLUS	1,000.00
TREASURY STOCK	(19,210.00)
DISTRIBUTIONS	(600,000.00)
RETAINED EARNINGS	252,777.08
CURRENT EARNINGS	452,035.27
TOTAL STOCKHOLDERS EQTY	<u>87,602.35</u>
TOTAL LIAB. & EQUITY	<u>3,740,802.12</u>

EXHIBIT B

Avery Communications, Inc.
Financial Information

Avery Communications, Inc. and Subsidiaries
Balance Sheet
March 31, 1996
 (Internally prepared statements)

	ASSETS	CONSOLIDATED
CURRENT ASSETS		
Cash		27,271.00
Trade Accounts Receivable		639,860.00
Inventory		515,000.00
Other current assets		144,185.00
Intercompany receivables		(0.00)
Total current assets		1,326,316.00
 PROPERTY AND EQUIPMENT		
Equipment in service		226,729.00
Furniture and fixtures		46,755.00
Leasehold improvements		10,437.00
Accumulated depreciation		(30,108.00)
Total Equipment-net		253,813.00
 OTHER ASSETS		
Deferred financing, cost		329,144.00
Lease contract receivable		97,966.00
Non-compete agreements		260,000.00
Goodwill, net of amortization		191,013.00
Other assets		13,912.00
Total other assets		892,035.00
TOTAL ASSETS		2,472,164.00

Avery Communications, Inc. and Subsidiaries
Balance Sheet
March 31, 1996
Internally prepared statements

LIABILITIES AND STOCKHOLDERS' EQUITY	CONSOLIDATED
CURRENT LIABILITIES	
Trade Accounts Payable	574,027.00
Line of Credit-MJ Capital	175,000.00
Note Payable	5,053.00
Accrued liabilities	80,881.00
Deferred Income	151,851.00
Other current liabilities	52,857.00
Intercompany payables	0.00
Total current liabilities	1,039,669.00
NON CURRENT LIABILITIES	
Bridge Loan	800,000.00
Notes payable	448,713.00
Notes Payable - 504D	340,000.00
Note payable - BCI loan	1,050,000.00
Total non current liabilities	2,638,713.00
STOCKHOLDERS' EQUITY	
Common stock	27,340.00
Treasury stock	(496,537.00)
Additional paid in capital	1,101,299.00
Retained deficit	(1,838,320.00)
Total stockholders' equity	(1,206,218.00)
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	2,472,164.00

Avery Communications, Inc. and Subsidiaries
Income Statement
For the year ended March 31, 1996
Internally prepared statements

		CONSOLIDATED
INCOME		
	Net Sales	1,178,120.00
	Cost of Sales	651,008.00
	Gross Profit	527,114.00
OPERATING EXPENSES		414,419.00
	Income (loss) from operations	112,695.00
	Interest expense	(63,565.00)
	Other income	4,792.00
	Amortization of deferred financing costs	(51,068.00)
	Income (loss) before income tax provision	2,854.00
	Income tax provision	0.00
NET INCOME		2,854.00

EXHIBIT C

Agreement and Plan of Merger

which would be applicable to HOLD and which might have a Material Adverse Effect, either before or after the Closing Date.

3.1.11 Operation of the Business. Except as set forth in Schedule 3.1.11, (a) HOLD has not conducted its business through any divisions or any direct or indirect Subsidiary or Affiliate of HOLD and (b) no part of the business is operated by HOLD through any entity other than HOLD.

3.1.12 Assets. Except as disclosed in Schedule 3.1.12, HOLD has good title to all its assets, free and clear of any and all Liens other than Permitted Liens. The assets reflected on the Balance Sheet, taken as a whole, constitute all the properties and assets relating to or used or held for use in connection with the business of HOLD during the past twelve months except Inventory sold, cash disposed of, accounts receivable collected, prepaid expenses realized, Contracts fully performed, and properties or assets replaced by equivalent or superior properties or assets, in each case in the ordinary course of business consistent with prior practice. Except as disclosed in Schedule 3.1.12, there are no assets or properties used in the operation of the business of HOLD and owned by any Person other than HOLD that will not on the Closing Date be leased or licensed to HOLD under valid, current leases or license arrangements. The assets reflected on the Balance Sheet are in all material respects adequate for the purposes for which such assets are currently used or are held for use, and are in reasonably good repair and operating condition (subject to normal wear and tear) and, to the knowledge of the Stockholders, there are no facts or conditions affecting the assets which could, individually or in the aggregate, interfere in any material respect with the use, occupancy or operation thereof as currently used, occupied or operated, or their adequacy for such use.

3.1.13 Contracts.

(a) Schedule 3.1.13(a) contains a complete and correct list of all agreements, contracts, commitments and other instruments and arrangements (whether written or oral) of the types described below (x) by which any of the assets of HOLD are bound or affected or (y) to which HOLD is a party or by which it is bound (the "Contracts"):

(i) agreements, contracts, commitments, and other instruments and arrangements pursuant to which HOLD serves as a carrier of long distance service;

(ii) agreements, contracts, commitments, and other instruments and arrangements relating to

the solicitation of new customers or additional business for or on behalf of HOLD;

(iii) leases, licenses, permits, franchises, insurance policies, Governmental Approvals and other contracts concerning or relating to the Real Property;

(iv) employment, consulting, agency, collective bargaining or other similar contracts, agreements, and other instruments and arrangements relating to or for the benefit of current, future or former employees, officers, directors, sales representatives, distributors, dealers, agents, independent contractors or consultants;

(v) loan agreements, indentures, letters of credit, mortgages, security agreements, pledge agreements, deeds of trust, bonds, notes, guarantees, and other agreements and instruments relating to the borrowing of money or obtaining of or extension of credit;

(vi) licenses, licensing arrangements and other contracts providing in whole or in part for the use of, or limiting the use of, any Intellectual Property;

(vii) brokerage or finder's agreements;

(viii) joint venture, partnership and similar contracts involving a sharing of profits or expenses (including joint research and development and joint marketing contracts);

(ix) asset purchase agreements and other acquisition or divestiture agreements, including any agreements relating to the sale, lease or disposal of any assets (other than sales of inventory in the ordinary course of business) or involving continuing indemnity or other obligations;

(x) orders and other contracts for the purchase or sale of materials, supplies, products or

services, each of which involves aggregate payments in excess of \$10,000 in the case of purchases or \$10,000 in the case of sales;

(xi) contracts with respect to which the aggregate amount that could reasonably be expected to be paid or received thereunder in the future exceeds \$10,000 per annum or \$10,000 in the aggregate;

(xii) sales agency, manufacturer's representative, marketing or distributorship agreements;

(xiii) contracts, agreements or arrangements with respect to the representation of HOLD or its business in states other than Texas and foreign countries;

(xiv) master lease agreements providing for the leasing of both (A) personal property primarily used in, or held for use primarily in connection with, the business of HOLD and (B) other personal property;

(xv) contracts, agreements or commitments with any employee, director, officer, Stockholder or Affiliate of HOLD; and

(xvi) any other contracts, agreements or commitments that are material to HOLD or its business.

(b) HOLD has delivered to ACI complete and correct copies of all written Contracts, together with all amendments thereto, and accurate descriptions of all material terms of all oral Contracts, set forth or required to be set forth in Schedule 3.1.13(a).

(c) All Contracts are in full force and effect and enforceable against each party thereto. There does not exist under any Contract any event of default or event or condition that, after notice or lapse of time or both, would constitute a violation, breach or event of default thereunder on the part of HOLD or, to the

knowledge of HOLD or any Stockholder, any other party thereto except as set forth in Schedule 3.1.13(c) and except for such events or conditions that, individually and in the aggregate, (i) has not had or resulted in, and will not have or result in, a Material Adverse Effect, and (ii) has not and will not materially impair the ability of HOLD or any Stockholder to perform their respective obligations under this Agreement and under the Collateral Agreements. Except as set forth in Schedule 3.1.13(c), no consent of any third party is required under any Contract as a result of or in connection with, and the enforceability of any Contract will not be affected in any manner by, the execution, delivery and performance of this Agreement or any of the Collateral Agreements or the consummation of the transactions contemplated hereby or thereby.

(d) HOLD does not have outstanding any power of attorney.

3.1.14 Territorial Restrictions. HOLD is not restricted by any written agreement or understanding with any other Person from carrying on its business anywhere in the world.

3.1.15 Inventories. All Inventories are of good, usable and merchantable quality in all material respects and, except as set forth on Schedule 3.1.15, do not include obsolete or discontinued items. Except as set forth on Schedule 3.1.15, (a) all Inventories are of such quality as to meet the quality control standards of HOLD and any applicable governmental quality control standards, (b) all Inventories that are finished goods are saleable as current inventories at the current prices thereof in the ordinary course of business, (c) all Inventories are recorded on the books of HOLD at the lower of cost or market value determined in accordance with GAAP and (d) no write-down in inventory has been made or should have been made pursuant to GAAP during the past two years. Schedule 3.1.15 lists the locations of all Inventories.

3.1.16 Customers and Pricing. HOLD has previously delivered to ACI a true, complete and correct copy of its customer database. Such database completely and accurately sets forth the prices charged by HOLD to its customers (and any applicable discounts by customer name) for its services.

3.1.17 Suppliers; Raw Materials. Schedule 3.1.17 sets forth (a) the names and addresses of all suppliers from which HOLD purchased or otherwise acquired long distance service or from which HOLD ordered supplies, merchandise and other goods and services with an aggregate purchase price for each such supplier of \$10,000 or more during the twelve-month period ended January 31, 1996, (b) the amount for which each such supplier invoiced HOLD during such period, and

(c) a list of each Contract that is a "requirements contract," "take or pay contract," or similar Contract pursuant to which HOLD is or may be required to purchase any minimum amount of supplies, merchandise or other goods and services during any applicable period of time, or pay for such supplies, merchandise or other goods and services even though not actually used by, received by or delivered to HOLD, and a complete description of the terms thereof. HOLD has not received any notice and has no reason to believe that there has been any material adverse change in the price of such supplies, merchandise or other goods or services, or that any such supplier will not sell supplies, merchandise and other goods to Merger Sub at any time after the Closing Date on terms and conditions similar to those used in its current sales to HOLD, subject to general and customary price increases. To the knowledge of the Stockholders, no supplier of HOLD described in clause (a) of the first sentence of this section has otherwise threatened to take any action described in the preceding sentence as a result of the consummation of the transactions contemplated by this Agreement and the Collateral Agreements.

3.1.18 Product Warranties. Except as set forth in Schedule 3.1.18 and for warranties under Applicable Law, (a) there are no warranties express or implied, written or oral, with respect to the products and services of HOLD and (b) there are no pending or threatened claims with respect to any such warranty, and HOLD has no liability with respect to any such warranty, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due.

3.1.19 Absence of Certain Business Practices. HOLD has not, nor has any officer, employee or agent of HOLD, or any other Person acting on behalf of HOLD or any officer, employee or agent of HOLD, directly or indirectly, within the past five years given or agreed to give any gift or similar benefit to any customer, supplier, governmental employee or other Person who is or may be in a position to help or hinder the business of HOLD (or assist HOLD in connection with any actual or proposed transaction relating to the business of HOLD) (i) which subjected or might have subjected HOLD to any damage or penalty in any civil, criminal or governmental litigation or proceeding, (ii) which if not given in the past, might have had a Material Adverse Effect, (iii) which if not continued in the future, might have a Material Adverse Effect or subject HOLD, Merger Sub or ACI to suit or penalty in any private or governmental litigation or proceeding, (iv) for any of the purposes described in Section 162(c) of the Code or (v) for the purpose of establishing or maintaining any concealed fund or concealed bank account.

3.1.20 Intellectual Property.

(a) **Title.** Schedule 3.1.20(a) contains a complete and correct list of all Intellectual Property that is owned by HOLD and primarily related to, used in, held for use in connection with, or

necessary for the conduct of, or otherwise material to the business of HOLD (the "Owned Intellectual Property"). HOLD owns or has the exclusive right to use pursuant to license, sublicense, agreement or permission all Intellectual Property Assets, free from any Liens (other than Permitted Liens) and free from any requirement of any past, present or future royalty payments, license fees, charges or other payments, or conditions or restrictions whatsoever. The Intellectual Property Assets comprise all of the Intellectual Property necessary for HOLD to conduct and operate its business as now being conducted.

(b) *Transfer.* Immediately after the Closing, HOLD will own all of the Owned Intellectual Property and will have a right to use all other Intellectual Property Assets, free from any Liens (other than Permitted Liens) and on the same terms and conditions as in effect prior to the Closing.

(c) *No Infringement.* The conduct of the business of HOLD does not infringe or otherwise conflict with any rights of any Person in respect of any Intellectual Property. To the knowledge of the Stockholders, none of the Intellectual Property Assets is being infringed or otherwise used or available for use, by any other Person.

(d) *Licensing Arrangements.* Schedule 3.1.20(d) sets forth all agreements, arrangements or laws (i) pursuant to which HOLD has licensed Intellectual Property Assets to, or the use of Intellectual Property Assets is otherwise permitted (through non-assertion, settlement or similar agreements or otherwise) by, any other Person and (ii) pursuant to which HOLD has had Intellectual Property licensed to it, or has otherwise been permitted to use Intellectual Property (through non-assertion, settlement or similar agreements or otherwise). All of the agreements or arrangements set forth on Schedule 3.1.20(d) (x) are in full force and effect in accordance with their terms and no default exists thereunder by HOLD, or to the knowledge of the Stockholders, by any other party thereto, (y) are free and clear of all Liens, and (z) do not contain any change in control or other terms or conditions that will become applicable or inapplicable as a result of the consummation of the transactions contemplated by this Agreement. HOLD has delivered to ACI true and complete copies of all licenses and arrangements (including amendments) set forth on Schedule 3.1.20(d). All royalties, license fees, charges and other amounts payable by, on behalf of, to, or for the account of, HOLD

in respect of any Intellectual Property are disclosed in the Financial Statements.

(e) **No Intellectual Property Litigation.** No claim or demand of any Person has been made nor is there any proceeding that is pending, or to the knowledge of the Stockholders, threatened, nor is there a reasonable basis therefor, which (i) challenges the rights of HOLD in respect of any Intellectual Property Assets, (ii) asserts that HOLD is infringing or otherwise in conflict with, or is, except as set forth in Schedule 3.1.20(d), required to pay any royalty, license fee, charge or other amount with regard to, any Intellectual Property, or (iii) claims that any default exists under any agreement or arrangement listed on Schedule 3.1.20(d). None of the Intellectual Property Assets is subject to any outstanding order, ruling, decree, judgment or stipulation by or with any court, arbitrator, or administrative agency, or has been the subject of any litigation within the last five years, whether or not resolved in favor of HOLD.

(f) **Due Registration.** The Owned Intellectual Property has been duly registered with, filed in or issued by, as the case may be, the United States Patent and Trademark Office, United States Copyright Office or such other filing offices, domestic or foreign, and HOLD has taken such other actions, to ensure full protection under any applicable laws or regulations, and such registrations, filings, issuances and other actions remain in full force and effect, in each case to the extent material to the business of HOLD.

(g) **Use of Name and Mark.** Except as set forth in Schedule 3.1.20(g), there are, and immediately after the Closing will be, no contractual restrictions or limitations pursuant to any orders, decisions, injunctions, judgments, awards or decrees of any Governmental Authority on HOLD's right to use the name "Home Owners Long Distance" and the name and mark "HOLD" in the conduct of its business.

3.1.21 Insurance. Schedule 3.1.21 contains a complete and correct list and summary description of all insurance policies maintained by HOLD. HOLD has delivered to ACI complete and correct copies of all such policies, together with all riders and amendments thereto. Such policies are in full force and effect, and all premiums due thereon have been paid. HOLD has complied in all material respects with the terms and provisions of such policies. The insurance coverage provided by such policies is adequate and customary for the business conducted

by HOLD. Schedule 3.1.21 sets out all claims made by HOLD under any policy of insurance during the past two years, and there is no basis on which a claim should or could be made under any such policy. There are no pending or asserted claims outstanding under any such policies as to which any insurer has denied liability, and there are no pending or asserted claims outstanding under any insurance policy or binder that have been disallowed or improperly filed.

3.1.22 Real Property.

(a) **Owned Real Property.** HOLD has no Owned Real Property.

(b) **Leases.** Schedule 3.1.22(b) contains a complete and correct list of all Leases setting forth the address, landlord and tenant for each Lease. HOLD has delivered to ACI correct and complete copies of the Leases. Each Lease is legal, valid, binding, enforceable, and in full force and effect, except as may be limited by bankruptcy, insolvency, reorganization and similar Applicable Laws affecting creditors generally and by the availability of equitable remedies. Neither HOLD nor any other party is in default, violation or breach in any respect under any Lease, and no event has occurred and is continuing that constitutes or, with notice or the passage of time or both, would constitute a default, violation or breach in any respect under any Lease. Each Lease grants the tenant under the Lease the exclusive right to use and occupy the demised premises thereunder. HOLD has good and valid title to the leasehold estate under each Lease free and clear of all Liens other than Permitted Liens. HOLD enjoys peaceful and undisturbed possession under its respective Leases for the Leased Real Property.

(c) **Fee and Leasehold Interests.** The Real Property constitutes all the fee and leasehold interests in real property held for use in connection with, necessary for the conduct of, or otherwise material to, the business of HOLD.

(d) **No Proceedings.** There are no eminent domain or other similar proceedings pending or threatened affecting any portion of the Real Property. There is no writ, injunction, decree, order or judgment outstanding, nor any action, claim, suit or proceeding, pending or threatened, relating to the ownership, lease, use, occupancy or operation by any Person of any Real Property.

(e) *Current Use.* The use and operation of the Real Property in the conduct of the business of HOLD does not violate in any material respect any instrument of record or agreement affecting the Real Property. There is no violation of any covenant, condition, restriction, easement or order of any Governmental Authority having jurisdiction over such property or of any other Person entitled to enforce the same affecting the Real Property or the use or occupancy thereof. No damage or destruction has occurred with respect to any of the Real Property since the Balance Sheet Date that would, individually or in the aggregate, have a Material Adverse Effect.

(f) *Compliance with Real Property Laws.* The Real Property is in full compliance with all applicable building, zoning, subdivision and other land use and similar Applicable Laws affecting the Real Property (collectively, the "Real Property Laws"), and HOLD has not received any notice of violation or claimed violation of any Real Property Law. There is no pending or, or to the knowledge of the Stockholders, anticipated change in any Real Property Law that will have or result in a material adverse effect upon the ownership, alteration, use, occupancy or operation of the Real Property or any portion thereof. No current use by HOLD of the Real Property is dependent on a nonconforming use or other Governmental Approval the absence of which would materially limit the use of such properties or assets held for use in connection with, necessary for the conduct of, or otherwise material to, the business of HOLD.

3.1.23 *Environmental Matters.*

(a) *Permits.* All Environmental Permits are identified in Schedule 3.1.23(a), and HOLD currently holds, and at all times has held, all such Environmental Permits necessary to the business of HOLD. HOLD has not been notified by any relevant Governmental Authority that any Environmental Permit will be modified, suspended, cancelled or revoked, or cannot be renewed in the ordinary course of business.

(b) *No Violations.* HOLD and its Affiliates have complied and are in compliance in all material respects with all Environmental Permits and all applicable Environmental Laws pertaining to the Real Property (and the use, ownership or transferability thereof) and the business of HOLD. No Person has alleged any violation by HOLD or its Affiliates of any

Environmental Permits or any applicable Environmental Law relating to the conduct of the business of HOLD or the use, ownership or transferability of the Real Property.

(c) *No Actions.* Except as set forth in Schedule 3.1.23(c), neither HOLD nor any of its Affiliates has caused or taken any action that has resulted or may result in, or has been or is subject to, any liability or obligation on the part of HOLD relating to (i) the environmental conditions on, under, or about any Real Property, the properties or assets owned, leased or used by HOLD held for use in connection with, necessary for the conduct of, or otherwise material to, the business of HOLD, or (ii) the past or present use, management, handling, transport, treatment, generation, storage or Release of any Hazardous Substances.

(d) *Full Disclosure.* HOLD has disclosed and made available to ACI all information, including all studies, analyses and test results, in the possession, custody or control of HOLD or any of its Affiliates relating to (i) the environmental conditions on, under or about the Real Property, and (ii) Hazardous Substances used, managed, handled, transported, treated, generated, stored or Released by HOLD or any other Person at any time on any Real Property, or otherwise in connection with the use or operation of the properties or assets used in or held for use in connection with the business of HOLD.

3.1.24 Employees and Labor Matters. Schedule 3.1.24 sets forth the name, title and salary of each employee of HOLD as of the date of this Agreement. Except as set forth in Schedule 3.1.24, HOLD is not a party to or bound by any collective bargaining agreement and there are no labor unions or other organizations representing, purporting to represent or attempting to represent any employees employed in the operation of the business of HOLD. Since January 1, 1991, there has not occurred or, to the knowledge of HOLD or any Stockholder, been threatened any material strike, slowdown, picketing, work stoppage, concerted refusal to work overtime or other similar labor activity with respect to any employees employed in the operation of the business of HOLD. There are no labor disputes currently subject to any grievance procedure, arbitration or litigation and there is no representation petition pending or, to the knowledge of any Stockholder, threatened with respect to any employee employed in the operation of the business of HOLD. HOLD has complied in all material respects with all provisions of Applicable Law pertaining to the employment of employees, including all such Laws relating to labor relations, equal employment, fair employment practices, entitlements, prohibited discrimination or other similar employment practices or acts, except for any failure so to comply that,

individually or together with all such other failures, has not and will not result in a material liability or obligation on the part of HOLD, and has not had or resulted in, and will not have or result in, a Material Adverse Effect on HOLD.

3.1.25 Employee Benefit Plans and Related Matters.

(a) **Employee Benefit Plans.** Schedule 3.1.25(a) sets forth a true and complete list of each "employee benefit plan," as such term is defined in section 3(3) of the ERISA, whether or not subject to ERISA, and each bonus, incentive or deferred compensation, severance, termination, retention, change of control, stock option, stock appreciation, stock purchase, phantom stock or other equity-based, performance or other employee or retiree benefit or compensation plan, program, arrangement, agreement, policy or understanding, whether written or unwritten, that provides or may provide benefits or compensation in respect of any employee or former employee employed or formerly employed by HOLD or the beneficiaries or dependents of any such employee or former employee (such employees, former employees, beneficiaries and dependents collectively, the "Employees") or under which any Employee is or may become eligible to participate or derive a benefit and that is or has been maintained or established by HOLD or any other trade or business, whether or not incorporated, which, together with HOLD, is or would have been at any date of determination occurring within the preceding six years treated as a single employer under section 414 of the Code (such other trades and businesses collectively, the "Related Persons"), or to which HOLD or any Related Person contributes or is or has been obligated or required to contribute or with respect to which HOLD may have any liability or obligation (collectively, the "Plans"). With respect to each such Plan, HOLD has, if applicable, provided ACI complete and correct copies of: all written Plans; descriptions of all unwritten Plans; all trust agreements, insurance contracts or other funding arrangements; the two most recent actuarial and trust reports; the two most recent Forms 5500 and all schedules thereto; the most recent IRS determination letter; current summary plan descriptions; all material communications received from or sent to the IRS, the Pension Benefit Guaranty Corporation or the Department of Labor (including a written description of any oral communication); an actuarial study of any post-employment life or medical benefits provided under any such Plan, if any; statements or other communications regarding withdrawal or other multiemployer plan liabilities, if any; and all amendments and modifications to any such document. HOLD has not

communicated to any Employee any intention or commitment to modify any Plan or to establish or implement any other employee or retiree benefit or compensation arrangement.

(b) *Qualification.* Each Plan intended to be qualified under section 401(a) of the Code, and the trust (if any) forming a part thereof, has received a favorable determination letter from the IRS as to its qualification under the Code and to the effect that each such trust is exempt from taxation under section 501(a) of the Code, and nothing has occurred since the date of such determination letter that could adversely affect such qualification or tax-exempt status.

(c) *Compliance; Liability.* No Plan is subject to section 412 of the Code or section 302 or Title IV of ERISA. No liability has been or is expected to be incurred by HOLD, any Related Person (either directly or indirectly, including as a result of an indemnification obligation) under or pursuant to Title I or IV of ERISA or the penalty, excise tax or joint and several liability provisions of the Code relating to employee benefit plans, and, to the knowledge of the Stockholders, no event, transaction or condition has occurred or exists that could result in any such liability to the business of HOLD. Each of the Plans has been operated and administered in all respects in compliance with all Applicable Laws, except for any failure so to comply that, individually or together with all other such failures, has not and will not result in a material liability or obligation on the part of the business of HOLD, and has not had or resulted in, and will not have or result in, a Material Adverse Effect. There are no material pending or, to the knowledge of the Stockholders, threatened claims by or on behalf of any of the Plans, by any Employee or otherwise, involving any such Plan or the assets of any Plan (other than routine claims for benefits). No Plan is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA or is a "multiple employer plan" within the meaning of section 4063 or 4064 of ERISA. All contributions required to have been made by HOLD and each Related Person to any Plan under the terms of any such Plan or pursuant to any applicable collective bargaining agreement or Applicable Law have been made within the earliest time prescribed by any such Plan, agreement or Applicable Law. No Employee is or may become entitled to post-employment benefits of any kind by reason of such employment, including death or medical benefits (whether or not insured), other than (a) coverage provided pursuant to the terms of any Plan specifically

identified as providing such coverage in Schedule 3.1.25(a) or mandated by section 4980B of the Code, (b) retirement benefits payable under any Plan qualified under section 401(a) of the Code or (c) deferred compensation accrued as a liability on the Balance Sheet, or incurred after the Balance Sheet Date in the ordinary course of business consistent with the prior practice of HOLD, pursuant to the terms of a Plan. The consummation of the transactions contemplated by this Agreement or the Collateral Agreements will not result in an increase in the amount of compensation or benefits or the acceleration of the vesting or timing of payment of any compensation or benefits payable to or in respect of any such Employee.

3.1.26 Confidentiality. HOLD has taken all steps necessary to preserve the confidential nature of all material confidential information (including any proprietary information) with respect to HOLD and the business of HOLD.

3.1.27 No Guarantees. None of the obligations or liabilities of HOLD is guaranteed by or subject to a similar contingent obligation of any other Person. HOLD has not guaranteed or become subject to a similar contingent obligation in respect of the obligations or liabilities of any other Person. Except as disclosed in Schedule 3.1.27, there are no outstanding letters of credit, surety bonds or similar instruments of HOLD or any of its Affiliates.

3.1.28 Records. The minute books of HOLD are complete and correct in all material respects. The books of account of HOLD are sufficient to prepare the Financial Statements in accordance with GAAP and to prepare audited financial statements for the three years ended December 31, 1995, in accordance with the rules and regulations of the Securities and Exchange Commission applicable to any registration statements, reports or other documents required to be filed therewith. Such financial statements of HOLD can be audited and such audited financial statements prepared within 90 days following the Closing Date.

3.1.29 Brokers and Finders. All negotiations relating to this Agreement, the Collateral Agreements, and the transactions contemplated hereby and thereby, have been carried on without the participation of any Person acting on behalf of HOLD or its Affiliates or any Stockholder in such manner as to give rise to any valid claim against HOLD, Merger Sub, ACI, or any of the Subsidiaries or Affiliates of ACI for any brokerage or finder's commission, fee or similar compensation.

3.1.30 Business Description and Review. Schedule 3.1.30 attached hereto contains an accurate and substantially complete summary description of the business of HOLD and the general development of the business of HOLD during

the past five years. HOLD has previously presented and delivered to ACI HOLD's Financial Plan entitled "Confidential Business Review" (the "HOLD Business Plan"). The six-year pro forma income statements, six-year pro forma balance sheets, and six-year pro forma statement of cash flows on pages 10, 12 and 13, respectively, of the HOLD Business Plan are attached as Annex I to Schedule 3.1.30. Such six-year pro forma income statements, six-year pro forma balance sheets and six-year pro forma statement of cash flows attached as Annex I to Schedule 3.1.30 and the other estimates contained in the HOLD Business Plan are based upon factual assumptions that were reasonably made by HOLD and the Stockholders and were made in good faith at the time such projections and estimates were made, and such factual assumptions remain reasonable and good faith assumptions. There has been no material change in the business prospects of HOLD or in any other fact or circumstance, known to any Stockholder, which would or could reasonably be expected to render any such projections or estimates, or the assumptions upon which they were based, unreasonable or not made in good faith in any material respect.

3.1.31 Receivables. All of HOLD's receivables (including accounts receivable, loans receivable and advances) and which are reflected on the Balance Sheet, and all such receivables which will have arisen since the Balance Sheet Date, are valid and genuine and have arisen solely from *bona fide* transactions in the ordinary course of business consistent with past practices. All such receivables are collectible (net of those amounts paid to Billing pursuant to its billing services agreement) within 90 days of billing, and none of such receivables is subject to valid defenses, set-offs or counterclaims. Schedule 3.1.31 hereto accurately lists as of February 29, 1996, all receivables, the amount owing and the aging of such receivable, the name and last known address of the party from whom such receivable is owing, and any security in favor of HOLD for the repayment of such receivable which such HOLD purports to have. HOLD has delivered to ACI complete and correct copies of all instruments, documents and agreements evidencing such receivables and of all instruments, documents or agreements creating security therefor ("Security"). HOLD has valid and perfected security interests in such Security (to the extent such priority may be obtained under applicable law by possession of such Security or the filing of financing statements or similar documents with respect thereto).

3.1.32 Transactions with Affiliates. Except as disclosed in Schedule 3.1.32, and except for the ownership of Billing by E. Dunn, P. Dunn, Webb and Young, no shareholder, director, officer or employee of HOLD, or any member of such Person's immediate family or any other of such Person's Affiliates, owns or has a 5% or more ownership interest in any corporation or other entity that is or was during the last three years a party to, or in any property which is or was during the last three years the subject of, any material contract, agreement or understanding, business arrangement or relationship with HOLD.

3.1.33 Disclosure. No representation or warranty by any Stockholder contained in this Agreement or any statement or certificate furnished or to be furnished by or on behalf of HOLD or any Stockholder to ACI or Merger Sub or their representatives in connection herewith or pursuant hereto contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact required to make the statements contained herein or therein not misleading. There is no fact (other than matters of a general economic or political nature which do not affect the business of HOLD uniquely) known to any Stockholder that has not been disclosed by such Stockholder to ACI that might reasonably be expected to have or result in a Material Adverse Effect.

SECTION 3.2 Securities Act of 1933.

3.2.1 Investment Representations and Warranties. Each of the Stockholders (each Stockholder being hereinafter sometimes referred to as a "Holder") represents and warrants, severally and not jointly, and solely on behalf of such Person individually, to ACI and Merger Sub that:

(a) Except for P. Dunn and the Dunn Trust, Holder is an "accredited investor" as that term is defined in Rule 501 promulgated under the Securities Act.

(b) The Avery Shares to be received upon consummation of the transactions contemplated hereby will be acquired for investment for an indefinite period for Holder's own account and not with a view to the sale or distribution of any part thereof, and that Holder has no present intention of selling or otherwise distributing the same. Holder does not have any contract, undertaking, agreement or arrangement with any Person to sell or transfer to such Person any of the Avery Shares.

(c) Holder understands that the Avery Shares are not and may never be registered under the Securities Act on the ground that the sale provided for in this Agreement and the issuance of securities is exempt from the registration provisions thereof, and that the reliance by ACI and Merger Sub on such exemption is predicated on Holder's representations set forth herein.

(d) Holder agrees that in no event will Holder make a disposition of any of the Avery Shares, unless the Avery Shares shall have been registered under the Securities Act, unless and until (i) Holder shall have notified ACI with a statement of the circumstances surrounding the proposed disposition, and (ii) Holder shall have furnished ACI with an opinion of counsel reasonably

satisfactory to ACI to the effect that (A) such disposition will not require registration of such securities under the Securities Act, and (B) that appropriate action necessary for compliance with the Securities Act has been taken.

(e) Holder is able to fend for itself, himself or herself, as the case may be, in the transactions contemplated by this Agreement, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of Holder's investment, has the ability to bear the economic risks of Holder's investment and has been furnished with and has had access to such information as would be made available in the form of a registration statement together with such additional information as is necessary to verify the accuracy of the information supplied and to have all questions which have been asked by Holder answered by or on behalf of ACI.

(f) Holder understands that if a registration statement covering the Avery Shares under the Securities Act is not in effect when Holder desires to sell any of the Avery Shares, Holder may be required to hold such Avery Shares for an indeterminate period. Holder also acknowledges that Holder understands that any sale of the Avery Shares which might be made by Holder in reliance upon Rule 144 or Rule 145 under the Securities Act may be made only in limited amounts in accordance with the terms and conditions of that Rule. Holder has consulted with Holder's counsel regarding the terms of Rule 144 or Rule 145 and the restrictions on sales of the Avery Shares imposed thereby, and is willing to accept the Avery Shares pursuant to this Agreement subject to the limitations of Rule 144 or Rule 145.

3.2.2 Legends. All certificates representing the Avery Shares shall bear substantially the following legend:

"THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAVE BEEN ACQUIRED BY THE ISSUER FOR INVESTMENT PURPOSES. SAID SHARES MAY NOT BE SOLD OR TRANSFERRED UNLESS (A) THEY HAVE BEEN REGISTERED UNDER SAID ACT, OR (B) THE TRANSFER AGENT (OR THE COMPANY IF THEN ACTING AS ITS TRANSFER AGENT) IS PRESENTED WITH EITHER A WRITTEN OPINION SATISFACTORY TO COUNSEL FOR THE COMPANY OR A 'NO-ACTION' OR INTERPRETIVE LETTER

FROM THE SECURITIES AND EXCHANGE COMMISSION TO THE EFFECT THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE CIRCUMSTANCES OF SUCH SALE OR TRANSFER."

3.2.3 Registration Rights. From and after the first anniversary of the Closing Date, the Stockholders shall have "piggy back" registration rights to have their Avery Shares and the shares of ACI Common Stock issuable upon their conversion of the ACI Preferred Shares included in any registration statement filed by ACI under the Securities Act except a registration statement relating to a business combination or similar acquisition transaction or relating to the registration of any securities issued solely to employees and consultants of ACI and its Affiliates. Such registration rights shall be subject to normal limitations that may be imposed by any underwriter for ACI's securities. All expenses of such registration shall be borne by ACI except underwriting discounts and commissions and expenses of counsel for any Stockholder. The Stockholders and ACI shall enter into a Registration Rights Agreement (the "Registration Rights Agreement"), in substantially the form attached hereto as Exhibit B, which shall set forth the complete obligations of the parties, the terms and conditions of the registration rights, and the mode of carrying the same into effect.

SECTION 3.3 Representations and Warranties of ACI and Merger Sub. ACI and Merger Sub, jointly and severally, represent and warrant to HOLD that:

3.3.1 Corporate Status and Authorization. Merger Sub is a corporation duly organized, validly existing and in good standing, under the laws of the State of Texas, the jurisdiction of its incorporation, with full corporate power and authority to execute and deliver this Agreement and the Collateral Agreements, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. ACI is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with full corporate power and authority to execute and deliver this Agreement and the Collateral Agreements, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Merger Sub and ACI of this Agreement, and the consummation of the transactions contemplated hereby, have been, and on the Closing Date, the execution and delivery by the Merger Sub and ACI of the Collateral Agreements will have been, duly authorized by all requisite corporate action. Merger Sub and ACI have duly executed and delivered this Agreement and on the Closing Date will have duly executed and delivered the Collateral Agreements. This Agreement is, and on the Closing Date each of the Collateral Agreements will be, valid and legally binding obligations of Merger Sub and ACI, enforceable against Merger Sub and ACI in accordance with their respective terms.

3.3.2 No Conflicts, Etc. The execution, delivery and performance by ACI and Merger Sub of this Agreement and each of the Collateral Agreements, and the consummation of the transactions contemplated hereby and thereby, do not and will not conflict with or result in a violation of or under (with or without the giving of notice or the lapse of time, or both) (i) the articles of incorporation or bylaws or other organizational documents of Merger Sub or ACI, (ii) any Applicable Law applicable to Merger Sub, ACI or any of their Affiliates or any of their properties or assets or (iii) any contract, agreement or other instrument applicable to the Merger Sub, ACI or any of their Affiliates or any of their properties or assets, except, in the case of clause (iii), for violations and defaults that, individually and in the aggregate, have not and will not materially impair the ability of the Merger Sub to perform its obligations under this Agreement or under any of the Collateral Agreements or to consummate the transactions contemplated hereby or thereby. Except as specified in Schedule 3.3.2, no Governmental Approval or other Consent is required to be obtained or made by Merger Sub or ACI in connection with the execution and delivery of this Agreement or the Collateral Agreements or the consummation of the transactions contemplated hereby and thereby.

3.3.3 Capital Stock. The authorized capital stock of ACI consists of 40,000,000 shares of Capital Stock, which are divided into 20,000,000 share. of Common Stock, of which 3,451,900 shares are issued and outstanding on April 25, 1996, and 20,000,000 shares of Preferred Stock, of which no shares are issued and outstanding on the date of this Agreement. All of the issued and outstanding shares of ACI Common Stock have been duly authorized and validly issued and are fully paid and nonassessable. Except as set forth on Schedule 3.3.3 or as provided in this Agreement, (i) no subscription, warrant, option, convertible security or other right (contingent or otherwise) to purchase or acquire any shares of capital stock of ACI is authorized or outstanding, (ii) there is not any commitment of ACI to issue any subscription, warrant, option, convertible security or other such right or to issue or distribute to holders of any shares of its capital stock any evidences of indebtedness or assets of ACI, and (iii) ACI has no obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any shares of its capital stock or any interest therein or to pay any dividend or make any other distribution in respect thereof. No person or entity is entitled to any preemptive or similar right with respect to the issuance of any capital stock of ACI.

3.3.4 Financial Statements. ACI has delivered to HOLD (a) audited consolidated financial statements of Avery Communications, Inc., a Texas corporation and wholly owned Subsidiary of ACI, as at and for the periods ended December 31, 1993 and 1994, together with a report thereon by ACI's Accountants (the "ACI Audited Financial Statements"). The ACI Audited Financial Statements are complete and correct in all material respects and have been prepared in

accordance with GAAP applied throughout the periods indicated. The balance sheets included in the ACI Audited Financial Statements present fairly the financial condition of ACI as at their respective dates. The statements of income and retained earnings and statements of cash flows included in the ACI Audited Financial Statements present fairly the results of operations and cash flows of ACI for the periods indicated. ACI has delivered to HOLD unaudited consolidated financial statements of ACI as at and for the 12-month period ended December 31, 1995, and the three-month period ended March 31, 1996. Such unaudited financial statements are complete and correct in all material respects and have been prepared in accordance with GAAP, except that such unaudited financial statements do not contain notes and may be subject to normal audit adjustments, and, in the case of the unaudited consolidated financial statements as at March 31, 1996, normal annual adjustments, which audit and annual adjustments, will not, individually or in the aggregate, have or result in a Material Adverse Effect. The consolidated balance sheets included in such unaudited financial statements present fairly the consolidated financial condition of ACI as at their respective dates. The consolidated statements of income and retained earnings and statements of cash flows included in such unaudited financial statements present fairly the consolidated results of operations and cash flows for the periods indicated. As used herein, the term "ACI Balance Sheet Date" means March 31, 1996.

3.3.5 Absence of Undisclosed Liabilities. ACI has no liabilities or obligations of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due, except (a) as and to the extent disclosed or reserved against in the ACI Balance Sheet (excluding the notes thereto) and (b) for liabilities and obligations that (i) were incurred after the date of the ACI Balance Sheet in the ordinary course of business consistent with prior practice and (ii) individually and in the aggregate are not material to the business of ACI and have not had or resulted in, and will not have or result in, a Material Adverse Effect.

3.3.6 Absence of Changes. Except as set forth in Schedule 3.3.6, since the ACI Balance Sheet Date, ACI has conducted its business only in the ordinary course consistent with prior practice and has not:

- (a) suffered any Material Adverse Effect;
- (b) incurred any obligation or liability, absolute, accrued, contingent or otherwise, whether due or to become due, except current liabilities for trade or business obligations incurred in connection with the purchase of goods or services in the ordinary course of business consistent with prior practice, none of which liabilities, in any case or in the aggregate, could have a Material Adverse Effect;

(c) discharged or satisfied any Lien other than those then required to be discharged or satisfied, or paid any obligation or liability, absolute, accrued, contingent or otherwise, whether due or to become due, other than current liabilities (including the current part of long-term debt) shown on the ACI Balance Sheet and current liabilities incurred since the date thereof in the ordinary course of business consistent with prior practice;

(d) mortgaged, pledged or subjected to Lien, any property, business or assets, tangible or intangible, held in connection with its business;

(e) sold, transferred, leased to others or otherwise disposed of any of its assets, except for inventory sold in the ordinary course of business, or cancelled or compromised any debt or claim, or waived or released any right of substantial value;

(f) received any notice of termination of any material contract, lease or other agreement or suffered any damage, destruction or loss (whether or not covered by insurance), which, in any case or in the aggregate, has had, or could be reasonably expected to have, a material Adverse Effect;

(g) transferred or granted any rights under, or entered into any settlement regarding the breach or infringement of, any Intellectual Property, or modified any existing rights with respect thereto;

(h) made any change in the rate of compensation, commission, bonus or other direct or indirect remuneration payable, or paid or agreed or orally promised to pay, conditionally or otherwise, any bonus, incentive, retention or other compensation, retirement, welfare, fringe or severance benefit or vacation pay, to or in respect of any shareholder, director, officer, employee, salesman, distributor or agent relating to its business, which, in any case or in the aggregate, has had, or could be reasonably expected to have, a Material Adverse Effect;

(i) encountered any labor union organizing activity, had any actual or threatened employee strikes, work stoppages, slowdowns or lockouts, or had any material change in its relations with its employees, agents, customers or suppliers;

(j) made any capital expenditures or capital additions or improvements in excess of an aggregate of \$10,000;

(k) instituted, settled or agreed to settle any litigation, action or proceeding before any court or governmental body relating to its business or the assets other than in the ordinary course of business consistent with past practices but not in any case involving amounts in excess of \$10,000;

(l) entered into any transaction, contract or commitment other than in the ordinary course of business or paid or agreed to pay any legal, accounting, brokerage, finder's fee, Taxes or other expenses in connection with, or incurred any severance pay obligations by reason of, this Agreement or the transactions contemplated hereby, which, in any case or in the aggregate, has had, or could be reasonably expected to have, a material Adverse Effect; or

(m) taken any action or omitted to take any action that would result in the occurrence of any of the foregoing.

3.3.7 *Litigation.* There is no action, claim, suit or proceeding pending, or to Merger Sub's or ACI's knowledge threatened, by or against or affecting Merger Sub or ACI in connection with or relating to the transactions contemplated by this Agreement or of any action taken or to be taken in connection herewith or the consummation of the transactions contemplated hereby.

3.3.8 *Historic Business.* It is the present intention of ACI and Merger Sub to continue at least one significant historic business line of HOLD, or to use at least a significant portion of HOLD's historic business assets in a business, in each case within the meaning of Treas. Reg. § 1.368-1(d).

3.3.9 *Brokers and Finders.* All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of Merger Sub, ACI or any of their Affiliates in such manner as to give rise to any valid claim against HOLD or any Stockholder for any brokerage or finders commission, fee or similar compensation.

3.3.10 *Disclosure.* No representation or warranty by ACI or Merger Sub contained in this Agreement or any statement or certificate furnished or to be furnished by or on behalf of ACI or Merger Sub to HOLD or the Stockholders or their representatives in connection herewith or pursuant hereto contains or will contain any untrue statement of a material fact, or omits or will omit to state any

material fact required to make the statements contained herein or therein not misleading. There is no fact (other than matters of a general economic or political nature which do not affect its business uniquely) known to ACI or Merger Sub that has not been disclosed by ACI and Merger Sub to HOLD that might reasonably be expected to have or result in a Material Adverse Effect.

ARTICLE 4

COVENANTS

SECTION 4.1 *Covenants of HOLD and Stockholders.*

4.1.1 *Conduct of Business.* From the date hereof to the Closing Date, except as expressly permitted or required by this Agreement or as otherwise consented to by ACI in writing, HOLD will:

(a) carry on the business of HOLD in, and only in, the ordinary course, in substantially the same manner as heretofore conducted, and use all reasonable efforts to preserve intact its present business organization, maintain its properties in good operating condition and repair, keep available the services of its present officers and significant employees, and preserve its relationship with customers, suppliers and others having business dealings with it, to the end that its goodwill and going business shall be in all material respects unimpaired following the Closing;

(b) pay accounts payable and other obligations of the business of HOLD when they become due and payable in the ordinary course of business consistent with prior practice;

(c) perform in all material respects all of its obligations under all Contracts and other agreements and instruments, and comply in all material respects with all Applicable Laws applicable to it;

(d) not enter into or assume any material agreement, contract or instrument, or enter into or permit any material amendment, supplement, waiver or other modification in respect thereof;

(e) not grant (or commit to grant) any increase in the compensation (including incentive or bonus compensation) of any

employee, or institute, adopt or amend (or commit to institute, adopt or amend) any compensation or benefit plan, policy, program or arrangement or collective bargaining agreement applicable to any such employee; and

(f) not take any action or omit to take any action, which action or omission would cause to be inaccurate or result in a breach of any of the representations and warranties set forth in Section 3.1.8.

4.1.2 No Solicitation. During the term of this Agreement, neither HOLD, any Stockholder, any of their respective Affiliates nor any Person acting on their behalf shall (i) solicit or encourage any inquiries or proposals for, or enter into any discussions with respect to, the acquisition of any properties and assets held for use in connection with, necessary for the conduct of, or otherwise material to, the business of HOLD or (ii) furnish or cause to be furnished any non-public information concerning the business of HOLD to any Person (other than ACI, Merger Sub and their respective agents and representatives), other than in the ordinary course of business or pursuant to Applicable Law and after prior written notice to ACI. HOLD shall not sell, transfer or otherwise dispose of, grant any option or proxy to any Person with respect to, create any Lien upon, or transfer any interest in, any of its assets, other than in the ordinary course of business consistent with prior practice and in accordance with each and every term of this Agreement.

4.1.3 Access and Information.

(a) So long as this Agreement remains in effect, HOLD will (and will cause each of its Affiliates and its Affiliates' respective accountants, counsel, consultants, employees and agents) give ACI, ACI's prospective lenders and investors, and their respective accountants, counsel, consultants, employees and agents, full access during normal business hours to, and furnish them with all documents, records, work papers and information with respect to, all of such Person's properties, assets, books, contracts, commitments, reports and records relating to the business and the assets of HOLD, as ACI shall from time to time reasonably request. In addition, HOLD will permit ACI, ACI's prospective lenders and investors, and their respective accountants, counsel, consultants, employees and agents, reasonable access to such personnel of HOLD during normal business hours as may be necessary or useful to ACI in its review of the properties, assets and business affairs of HOLD and the above-mentioned documents,

records and information. HOLD will keep ACI generally informed as to the affairs of the business of HOLD.

(b) HOLD will retain all books and records relating to the business of HOLD in accordance with HOLD's record retention policies as presently in effect. During the seven-year period beginning on the Closing Date, the Stockholders shall not dispose of or permit the disposal of any such books and records not required to be retained under such policies without first giving 60 days' prior written notice to ACI offering to surrender the same to ACI at ACI's expense.

(c) From and after the Closing Date, HOLD and the Stockholders will cooperate with Merger Sub and ACI in the preparation of audited financial statements for HOLD for the three years ended December 31, 1995, and shall make available to ACI and its auditors all information necessary for the preparation thereof.

4.1.4 Financial Statements. Until the Closing, on or before the 21st day of each month, HOLD shall deliver to ACI unaudited consolidated financial statements of HOLD as at and for the monthly period ending the last day of the preceding month (the "Subsequent Monthly Financial Statements"), which shall include a balance sheet, statement of income and statement of cash flows. At the time that the Subsequent Monthly Financial Statements are delivered to ACI, HOLD and the Stockholders shall by such delivery be deemed to have made the representations and warranties to ACI and Merger Sub with respect to such Subsequent Monthly Financial Statements set forth in Section 3.1.5.

4.1.5 Public Announcements. Except as required by Applicable Law, HOLD shall not, and shall not permit any Affiliate to, make any public announcement in respect of this Agreement or the transactions contemplated hereby without the prior written consent of ACI.

4.1.6 Further Actions.

(a) HOLD and the Stockholders shall use all reasonable good faith efforts to take all actions and to do all things necessary, proper or advisable to consummate the transactions contemplated hereby by the expected Closing Date.

(b) HOLD and the Stockholders will, as promptly as practicable, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or

supplied by any of them pursuant to Applicable Law in connection with this Agreement, the Collateral Agreements, the consummation of the Merger and the other transactions contemplated hereby and thereby, including filings pursuant to the HSR Act, if any.

(c) HOLD and the Stockholders, as promptly as practicable, will use all reasonable efforts to obtain, or cause to be obtained, all Consents (including all Governmental Approvals and any Consents required under any Contract) necessary to be obtained in order to consummate the Merger and the other transactions contemplated hereby.

(d) HOLD and the Stockholders will, and will cause each of their Affiliates to, coordinate and cooperate with ACI and Merger Sub in exchanging such information and supplying such assistance as may be reasonably requested by ACI or Merger Sub in connection with the filings and other actions contemplated by Section 4.2.3.

(e) At all times prior to the Closing, HOLD and the Stockholders shall promptly notify ACI in writing of any fact, condition, event or occurrence that will or may result in the failure of any of the conditions contained in Sections 5.1 and 5.2 to be satisfied, promptly upon any of them becoming aware of the same.

4.1.7 Voting of HOLD Common Stock. Each Stockholder shall vote all shares of the HOLD Common Stock held by such Stockholder in favor of the approval of this Agreement, the Merger and the other transactions contemplated hereby, and shall not exercise any dissenters' rights such Stockholder may have under Article 5.11 of the TBCA. Each Stockholder hereby grants to ACI for a period commencing on the date hereof and continuing so long as this Agreement is in effect an irrevocable proxy, which is acknowledged by each Stockholder to be coupled with an interest, to vote such shares of HOLD Common Stock held by such Stockholder to approve this Agreement, the Merger and the other transactions contemplated hereby.

4.1.8 Affiliate Letters. Prior to the Closing Date, the Stockholders shall identify to ACI all Persons who the Stockholders believe may be "affiliates" of HOLD within the meaning of Rule 145 under the Securities Act. The Stockholders shall use all reasonable efforts to provide ACI with such information as ACI shall reasonably request for purposes of making its own determination of Persons who may be deemed to be affiliates of HOLD. The Stockholders shall use all reasonable efforts to deliver to ACI prior to the Closing Date a letter from each of the affiliates specified by ACI in substantially the form attached hereto as

Exhibit C (an "Affiliate Letter"). Each Stockholder shall deliver an Affiliate Letter to ACI prior to the Closing Date.

4.1.9 Further Assurances. Following the Closing, HOLD and the Stockholders shall, and shall cause each of their Affiliates to, from time to time, execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably requested by ACI or Merger Sub, to confirm and assure the rights and obligations provided for in this Agreement and in the Collateral Agreements and render effective the consummation of the transactions contemplated hereby and thereby.

4.1.10 Disclosure Memorandum. The Stockholders shall prepare a Disclosure Memorandum (the "Disclosure Memorandum") (i) in which the Stockholders shall list or describe, by means of Schedules attached to the Disclosure Memorandum and numbered to correspond to the particular Section of this Agreement to which it relates, each of the Contracts, Financial Statements, Tax Returns, documents, instruments, or other writings of any nature whatsoever, and each of the events or other occurrences of any nature whatsoever, required by the provisions of this Agreement to be listed or described, and (ii) in which the Stockholders may disclose, by means of Schedules attached to the Disclosure Memorandum and numbered to correspond to the particular Section of this Agreement to which it relates, exceptions to the representations, warranties, covenants and agreements of the Stockholders set forth in this Agreement. The Disclosure Memorandum shall (i) state that it is being delivered pursuant to the provisions of this Section 4.1.10 of this Agreement; (ii) contain a representation and warranty of each Stockholder to the effect that (A) the Table of Contents attached as Annex I to the Disclosure Memorandum lists each and every Schedule to the Disclosure Memorandum delivered pursuant to this Agreement, and (B) true, complete, correct and legible copies of each of the Contracts, Financial Statements, Tax Returns, documents, instruments and writings, including all amendments, supplements or modifications thereof and all consents and waivers currently in effect thereunder (collectively, the "Supporting Documents") have been furnished to ACI with, and as part of, the Disclosure Memorandum; and (iii) be executed for the Stockholders by either Webb or E. Dunn. The Disclosure Memorandum, the Schedules to the Disclosure Memorandum, and the Supporting Documents shall be bound together (on the left side or stitching margin in such manner as to leave the reading matter legible), in one or more parts, to form one complete document, and each page of the complete document shall be numbered sequentially (in addition to any numbering which otherwise may be present) by any legible form of notation from the first page of the Disclosure Memorandum through the last page of any Schedule forming a part thereof, or otherwise identified with such other notation format or tabbing as will permit indexing and locating as hereinafter provided. The Table of Contents attached as Annex I to

the Disclosure Memorandum shall indicate, by any legible form of notation, the page number in the sequential numbering system, or otherwise identified with such other notation form or tabbing, where each Schedule thereto and Supporting Document delivered therewith is located in the bound Disclosure Memorandum. If any Schedule to the Disclosure Memorandum lists documents that are required to be disclosed on any other Schedule to the Disclosure Memorandum, the Disclosure Memorandum may cross-reference to such other Schedule if the sequential page numbers, or other notation format or tabbing, of the listed documents are reflected on such Schedule. The Stockholders shall prepare and deliver three copies of the Disclosure Memorandum to ACI or its counsel on or before 5:00 p.m., Central Standard or Daylight Savings Time, as the case may be, on the twentieth calendar day following the date of this Agreement, but, in any event, at least one copy of the Disclosure Memorandum shall be delivered to counsel for ACI in Dallas, Texas. The statements of the Stockholders contained in the Disclosure Memorandum and each Schedule to the Disclosure Memorandum shall be deemed to constitute representations and warranties made by the Stockholders in this Agreement as fully and completely and to the same extent as if the contents of each were set forth in full in Section 3.1 of this Agreement subject to the same qualifications contained in the particular Section of Section 3.1 to which the statements in the Disclosure Memorandum relate.

ACI shall have through 5:00 p.m., Central Standard or Daylight Savings Time, as the case may be, on the tenth Business Day following the date on which the Disclosure Memorandum is delivered to ACI and its counsel as herein provided (such day being referred to herein as the "Review Termination Date") to review the contents of and disclosures in the Disclosure Memorandum and to complete its review of the books, records and operations of HOLD. At any time through and including the Review Termination Date, ACI shall have the right to notify the Stockholders whether it elects to proceed with the transactions contemplated by this Agreement, or to terminate this Agreement. In the event ACI elects to terminate this Agreement, the provisions of Article 6 hereof shall govern and apply for all purposes, and, in addition, in the event the Stockholders shall fail to deliver the Disclosure Memorandum as herein provided, or in the event that ACI terminates this Agreement pursuant to this Section 4.1.10 because the Disclosure Memorandum sets forth information not previously disclosed to ACI which has resulted in or could reasonably be expected to result in a Material Adverse Effect on HOLD, the Stockholders shall pay all Reimbursable Expenses.

SECTION 4.2 *Covenants of ACI and Merger Sub.*

4.2.1 *Public Announcements.* Prior to the Closing, except as required by Applicable Law, ACI and Merger Sub shall not, and shall not permit its Affiliates to, make any public announcement in respect of this Agreement or the transactions contemplated hereby without the prior written consent of HOLD.

4.2.2 Access and Information. So long as this Agreement remains in effect, ACI will (and will cause each of its Affiliates and its Affiliates' respective accountants, counsel, consultants, employees and agents) give HOLD, and its accountants, counsel, consultants, employees and agents, full access during normal business hours to, and furnish them with all documents, records, work papers and information with respect to, all of such Person's properties, assets, books, contracts, commitments, reports and records relating to the business and the assets of ACI, as HOLD shall from time to time reasonably requests. In addition, ACI will permit HOLD, and its accountants, counsel, consultants, employees and agents, reasonable access to such personnel of ACI during normal business hours as may be necessary or useful to HOLD in its review of the properties, assets and business affairs of ACI and the above-mentioned documents, records and information. ACI will keep HOLD generally informed as to the affairs of the business of ACI.

4.2.3 Further Actions.

(a) ACI and Merger Sub shall use all reasonable good faith efforts to take all actions and to do all things necessary, proper or advisable to consummate the transactions contemplated hereby by the expected Closing Date.

(b) ACI and Merger Sub will, as promptly as practicable, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by Merger Sub or ACI, or both, pursuant to Applicable Law in connection with this Agreement, the Collateral Agreements, the Merger pursuant to this Agreement, and the consummation of the other transactions contemplated hereby and thereby, including filings pursuant to the HSR Act, if any.

(c) ACI and Merger Sub will coordinate and cooperate with HOLD and the Stockholders in exchanging such information and supplying such reasonable assistance as may be reasonably requested by HOLD and the Stockholders in connection with the filings and other actions contemplated by Section 4.1.6.

(d) At all times prior to the Closing, ACI and Merger Sub shall promptly notify HOLD and the Stockholders in writing of any fact, condition, event or occurrence that will or may result in the failure of any of the conditions contained in Sections 5.1 and 5.3 to be satisfied, promptly upon becoming aware of the same.

4.2.4 Further Assurances. Following the Closing, ACI shall, and shall cause Merger Sub and its Affiliates to, from time to time, execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably requested by HOLD and the Stockholders, to confirm and assure the rights and obligations provided for in this Agreement and in the Collateral Agreements and render effective the consummation of the transactions contemplated hereby and thereby.

4.2.5 Earn-Out Covenants. Until such time as the earn-out provisions of Section 2.4 shall have terminated, ACI shall (i) not move any HOLD accounts to other carriers without the approval of the Stockholders, which shall not be unreasonably withheld, (ii) not terminate or alter materially the terms of any existing Contracts with providers of long distance service, (iii) use its reasonable best efforts to retain the employment of HOLD's existing high performance employees, each of which is identified by special notation on Schedule 3.1.24, and (iv) use its reasonable best efforts to replace any high performing employee who quits or is terminated, or make other provisions to provide substantially the same function of such employees. Nothing in this Section shall be deemed to provide any rights to any Person, including any right to employment.

SECTION 4.3 Governmental Approvals for Long Distance Licenses. The Stockholders and representatives of ACI shall immediately begin the process of obtaining the Governmental Approvals necessary for the transfer of the various licenses and similar authorizations required for HOLD to continue operating as a reseller of long distance services following the Merger in each of the jurisdictions where it is presently so licensed or authorized. The costs and expenses of obtaining these Governmental Approvals, including the fees and expenses of special counsel, shall be borne equally by the Stockholders as a group, on the one hand, and ACI, on the other. This Section shall take precedence over any other provision in this Agreement regarding the payment of expenses.

SECTION 4.4 Private Placement Memorandum. ACI and the Stockholders shall cooperate and promptly prepare a private placement memorandum to be used by ACI in connection with its obtaining the financing for the transactions contemplated hereby. ACI, HOLD and the Stockholders shall each furnish all such information as is required or advisable to comply as to form in all material respects with the applicable provisions of the Securities Act, the rules and regulations thereunder, and other Applicable Laws relating to private placements in preparing the private placement memorandum. ACI's private placement memorandum will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that the foregoing shall not apply to the extent that any such untrue statement of a material fact or omission to state a material fact was made by ACI in reliance upon and in conformity with written information concerning HOLD furnished to ACI by HOLD or the Stockholders specifically for use in the private placement memorandum. The information provided by HOLD and the Stockholders for inclusion in the

private placement memorandum, and each amendment or supplement thereto, will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. No amendment or supplement to the private placement memorandum will be made by ACI without the approval of the Stockholders.

SECTION 4.5 ACI Financing. ACI shall use its best efforts to complete the financing necessary to consummate the transactions contemplated hereby.

ARTICLE 5

CONDITIONS PRECEDENT

SECTION 5.1 Conditions to Obligations of Each Party. The obligations of the parties to consummate the transactions contemplated hereby shall be subject to the fulfillment on or prior to the Closing Date of the following conditions:

5.1.1 HSR Act Notification. In respect of the notifications pursuant to the HSR Act, if any, the applicable waiting period and any extensions thereof shall have expired or been terminated.

5.1.2 No Injunction, Etc. Consummation of the transactions contemplated hereby shall not have been restrained, enjoined or otherwise prohibited by any Applicable Law, including any order, injunction, decree or judgment of any court or other Governmental Authority. No court or other Governmental Authority shall have determined any Applicable Law to make illegal the consummation of the transactions contemplated hereby or by the Collateral Agreements, and no proceeding with respect to the application of any such Applicable Law to such effect shall be pending.

SECTION 5.2 Conditions to Obligations of ACI and Merger Sub. The obligations of ACI and Merger Sub to consummate the transactions contemplated hereby shall be subject to the fulfillment (or waiver by ACI) on or prior to the Closing Date of the following additional conditions, which HOLD and the Stockholders agree to use reasonable good faith efforts to cause to be fulfilled:

5.2.1 Representations, Performance. The representations and warranties of the Stockholders contained in this Agreement and in the Collateral Agreements shall be true and correct in all respects (in the case of any representation or warranty containing any materiality qualification) or in all material respects (in the case of any representation or warranty without any materiality qualification) at and as of the date hereof, and (ii) shall be repeated and shall be true and correct in all

respects (in the case of any representation or warranty containing any materiality qualification) or in all material respects (in the case of any representation or warranty without any materiality qualification) on and as of the Closing Date with the same effect as though made on and as of the Closing Date. HOLD and each of the Stockholders shall have duly performed and complied in all material respects with all agreements and conditions required by this Agreement and each of the Collateral Agreements to be performed or complied with by them prior to or on the Closing Date. HOLD and the Stockholders shall have delivered to ACI a certificate, dated the Closing Date and signed by the duly authorized officers of HOLD and each of the Stockholders, to the foregoing effect.

5.2.2 Financing. ACI shall have obtained funds sufficient to enable ACI to consummate the transactions contemplated by this Agreement on such terms as are satisfactory to ACI in its reasonable judgment.

5.2.3 Consents. HOLD and the Stockholders shall have obtained and shall have delivered to ACI copies of (i) all Governmental Approvals required to be obtained by HOLD in connection with the execution and delivery of this Agreement and the Collateral Agreements and the consummation of the transactions contemplated hereby or thereby and (ii) all Consents (including all Consents required under any Contract) necessary to be obtained in order to consummate the Merger pursuant to this Agreement and the consummation of the other transactions contemplated hereby and by the Collateral Agreements.

5.2.4 No Material Adverse Effect. No event, occurrence, fact, condition, change, development or effect shall have occurred, exist or come to exist that, individually or in the aggregate, has constituted or resulted in, or could reasonably be expected to constitute or result in, a Material Adverse Effect on HOLD.

5.2.5 Collateral Agreements. ACI and Merger Sub shall have received each of the following agreements, in each case duly executed by the other parties thereto:

- (a) the Articles of Merger;
- (b) the Escrow Agreement;
- (c) the Registration Rights Agreement;
- (d) a Non-Competition Agreement (a "Non-Competition Agreement"), in the form attached hereto as Exhibit D, pursuant to which each Stockholder who will not enter into an Employment Agreement with the Surviving Corporation agrees not, directly or indirectly, to engage, either directly or indirectly, in any business

competitive with HOLD or its business anywhere in the world for a period of five years;

(e) an Employment Agreement (the "Dunn Employment Agreement"), in the form attached hereto as Exhibit E, executed by E. Dunn, pursuant to which E. Dunn shall be employed by Merger Sub;

(f) an Employment Agreement (the "Webb Employment Agreement"), in the form attached hereto as Exhibit E, executed by Webb, pursuant to which Webb shall be employed by Merger Sub; and

(g) Releases (collectively, the "Stockholder Releases"), in the form attached hereto as Exhibit G, executed by each Stockholder.

5.2.6 Subsequent Monthly Financial Statements. ACI shall have received Subsequent Monthly Financial Statements. The Subsequent Monthly Financial Statements shall (a) contain no liabilities different in kind or in scope from the liabilities set forth in the Balance Sheet, (b) confirm and be consistent with the information concerning HOLD (including the projected results of operations) previously provided to ACI by HOLD and the Stockholders in the HOLD Business Plan prior to the date hereof and otherwise be satisfactory to ACI.

5.2.7 Opinion of Counsel. ACI shall have received an opinion, addressed to it and dated the Closing Date, from Gresham, Davis, Gregory, Worthy & Moore, counsel to HOLD, in substance and form reasonably satisfactory to ACI.

5.2.8 Corporate Proceedings. All corporate and other proceedings of HOLD and the Stockholders in connection with this Agreement and the Collateral Agreements and the transactions contemplated hereby and thereby, and all documents and instruments incident hereto and thereto, shall be reasonably satisfactory in substance and form to ACI and its counsel, and ACI and its counsel shall have received all such documents and instruments, or copies thereof, certified if requested, as may be reasonably requested.

5.2.9 Billing Closing. The conditions to the obligations of Merger Sub to consummate the transactions contemplated by the Billing Agreement shall have been fulfilled (or waived by Merger Sub) and, concurrently with the Closing, the transactions contemplated by the Billing Agreement shall have been consummated.

5.2.10 Cash Balances. HOLD shall have no less than \$400,000 unrestricted cash on the Closing Date, and the Stockholders shall have delivered to ACI such evidence and documents as ACI may reasonably request to confirm satisfaction of this condition. In the event HOLD shall have less than \$400,000 unrestricted cash on the Closing Date, this condition shall automatically be deemed to be fulfilled if the Stockholders shall contribute, or cause to be contributed, cash at the Closing sufficient to satisfy this condition.

5.2.11 Investment Letter. Each Stockholder and the other affiliates of HOLD shall have delivered an Affiliate Letter to ACI.

SECTION 5.3 Conditions to Obligations of HOLD and Stockholders. The obligation of HOLD and the Stockholders to consummate the transactions contemplated hereby shall be subject to the fulfillment (or waiver by HOLD and the Stockholders), on or prior to the Closing Date, of the following additional conditions, which ACI and Merger Sub agree to use reasonable good faith efforts to cause to be fulfilled.

5.3.1 Representations, Performance. The representations and warranties of Merger Sub and ACI contained in this Agreement and the Collateral Agreements shall be true and correct in all respects (in the case of any representation or warranty containing any materiality qualification) or i) all material respects (in the case of any representation or warranty without any materiality qualification) at and as of the date hereof and (ii) shall be repeated and shall be true and correct in all respects (in the case of any representation or warranty containing any materiality qualification) or in all material respects (in the case of any representation or warranty without any materiality qualification) on and as of the Closing Date with the same effect as though made at and as of such time. Merger Sub and ACI shall have duly performed and complied in all material respects with all agreements and conditions required by this Agreement and the Collateral Agreements to be performed or complied with by them prior to or on the Closing Date. Merger Sub and ACI shall have delivered to HOLD and the Stockholders a certificate, dated the Closing Date and signed by the duly authorized officers of Merger Sub and ACI, to the foregoing effect.

5.3.2 Corporate Proceedings. All corporate proceedings of Merger Sub and ACI in connection with this Agreement, the Collateral Agreements and the transactions contemplated hereby and thereby, and all documents and instruments incident hereto and thereto, shall be reasonably satisfactory in substance and form to HOLD and the Stockholders, and their counsel, and HOLD and the Stockholders and their counsel shall have received all such documents and instruments, or copies thereof, certified if requested, as may be reasonably requested.

5.3.3 Billing Closing. The conditions to the obligations of the sellers under the Billing Agreement to consummate the transactions contemplated by the Billing Agreement shall have been fulfilled (or waived by the sellers thereunder), and, concurrently with the Closing, the transactions contemplated by the Billing Agreement shall have been consummated.

5.3.4 Consents and Approvals. HOLD and the Stockholders shall have obtained all Governmental Approvals necessary to consummate the transactions contemplated hereby.

5.3.5 Collateral Agreements. ACI and the Surviving Corporation shall have entered into each of the Collateral Agreements to which it is a party.

ARTICLE 6

TERMINATION

SECTION 6.1 Termination. This Agreement may be terminated at any time prior to the Closing Date:

- (a) by ACI pursuant to Section 4.1.10 hereof;
- (b) by the written agreement of ACI, HOLD and the Stockholders;
- (c) by either HOLD or ACI by written notice to the other party if, without fault of the terminating party, the Effective Time shall not have occurred by 5:00 p.m. Central Standard or Daylight Savings Time, as the case may be, on or before September 30, 1996, unless such date shall be extended by the mutual written consent of ACI, HOLD and the Stockholders;
- (d) by ACI by written notice to HOLD if (i) the representations and warranties of HOLD and the Stockholders shall not have been true and correct in all respects (in the case of any representation or warranty containing any materiality qualification) or in all material respects (in the case of any representation or warranty without any materiality qualification) as of the date when made or (ii) if any of the conditions set forth in Section 5.1 or 5.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by 5:00 p.m. Central Standard or Daylight Savings Time, as the case may be, on September 30, 1996, unless such failure shall be due to the failure of either ACI or Merger Sub to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by either of them prior to the Closing; or

(e) by HOLD by written notice to ACI if (i) the representations and warranties of ACI and Merger Sub shall not have been true and correct in all respects (in the case of any representation or warranty containing any materiality qualification) or in all material respects (in the case of any representation or warranty without any materiality qualification) as of the date when made or (ii) if any of the conditions set forth in Section 5.1 or 5.3 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by 5:00 p.m. Central Standard or Daylight Savings Time, as the case may be, on September 30, 1996, unless such failure shall be due to the failure of HOLD or any Stockholder to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by any of them prior to the Closing.

SECTION 6.2 Effect of Termination. In the event of the termination of this Agreement pursuant to the provisions of Section 6.1, this Agreement shall become void and have no effect, without any liability to any Person in respect hereof or of the transactions contemplated hereby on the part of any party hereto, or any of its directors, officers, employees, agents, consultants, representatives, advisers, stockholders or Affiliates, except as specified in Sections 9.2 and 4.1.10, and except for any liability resulting from such party's breach of this Agreement.

ARTICLE 7

INDEMNIFICATION

SECTION 7.1 By HOLD and the Stockholders. HOLD and Stockholders, jointly and severally, shall defend, indemnify and hold harmless ACI, Merger Sub, the Surviving Corporation, and their respective officers, directors, employees, agents, advisers, representatives and Affiliates (collectively, the "ACI Indemnitees") from and against, and pay or reimburse the ACI Indemnitees for, any and all claims, liabilities, obligations, losses, fines, costs, royalties, proceedings, deficiencies or damages (whether absolute, accrued, conditional or otherwise and whether or not resulting from third party claims), including out-of-pocket expenses and reasonable attorneys' and accountants' fees incurred in the investigation or defense of any of the same or in asserting any of their respective rights hereunder (collectively, "Losses"), resulting from or arising out of:

- (i) any inaccuracy of any representation or warranty made by HOLD or any Stockholder herein or under any Collateral Agreement or in connection herewith or therewith; or
- (ii) any failure of HOLD or any Stockholder to perform any covenant or agreement hereunder or under any Collateral Agreement or fulfill any other obligation in respect hereof or of any Collateral Agreement.

SECTION 7.2 *By Merger Sub and ACI.* Merger Sub and ACI, jointly and severally, shall defend, indemnify and hold harmless HOLD and its officers, directors, employees, agents, advisers, representatives and Affiliates (collectively, the "HOLD Indemnitees") from and against any and all Losses resulting from or arising out of:

(i) any inaccuracy in any representation or warranty made by Merger Sub or ACI herein or under any Collateral Agreement in connection herewith or therewith; or

(ii) any failure of Merger Sub or ACI to perform any covenant or agreement hereunder or under any Collateral Agreement or fulfill any other obligation in respect thereof or of any Collateral Agreement.

SECTION 7.3 *Limitation on Indemnification.* The ACI Indemnitees shall be entitled to indemnification hereunder only when, and only with respect to amounts by which, the aggregate of all Losses incurred by the ACI Indemnitees exceeds \$40,000. The HOLD Indemnitees shall be entitled to indemnification hereunder only when, and only with respect to amounts by which, the aggregate of all Losses incurred by the HOLD Indemnitees exceeds \$40,000.

SECTION 7.4 *Maximum Liability of Young.* Young shall have no liability hereunder for any amount in excess of Young's *pro rata* amount of the Merger Consideration received by Young pursuant to this Agreement.

SECTION 7.5 *Adjustments to Indemnification Payments.* Any payment made by HOLD and the Stockholders, or any of them to ACI Indemnities, on the one hand, or by ACI and Merger Sub, or either of them, to the HOLD Indemnities, on the other hand, pursuant to this Article 7 in respect of any claim (i) shall be net of any insurance proceeds realized by and paid to the Indemnified Party in respect of such claim and (ii) shall be (A) reduced by an amount equal to any Tax benefits attributable to such claim and (B) increased by an amount equal to any Taxes attributable to the receipt of such payment, but only to the extent that such Tax benefits are actually realized, or such Taxes are actually paid, as the case may be, by HOLD or by any consolidated, combined or unitary group of which HOLD is a member. The Indemnified Party shall use its reasonable efforts to make insurance claims relating to any claim for which it is seeking indemnification pursuant to this Article 7; provided that the Indemnified Party shall not be obligated to make such an insurance claim if the Indemnified Party in its reasonable judgment believes that the cost of pursuing such an insurance claim together with any corresponding increase in insurance premiums or other chargebacks to the Indemnified Party, as the case may be, would exceed the value of the claim for which the Indemnified Party is seeking indemnification.

SECTION 7.6 *Indemnification Procedures.* In the case of any claim asserted by a third party against a party entitled to indemnification under this Agreement (the "Indemnified Party"), notice shall be given by the Indemnified Party to the party required to provide indemnification

(the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and the Indemnified Party shall permit the Indemnifying Party (at the expense of such Indemnifying Party) to assume the defense of any claim or any litigation resulting therefrom, provided that (i) the counsel for the Indemnifying Party who shall conduct the defense of such claim or litigation shall be reasonably satisfactory to the Indemnified Party, (ii) the Indemnified Party may participate in such defense at such Indemnified Party's expense, and (iii) the omission by any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its indemnification obligation under this Agreement except to the extent that such omission results in a failure of actual notice to the Indemnifying Party and such indemnifying Party is materially damaged as a result of such failure to give notice. Except with the prior written consent of the Indemnified Party, no Indemnifying Party, in the defense of any such claim or litigation, shall consent to entry of any judgment or enter into any settlement that provides for injunctive or other nonmonetary relief affecting the Indemnified Party or that does not include as an unconditional term thereof the giving by each claimant or plaintiff to such Indemnified Party of a release from all liability with respect to such claim or litigation. In the event that the Indemnified Party shall in good faith determine that the conduct of the defense of any claim subject to indemnification hereunder or any proposed settlement of any such claim by the Indemnifying Party might be expected to affect adversely the Indemnified Party's Tax liability or the ability of ACI or the Surviving Corporation to conduct its business, or that the Indemnified Party may have available to it one or more defenses or counterclaims that are inconsistent with one or more of those that may be available to the Indemnifying Party in respect of such claim or any litigation relating thereto, the Indemnified Party shall have the right at all times to take over and assume control over the defense, settlement, negotiations or litigation relating to any such claim at the sole cost of the Indemnifying Party, provided that if the Indemnified Party does so take over and assume control, the Indemnified Party shall not settle such claim or litigation without the written consent of the Indemnifying Party, such consent not to be unreasonably withheld. In the event that the Indemnifying Party does not accept the defense of any matter as above provided, the Indemnified Party shall have the full right to defend against any such claim or demand and shall be entitled to settle or agree to pay in full such claim or demand. In any event, the Indemnifying Party and the Indemnified Party shall cooperate in the defense of any claim or litigation subject to this Section 7 and the records of each shall be available to the other with respect to such defense.

SECTION 7.7 *Time Limitation.* All claims for indemnification under clause (i) of the first sentence of Section 8.3(a) or clause (i) of the first sentence of Section 8.3(b) must be asserted within 30 days of the termination of the respective survival periods set forth in Section 9.1.

SECTION 7.8 *Indemnification Not Exclusive.* The foregoing indemnification provisions are in addition to, and not in derogation or limitation of, any statutory, equitable or common-law remedy any party may have for breach of representation, warranty, covenant or agreement or any other remedy for which provision is made in this Agreement.

ARTICLE 8**DEFINITIONS AND CONSTRUCTION**

SECTION 8.1 *Definition of Certain Terms.* Except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Section 8.1, whenever used in this Agreement (including in the Schedules), shall have the respective meanings assigned to them in this Section for all purposes of this Agreement, and include the plural as well as the singular.

1996 Prorated Payment: as defined in Section 2.4.3.

1996 Prorated Target: as defined in Section 2.4.3.

Accredited Investor: as defined in Section 3.2.1(a).

ACI: as defined in the first paragraph of this Agreement.

ACI Adjustment Amount: as defined in Section 2.2.1.

ACI Audited Financial Statements: as defined in Section 3.3.4.

ACI Balance Sheet Date: as defined in Section 3.3.4.

ACI Common Stock: as defined in Section 1.10.1.

ACI's Auditors: as defined in Section 2.3.

ACI Indemnitees: as defined in Section 7.1.

ACI Preferred Shares: the shares of a series of the Preferred Stock, par value \$0.01 per share, of ACI to be issued to the Stockholders at the Closing pursuant to this Agreement.

Acquisition Transaction: any transaction pursuant to which (i) any Person or group (other than ACI or Merger Sub or their respective Affiliates), together with the beneficial ownership thereof on the part of any Affiliates of such Person or group, first acquires beneficial ownership of 50 per cent or more of the HOLD Common Stock then outstanding, or (ii) any Person or group (other than ACI or Merger Sub or their respective Affiliates) acquires assets of HOLD which, together with any assets of HOLD acquired from HOLD by any Affiliates of such Person or group, constituting 50 per cent or more of the assets of HOLD owned by HOLD on the Termination Date.

Additional Consideration: as defined in Section 2.4.1.

Additional Consideration Value: as defined in Section 2.4.6(a).

Adjustment Date: as defined in Section 2.3.

Affiliate: of a Person means a Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the first Person. "Control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise.

Affiliate Letter: as defined in Section 4.1.8.

Agreement: this instrument as originally executed, including the Schedules hereto, or as it may be from time to time supplemented or amended by one or more supplements or amendments hereto entered pursuant to the applicable provisions hereof.

Annual Target: as defined in Section 2.4.1.

Applicable Law: all applicable provisions of all (i) constitutions, treaties, statutes, laws (including the common law), rules, regulations, ordinances, codes or orders of any Governmental Authority, (ii) Governmental Approvals and (iii) orders, decisions, injunctions, judgments, awards and decrees of or agreements with any Governmental Authority.

Arbitrator: as defined in Section 2.3.

Articles of Merger: as defined in Section 1.3.

Avery Shares: as defined in Section 2.1.

Balance Sheet: the balance sheet contained in the Unaudited Financial Statements.

Balance Sheet Date: as defined in Section 3.1.5.

Benefit Liabilities: liabilities, obligations, commitments, costs and expenses, including reasonable fees and disbursements of attorneys and other advisors, including any such expenses incurred in connection with the enforcement of any applicable provision of this Agreement.

Billing: as defined in the Recitals to this Agreement.

Billing Services Agreement: as defined in the Recitals to this Agreement.

Business Day: shall mean a day other than a Saturday, Sunday or other day on which commercial banks in New York City or the State of Texas are authorized or required to close.

Carryforward Amount: as defined in Section 2.4.3.

Cash Consideration: as defined in Section 1.10.1.

CERCLA: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*

Closing: as defined in Section 1.4.

Closing Balance Sheet: as defined in Section 2.3.

Closing Date: as defined in Section 2.1.

Code: the Internal Revenue Code of 1986.

Collateral Agreements: the agreements and other documents and instruments described in Sections 5.2.5.

Consent: any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing with, or report or notice to, any Person, including any Governmental Authority.

Contract Period: as defined in Section 2.4.1.

Contracts: as defined in Section 3.1.13(a).

Covered Returns: as defined in Section 3.1.7(a).

Covered Taxes: all Taxes.

Disclosure Memorandum: as defined in Section 4.1.10.

Dollars or \$: lawful money of the United States.

Dunn Employment Agreement: as defined in Section 5.2.5(e).

Dunn Trust: as defined in the first paragraph of this Agreement.

E. Dunn: as defined in the first paragraph of this Agreement.

Effective Time: as defined in Section 1.3.

Employee Benefit Plan: as defined in Section 3.1.25(a).

Employees: as defined in Section 3.1.25(a).

Environmental Assessment: any environmental assessment of the Real Property and the other assets, equipment and facilities owned, leased, operated or used by HOLD.

Environmental Laws: all Applicable Laws relating to the protection of the environment, to human health and safety, or to any emission, discharge, generation, processing, storage, holding, abatement, existence, Release, threatened Release or transportation of any Hazardous Substances, including (i) CERCLA, the Resource Conservation and Recovery Act, and the Occupational Safety and Health Act, (ii) all other requirements pertaining to reporting, licensing, permitting, investigation or remediation of emissions, discharges, releases or threatened releases of Hazardous Materials into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport or handling of Hazardous Substances, and (iii) all other requirements pertaining to the protection of the health and safety of employees or the public.

Environmental Liabilities and Costs: all Losses, whether direct or indirect, known or unknown, current or potential, past, present or future, imposed by, under or pursuant to Environmental Laws, including all Losses related to Remedial Actions, and all fees, disbursements and expenses of counsel, experts, personnel and consultants based on, arising out of or otherwise in respect of: (i) the ownership or operation of the business, Real Property or any other real properties, assets, equipment or facilities, by HOLD, or any of their predecessors or Affiliates; (ii) the environmental conditions existing on the Closing Date on, under, above, or about any Real Property or any other real properties, assets, equipment or facilities currently or previously owned, leased or operated by the HOLD, or any of their predecessors or Affiliates; and (iii) expenditures necessary to cause any Real Property or any aspect of the business to be in compliance with any and all requirements of Environmental Laws as of the Closing Date, including all Environmental Permits issued under or pursuant to such Environmental Laws, and reasonably necessary to make full economic use of any Real Property.

Environmental Permits: any federal, state and local permit, license, registration, consent, order, administrative consent order, certificate, approval or other authorization with respect to the HOLD necessary for the conduct of the

business as currently conducted or previously conducted under any Environmental Law.

ERISA: the Employee Retirement Income Security Act of 1974.

Escrow Agent: as defined in Section 2.2.1.

Escrow Agreement: as defined in Section 2.2.1.

Escrow Closing Payment: as defined in Section 2.2.1.

Escrow Period: as defined in Section 2.2.2.

Escrow Shares: as defined in Section 2.2.2.

Financial Statements: each of the financial statements required to be provided by Section 3.1.5.

GAAP: generally accepted accounting principles as in effect in the United States.

Government Approval: any Consent of, with or to any Governmental Authority.

Governmental Authority: any nation or government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any government authority, agency, department, board, commission or instrumentality of the United States, any State of the United States or any political subdivision thereof, and any tribunal or arbitrator(s) of competent jurisdiction, and any self-regulatory organization.

Hazardous Substances: any substance that: (i) is or contains asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum or petroleum-derived substances or wastes, radon gas or related materials, (ii) requires investigation, removal or remediation under any Environmental Law, or is defined, listed or identified as a "hazardous waste" or "hazardous substance" thereunder, or (iii) is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any Governmental Authority or Environmental Law.

HOLD: as defined in the first paragraph of this Agreement.

HOLD Business Plan: as defined in Section 3.1.30.

HOLD Common Stock: as defined in Section 1.10.1.

HOLD Indemnitees: as defined in Section 7.2.

HOLD's Auditors: as defined in Section 2.3.

HOLD's Banker: as defined in Section 2.4.6(b).

Holder: as defined in Section 3.2.1.

HSR Act: the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976.

Indemnified Party: as defined in Section 7.6.

Indemnifying Party: as defined in Section 7.6.

Initial Banker: as defined in Section 2.4.6(a).

Intellectual Property: any and all United States and foreign: (a) patents (including design patents, industrial designs and utility models) and patent applications (including docketed patent disclosures awaiting filing, reissues, divisions, continuations-in-part and extensions), patent disclosures awaiting filing determination, inventions and improvements thereto; (b) trademarks, service marks, trade names, trade dress, logos, business and product names, slogans, and registrations and applications for registration thereof; (c) copyrights (including software) and registrations thereof; (d) inventions, processes, designs, formulae, trade secrets, know-how, industrial models, confidential and technical information, manufacturing, engineering and technical drawings, product specifications and confidential business information; (e) mask work and other semiconductor chip rights and registrations thereof; (f) intellectual property rights similar to any of the foregoing; (g) copies and tangible embodiments thereof (in whatever form or medium, including electronic media).

Inventories: all inventories of raw materials, work in process, finished products, goods, spare parts, replacement and component parts, and office and other supplies, including Inventories held at any location controlled by HOLD and Inventories previously purchased and in transit to HOLD at such locations.

IRS: the Internal Revenue Service.

Leased Real Property: means all interests leased pursuant to the Leases.

Leases: means the real property leases, subleases, licenses and occupancy agreements pursuant to which HOLD is the lessee, sublessee, licensee or occupant.

Lender: as defined in Section 2.4.7.

Lien: any mortgage, pledge, hypothecation, right of others, claim, security interest, encumbrance, lease, sublease, license, occupancy agreement, adverse claim or interest, easement, covenant, encroachment, burden, title defect, title retention agreement, voting trust agreement, interest, equity, option, lien, right of first refusal, charge or other restrictions or limitations of any nature whatsoever, including such as may arise under any Contracts.

Losses: as defined in Section 7.1.

Material Adverse Effect: any event, occurrence, fact, condition, change or effect that is materially adverse to the business, operations, results of operations, condition (financial or otherwise), properties (including intangible properties), assets (including intangible assets) or liabilities of HOLD, or of ACI and its Subsidiaries, taken as a whole, as the case may be.

Maximum Cash Consideration: as defined in Section 2.1.

Merger: as defined in Section 1.1.

Merger Consideration: as defined in Section 1.10.1.

Merger Consideration Adjustment Note: a promissory note in the original principal amount of the Stockholder Adjustment Amount, bearing interest at 10% per annum beginning six months after the date of issuance, repayable in 24 equal monthly installments of principal and interest beginning in the seventh month after the date of issuance, and containing a right of setoff for Losses.

Merger Sub: as defined in the first paragraph of this Agreement.

Merger Sub Indemnitees: as defined in Section 7.1.

Monthly Unaudited Financial Statements: as defined in Section 3.1.5.

Multiemployer Plan: as defined in Section 3.1.25(c).

Multiple Employer Plan: as defined in Section 3.1.25(c).

Net Assets: as defined in Section 2.1.

New Certificates: as defined in Section 1.10.3.

Non-Competition Agreement: as defined in Section 5.2.5(d).

Old Certificates: as defined in Section 1.10.3.

Owned Intellectual Property: as defined in Section 3.1.20(a).

Owned Real Property: the real property owned by HOLD, together with all other structures, facilities, improvements, fixtures, systems, equipment and items of property presently or hereafter located thereon, attached or appurtenant thereto, or owned by the HOLD and located on Leased Real Property, and all easements, licenses, rights and appurtenances relating to the foregoing.

P. Dunn: as defined in the first paragraph of this Agreement.

Permitted Liens: (i) Liens reserved against in the Balance Sheet, to the extent so reserved, (ii) Liens for Taxes not yet due and payable or which are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on HOLD's books in accordance with GAAP, or (iii) Liens that, individually and in the aggregate, do not and would not materially detract from the value of any of the property or assets of HOLD or materially interfere with the use thereof as currently used or contemplated to be used or otherwise.

Person: any natural person, firm, partnership, association, corporation, company, trust, business trust, Governmental Authority or other entity.

Plans: as defined in Section 3.1.25(a).

Pre-Tax Profits: as defined in Section 2.4.4.

Proration Factor: as defined in Section 2.4.3.

Proration Period: as defined in Section 2.4.3.

Real Property: the Owned Real Property and the Leased Real Property.

Real Property Laws: as defined in Section 3.1.22(f).

Registration Rights Agreement: as defined in Section 3.2.3.

Reimbursable Expenses: all out-of-pocket expenses and fees including legal and accounting fees and fees payable to banks and other financial institutions and advisors, incurred by ACI or Merger Sub, or both, or on their behalf in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the consummation of the Merger and the other transactions contemplated hereby, or the financing of such transactions, or incurred by banks,

financial institutions or advisors and assumed by ACI or Merger Sub, or both, in connection with the negotiation, preparation, execution, delivery and performance of this Agreement or any related financing.

Related Persons: as defined in Section 3.1.25(a).

Release: any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing and the like, including the moving of any materials through, into or upon, any land, soil, surface water, ground water or air, or otherwise entering into the environment.

Remedial Action: all actions required to (i) clean up, remove, treat or in any other way remediate any Hazardous Substances; (ii) prevent the release of Hazardous Substances so that they do not migrate or endanger or threaten to endanger public health or welfare or the environment; or (iii) perform studies, investigations and care related to any such Hazardous Substances.

Review Termination Date: as defined in Section 4.1.10.

Securities Act: the Securities Act of 1933.

Security: as defined in Section 3.1.31.

Share Consideration: as defined in Section 1.10.1.

Stockholder: as defined in the first paragraph of this Agreement.

Stockholder Adjustment Amount: as defined in Section 2.2.1.

Stockholder Releases: as defined in Section 5.2.5(g).

Stockholders: as defined in the first paragraph of this Agreement.

Subsequent Monthly Financial Statements: as defined in Section 4.1.4.

Subsidiaries: each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing at least 50% of the outstanding voting stock or other equity interests.

Supporting Documents: as defined in Section 4.1.10.

Surviving Corporation: as defined in Section 1.2.

Tax: any federal, state, provincial, local, foreign or other income, alternative, minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers' compensation, payroll, health care, withholding, estimated or other similar tax, duty or other governmental charge or assessment or deficiencies thereof (including all interest and penalties thereon and additions thereto whether disputed or not).

Tax Return: any return, report, declaration, form, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

TBCA: the Texas Business Corporation Act.

Termination Date: the date on which this Agreement is terminated pursuant to Section 7.1.

Total 1996 Payment: as defined in Section 2.4.3.

Treasury Regulations: the regulations prescribed pursuant to the Code.

Unaudited Financial Statements: as defined in Section 3.1.5.

Webb: as defined in the first paragraph of this Agreement.

Webb Employment Agreement: as defined in Section 5.2.5(f).

Withholding Taxes: as defined in Section 3.1.7(a).

Young: as defined in the first paragraph of this Agreement.

SECTION 8.2 Rules of Construction.

(a) "This Agreement" means this instrument as originally executed, including the Exhibits and Schedules hereto, or as it may be from time to time supplemented or amended by one or more supplements or amendments hereto entered pursuant to the applicable provisions hereof;

(b) "includes" and "including" are not limiting, and, in each case, shall be construed as if followed by the words "without limitation," "but not limited to" or words of similar import;

(c) "may not" is prohibitive, and not permissive;

(d) "shall" is mandatory, and not permissive;

(e) "or" is not exclusive [*i.e.*, if a party "may do (a), (b) or (c)," then the party may do all of, any one of, or any combination of, (a), (b) or (c)] unless the context expressly provides otherwise;

(f) all references in this instrument to designated Articles, Sections, Exhibits, and Schedules are to the designated Articles, Sections, Exhibits, and Schedules of this instrument as originally executed;

(g) all references herein to constitutions, treaties, statutes, laws, rules, regulations, ordinances, codes or orders include any successor thereto or replacement thereof, and mean references to any of them as amended, modified or supplemented from time to time;

(h) the words "herein," "hereof," "hereto" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision;

(i) all terms used herein which are defined in the Securities Act, the Exchange Act or the rules and regulations promulgated thereunder have the meanings assigned to them therein unless otherwise defined herein; and

(j) all accounting terms not otherwise defined herein have the meaning assigned to them in accordance with GAAP.

ARTICLE 9

GENERAL PROVISIONS

SECTION 9.1 *Survival of Representations and Warranties.* The representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement, any examination by or on behalf of the parties hereto and the completion of the transactions contemplated herein, but only to the extent specified below:

(a) except as set forth in clauses (b) and (c) below, the representations and warranties contained in Section 3.1 and Section 3.3 shall survive for a period of one year following the Closing Date;

(b) the representations and warranties contained in Sections 3.1.1, 3.1.2, 3.1.3, 3.1.23, 3.1.24 and 3.3.1 shall survive without limitation; and

(c) the representations and warranties of HOLD contained in Section 3.1.7 shall survive as to any Tax covered by such representations and warranties for so long as any statute of limitations for such Tax remains open, in whole or in part, including by reason of waiver of such statute of limitations.

SECTION 9.2 Expenses. Except as provided in Sections 4.3 and 4.1.10, HOLD, on the one hand, and Merger Sub, on the other hand, shall bear their respective expenses, costs and fees (including attorneys', auditors' and financing commitment fees) in connection with the transactions contemplated hereby, including the preparation, execution and delivery of this Agreement and compliance herewith, whether or not the transactions contemplated hereby shall be consummated.

SECTION 9.3 Severability. If any provision of this Agreement, including any phrase, sentence, clause, Section or subsection is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever.

SECTION 9.4 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or (c) sent by next-day or overnight mail or delivery or (d) sent by telecopy or telegram,

(i) if to Merger Sub or ACI, to

Avery Communications, Inc.
801 Greenview Drive
Grand Prairie, Texas 75050
Attention: Patrick J. Haynes, III

with a copy to:

Bruce A. Cheatham, Esq.
Winstead Sechrest & Minick P.C.
1201 Elm Street, Suite 5400
Dallas, Texas 75270

(ii) if to HOLD or the Stockholders, to

Home Owners Long Distance Incorporated
8000 Vantage Building A, Suite 2001
San Antonio, Texas 78230
Attention: Joseph W. Webb

with a copy to:

Byron L. LeFlore, Jr., Esq.
Gresham, Davis, Gregory, Worthy & Moore
112 East Pecan Street, Ninth Floor
San Antonio, Texas 78205-1542

or, in each case, at such other address as may be specified in writing to the other parties hereto.

All such notices, requests, demands, waivers and other communications shall be deemed to have been received (w) if by personal delivery on the day after such delivery, (x) if by certified or registered mail, on the seventh business day after the mailing thereof, (y) if by next-day or overnight mail or delivery, on the day delivered, (z) if by telecopy or telegram, on the next day following the day on which such telecopy or telegram was sent, provided that a copy is also sent by certified or registered mail.

SECTION 9.5 Headings. The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

SECTION 9.6 Entire Agreement. This Agreement (including the Schedules hereto) and the Collateral Agreements (when executed and delivered) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

SECTION 9.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

SECTION 9.8 Governing Law, Etc. This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. Merger Sub and HOLD hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States of America located in the State of Texas, City and County of Dallas, solely in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought

or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any of such document may not be enforced in or by said courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Texas State or Federal court. Merger Sub and HOLD hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 9.4, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

SECTION 9.9 *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

SECTION 9.10 *Assignment.* This Agreement shall not be assignable or otherwise transferable by any party hereto without the prior written consent of the other parties hereto, provided that ACI and Merger Sub may assign this Agreement to any Subsidiary of Merger Sub, and ACI and Merger Sub may assign this Agreement to any lender to ACI or any Subsidiary or Affiliate thereof as security for obligations to such lender in respect of the financing arrangements entered into in connection with the transactions contemplated hereby and any refinancings, extensions, refundings or renewals thereof, provided, further, that no assignment to any such lender shall in any way affect ACI's or Merger Sub's obligations or liabilities under this Agreement.

SECTION 9.11 *No Third Party Beneficiaries.* Except as provided in Section 7 with respect to indemnification of Indemnified Parties hereunder, nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto and their respective heirs, successors and permitted assigns.

SECTION 9.12 *Amendment; Waivers, Etc.* No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity. The rights and remedies of any party based upon, arising out of or otherwise in respect of any inaccuracy or breach of any representation, warranty, covenant or agreement or failure to fulfill any condition shall in no way be limited by the fact that the act, omission, occurrence or other state of facts upon which any claim of any such inaccuracy or breach is based may also be the subject matter of any other representation, warranty, covenant or agreement as to which there is no inaccuracy

or breach. The representations and warranties of HOLD and the Stockholders shall not be affected or deemed waived by reason of any investigation made by or on behalf of Merger Sub or ACI (including by any of their respective advisors, consultants or representatives) or by reason of the fact that Merger Sub or ACI or any of such advisors, consultants or representatives knew or should have known that any such representation or warranty is or might be inaccurate. The representations and warranties of Merger Sub and ACI shall not be affected or deemed waived by reason of any investigation made by or on behalf of HOLD or the Stockholders (including by any of their respective advisors, consultants or representatives) or by reason of the fact that HOLD or the Stockholders or any of such advisors, consultants or representatives knew or should have known that any such representation or warranty is or might be inaccurate.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

EVERY COMMUNICATIONS, INC.

By: /s/PATRICK J. HAYNES, III
Patrick J. Haynes, III
Chairman of the Board

EVERY ACQUISITION SUB, INC.

By: /s/PATRICK J. HAYNES, III
Patrick J. Haynes, III
Chairman of the Board

HOME OWNERS LONG
DISTANCE INCORPORATED

By: /s/JOSEPH W. WEBB
Joseph W. Webb
President and Chief Executive Officer

STOCKHOLDERS

/s/JOSEPH W. WEBB

Joseph W. Webb

/s/JAMES A. YOUNG

James A. Young

/s/EDWARD L. DUNN

Edward L. Dunn

/s/PHILIP S. DUNN

Philip S. Dunn, as trustee under Trust Agreement dated December 31, 1992, on behalf of the Dunn Stock Trust Fund No. 1 established thereby

/s/PHILIP S. DUNN

Philip S. Dunn

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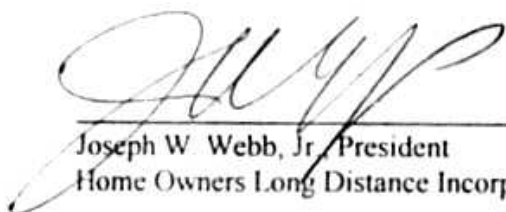
Verification of the Applicants

VERIFICATION

STATE OF TEXAS

COUNTY OF BEXAR

Joseph W. Webb, Jr, being first duly sworn, deposes and says that he is the President of Home Owners Long Distance, Incorporated, the applicant in the subject proceeding, that he has read the foregoing application and knows the contents thereof and that the same are true to his knowledge, except as to matters which are therein stated on information or belief, and as to those matter he believes them to be true.

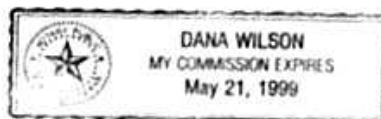


Joseph W. Webb, Jr, President
Home Owners Long Distance Incorporated

Subscribed and sworn to before me this 24th day of May 1996.



Notary Public



VERIFICATION

STATE OF Texas)
)
COUNTY OF Tarrant) ss:
_____)

I, Thomas Lyons, being first duly sworn, deposes and says that he is
President for Avery Communications, Inc., the applicant in the
subject proceeding, that ~~she~~ he has read the foregoing application and knows the contents thereof; that
the same are true of ~~her~~ his knowledge, except as to matters which are therein stated on information or
belief, and as to those matters ~~she~~ he believes them to be true.

By: Sharon [Signature]
Name: Thomas Lyons
Title: President

Subscribed and sworn to before me this 29th day of May, 1996.

Harriet M. Gooch
Notary Public

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

AVERY COMMUNICATIONS, INC.,

AVERY ACQUISITION SUB, INC.,

HOME OWNERS LONG DISTANCE INCORPORATED,

JOSEPH W. WEBB,

JAMES A. YOUNG,

EDWARD L. DUNN,

DUNN STOCK TRUST FUND NO. 1,

AND

PHILIP S. DUNN

DATED AS OF MAY 3, 1996

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- Exhibit B - Form of Registration Rights Agreement
- Exhibit C - Form of Affiliate Letter
- Exhibit D - Form of Non-Competition Agreement
- Exhibit E - Form of Dunn Employment Agreement
- Exhibit F - Form of Webb Employment Agreement
- Exhibit G - Form of Release

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is dated as of May 3, 1996, and is being entered by and among AVERY COMMUNICATIONS, INC., a Delaware corporation ("ACI"), AVERY ACQUISITION SUB, INC., a Texas corporation ("Merger Sub"), HOME OWNERS LONG DISTANCE INCORPORATED, a Texas corporation ("HOLD"), JOSEPH W. WEBB ("Webb"), JAMES A. YOUNG ("Young"), EDWARD L. DUNN ("E. Dunn"), PHILIP S. DUNN, as trustee under Trust Agreement dated December 31, 1992, on behalf of the Dunn Stock Trust Fund No. 1 established thereby (the "Dunn Trust"), and PHILIP S. DUNN ("P. Dunn," and, collectively with Webb, Young, E. Dunn and the Dunn Trust, the "Stockholders," or individually, a "Stockholder"), with reference to the following RECITALS:

R E C I T A L S

A. Subject only to the limitations and exclusions contained in this Agreement, and on the terms and conditions hereinafter set forth, Merger Sub will merge with and into HOLD and HOLD will become a wholly owned subsidiary of ACI. This Agreement is intended to be a "plan of reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986.

B. Contemporaneously herewith, ACI, Merger Sub, Webb, Young, E. Dunn, P. Dunn, Harold D. Box, David W. Mechler, Jr., HOLD Billing Services, Ltd., a Texas limited partnership ("Billing"), and HOLD Billing and Collections, L.C., a Texas limited liability company, are entering into a Partnership Interest Purchase Agreement (the "Billing Services Agreement") pursuant to which Merger Sub will acquire, subject to the terms and conditions set forth therein, approximately 54% of the issued and outstanding partnership interests of Billing.

C. Each capitalized term used herein is defined in Section 8.1 hereof.

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

ARTICLE 1

THE MERGER AND RELATED MATTERS

SECTION 1.1 *The Merger.* Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 1.3), Merger Sub shall be merged with and into HOLD in accordance with this Agreement and the separate corporate existence of Merger Sub shall thereupon cease (the "Merger").

SECTION 1.2 *Surviving Corporation.* HOLD shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation"). The name of the Surviving Corporation shall continue to be "Home Owners Long Distance Incorporated." The Merger shall have the effects specified in the Texas Business Corporation Act (the "TBCA").

SECTION 1.3 *Effective Time.* If all the conditions to the Merger set forth in Article 5 shall have been fulfilled or waived in accordance herewith and this Agreement shall not have been terminated as provided in Article 6, the parties hereto shall cause Articles of Merger (the "Articles of Merger") meeting the requirements of Article 5.03 of the TBCA to be properly executed and filed in accordance with such Article on the Closing Date. The Merger shall become effective at the time of filing of the Articles of Merger with the Secretary of State of the State of Texas in accordance with the TBCA or at such later time which the parties hereto shall have agreed upon and designated in such filing as the effective time of the Merger (the "Effective Time").

SECTION 1.4 *Closing.* Subject to the terms and conditions of this Agreement, the closing (the "Closing") of this Agreement and the transactions contemplated hereby shall take place at the offices of Winstead Sechrest & Minick P.C., 5400 Renaissance Tower, 1201 Elm Street, Dallas, Texas 75270, at 10:00 A.M., local time, on the later of (i) August 1, 1996, or (ii) the date which is three Business Days after the satisfaction or waiver of all conditions to the consummation of the transactions contemplated hereby, or at such other time or place or on such other date, in each case as may be mutually agreed upon in writing by ACI and HOLD. The date of the Closing is sometimes herein referred to as the "Closing Date."

SECTION 1.5 *Articles of Incorporation of Surviving Corporation.* The articles of Incorporation (as defined in Article 1.02 of the TBCA) of the Surviving Corporation in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation, until duly amended in accordance with applicable law, except that the Articles of Incorporation of HOLD shall hereby, at the Effective Time, be amended to decrease the number of authorized shares of HOLD Common Stock, par value \$1.00 per share, from 100,000 to 1,000.

SECTION 1.6 *Bylaws of Surviving Corporation.* The Bylaws of Merger Sub in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation, until duly amended in accordance with applicable law, except that the Bylaws of Merger Sub shall hereby, at the Effective Time, be amended to change all references therein to "Avery Acquisition Sub, Inc." to "Home Owners Long Distance Incorporated."

SECTION 1.7 *Directors of Surviving Corporation.* The directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation as of the Effective Time to serve, subject to the Bylaws of the Surviving Corporation, until their respective successors are duly elected and qualified.

SECTION 1.8 *Directors of ACI.* ACI's Board of Directors shall take all action necessary to cause the number of directors comprising the full Board of Directors of ACI at the Effective

Time to be increased by one director and shall take all such action necessary to cause Joseph W. Webb to be elected as a director of ACI, to serve, subject to the Bylaws of ACI, until his successor is duly elected and qualified.

SECTION 1.9 *Officers of Surviving Corporation.* The officers of Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation as of the Effective Time to serve, subject to the Bylaws of the Surviving Corporation, until their respective successors are duly elected and qualified.

SECTION 1.10 *Manner and Basis of Converting Shares.* At the Effective Time, the capital stock of Hold, ACI and Merger Sub shall, by virtue of the Merger and without any action on the part of the holders thereof, be converted in the manner and on the basis hereinafter provided.

1.10.1 *HOLD Common Stock.* Each share of common stock, par value \$1.00 per share ("HOLD Common Stock"), of HOLD outstanding at the Effective Time shall, subject to compliance with Section 1.10.3, be converted into and exchanged for (i) \$78.59375 cash (the "Cash Consideration") and (ii) 27.59375 shares (the "Share Consideration," and collectively with the Cash Consideration, the "Merger Consideration") of common stock, par value \$0.01 per share (the "ACI Common Stock"), of ACI, except that shares of HOLD Common Stock held in HOLD's treasury or owned by ACI or Merger Sub at the Effective Time shall be cancelled.

1.10.2 *Dissenters' Rights of HOLD Stockholders.* Notwithstanding Section 1.10.1, no share of ACI Common Stock shall be issued in respect of any shares of HOLD Common Stock, the holders of which shall object to the Merger in writing and demand payment of the value of their shares pursuant to Article 5.12 of the TBCA, such holders to have only the rights provided by the TBCA.

1.10.3 *Surrender and Exchange of HOLD Common Stock.* Subject to the provisions of the last clause of Section 1.10.1, after the Effective Time, each holder of an outstanding certificate or certificates (the "Old Certificates") theretofore representing shares of HOLD Common Stock, upon surrender thereof to ACI at the Closing, shall be entitled to receive in exchange therefor the Cash Consideration and a certificate or certificates (the "New Certificates") representing the number of whole shares of ACI Common Stock into and for which the shares of HOLD Common Stock theretofore represented by such surrendered Old Certificates have been converted. No fractional shares of ACI Common Stock shall be issued pursuant to the Merger, and no certificates or scrip for fractional shares of ACI Common Stock will be issued, no ACI stock split or dividend shall relate to any fractional share interest, and no such fractional share interest shall entitle the owner thereof to vote or to any rights of a stockholder of ACI. Until surrendered and exchanged, each outstanding Old Certificate shall be deemed for

all corporate purposes, other than the payment of dividends or liquidating or other distributions, if any, to holders of record of ACI Common Stock, to represent the number of whole shares of ACI Common Stock into and for which the shares of HOLD Common Stock theretofore represented by such Old Certificate shall have been converted. No dividend or liquidating or other distribution, if any, payable to holders of record at or after the Effective Time of shares of ACI Common Stock, or payable subsequent to the Effective Time to holders of record at a time prior to the Effective Time of shares of HOLD Common Stock, shall be paid to the holders of outstanding Old Certificates; provided, however, that upon surrender and exchange of such outstanding Old Certificates there shall be paid (subject to the last sentence of this Section 1.10.3) to the record holders of the New Certificates issued in exchange therefor the amount, without interest thereon, of dividends and liquidating or other distributions, if any, which theretofore have become payable to holders of record on or after the Effective Time with respect to the number of whole shares of ACI Common Stock represented by such New Certificates. If outstanding Old Certificates are not surrendered and exchanged for New Certificates prior to two years after the Effective Time (or, in any particular case, prior to the date before the second anniversary of the Effective Time on which the whole shares of ACI Common Stock, the dividends and liquidating or other distributions, if any, and cash in lieu of fractional shares described below would otherwise escheat to or become the property of any governmental unit or any agency thereof), (i) the Merger Consideration into and for which the shares of HOLD Common Stock theretofore represented by such Old Certificates shall have been converted, (ii) the amount of dividends and liquidating or other distributions, if any, which theretofore have become payable to holders of record on or after the Effective Time with respect to such number of whole shares of ACI Common Stock, and (iii) the amount of dividends and liquidating or other distributions, if any, which subsequently become payable with respect to such number of whole shares of ACI Common Stock, shall become the property of ACI (and, to the extent not in its possession, shall be paid over to it), free and clear of all Liens and claims or interests of any other person previously entitled thereto.

1.10.4 *Transfer Taxes Payable by HOLD Stockholders.* If any New Certificate is to be issued in a name other than that in which the Old Certificate surrendered for exchange is issued, the Old Certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer and the person requesting such exchange shall pay to ACI or its transfer agent any transfer or other taxes required by reason of the issuance of the New Certificate in any name other than that of the registered holder of the Old Certificate surrendered, or establish to the satisfaction of ACI or its transfer agent that such tax has been paid or is not payable.

1.10.5 *HOLD Stock Transfers.* As of the Effective Time, no transfer of the shares of HOLD Common Stock outstanding prior to the Effective Time shall

be made on the stock transfer books of the Surviving Corporation. If, after the Effective Time, Old Certificates are presented to ACI or the Surviving Corporation, they shall be exchanged pursuant to Section 1.10.3.

1.10.6 Lost Certificates. In the event any Old Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Old Certificate to be lost, stolen or destroyed and, if required by the transfer agent for the ACI Common Stock, the posting by such person of a bond in such reasonable amount as the Surviving Corporation may direct as indemnity against any claim that may be made against it with respect to such Old Certificate, ACI will cause to be issued exchange for such lost, stolen or destroyed Old Certificate pursuant to Section 1.10.3 a New Certificate representing the shares of ACI Common Stock deliverable in respect thereof pursuant to Section 1.10.1.

SECTION 1.11 Capital Stock of ACI. All issued shares of ACI Common Stock, whether outstanding or held in the treasury of ACI, shall continue unchanged as shares of capital stock of ACI. All outstanding ACI warrants and ACI stock options shall continue unchanged as securities of ACI.

SECTION 1.12 Capital Stock of Merger Sub. All shares of capital stock of Merger Sub outstanding at the Effective Time shall be converted into and exchanged for 1,000 shares of common stock of the Surviving Corporation, except that shares of capital stock of Merger Sub held in Merger Sub's treasury shall be cancelled.

ARTICLE 2

EARN-OUT, ADJUSTMENTS AND ESCROW

SECTION 2.1 Total Merger Consideration. The total Merger Consideration to which the Stockholders shall be entitled pursuant to the Merger shall be an amount equal to the sum of:

(i) 1,766,000 shares (collectively, the "Avery Shares") of the ACI Common Stock, minus such number of the Escrow Shares (as defined below) as shall not be released from the Escrow Agreement (as defined below) pursuant to the provisions hereof and thereof; plus

(ii) \$5,030,000 cash, plus or minus (A) the amount, if any, by which the Net Assets (hereinafter defined) of HOLD on the Closing Date as reflected on the Closing Balance Sheet (as defined in Section 2.3 hereof) is greater or less than \$1,000,000, plus or minus (B) the amount, if any, by which HOLD's cash on the Closing Date as reflected on the Closing Balance Sheet is greater

or less than \$400,000 (such amount, as so calculated, being hereinafter referred to as the "Maximum Cash Consideration"). In calculating the Maximum Cash Consideration, however, the extent to which cash of more or less than \$400,000 causes Net Assets to be greater or less than \$1,000,000 shall be added or subtracted, as the case may be, only one time. By way of example, if Net Assets equal \$900,000 and cash equals \$300,000, the Maximum Cash Consideration shall be reduced by only \$100,000. "Net Assets" as of a given date shall mean the gross book value of all HOLD's assets on such date (exclusive of licenses, patents, patent applications, copyrights, trademarks, trade names, good will, experimental or organizational expense and other like intangibles, treasury stock and unamortized debt discount and expense, and exclusive of the MCI deposit described in Section 2.5), less the sum of (i) all reserves for depreciation, obsolescence, depletion and amortization of its properties, reserves for uncollectible accounts and all other proper reserves which in accordance with GAAP should be provided, plus (ii) all indebtedness and other liabilities of HOLD.

SECTION 2.2 *Adjustments and Escrow.*

2.2.1 *Escrow of Cash Consideration.* At the Effective Time, ACI shall pay to the Escrow Agent (the "Escrow Agent") under an Escrow Agreement (the "Escrow Agreement"), substantially in the form attached hereto as Exhibit A, the amount of \$1,000,000 of the Cash Consideration (the "Escrow Closing Payment"). The Escrow Closing Payment shall be deducted *pro rata* from the Cash Consideration allocable to each former holder of HOLD Common Stock pursuant to the Merger. If the Maximum Cash Consideration shall be greater than \$5,030,000, the Escrow Agent shall deliver the Escrow Closing Payment to the Stockholders, *pro rata*, and ACI shall pay to the Stockholders the amount, if any (the "Stockholder Adjustment Amount"), by which the Maximum Cash Consideration exceeds \$5,030,000 by delivery to the Stockholders of the Merger Consideration Adjustment Note, in each case, within seven days after the Adjustment Date (as defined in Section 2.3 hereof). If \$5,030,000 be greater than the Maximum Cash Consideration, the Escrow Agent shall pay such excess (the "ACI Adjustment Amount") to ACI within seven day after the Adjustment Date by delivery to ACI of a certified or bank cashier's check in the amount of the ACI Adjustment Amount, and shall pay the remainder of the Escrow Closing Payment, if any, to the Stockholders *pro rata*. In addition, if the ACI Adjustment Amount be greater than the Escrow Closing Payment, then the Stockholders, *pro rata*, shall pay the amount by which the ACI Adjustment Amount exceeds the Escrow Closing Payment to ACI within seven days after the Adjustment Date by delivery to ACI of certified or bank cashier's checks in the aggregate amount of such

excess. In the event that a settlement with LDDS/WorldCom of the disputed claim regarding customer accounts is not entered by HOLD prior to the Adjustment Date and the reserve for such settlement of \$685,235.36 reflected on the Unaudited Financial Statements appropriately adjusted, then, in the event such a settlement is reached involving a credit or cash proceeds after the Adjustment Date, the effect of such settlement shall be given effect following so far as practicable the procedures set forth herein, including, if necessary, modifying the original principal amount of the Merger Consideration Adjustment Note and recalculating the remaining payments due thereunder with respect to such new original principal amount as equal monthly installments from the date of such modification. No effect will be given to the settlement with LDDS/WorldCom in the determination of Pre-Tax Profits hereunder, and the effect of such settlement shall be totally disregarded in calculating the net income (loss) of HOLD for any Contract Period.

2.2.2 Escrow of Avery Shares. At the Effective Time, ACI shall deliver to the Escrow Agent under the Escrow Agreement 250,000 shares (the "Escrow Shares") of the Avery Shares. The Escrow Shares shall be deducted *pro rata* from the Share Consideration allocable to each former holder of HOLD Common Stock pursuant to the Merger. The Escrow Shares shall be held in escrow for a period of two years following the Closing Date (the "Escrow Period"). If, during the Escrow Period, HOLD is sold by ACI in a tax-free reorganization for common stock of the acquiring company, the 250,000 Escrow Shares will be released from the Escrow Agreement to the Stockholders *pro rata* at the closing of such transaction. If ACI does not sell HOLD during the Escrow Period, the 250,000 Escrow Shares will be released from the Escrow Agreement to the Stockholders *pro rata* at the end of the Escrow Period. In all other events, the Escrow Shares shall be delivered to ACI.

SECTION 2.3 Closing Financial Statements. Not later than 60 days after the Closing Date, the Stockholders shall, at their sole cost and expense, cause to be prepared the balance sheet of HOLD and a balance sheet of Billing at the Closing Date and the related statements of income, changes in financial position and cash flows, and notes, of HOLD and Billing for the period from the Balance Sheet Date until the Closing Date, in accordance with GAAP consistently applied by HOLD in accordance with past practice for the Financial Statements.

The Stockholders shall cause Haass, Lindow & Co., HOLD's independent accountants ("HOLD's Auditors"), to review such financial statements in accordance with the "review" provisions of Statement No. 1, entitled "Compilation and Review of Financial Statements" (December 1978) of the Accounting and Review Services Committee of the American Institute of Certified Public Accountants, and to issue, as soon as practicable but in any event not later than 60 days after the Closing Date, its report thereon to ACI and the Stockholders in accordance with the standards of such Statement. Such report shall also include a detailed schedule setting forth the calculation of Net Assets and the Maximum Cash Consideration and a statement to the

effect that the Maximum Cash Consideration was calculated in accordance with the provisions of this Agreement. In rendering the foregoing review and report, HOLD's Auditors shall consult with the accountants ("ACI's Auditors") designated by ACI, and permit ACI's Auditors at the earliest practicable date to review the report of HOLD's Auditors, including all work papers, schedules and calculations related thereto, prior to the issuance thereof. ACI's Auditors shall commence its review of said work papers, schedules and calculations as soon as practicable after HOLD's Auditors have completed the field work phase of their review.

Any dispute which may arise between ACI and the Stockholders as to such financial statements or the proper amount of the Maximum Cash Consideration shall be resolved in the following manner:

(i) ACI, if it disputes the financial statements or the amount of the Maximum Cash Consideration, shall notify the Stockholders in writing within 15 days after the issuance of the report of HOLD's Auditors pursuant hereto that ACI disputes the financial statements or the amount of the Maximum Cash Consideration; such notice shall specify in reasonable detail the nature of the dispute;

(ii) during the 15-day period following the date of such notice, ACI and the Stockholders shall attempt to resolve such dispute and to determine the appropriateness of the financial statements or the Maximum Cash Consideration; and

(iii) if at the end of the 15-day period specified in subsection (b) above, ACI and the Stockholders shall have failed to reach a written agreement with respect to such dispute, the matter shall be referred to a national firm of independent certified public accountants (the "Arbitrator") mutually agreeable to ACI and the Stockholders, which shall act as an arbitrator and shall issue its report as to the financial statements or the Maximum Cash Consideration within 60 days after such dispute is referred to the Arbitrator. In the event that ACI and the Stockholders cannot agree on such a national firm of independent certified public accountants, then the name of the "Big Six" national accounting firms, exclusive of any such firm which is rendering or has within the past three years rendered services to ACI or the Stockholders or their Affiliates, shall be selected by lottery until one such firm is willing to act as then Arbitrator for purposes of this Agreement. Each of the parties hereto shall bear all costs and expenses incurred by it in connection with such arbitration, except that the fees and expenses of the Arbitrator hereunder shall be borne equally by ACI, on the one hand, and the Stockholders, on the other hand,

which shall be paid in advance of performance of such services. This provision for arbitration shall be specifically enforceable by the parties and the decision of the Arbitrator in accordance with the provisions hereof shall be final and binding and there shall be no right of appeal therefrom.

References in this Agreement to the "Closing Balance Sheet" shall mean the balance sheet of HOLD at the Closing Date, prepared and reviewed as described in this Section 2.3. The "Adjustment Date" shall be the later of the 15th day after delivery of the report of HOLD's Auditors pursuant hereto, or the date upon which any dispute concerning the amount of the Maximum Cash Consideration is resolved.

SECTION 2.4 *Earn-Out Agreement.*

2.4.1 Additional Consideration. As additional consideration, ACI shall pay to the Stockholders *pro rata* an amount (the "Additional Consideration") based upon HOLD's Pre-Tax Profits (as hereinafter defined) set forth below (the "Annual Target") for each of the applicable periods (each, a "Contract Period") set forth below:

<u>YEAR ENDING DECEMBER 31,</u>	<u>HOLD'S PRE-TAX PROFITS ANNUAL TARGETS</u>
1996	\$2,400,000
1997	\$3,000,000
1998	\$3,600,000

2.4.2 Payment Amounts. The Additional Consideration shall be payable based upon the percentage of HOLD's Pre-Tax Profits actually earned by HOLD during each Contract Period. If HOLD's Pre-Tax Profits for any Contract Period shall be less than 70% of the Annual Target, no Additional Consideration shall be payable. If HOLD's Pre-Tax Profits shall be equal to 70% of the Annual Target, \$580,000 Additional Consideration shall be payable. The Additional Consideration payable shall be increased thereafter in the amount of \$14,000 for each additional one percent (1%) of the Annual Target over 70% of the Annual Target achieved by HOLD, up to a maximum of 150% of the Annual Target. By way of illustration, if the Annual Target be \$3,000,000, and HOLD's Pre-Tax Profits be \$2,550,000, or 85% of the Annual Target, the Additional Consideration payable shall be \$790,000 (85% - 70% = 15; 15 x \$14,000 = \$210,000; \$210,000 + \$580,000 = \$790,000). The maximum Additional Consideration payable for any Contract Period shall be \$1,700,000. In making these calculations, no rounding shall be used.

2.4.3 1996 Proration and Carryforwards. The Additional Consideration payment payable for 1996 hereunder shall be based upon that portion of HOLD's Pre-Tax Profits allocable to the period beginning on the Closing Date and ending on December 31, 1996 (the "Proration Period"). Accordingly, the \$2,400,000 for 1996 shall be multiplied by a fraction (the "Proration Factor"), the numerator of which shall be the actual number of days between the Closing Date and December 31, 1996 (beginning on the calendar day next following the Closing Date and including December 31), and the denominator of which shall be 366. The amount so calculated is hereinafter referred to as the "1996 Prorated Target." The Additional Consideration payment for 1996 shall be calculated by determining the amount, if any, of Additional Consideration payable for 1996 by dividing the HOLD's Pre-Tax Profits allocable to the Proration Period by the 1996 Prorated Target to determine the percentage of HOLD's Pre-Tax Profits achieved during the Proration Period. The Additional Consideration payment amount, if any, for such percentage, as determined in accordance with the provisions of Section 2.4.2 (the "Total 1996 Payment"), shall be multiplied by the Proration Factor. The amount so calculated (the "1996 Prorated Payment") shall be the Additional Consideration payment amount for 1996. The difference obtained by subtracting the 1996 Prorated Payment from the Total 1996 Payment shall be divided by two, and an Additional Consideration payment (the "Carryforward Amount") in such amount shall be carried forward to the Contract Periods for each of 1997 and 1998. At the end of each such Contract Period, the Carryforward Amount for that Contract Period shall be multiplied by a fraction, the numerator of which is HOLD's Pre-Tax Profits, if any, for that Contract Period and the denominator of which is the Annual Target for that Contract Period, and the amount so calculated or the Carryforward Amount, whichever is less, shall be paid to the Stockholders, *pro rata* as Additional Consideration for each such Contract Period.

2.4.4 "Pre-Tax Profits" Defined. "Pre-Tax Profit;" of HOLD for any Contract Period means the sum of (i) the net income (loss) of HOLD for such Contract Period, as determined in accordance with GAAP, plus, if not included therein in accordance with the consolidation principles of GAAP, (ii) an amount equal to the product obtained by multiplying (A) the net income (loss) of the limited partnership that is engaged in the business of performing billing services for long-distance carriers for such Contract Period, as determined in accordance with GAAP, by (B) HOLD's percentage ownership of such limited partnership, plus (iii) an amount equal to any expenses of ACI or its Subsidiaries (other than HOLD) allocated to HOLD as overhead or otherwise, plus (iv) a provision, determined as hereinafter provided, for all taxes in respect of income, excess profits or otherwise and additions to reserves therefor (including reserves for deferred income taxes), other than taxes or tax credits upon any gain or loss arising from the sale of capital assets. In the event HOLD has a loss for any Contract Period, then such loss shall be carried forward to the subsequent Contract Periods and be subtracted from HOLD's net income (loss) for such Contract

Periods until such time as HOLD's net income for the applicable Contract Period, less the sum of all losses incurred through the end of such Contract Period, shall be a positive number. In calculating Pre-Tax Profits, HOLD's and such limited partnership's net income (loss), respectively, for a Contract Period, as determined in accordance with GAAP, shall be reduced by a deemed tax calculation as if each of HOLD and such limited partnership were a separate taxpaying entity. For purposes of this calculation, all federal, state and local taxes in respect of income, excess profits or otherwise and additions to reserves therefor (including reserves for deferred income taxes) shall be determined based on HOLD's and such limited partnership's net income (loss), respectively, as determined in accordance with GAAP, for each Contract Period using an assumed rate of income tax based upon the net income (loss) of HOLD and such limited partnership, respectively, for such Contract Period equal to (a) the applicable federal rate of income tax for corporations, and (b) the applicable state or local rates of income tax for corporations net of federal benefit.

2.4.5 Disagreements Regarding Calculations. The following provisions shall cover disagreements regarding the calculations required by this Section:

(a) ACI shall, at the time of each payment of Additional Consideration hereunder, deliver to the Stockholders a schedule setting forth the computation of the Additional Consideration and a copy of the financial information used in making such computation. ACI's computation of any payment hereunder shall be conclusive and binding upon the parties hereto unless, within 30 Business Days following the Stockholders' receipt of the aforescribed payment and information, the Stockholders notify ACI in writing that they disagree with the ACI's computation of the Additional Consideration. Such notice by the Stockholders shall include a schedule setting forth the Stockholders' computation of the Additional Consideration, together with a copy of any financial information, other than that previously supplied by ACI to the Stockholders, used in making the Stockholders' computation.

The Stockholders' computation of the Additional Consideration under this Section shall be conclusive and binding upon the parties hereto unless, within 30 Business Days following ACI's receipt of the Stockholders' notice, ACI notifies the Stockholders in writing that it disagrees with the Stockholders' computation of the Additional Consideration. If ACI disagrees with the Stockholders' computation of the Additional Consideration, and ACI and the Stockholders cannot mutually agree as to the correct computation of the Additional Consideration, ACI and the Stockholders shall request a national firm of independent certified

public accountants mutually agreeable to ACI and the Stockholders to compute the amount of the Additional Consideration as promptly as practicable, which computation shall be conclusive and binding upon ACI and the Stockholders. In the event that ACI and the Stockholders cannot agree on such a national firm of independent certified public accountants, then the name of the "Big Six" national accounting firms, exclusive of any such firm which is rendering or has within the past three years rendered services to ACI or the Stockholders or their Affiliates, shall be selected by lottery until one such firm is willing to compute the disputed payment for purposes of this Agreement. The expenses of any computation by any such national accounting firm selected by ACI and the Stockholders to resolve computational disputes hereunder shall be borne equally by ACI, on the one hand, and the Stockholders as a group, on the other hand, and, except for the first Contract Period, shall be paid in advance of performance of such services.

(b) In the event the amount of Additional Consideration, if any, to be paid by ACI to the Stockholders hereunder for any Contract Period is recomputed in accordance with the provisions hereof, the adjustment to the amount of Additional Consideration shall be paid by ACI to the Stockholders *pro rata* within ten Business Days after the date of final recomputation of such payment.

2.4.6 Retirement Option. ACI shall have the option to retire and terminate the obligation of ACI to make payments of Additional Consideration as hereinafter set forth:

(a) At any time on and after the payment of the Additional Consideration in respect of the Contract Period ending December 31, 1996, ACI shall have the option of terminating the payment of future Additional Consideration by making a lump sum payment equal in amount to the Additional Consideration Value (as hereinafter defined) to the Stockholders *pro rata*. As used herein, "Additional Consideration Value" shall mean the amount, determined by a nationally recognized investment banking firm (the "Initial Banker"), to be mutually agreed upon by the Stockholders and ACI (or if the Stockholders and ACI are unable to agree, the New York office of Merrill Lynch & Co.), to be equal to the net present value of the Additional Consideration projected to become due with respect to periods commencing after the last Contract Period with respect of which Additional Consideration has been

paid, based upon projected HOLD's Pre-Tax Profits for such Contract Periods as determined by such investment banking firm in light of such investment banking firm's evaluation of HOLD's earnings and future prospects and such other matters that such investment banking firm shall deem relevant. In calculating the Additional Consideration Value hereunder, the minimum Additional Consideration payable for any Contract Period shall be \$580,000, and the maximum Additional Consideration payable for any Contract Period shall be \$1,700,000. In determining the net present value of such Additional Consideration payments, a discount rate equal to the "prime rate" in effect as of the last Business Day of the last completed Contract Period, as published in The Wall Street Journal, shall be utilized. The fees and expenses of the Initial Banker shall be borne by ACI.

(b) Upon ACI's receipt of the Initial Banker's determination of the Additional Consideration Value, it shall promptly notify the Stockholders of such determination and the assumptions and methodology utilized in arriving at such determination and provide the written opinion of the Initial Banker as to its determination. If within 30 Business Days of receipt of such determination, the Stockholders shall not object thereto, ACI shall be entitled to consummate the exercise of its option pursuant to the provisions hereof. If within such 30-day period the Stockholders shall object in writing to such determination, the Stockholders may appoint, at their sole cost and expense, a nationally recognized investment banking firm (the "Stockholders' Banker") to undertake separately the evaluation prescribed hereby. Not later than 60 days following their written notice to ACI of their objection to the Initial Banker's determination, the Stockholders shall provide ACI with the Stockholders' Banker's determination, including the assumptions and methodology utilized in arriving at such determination and provide the written opinion of the Stockholders' Banker as to its determination. If the Stockholders do not provide ACI with these materials within the 60-day period prescribed above, ACI shall be entitled to consummate the exercise of its option pursuant hereto.

(c) If within 30 days of the delivery of the determination of the Stockholders' Banker the Stockholders' Banker and the Initial Banker are unable to resolve their differing determinations and arrive at an agreed upon value, then a third nationally recognized investment banking firm, selected by the agreement of the Initial Banker and the Stockholders' Banker, shall undertake to make the determinations prescribed hereby. Such investment banker's

determination as to the Additional Consideration Value shall be delivered to ACI and the Stockholders along with the assumptions and methodology utilized in arriving at such determination as well as the written opinion of such investment banker as to its determination. At such time, the Additional Consideration Value shall be deemed to be the simple average of the two closest determinations by the three investment bankers, which determination shall be final and binding upon ACI and the Stockholders. The fees and expenses of such third investment banker shall be borne equally by ACI, on the one hand, and the Stockholders as a group, on the other hand, and shall be paid in advance of the performance of such service.

3.4.7 Subordination. If at any time when a payment of Additional Consideration is to be paid hereunder there shall then exist a default under any loan, credit or similar agreement to which ACI is a party for the borrowing of money or the extension of credit, or the payment of Additional Consideration hereunder will result in such a default under any such loan, credit or similar agreement for the borrowing of money or the extension of credit, whether upon the giving of notice or the lapse of time or both, from any lender to ACI or any of its Subsidiaries ("Lender"), or there shall exist any other default under any agreement governing secured indebtedness owed by ACI or any of its Subsidiaries to any Lender, then the payment of such Additional Consideration shall be deferred until such time as such default is either cured or waived, and shall be paid promptly to the Stockholders *pro rata* upon the cure or waiver of such default.

SECTION 2.5 MCI Deposit. At the Closing, ACI shall deliver to the Stockholders, *pro rata*, the ACI Preferred Shares. The number of shares of the ACI Preferred Shares to be issued shall be determined by dividing the cash of HOLD on deposit with MCI Telecommunications Corporation on the Closing Date by \$2.00 (disregarding any fractional share). Subject to the rights of any holders of shares of the ACI Preferred Stock issued in connection with the financing of the transactions contemplated by this Agreement, the ACI Preferred Shares shall have a preferential dividend of 10% per annum, shall have a liquidation preference of \$2.00 per share, and shall be convertible into ACI Common Stock on a one-for-one basis, subject to normal anti-dilution adjustments.

ARTICLE 3**REPRESENTATIONS AND WARRANTIES**

SECTION 3.1 *Representations and Warranties of Stockholders.* The Stockholders, jointly and severally, represent and warrant to ACI and Merger Sub that, except as set forth in the Disclosure Memorandum delivered to ACI and Merger Sub as provided in Section 4.1.10 hereof, each of which exceptions shall specifically identify the relevant subsection hereof to which it relates and shall be deemed to be representations and warranties as if made hereunder:

3.1.1 *Authorization.* HOLD and the Stockholders have the power and authority to execute and deliver this Agreement and each of the Collateral Agreements, to perform fully their respective obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by HOLD of this Agreement, and the consummation of the transactions contemplated hereby, have been, and on the Closing Date the execution and delivery by HOLD of each of the Collateral Agreements and the consummation of the transactions contemplated thereby will have been, duly authorized by all requisite corporate action of HOLD. HOLD and the Stockholders have duly executed and delivered this Agreement and on the Closing Date HOLD and the Stockholders will have duly executed and delivered each of the Collateral Agreements. This Agreement is, and on the Closing Date each of the Collateral Agreements will be, legal, valid and binding obligations of HOLD and the Stockholders, enforceable against them in accordance with their respective terms.

3.1.2 *Corporate Status.*

(a) HOLD is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, the jurisdiction of its incorporation, with full corporate power and authority to carry on its business and to own or lease and to operate its properties as and in the places where such business is conducted and such properties owned, leased or operated.

(b) HOLD is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other jurisdictions specified opposite its name in Schedule 3.1.2(b), which are the only jurisdictions in which the operation of its business or the character of the properties owned, leased or operated by it in connection with its business makes such qualification necessary.

(c) HOLD has delivered to ACI complete and correct copies of its articles of incorporation and bylaws or other organizational documents, in each case, as amended and in effect on the date hereof. HOLD is not in violation of any of the provisions of its articles of incorporation or bylaws or other organizational documents.

3.1.3 No Conflicts. The execution, delivery and performance by HOLD and the Stockholders of this Agreement and each of the Collateral Agreements, and the consummation of the transactions contemplated hereby and thereby, do not and will not conflict with or result in a violation of or a default under (with or without the giving of notice or the lapse of time or both) (i) any Applicable Law applicable to HOLD or any Affiliate thereof or any of the properties or assets of HOLD, (ii) the articles of incorporation or bylaws or other organizational documents of HOLD or (iii) except as set forth in Schedule 3.1.3, any Contract or other contract, agreement or other instrument to which HOLD or any Affiliate thereof is a party or by which HOLD or any of their properties or assets may be bound or affected. Except as specified in Schedule 3.1.3, no Governmental Approval or other Consent is required to be obtained or made by HOLD in connection with the execution and delivery of this Agreement and the Collateral Agreements or the consummation of the transactions contemplated hereby or thereby.

3.1.4 Capital Stock. The authorized capital stock of HOLD consists of 100,000 shares of common stock, par value \$1.00 per share, of which 64,000 shares are issued and outstanding and owned of record and beneficially by the Stockholders as set forth on Schedule 3.1.4. All of the issued and outstanding shares of HOLD Common Stock have been duly authorized and validly issued and are fully paid and nonassessable. No subscription, warrant, option, convertible security or other right (contingent or otherwise) to purchase or acquire any shares of capital stock of HOLD is authorized or outstanding, there is not any commitment of HOLD to issue any subscription, warrant, option, convertible security or other such right or to issue or distribute to holders of any shares of its capital stock any evidences of indebtedness or assets of HOLD, and HOLD has no obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any shares of its capital stock or any interest therein or to pay any dividend or make any other distribution in respect thereof. No person or entity is entitled to any preemptive or similar right with respect to the issuance of any capital stock of HOLD.

3.1.5 Financial Statements. HOLD has delivered to ACI (a) unaudited consolidated financial statements of HOLD as at and for the 12-month period ended December 31, 1995 (the "Unaudited Financial Statements"), and (b) unaudited consolidated financial statements of HOLD as at and for the

monthly periods ended January 31, February 29, and March 31, 1996 (the "Monthly Unaudited Financial Statements"), and related statements of income, cash flows and changes in financial position for the periods then ended (the Unaudited Financial Statements and the Monthly Unaudited Statements, and, from and after the date of delivery thereof, the Subsequent Monthly Financial Statements, being hereinafter referred to collectively as the "Financial Statements"). The Unaudited Financial Statements and the Monthly Unaudited Financial Statements are complete and correct in all material respects and have been prepared and, when delivered, the Subsequent Monthly Financial Statements will have been prepared, in accordance with GAAP, except that the Unaudited Financial Statements, the Monthly Unaudited Financial Statements and the Subsequent Monthly Financial Statements do not contain notes and may be subject to normal audit adjustments and, in the case of the Monthly Unaudited Financial Statements and the Subsequent Monthly Financial Statements, normal annual adjustments, which audit and annual adjustments, will not, individually or in the aggregate have or result in a Material Adverse Effect. The balance sheets included in the Financial Statements present fairly the financial condition of HOLD as at their respective dates. The statements of income and retained earnings and statements of cash flows included in the Financial Statements present fairly the results of operations and cash flows for the periods indicated. As used herein, the term "Balance Sheet Date" means December 31, 1995.

3.1.6 *Absence of Undisclosed Liabilities.* HOLD has no liabilities or obligations of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due, except (a) as set forth in Schedule 3.1.6, (b) as and to the extent disclosed or reserved against in the Balance Sheet (excluding the notes thereto) and (c) for liabilities and obligations that (i) were incurred after the date of the Balance Sheet in the ordinary course of business consistent with prior practice and (ii) individually and in the aggregate are not material and have not had or resulted in, and will not have or result in, a Material Adverse Effect. None of HOLD's employees is now or will by the passage of time become entitled to receive any vacation time, vacation pay or severance pay attributable to services rendered prior to such date except as disclosed on the Balance Sheet (excluding the notes thereto).

3.1.7 *Taxes.*

(a) HOLD has (or by the Closing will have) duly and timely filed all Tax Returns with respect to Covered Taxes required to be filed on or before the Closing Date ("Covered Returns"). Except for Covered Taxes set forth on Schedule 3.1.7(a), which are being contested in good faith and by appropriate proceedings, the following Covered Taxes have (or by the Closing Date will have) been duly and timely paid: (i) all Covered Taxes shown to be due

on the Covered Returns, (ii) all deficiencies and assessments of Covered Taxes of which notice has (or by the Closing Date will have) been received by HOLD that are or may become payable or chargeable as a lien upon the business of HOLD, and (iii) all other Covered Taxes due and payable on or before the Closing Date for which neither filing of Covered Returns nor notice of deficiency or assessment is required, of which HOLD or any Stockholder is or reasonably should be (or by the Closing Date will be or reasonably should be) aware that are or may become payable by HOLD. All Taxes required to be withheld by or on behalf of HOLD in connection with amounts paid or owing to any employee, independent contractor, creditor or other party ("Withholding Taxes") have been withheld, and such withheld Taxes have either been duly and timely paid to the proper Governmental Authorities or set aside in accounts for such purpose.

(b) Except as set forth on Schedule 3.1.7(b), no agreement or other document extending, or having the effect of extending, the period of assessment or collection of any Covered Taxes or Withholding Taxes, and no power of attorney with respect to any such Taxes, has been filed with the IRS or any other Governmental Authority.

(c) Except as set forth on Schedule 3.1.7(c), (i) there are no Covered Taxes or Withholding Taxes asserted in writing by any Governmental Authority to be due and (ii) no issue has been raised in writing by any Governmental Authority in the course of any audit with respect to Covered Taxes or Withholding Taxes. Except as set forth on Schedule 3.1.7(c), no Covered Taxes and no Withholding Taxes are currently under audit by any Governmental Authority. Except as set forth on Schedule 3.1.7(c), neither the IRS nor any other Governmental Authority is now asserting or, to the knowledge of any Stockholder, threatening to assert against HOLD any deficiency or claim for additional Covered Taxes or any adjustment of Covered Taxes that would, if paid by Merger Sub, have a Material Adverse Effect, and there is no reasonable basis for any such assertion of which any Stockholder is or reasonably should be aware.

(d) Except as set forth on Schedule 3.1.7(d), there is no litigation or administrative appeal pending or, to the knowledge of any Stockholder, threatened against or relating to HOLD in connection with Covered Taxes.

3.1.8 Absence of Changes. Except as set forth on Schedule 3.1.8, since the Balance Sheet Date, HOLD has conducted its business only in the ordinary course consistent with prior practice and has not:

- (a) suffered any Material Adverse Effect;
- (b) amended its articles of incorporation or bylaws or equivalent organizational documents;
- (c) issued or sold any shares of its capital stock or of any other equity security or of any security convertible into or exchangeable for its equity securities;
- (d) declared, set aside, or paid any dividend or other distribution in respect of its capital stock, or directly or indirectly redeemed, purchased or otherwise acquired any shares of its capital stock;
- (e) incurred any obligation or liability, absolute, accrued, contingent or otherwise, whether due or to become due, except current liabilities for trade or business obligations incurred in connection with the purchase of goods or services in the ordinary course of business consistent with prior practice, none of which liabilities, in any case or in the aggregate, could have a Material Adverse Effect;
- (f) discharged or satisfied any Lien other than those then required to be discharged or satisfied, or paid any obligation or liability, absolute, accrued, contingent or otherwise, whether due or to become due, other than current liabilities shown on the Balance Sheet and current liabilities incurred since the date thereof in the ordinary course of business consistent with prior practice;
- (g) mortgaged, pledged or subjected to any Lien, any property, business or assets, tangible or intangible, held in connection with its business;
- (h) sold, transferred, leased to others or otherwise disposed of any of its assets, except for inventory sold in the ordinary course of business consistent with prior practice, or cancelled or compromised any debt or claim, or waived or released any right of substantial value;

(i) made, entered into or assumed, or suffered any amendment or termination of, any agreement, contract, commitment, lease or Plan to which it is a party or by which it or any of its assets is bound, or received any notice of termination of any contract, lease or other agreement or suffered any damage, destruction or loss (whether or not covered by insurance);

(j) transferred or granted any rights under, or entered into any settlement regarding the breach or infringement of, any Intellectual Property, or modified any existing rights with respect thereto;

(k) made any change in the rate of compensation, commission, bonus or other direct or indirect remuneration payable, or paid or agreed or orally promised to pay, conditionally or otherwise, any bonus, incentive, retention or other compensation, retirement, welfare, fringe or severance benefit or vacation pay, to or in respect of any Stockholder, director, officer, employee, salesman, distributor or agent, or made any other changes to its personnel practices;

(l) encountered any labor union organizing activity, had any actual or threatened employee strikes, work stoppages, slowdowns or lockouts, or had any material change in its relations with its employees, agents, customers or suppliers;

(m) failed to replenish its inventories and supplies in a normal and customary manner consistent with its prior practice and prudent business practices prevailing in the industry, or made any purchase commitment in excess of the normal, ordinary and usual requirements of its business or at any price in excess of the then current market price or upon terms and conditions more onerous than those usual and customary in the industry;

(n) failed to maintain in full force and effect substantially the same level and types of insurance coverage as in effect on the Balance Sheet Date for destruction, damage to, or loss of any of its assets;

(o) suffered any material damage, destruction or loss, whether or not covered by insurance, affecting its business, as currently conducted or as proposed to be conducted, or to its assets;

(p) made any change in its selling, pricing or advertising practices;

(q) changed its accounting principles, methods or practices or investment practices, including such changes as were necessary to conform to GAAP, written up the value of any of its assets on its books and records, or increased, reduced, drawn down or reversed any of its reserves (other than in accordance with GAAP);

(r) made any capital expenditures or capital additions or improvements in excess of an aggregate of \$5,000;

(s) instituted, settled or agreed to settle any litigation, action or proceeding before any court or governmental body other than in the ordinary course of business consistent with past practices but not in any case involving amounts in excess of \$5,000;

(t) entered into any transaction, contract or commitment other than in the ordinary course of business consistent with prior practice, or paid or agreed to pay any legal, accounting, brokerage, finder's fee, Taxes or other expenses in connection with, or incurred any severance pay obligations by reason of, this Agreement or the transactions contemplated hereby; or

(u) taken any action or omitted to take any action that would result in the occurrence of any of the foregoing.

3.1.9 Litigation. Except as set forth on Schedule 3.1.9, there is no action, claim, demand, suit, proceeding, arbitration, grievance, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, regulatory or otherwise, in law or in equity, pending or threatened against or relating to HOLD or against or relating to the transactions contemplated by this Agreement, and no Stockholder knows or has reason to be aware of any basis for the same. Except as set forth on Schedule 3.1.9, no citations, fines or penalties have been asserted against HOLD under any Environmental Law or any foreign, federal, state or local law relating to occupational health or safety.

**3.1.10 Compliance with Laws; Governmental Approvals and Consents;
Governmental Contracts.**

(a) Except as disclosed on Schedule 3.1.10(a), to the knowledge of the Stockholders, HOLD has complied in all material respects with all Applicable Laws the violation of which has not had or resulted in, and will not have or result in, a Material Adverse Effect, either before or after Closing, and HOLD has not received any notice alleging any such conflict, violation, breach or default.

(b) Schedule 3.1.10(b) sets forth all Governmental Approvals and other Consents necessary for, or otherwise material to, the conduct of its business or the ownership and use of its assets, including all licenses, permits or similar authorizations required or necessary for the reselling of long distance services. Except as set forth on Schedule 3.1.10(b), all such Governmental Approvals and Consents have been duly obtained and are in full force and effect, and HOLD is in compliance with each of such Governmental Approvals and Consents held by it. HOLD owns, holds, possesses or lawfully uses in the operation of its business all the Governmental Approvals set forth on Schedule 3.1.10(b), free and clear of all Liens and in compliance with all Applicable Laws. HOLD is not in default, nor has it received any notice of any claim of default, with respect to any such Governmental Approvals. All such Governmental Approvals are renewable by their terms or in the ordinary course of business without the need to comply with any special qualification procedures or to pay any amounts other than routine filing fees. None of such Governmental Approvals will be adversely affected by consummation of the transactions contemplated hereby. No Stockholder, director, officer, employee or former employee of HOLD or any Affiliates of HOLD, or any other Person owns or has any proprietary, financial or other interest (direct or indirect) in any Governmental Approvals which HOLD owns, possesses or uses in the operation of its business as now or previously conducted.

(c) Schedule 3.1.10(c) sets forth all Contracts with any Governmental Authority.

(d) To the knowledge of the Stockholders, there are no proposed laws, rules, regulations, ordinances, orders, judgments, decrees, governmental takings, condemnations or other proceedings

State of Florida

Commissioners:
SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA



DIVISION OF RECORDS &
REPORTING
BLANCA S. BAYÓ
DIRECTOR
(904) 413-6770

Public Service Commission

June 4, 1996

Ms. Julia A. Waysdorf
Swidler & Berlin
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116

Docket No. 960685-TI

Dear Ms. Waysdorf:

This will acknowledge receipt of an application for approval of authority for AVERY COMMUNICATIONS, INC. to acquire control of HOME OWNERS LONG DISTANCE, INCORPORATED, which was filed in this office on May 31, 1996 and assigned the above-referenced docket number. Appropriate staff members will be advised.

A tentative schedule of events in your docket (referred to as a Case Assignment and Scheduling Record or CASR) should be available, upon request, ten (10) working days after establishment of the docket. You may contact the Records Section at (904) 413-6770 or by fax at (904) 413-7118 to request that a copy of the case schedule be faxed or mailed to you. The schedule of events provides you with an opportunity to anticipate completion stages of work in the docket. These dates are subject to change; therefore, you may wish to call the Records Section periodically to obtain revised schedules for your docket. For firm dates of hearings or other activities, please look to the Commission's official notices and orders. You can also obtain information on your docket by accessing the PSC HomePage on the Internet, at <http://www.state.fl.us/psc/>.

Sincerely,

A handwritten signature in cursive script that reads "Linda C. Williams".

Linda C. Williams
Commission Deputy Clerk Supervisor