

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 19th  
day of July, 1996.

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

CASE NO. TM-96-418

ORDER APPROVING MERGER

On June 5, 1996, Home Owners Long Distance, Incorporated (HOLD) and Avery Communications, Inc. (Avery) filed an application pursuant to Section 392.300, RSMo 1994, seeking authorization of the Missouri Public Service Commission (Commission) for the Merger of HOLD with and into Avery Acquisition Sub, Inc. (Avery Sub), with HOLD as the surviving entity. Avery Sub is a wholly-owned subsidiary of Avery created specifically for the purpose of consummating the merger transaction. Following consummation of the merger, HOLD will become a wholly-owned subsidiary of Avery. Applicants have asked for expedited treatment of this application to permit consummation of the transaction no later than August 1, 1996.

HOLD is a privately-held Texas corporation with its principal office located at 8000 Vantage, Suite 2001, San Antonio, Texas 78269. HOLD was certificated by the Commission to provide interstate interexchange telecommunications services on September 3, 1993, in Case No. TA-93-267. Avery is a publicly-traded Delaware corporation with its principal office located at 801 Greenview Drive, Grand Prairie, Texas 75050. Avery is a holding company which through its subsidiaries provides domestic resold,

interstate and intrastate long distance services, international and cross border (Mexican) communications, and telecommunications equipment installation in the southern United States.

HOLD and Avery state in their application that the purpose of the merger between HOLD and Avery Sub is to allow HOLD and Avery the opportunity to strengthen their competitive positions with greater financial resources, and allow them to pursue their marketing and business plans more effectively. HOLD and Avery maintain that the proposed merger will benefit the public interest by enhancing the flexibility, efficiency, and financial viability of HOLD and Avery, and thus will promote competition among interexchange telecommunications carriers.

In support of their application, Applicants explain that the stockholders of HOLD will tender all of the issued and outstanding shares of HOLD in exchange for cash and common stock in Avery, as part of the merger between HOLD and Avery Sub. Applicants indicate that the president of HOLD will be appointed to the Board of Directors of Avery, and the president and vice president of HOLD will continue to manage HOLD following the merger. In addition, Applicants state that HOLD will continue operating under its name and will remain the holder of the certificate of service authority. Applicants add that HOLD will continue to provide high quality, affordable resold telecommunications services to the public, and that the merger will not disrupt service or cause any inconvenience or confusion to the customers of HOLD, since the transaction will be virtually transparent to HOLD customers in terms of the services they receive.

Financial information for HOLD and Avery is attached to the application in, respectively, Exhibits A and B. Also attached to the application is a copy of the Agreement and Plan of Merger dated May 3, 1996. In addition, Applicants also filed copies of the Resolutions of the

Boards of Directors of HOLD and Avery. Applicants state in a pleading filed July 16, 1996, that there should be no impact on the tax revenues of the various political subdivisions of Missouri.

The Staff of the Missouri Public Service Commission (Staff) filed a memorandum containing its recommendations on July 16, 1996. Staff explains that after the merger, Avery Sub would cease to exist as a separate entity, and HOLD would become a wholly-owned subsidiary of Avery. Staff notes that customers of HOLD would continue to receive the same services and rates as they are currently receiving from HOLD, since HOLD will continue to operate under its name and retain its certificate of service authority. In addition, Staff states that Applicants propose no changes to HOLD's Missouri P.S.C. Tariff No. 1. Staff also notes that the Consumer Services Department of the Commission has received 13 complaints against HOLD from Missouri customers between the period of November 22, 1993 to November 8, 1995, all of which dealt with switching primary exchange services (PIC). Staff states that it has reviewed the application and believes the proposed transaction is not detrimental to the public interest, and recommends approval of the merger. Staff adds that it is unaware of any other filing which would affect or which would be affected by this proposal.

Upon review of the verified application and attachments thereto, and Staff's recommendation, the Commission finds that the proposed transaction is unlikely to cause inconvenience and confusion to HOLD's customers, and HOLD's customers will continue to receive the same rates and services from the existing HOLD tariff. The Commission further finds that as a result of the merger, HOLD will have access to the expertise of its new parent company, Avery, and Avery will be able to enter the Missouri telecommunications market via its new subsidiary, HOLD, while both HOLD and

Avery will have an opportunity to realize significant economic and marketing efficiencies. The Commission is concerned about the complaints against HOLD, but is of the opinion that any complaints can be dealt with separately and need not form an impediment to approval of the merger. However, the Commission cautions HOLD to ensure that safeguards are in place so that Missouri customers are not switched without authorization. The Commission finds that the proposed merger is not detrimental to the public interest, and therefore the application of HOLD and Avery should be approved.

**IT IS THEREFORE ORDERED:**

1. That the merger of Avery Acquisition Sub, Inc. with and into Home Owners Long Distance Incorporated, with Home Owners Long Distance Incorporated as the surviving entity, is hereby approved, in accordance with the Agreement and Plan of Merger dated May 3, 1996, attached as Exhibit C to the parties' application.

2. That Avery Communications, Inc., Avery Acquisition Sub, Inc., and Home Owners Long Distance, Incorporated are authorized hereby to enter into, execute, and perform in accordance with all other documents reasonably necessary to effectuate the merger transaction contemplated by the application and this order.

3. That Avery Communications, Inc., Avery Acquisition Sub, Inc., and Home Owners Long Distance, Incorporated are hereby authorized to take any and all other actions necessary to effectuate the merger contemplated by the joint application and this order.

4. That Home Owners Long Distance, Incorporated shall file a pleading with the Missouri Public Service Commission notifying the Commission of the closing date of the merger within ten (10) days after the completion of the transaction.

5. That this order shall become effective on July 30, 1996.

BY THE COMMISSION

A handwritten signature in cursive script, reading "David L. Rauch".

David L. Rauch  
Executive Secretary

(S E A L)

Zobrist, Chm., McClure, Kincheloe,  
and Drainer, CC., Concur.  
Crumpton, C., Dissents.

ALJ: Bensavage.