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**UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK**

In re:

Avaya Inc., *et al.*,<sup>1</sup>  
Debtors.

Chapter 11

Case No. 17-10089 (SMB)

(Jointly Administered)

**Motion to Establish an Official Committee of Avaya Salaried Retirees and Appoint  
Counsel**

- 1 The Debtors in these chapter 11 cases include, along with the last four digits of each Debtor's federal tax identification number, include: Avaya Inc. (3430); Avaya CALA Inc. (9365); Avaya EMEA Ltd. (9361); Avaya Federal Solutions, Inc. (4392); Avaya Holdings Corp. (9726); Avaya Holdings LLC (6959); Avaya Holdings Two, LLC (3240); Avaya Integrated Cabinet Solutions Inc. (9449); Avaya Management Services Inc. (9358); Avaya Services Inc. (9687); Avaya World Services Inc. (9364); Octel Communications LLC (5700); Sierra Asia Pacific Inc. (9362); Sierra Communication International LLC (9828); Technology Corporation of America, Inc. (9022); Ubiquity Software Corporation (6232); VPNet Technologies, Inc. (1193); and Zang, Inc. (7229). The location of Debtor Avaya Inc.'s corporate headquarters and the Debtors' service address is: 4655 Great America Parkway, Santa Clara, CA 95054.

**Motion to Establish an Official Committee of Avaya Salaried Retirees and Appoint  
Counsel**

**WHEREAS** the 830 Salaried Retirees of Avaya have general unsecured claims of over \$80 million against Avaya and that \$80 million is over 25% of all general unsecured claims, and

**WHEREAS** the interests of the 830 Salaried Retirees of Avaya are aligned with respect to the evaluating the methods and factors used in used by Avaya in calculating the present value of the Avaya Supplemental Pension Plan, and

**WHEREAS** the interests of the 830 Salaried Retirees of Avaya are also aligned on OPEB issues, and

**WHEREAS** in Docket 1282 *Objection to Notice of Proposed Supplemental Order Regarding Assigned Mediation*, I requested that the Court appoint one or more Avaya Retirees, or representatives thereof, to the Mediation process, on the basis that subsequent filings (including Docket 1208) were likely to raise a conflict of interest within the “Official Committee of Unsecured Creditors”, and

**WHEREAS** the Court ruled in Docket 1282 that the interests of the Avaya Salaried Retirees would be adequately represented by the “Official Committee of Unsecured Creditors” in the mediation process, and

**WHEREAS** subsequent to the hearing on 5 October 2017 I have filed Docket 1358 the *Motion to Compel Avaya to Disclose Methodology and Factors Used in Calculating its Value for the Supplemental Pensions of Avaya Retirees* and Docket 1438 which amends that motion, and

**WHEREAS** the “Official Committee of Unsecured Creditors” issued Docket 1442 *Response of the Official Committee of Unsecured Creditors to Motion to Compel Avaya to Disclose Methodology and Factors Used in Calculating its Value for the Supplemental Pensions of Avaya Retirees*, and in their response, they take issue with my objections to the methodology in Avaya’s supplemental disclosure, and

**WHEREAS** the “Official Committee of Unsecured Creditors” does not recognize the commonality of pension valuation and other post-employment issues across the entire sub-class of Avaya Salaried employees, suggesting that my issue (and by implication the issues of all Avaya Salaried Retirees) be adjudicated on a case by case basis “if and when the Debtors or any other party in interest objects to his proof of claim”, and

**WHEREAS** the “Official Committee of Unsecured Creditors” opines that “the Committee’s professionals concluded that the methodology used by the Debtors to calculate the ASPP claims appears to be reasonable, appropriate, and consistent with applicable law.” At no time do they suggest that the methodology is Fair and Equitable to the Avaya Salaried Retirees, and

**WHEREAS** the “Official Committee of Unsecured Creditors”, in their response, acknowledge that taking a role to assist individual creditors (and by implication the sub-class of Avaya

Salaried Retirees as a group) in prosecuting their claims against the Debtors estate “would present an inherent conflict of interest”.

**THEREFORE**, in recognition of that inherent conflict of interest, I request the Court designate an “Official Committee of Avaya Salaried Retirees” as a separate subclass of Unsecured Creditors and that separate counsel be appointed for the purpose of establishing whether Avaya’s valuation methodology Fairly and Equitably treats the sub-class of Avaya Salaried retirees. Furthermore, the proposed counsel shall be permitted to make motions and file plan objections such as those I previously filed in Docket 1208.

### **DISCUSSION**

I recognize and appreciate the Courts reluctance to establish an “Official Committee of Avaya Salaried Retirees”. The cost is significant and it is late in the process. However, as a group the Avaya Salaried Retirees have been significantly under represented. If I had not appeared in Court on 5 October 2017 for Docket 1282, Avaya would not have disclosed their methodology. Certainly the “Official Committee of Unsecured Creditors” was not pushing for it.

There are other issues as well. The PBGC has estimated that about 70 retirees will exceed the maximum under law. Has Avaya notified those retirees so they can establish claims? Has the “Official Committee”?

Avaya states in its plan that it intends to continue OPEB. However, the disclosure also says, “Pursuant to the Plan, OPEB will continue in accordance with, and subject to, their terms and applicable non-bankruptcy law or be modified or terminated in accordance with applicable non-bankruptcy law.” If Avaya emerges from bankruptcy and immediately terminates or modifies OPEB using other non-bankruptcy law, that would seem to skirt the spirit, if not the letter, of Chapter 11 bankruptcy. Did the “Official Committee of Unsecured Creditors” represent the Avaya Retirees well in mediation if they did not insist on a moratorium of such changes for some period of time? If Avaya could not commit to a 5-year moratorium, for example, Avaya Salary Retirees would be better off if OPEB were terminated in bankruptcy. At least we would get a partial recovery. Of course, once again, that would be a conflict of interest with the other parties the “Official Committee” represents. I will be raising this issue on my behalf, as well as on behalf of the other Avaya Retirees, when I revise my Plan Objection.

Also outstanding is my Plan Objection (Docket 1208), which I intend to modify before the filing date. I will be pressing for fair and equitable treatment based on economic impact to the creditors, rather than cash cost to Avaya. Once again, the “Official Committee of Unsecured Creditors” will have to confront the conflict of interest issue.

The Court has received a large number of ex-parte letters from Avaya Retirees. We are frustrated and we want to be heard. I am doing the best I can, both for me and my fellow retirees. I have heard from retirees who have had to sell their homes because of the loss of their supplemental pension. Others have had to go back to work. Forming an ad hoc group and hiring our own counsel is not a viable option. I am not a lawyer, accountant, actuary or statistician. It certainly would be nice if someone more qualified could stand up and speak for us.

### Conclusion

I appreciate the Court's patience in this matter. I urge you to consider the arguments presented above. If the Court cannot find a way to support a full-fledged "Official Committee of Avaya Salaried Retirees", perhaps there would be an alternative that the Court could suggest that would either restrict the scope of such a committee or limit its funding so that the timing of the current proceeding would not be significantly impacted.

Dated 3 November 2017  
Bethlehem, Pennsylvania

Respectfully submitted,



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