

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

AVAYA INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-90088 (DRJ)
)
) (Jointly Administered)

**DECLARATION OF ROOPESH SHAH
IN SUPPORT OF THE DEBTORS' EMERGENCY MOTION FOR ENTRY
OF INTERIM AND FINAL ORDERS (I) AUTHORIZING
THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING
AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND
SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING
ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES,
(IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING RELATED
RELIEF**

I, Roopesh Shah, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that:

1. I am a Senior Managing Director of Evercore Group L.L.C. ("Evercore"), an investment banking firm which has its principal office at 55 East 52nd Street New York, NY 10055. Evercore has expertise in domestic and cross-border restructurings, mergers and acquisitions, raising debt and equity capital, and other financial advisory services. Evercore has served as a financial advisor to debtors and creditors in a variety of industries. Evercore and its senior professionals have extensive experience with respect to the reorganization and restructuring of distressed companies, both out-of-court and in chapter 11 proceedings. Evercore is the proposed investment banker for the above-captioned debtors and debtors in possession (collectively, the "Debtors").

¹ A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <http://www.kccllc.net/avaya>. The location of Debtor Avaya Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.



2. I submit this declaration (the “Declaration”) on behalf of Evercore in support of the relief requested in the *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (VI) Granting Related Relief* (the “Motion”).²

3. Except as otherwise indicated, all statements in this Declaration are based on (a) my personal knowledge of the Debtors’ operations and finances, (b) my review of relevant documents, (c) information provided to me by Evercore employees working under my supervision, (d) information provided to me by, or discussions with, the members of the Debtors’ management team or their other advisors, and (e) my opinion based upon my experience as a restructuring professional. If called to testify, I could and would testify to each of the facts set forth herein on foregoing bases.

4. I am not being specifically compensated for this testimony other than through payments received by Evercore as a professional retained by the Debtors.

Professional Background and Qualifications

5. I am a Senior Managing Director at Evercore. I have approximately 26 years of financial advisory experience, of which 23 years have involved advising debtors, creditors, and equity holders on a wide variety of recapitalization and restructuring transactions. My experience includes procuring, structuring, and negotiating debtor-in-possession financing facilities across a broad range of industries, including energy, retail, entertainment, and technology. I have been involved in numerous restructurings, including those of Arcapita, Claire’s Stores, Catalina

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

Marketing, Edcon, Frontier Communications, Incora, LATAM Airlines, McDermott, New MACH Gen, Sea Island, Serta Simmons Bedding, Talen, Toys “R” Us, Tronox, Vanguard Natural Resources, Wastequip, Windstream Communications, and The Yellowstone Club. Prior to joining Evercore in May 2017, I held various positions, including as the Global Head of Goldman Sachs’ Restructuring Finance and Advisory Group, where I served in various positions for 11 years. Prior to that, I was a Director in the Restructuring Group of Miller Buckfire & Co. and a Vice President in the Mergers & Acquisitions Group of Wasserstein Perella & Co. I received a B.S. in Economics from the Wharton School of the University of Pennsylvania, with concentrations in finance, marketing, and information technology. I am principally responsible for overseeing the day-to-day activities of the Evercore deal team in this engagement.

Advisor Retention

6. In August 2022, the Debtors engaged Evercore to act as their investment banker to assist with the Debtors’ evaluation of strategic and capital structure alternatives. Since then, Evercore has worked closely with the Debtors’ management, board of directors, creditors, and other professionals and advisors to analyze the Debtors’ business affairs, assets and liabilities, capital structure, financial position, and contractual arrangements, and to explore various proposed strategic transactions and otherwise assist in the Debtors’ restructuring efforts. As a result of our extensive experience with the Debtors, I, and the Evercore team, have become familiar with the Debtors’ capital structure, liquidity needs, and business operations.

7. Evercore and the Debtors’ other advisors met regularly and evaluated a number of strategic and capital structure alternatives, including potential financings, amendments, waivers, forbearances and liability management transactions, in connection with potential out-of-court and in-court restructuring options. Evercore, along with the Debtors’ other advisors, played an active role in (a) performing various financial analyses of the Debtors, (b) soliciting and analyzing

multiple transaction proposals from key stakeholders across the Debtors' capital structure, (c) meeting with the Debtors' existing creditor groups and their respective advisors in order to negotiate potential restructuring solutions, (d) preparing for the commencement of these Chapter 11 Cases, and (e) assisting the Debtors with soliciting, negotiating and documenting postpetition financing (the "DIP Financing"). Accordingly, Evercore has worked closely with the Debtors' management and other professionals retained by the Debtors with respect to this restructuring and has become well-acquainted with the Debtors' business operations, capital structure, forecasted liquidity profile and resulting need for DIP Financing.

The Debtors' Immediate Liquidity Needs

8. The Debtors have an immediate and critical need to obtain the DIP Financing and the authority to use Cash Collateral throughout the chapter 11 process to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers, and customers, to make payroll, to satisfy other working capital and operational needs, to repay the outstanding obligations and cash collateralize certain letters of credit under the Debtors' Prepetition ABL Facility, to effectuate a value-maximizing operational restructuring commenced prepetition, and to fund the administration of these Chapter 11 Cases.³

9. As described in the First Day Declaration, beginning in early fiscal 2022, Avaya's revenue began to decrease. The decrease was driven by the continued decline in the capex business and the delayed revenue generation from the cloud investments, which was compounded in the second half of fiscal 2022 by a deceleration in the growth of the Company's subscription revenue.

³ See Declaration of Eric Koza, Chief Restructuring Officer of Avaya Holdings Corp. and Certain of its Affiliates and Subsidiaries, in Support of the Debtors' Chapter 11 Petitions and First Day Motions (the "First Day Declaration").

These challenges, coupled with customers' related concerns regarding Avaya's financial health, have had a detrimental impact on Avaya's revenue and cash flow. In light of these challenges, the Debtors' management and advisors assessed the need for contingency planning and engaged in efforts to prepare the Debtors to commence these Chapter 11 Cases. A key part of these efforts was determining the Debtors' liquidity profile and need for financing to enable the Debtors to fund these Chapter 11 Cases and their global operations.

10. Accordingly, the Debtors require continued access to Cash Collateral and incremental liquidity from the DIP Term Loan Facility to continue operations in the ordinary course, fund these Chapter 11 Cases, and successfully restructure their capital structure with a clear and committed path to emerge from these Chapter 11 Cases in an expeditious manner. In light of the Debtors' liquidity position, Evercore assisted the Debtors in evaluating potential financing alternatives. Among other things, Evercore has worked closely with the Debtors, their management, and their other advisors to evaluate the Debtors' cash requirements necessary to continue to operate their business as a going concern. Based on this work, the Debtors determined, in consultation with Evercore and their other advisors, that procuring sufficient financing at the start of these Chapter 11 Cases is essential for the Debtors to obtain liquidity critical to maintaining operations, funding the cost of these Chapter 11 Cases, and providing an avenue to exit these Chapter 11 Cases expeditiously with the ability to roll the DIP Term Loan Facility into exit financing.

11. Evercore reviewed the Debtors' liquidity needs, including the 13-week cash flow forecast prepared by AlixPartners LLP ("AlixPartners"), which takes into account anticipated cash receipts and disbursements during the 13-week projection period and considers a number of factors, including required costs to maintain operations, fees and interest expense associated with

the DIP Term Loan Facility, professional fees, and required operational payments. The Debtors and their advisors continued to update the budget leading up to the Petition Date to account for changes in the Debtors' funding needs resulting from, among other things, the estimated timing of the commencement of these Chapter 11 Cases. Based upon these forecasts and discussions with the Debtors' management and other advisors, I do not believe it would be possible to administer the Debtors' estates, operate the Debtors' business in the ordinary course, and pay administrative costs during these Chapter 11 Cases solely through the use of Cash Collateral given the Debtors' required liquidity and forecasted expenses.

12. Without access to the DIP Term Loan Facility, the Debtors will have limited cash on hand, and based on the Debtors' liquidity forecast, would not be able to generate sufficient levels of operating cash to cover their working capital needs and the costs of these Chapter 11 Cases. As a result, I believe that the DIP Term Loan Facility is critical to the Debtors' ability to administer these Chapter 11 Cases, and that the DIP Term Loan Facility (together with commitments for the DIP ABL Facility) would provide the Debtors with sufficient liquidity to continue operations in the ordinary course and pursue the restructuring contemplated by the Debtors' prepackaged plan of reorganization (the "Plan") and restructuring support agreement (the "RSA"). I believe that the DIP Term Loan Facility, which is part, and an essential component, of the restructuring contemplated by the Debtors' Plan and RSA, including the repayment of the Prepetition ABL Facility, is in the best interest of the Debtors' estates.

The Debtors' Efforts to Secure DIP Financing

13. In August 2022, the Debtors, with the assistance of Evercore and their other advisors, began discussing potential comprehensive restructuring proposals with various stakeholders across the Debtors' capital structure. These efforts included engaging with the

Debtors' existing lenders about the broader restructuring, including with Holders of Prepetition ABL Claims, the PW Ad Hoc Group, and the Akin Ad Hoc Group (together with the PW Ad Hoc Group, the "Ad Hoc Groups"). Following months of extensive discussions with these stakeholders, in mid-December, the Company and its advisors shifted their focus to an in-court restructuring when it became clear an out-of-court solution no longer had requisite lender support and could not achieve the holistic deleveraging necessary to best effectuate the Debtors' long-term business plan. To that end, an overwhelming majority of the Debtors' capital structure is supportive of the value-maximizing deleveraging transaction contemplated by the negotiated RSA and Plan.

14. Having shifted the focus to an in-court, holistic restructuring process, Evercore began the process of soliciting debtor-in-possession financing proposals. In addition to engaging with the Debtors' existing lenders, Evercore explored financing from potential third parties. Starting in December 2022, Evercore solicited interest from twenty-one third-party sources of financing outside of the Debtors' capital structure (while continuing to share informational updates and engage with lenders across the capital structure) to determine the extent to which any such parties would be willing to provide postpetition financing to the Debtors in the form of a term loan and/or an asset-based revolving loan.

15. The potential third-party lenders contacted by the Debtors included various institutions that routinely provide DIP Financing, including both well-known commercial banks and specialty lenders. Of these potential third-party lenders, nine executed confidentiality agreements with the Company and received access to non-public information. The Company consequently received three asset-based revolving loan proposals from potential third-party lenders and no term loan financing proposals, other than the DIP Term Loan Facility (and

commitments for the DIP ABL Facility) that the Debtors have secured from existing lenders. After rigorously evaluating each of the proposals, the Company eventually determined that the facilities for which the Debtors are seeking approval were the best available; all other proposals were either not actionable or inferior.

16. The feedback from third parties that Evercore contacted with respect to the DIP term loan marketing process was conclusive: no third party provided a term sheet or any indication of interest, whether on a priming or non-priming basis. Nor did any party within the Debtors' capital structure, aside from the DIP Term Loan Lenders, make a DIP term loan proposal.

17. Evercore solicited an asset-based revolving loan proposal via Citibank N.A. ("Citibank"), the administrative and collateral agent under the Prepetition ABL Facility, from all current ABL syndicate banks, and three additional banks outside of the bank syndicate. In addition, Evercore solicited a new money term loan proposal from members of the Ad Hoc Groups. Over the course of multiple weeks, the Debtors, with the assistance of Evercore and their other advisors, engaged in various conversations and extensive negotiations to achieve the best possible terms for the DIP Financing. Over the course of these negotiations, it became clear that the DIP Term Loan Facility, together with commitments for the DIP ABL Facility, would best serve the liquidity needs of the Debtors. Together, the DIP Term Loan Facility and commitments for the DIP ABL Facility were an important part of holistic negotiations that facilitated the RSA and Plan, allowed the Debtors to secure a term loan where none was available from the market, allowed the Debtors to secure commitments for the most favorable asset-backed loan available, and provided for both the term loan and asset-backed loan to continue as exit facilities post-emergence.

18. Following arm's-length and good faith negotiations with the Ad Hoc Groups and Citibank (on behalf of the bank syndicate), the Debtors were able to secure \$500 million super-

priority senior secured debtor-in-possession facility in the form of term loans, (the “DIP Term Loan Facility”) (in which existing lenders have agreed to prime themselves), that converts into an Exit Term Facility upon emergence, to be used for general corporate purposes, cash collateralizing certain prepetition letters of credit, funding of the administration of these Chapter 11 Cases, and satisfying critical incremental liquidity needs of both the Debtors and their foreign non-Debtor affiliates (“NFAs”). Additionally, the Debtors have secured commitments for an asset-backed loan facility of approximately \$128 million with a \$100 million letter of credit sub-facility (the “DIP ABL Facility”), that also converts into an Exit ABL Facility. The Debtors intend to return to the Bankruptcy Court in the very near term to seek approval for the DIP ABL Facility, and upon entry of the Interim Order, are seeking limited relief to enter into certain commitment and fee letters to “lock in” the DIP ABL Facility while the Debtors, the DIP ABL Agent, and the Consenting Stakeholders finalize the terms and documentation of such facility (such commitment letter being the “DIP-to-Exit ABL Commitment Letter” and such fee letters being collectively, the “DIP-to-Exit ABL Fee Letters,” together with the DIP-to-Exit ABL Commitment Letter, the “DIP-to-Exit ABL Commitment Papers”).

19. These negotiations also successfully resulted in the RSA, which reflects support from approximately ninety percent of First Lien Claims. The DIP Term Loan Facility, and, ultimately, the DIP ABL Facility (collectively, the “DIP Facilities”) are a critical component of the RSA and ensure that the Debtors have sufficient capital to responsibly operate their businesses during these Chapter 11 Cases and emerge with the certainty of being well-capitalized.

20. I believe that the proposed DIP Term Loan Facility (together with the commitment for the DIP ABL Facility) is the Debtors’ best source of postpetition funding, and that no better alternative was attainable. As noted above, the Debtors received no third-party new money term

loan proposals, and the third-party proposals to fund an asset-based revolving facility either were not actionable or were otherwise inferior with respect to their economic and structural terms. Accordingly, I believe that the proposed DIP Term Loan Facility, in tandem with the RSA and the commitment for the DIP ABL Facility, provides the Debtors with a path towards emergence that will maximize value for all stakeholders.

The DIP Term Loan Facility Should be Approved

21. As noted above, the Debtors and the Ad Hoc Groups engaged in arm's-length negotiations regarding the Plan, RSA, and exit financing. Following continued negotiations, the Debtors and the Ad Hoc Groups agreed upon the terms of a comprehensive restructuring that will allow for an expeditious exit from chapter 11.

22. Upon consummation of the Debtors' proposed Plan, the DIP Term Loan Facility will convert into an exit term loan facility, ensuring that the Debtors will not need to expend further resources soliciting additional sources of capital to satisfy the DIP Loans upon the Debtors' emergence from chapter 11. In tandem with the RSA, the Plan, and the settlement of claims with an ad hoc group of holders of the Debtors' 2.25% Convertible Senior Notes (the "Convertible Notes Settlement"), the DIP Term Loan Facility provides a path to emergence that is important to reassure employees, customers, and vendors of the Debtors' viability, protect operations, and maximize value for creditors.

A. Alternative Sources of Financing on Better Terms Than the DIP Term Loan Facility Are Not Available to the Debtors.

23. Based on the nature of the responses received by Evercore when it went to the market for DIP Financing proposals and the fact that the vast majority of the assets are encumbered and that unencumbered assets are not expected to have provided sufficient (if any) value to fund the case, I do not believe that any alternative sources of financing with terms as favorable as those

contained in the DIP Term Loan Facility are currently available to the Debtors. Specifically, the Debtors' unencumbered assets are comprised of (a) 35 percent of the stock of Debtors' foreign subsidiaries (all of which operate as part and parcel of Avaya's global enterprise and integrated operations) and (b) avoidance action proceeds, which I understand are not proposed to be encumbered until entry of a final order.

24. Furthermore, there is a significant consensus around the current DIP structure. The DIP Term Loan Facility is supported by the signatories to the RSA, which comprise approximately ninety percent of the term lender group.

25. In my opinion, the terms of the DIP Term Loan Facility are the product of extensive and good faith negotiations between the Debtors and the DIP Term Loan Lenders, each of whom was represented by experienced counsel and financial advisors. Through these vigorous negotiations, the Debtors were able to secure the most favorable terms possible for the DIP Term Loan Facility and the Debtors were not able to obtain financing on equal or better terms from the DIP Term Loan Lenders, or any other source, without granting the liens securing the DIP Term Loan Facility and providing superpriority claims. Simply put, the DIP Term Loan Facility provides the Debtors with the liquidity they need at the most optimal terms. Based on the negotiation history and the marketing efforts undertaken by the Debtors and Evercore, the proposed DIP Term Loan Facility represents the Debtors' best available postpetition financing option.

B. The Fees and Milestones Provided in Connection with the DIP Term Loan Facility Are Appropriate Under the Circumstances.

26. My team and I, along with the Debtors' other advisors, actively negotiated the terms and provisions of the DIP Term Loan Facility on behalf of the Debtors. The process was rigorous and marked by hard-fought negotiations. During that time, the parties exchanged numerous term

sheets and mark-ups, each with significant changes to the material terms of the DIP Term Loan Facility. Over the course of these negotiations, the economic and other terms of the DIP Term Loan Facility improved to the benefit of the Debtors. Among other concessions, the Debtors negotiated to increase the quantum of new money provided by the DIP Term Loan Facility, reduce cash fees, eliminate the payment of accrued pre-petition and post-petition cash interest on account of pre-petition claims, and secure the conversion of the proposed DIP Term Loan Facility to an exit facility.

27. I understand that the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Term Loan Lenders pursuant to the DIP Term Loan Documents. Specifically, the Debtors have agreed to pay upfront, commitment, and exit fees. The fees and interest to be paid under the DIP Term Loan Facility were the subject of arm's-length and good faith negotiation between the Debtors and the DIP Term Loan Lenders, are an integral component of the overall terms of the proposed DIP Term Loan Facility, and were required by the DIP Term Loan Lenders as consideration for the extension of DIP Financing. Further, the fees payable in equity of the reorganized entity, earned upon signing of the commitment letter, preserve critical liquidity that provides additional runway for the Debtors to consummate the Plan contemplated in the RSA. In the event that the Plan is not confirmed and an alternative DIP is transacted, the fees will be paid in cash.

28. Moreover, the proposed fees ensure that the Debtors' ordinary course operations remain uninterrupted, while also securing exit terms, which are reflected in an exit commitment letter. Under the current circumstances, I believe that the fees, rates, and other economics provided for in the DIP Term Loan Facility are appropriate, given the operational fragility of the business, the volatility of the credit markets, the fact that the Debtors were unable to obtain other DIP

financing on similar or better terms, and the fact that the DIP Term Loan Facility converts to an exit facility post-emergence.

29. The DIP Term Loan Facility also contains certain milestones that the Debtors must meet throughout their Chapter 11 Cases. The milestones were negotiated by the Debtors and the DIP Term Loan Lenders as a condition to providing the DIP Term Loan Facility. These milestones were negotiated at arm's-length and are an integral component of the DIP Term Loan Facility and the broader set of transactions contemplated by the RSA. Failure to meet such milestones constitutes an event of default under the DIP Term Loan Documents. I have reviewed the milestones and believe that they are appropriate, reflective of the need to move quickly through these Chapter 11 Cases, achievable given the high level of consensus, and permit sufficient time to effectuate the restructuring contemplated by the terms of the RSA.

C. The Repayment of the Prepetition ABL Facility Is Appropriate.

30. **First**, I understand that the Debtors do not have material remaining borrowing capacity under the Prepetition ABL Facility. Further, as described in the First Day Declaration, it is likely that the obligations under the Prepetition ABL Facility are oversecured based on the value of the ABL Priority Collateral, as reflected in the significant borrowing base cushion from which the Prepetition ABL Facility benefits. As a result, absent repayment of the Prepetition ABL Facility, interest and fees would accrue on the utilized amount and outstanding letters of credit at the default rate, and such interest would have to be paid in connection with the ultimate repayment of the Prepetition ABL Facility. In addition, this repayment will position the Debtors to pursue in the near-term a DIP asset-backed loan with undrawn capacity, rather than continuing to pay interest on the utilized portion of the Prepetition ABL Facility.

31. **Second**, the DIP Term Loan Lenders specifically negotiated for the repayment of the Prepetition ABL Facility in the context of their commitment or willingness to provide the DIP Term Loan Facility. The Debtors and the DIP Term Loan Lenders engaged in arm's-length negotiations and ultimately agreed on the repayment as consideration for, among other things, access to the liquidity generated by the new money term loans being provided by the DIP Term Loan Lenders. Further, the repayment of the Prepetition ABL Facility was critical to reaching an agreement with the Prepetition Secured Parties regarding the consensual use of Cash Collateral and the terms of the global restructuring transaction embodied in the RSA and Plan. Finally, the repayment of the Prepetition ABL Facility was required in order to secure the commitments for the DIP ABL Facility from the same banks.

Conclusion

32. I believe that, given the circumstances, the process to obtain DIP Financing produced the best financing available for the Debtors in these Chapter 11 Cases and that the terms of the DIP Term Loan Facility, along with the commitments for the DIP ABL Facility, are reasonable and appropriate under the circumstances. I also believe that, based on the Debtors' projections, the proposed DIP Term Loan Facility will provide the Debtors with the necessary liquidity to effectively manage their Chapter 11 Cases. The proposed DIP Term Loan Facility, together with the RSA, the Plan, the Convertible Notes Settlement, and the commitments for the DIP ABL Facility, provide the clearest path to an expeditious and adequately funded exit from chapter 11, which would best preserve the value of the Debtors' business and operations.

33. Based on the foregoing, it is my belief that the DIP Term Loan Facility, together with the commitments for the DIP ABL Facility, represents the best option available to address the Debtors' liquidity needs, and that the fees, terms, and conditions of the DIP Term Loan Facility are reasonable and appropriate under the circumstances.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

February 13, 2023

By:

/s/

Roopesh Shah
Senior Managing Director
Evercore Group L.L.C.