

ENTERED

February 15, 2023

Nathan Ochsner, Clerk

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

In re:) Chapter 11
)
AVAYA INC., <i>et al.</i> , ¹) Case No. 23-90088 (DRJ)
)
Debtors.) (Jointly Administered)
)
) Re: Docket No. 13

**ORDER (I) APPROVING THE DEBTORS' PROPOSED
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE
UTILITY SERVICES, (II) PROHIBITING UTILITY PROVIDERS
FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES,
(III) APPROVING THE DEBTORS' PROPOSED PROCEDURES FOR RESOLVING
ADEQUATE ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

Upon the emergency motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"), (a) approving the Proposed Adequate Assurance of payment for future Utility Services; (b) prohibiting Utility Providers from altering, refusing, or discontinuing services; (c) approving the Adequate Assurance Procedures for resolving Adequate Assurance Requests; and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant

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 Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Adequate Assurance Deposit and the Adequate Assurance Procedures are hereby approved and are deemed adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

2. Within three (3) business days after entry of the Order, the Debtors shall fax, e-mail, serve by mail, or otherwise expeditiously send a copy of the Motion and this Order to the Utility Providers on the Utility Providers List.

3. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in the Adequate Assurance Account during the pendency of these Chapter 11 Cases. No liens senior to the interests of the Utility Providers shall encumber the Adequate Assurance Deposit or the Adequate Assurance Account.

4. The following Adequate Assurance Procedures are hereby approved:

- a. Subject to paragraphs (b)-(j) below, the Debtors shall deposit the Adequate Assurance Deposit in the amount of \$500,000 in the Adequate Assurance Account for the benefit of the Utility Providers as soon as reasonably practicable, but no later than fifteen (15) business days after the entry of this Order; *provided* that, within thirty (30) days from the Petition Date, the Debtors may increase the Adequate Assurance Deposit to account for any

Adequate Assurance Request that has not been mutually resolved by the Debtors and the applicable Utility Provider or by the Court; *provided further* that the Debtors may increase the Adequate Assurance Deposit to account for any Adequate Assurance Request that has not been mutually resolved by the Debtors and the applicable Subsequently Identified Utility Provider or by the Court.

- b. The funds in the Adequate Assurance Account shall constitute adequate assurance for each Utility Provider in the amount set forth for such Utility Provider in the column labeled “Proposed Adequate Assurance” on the Utility Providers List.
- c. A Utility Provider may request a disbursement from the Adequate Assurance Account if the Debtors have not satisfied their postpetition payment obligation with respect to the Utility Services in accordance with the terms and conditions of such service, and such payment obligation remains unpaid beyond any applicable grace period. No disbursement will be made from the Adequate Assurance Account unless the requesting Utility Provider provides notice to the following parties: (a) the Debtors, Avaya Inc., 350 Mount Kemble Avenue, Morristown, New Jersey 07960 Attn: Shefali Shah (sashah@avaya.com); (b) proposed co-counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022 Attn: Joshua A. Sussberg, P.C., (joshua.sussberg@kirkland.com), Aparna Yenamandra, P.C. (aparna.yenamandra@kirkland.com), Rachael M. Bentley (rachael.bentley@kirkland.com), and Andrew Townsell (andrew.townsell@kirkland.com); Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654 Attn: Patrick J. Nash, Jr., P.C. (patrick.nash@kirkland.com); (c) the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, Texas 77002 Attn: Jayson B. Ruff and Christopher R. Travis; (d) counsel to any statutory committee appointed in these cases; (e) counsel to the Akin Ad Hoc Group, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York, 10036 Attn: Ira S. Dizengoff (idizengoff@akingump.com), Philip C. Dublin (pdublin@akingump.com), and Naomi Moss (nmoss@akingump.com) and (f) counsel to the PW Ad Hoc Group, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019 Attn: Andrew N. Rosenberg (arosenberg@paulweiss.com), Brian S. Hermann (bhermann@paulweiss.com), Brian Bolin (bbolin@paulweiss.com), Joe Graham (jgraham@paulweiss.com), and Xu Pang (xpang@paulweiss.com) (collectively, the “Notice Parties”).* The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount so disbursed.

* Counsel to the DIP ABL Agent at Davis Polk & Wardell, LLP, 450 Lexington Ave., NY, NY, Attn: Damian Schaible, Damian.Schaible@davispolk.com, Aryeh Ethan Falk Aryeh.Falk@davispolk.com

- d. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors automatically, without further order of the Court, on the earlier of (i) reconciliation and payment by the Debtors of the Utility Provider's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Provider, (ii) the effective date of any chapter 11 plan confirmed in these Chapter 11 Cases, or (iii) the consummation of a sale, pursuant to section 363 of the Bankruptcy Code, of all or substantially all the assets of the Debtors.
- e. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve an Adequate Assurance Request on the Notice Parties within thirty (30) days beginning on the Petition Date; *provided* that any Subsequently Identified Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve an Adequate Assurance Request on the Notice Parties within twenty-one (21) days from the date of service of the Motion and the Order.
- f. The Adequate Assurance Request must (i) be made in writing, (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account, and (iii) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment under section 366 of the Bankruptcy Code or the basis for seeking the Adequate Assurance Request, each as applicable.
- g. Unless and until a Utility Provider files and serves an Adequate Assurance Request in accordance with the Adequate Assurance Procedures, the Utility Provider will be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- h. The Debtors may, without further order from the Court, resolve an Adequate Assurance Request by mutual agreement with a Utility Provider, and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment including cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable after consultation with each of the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group; *provided, however,* that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available to any official committee appointed in these cases and the U.S. Trustee upon demand.

- i. If the Debtors and the Utility Provider are not able to reach an alternative resolution within fourteen (14) days of receipt of the Adequate Assurance Request, the Debtors or the Utility Provider will request a hearing before the Court as soon as reasonably practicable, but no later than thirty (30) days from the Petition Date, to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code.
- j. Pending resolution of the Determination Hearing, the Utility Provider filing such Adequate Assurance Request will be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

5. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures set forth herein.

6. Absent compliance with the procedures set forth in this Order, the Utility Providers including, without limitation, those listed on Exhibit 1 annexed hereto, are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges or any perceived inadequacy of the Debtors’ Proposed Adequate Assurance.

7. The inclusion of any entity in, as well as any omission of any entity from, the Utility Providers List shall not be deemed an admission by the Debtors that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

8. The Debtors are authorized, upon consultation with each of the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group, to: (a) add any Subsequently Identified Utility Provider to the Utility Providers List; (b) remove any Utility Provider from the Utility Providers List; and (c) add to or subtract from the Adequate Assurance Deposit the portion of such deposit allocated to added or removed Utility Providers or Subsequently Identified Utility Providers; *provided* that the Debtors shall provide notice (as set forth in paragraph 9 herein) to the

Subsequently Identified Utility Provider of its addition to the Utility Providers List and of its corresponding proposed Adequate Assurance Deposit; *provided further*, that the Debtors shall provide fourteen (14) days' notice to the Utility Provider that it is being removed from the Utility Providers List and that the corresponding amount in the Adequate Assurance Deposit will be deducted from the Adequate Assurance Account. If an objection is received, the Debtors may request a hearing before this Court regarding such objection. The Debtors shall not deduct the Adequate Assurance Deposit in the amount set aside for any Utility Provider that the Debtors seek to terminate or delete from the Utility Providers List unless and until the fourteen (14) day notice period has expired.

9. The Debtors must: (a) serve any Subsequently Identified Utility Provider a copy of the Motion and Order within three (3) business days of such provider being added to the Utility Providers List; (b) allocate additional amounts to the Adequate Assurance Deposit in accordance with this Order; and (c) provide notice to the Subsequently Identified Utility Provider of its proposed Adequate Assurance Deposit. Any Subsequently Identified Utility Provider shall (a) be bound to the Adequate Assurance Procedures and (b) have twenty-one (21) days from the date of service of the Motion and the Order to make a request for additional adequate assurance of payment in accordance with the Adequate Assurance Procedures.

10. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order

granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

11. The banks and financial institutions on which checks were drawn or electronic funds transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

12. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

13. Notwithstanding anything to the contrary in this Order, any payment made or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any) imposed on the Debtors under any order(s) of this Court approving the postpetition secured debtor in

possession financing facility and the use of cash collateral (any such order, a “Financing Order”), including any documentation with respect to such financing and any budget in connection with such Financing Order. In the event of any conflict between the terms of this Order and a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

14. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

18. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: February 15, 2023.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Utility Providers List

Utility Providers List

Provider	Address	Service(s)	Account Number(s) (If Known)	Average Monthly Expenditures	Adequate Assurance Deposit
AT&T	2150 N 1st, San Jose, CA 2605 Meridian Parkway, Durham, NC 2605	Telecom	80029974062	\$200,000	\$100,000
	6021 Connection Drive, Irving, TX		8310009495240		
	6021 Connection Drive, Irving, TX		8310009495247		
	2605 Meridian Parkway, Durham, NC 2605 9150 Guilford Road, Columbia, MD 350 Mount Kemble Avenue, Morristown, NJ 12121 Grant St, Thornton, CO 5505 Robin Hood Road, Norfolk, VA		8310008389890		
	350 Mount Kemble Avenue, Morristown, NJ		80030026274		
	350 Mount Kemble Avenue, Morristown, NJ		80023402862		
	2605 Meridian Parkway, Durham, NC 2605		8310012301861		
	350 Mount Kemble Avenue, Morristown, NJ		8310012301863		
	N/A		835174348		
Cat Telecom	Wave Place 55 Wireless Rd. Patuman Bangkok, 10330 Thailand	Telephone	6696662	\$100	\$50
Cincinnati Bell Technology / Altafiber	401 Kingsview Dr., Lebanon, OH 45036	Telecom	513-228-0253 849	\$500	\$250

Provider	Address	Service(s)	Account Number(s) (If Known)	Average Monthly Expenditures	Adequate Assurance Deposit
Cogent Communications Inc.	18155 Technology Dr., Culpeper, VA 22701 1950 N Stemmons Fwy, Dallas, TX 75207 2440 Marsh Lane, Carrollton, TX 75006	Telecom	AVAYAINC90001	\$8,000	\$4,000
Comcast Corporation	12121 Grant St., Thornton, CO	Telecom	8498320040238130	\$1,000	\$500
Cosmote	L. Kiisias 166A and Sofokleous 2, 15126 Marousi, Greece	Mobile	306979913729	\$300	\$150
			306977670606		
			306976633404		
Cox Virginia Telcom LLC	12730 Fair Lakes Circle, Fairfax, VA	Telecom	001 0101 057071701	\$1,000	\$500
Cyxtera	9180 Commerce Center Circle, Highlands Ranch, CO 80129	Telecom	630884	\$24,000	\$12,000
Dimension Data	Cnr Main & Sloane Street Bryanston The Campus, Ground Floor, Twickenham Building, Johannesburg, 2021, South Africa	Internet	119006	\$1,100	\$550
Equinix Inc.	1950 N Stemmons Fwy, Dallas, TX 75207 30 S Wacker Drive, Chicago, IL	Telecom	594827	\$110,000	\$55,000
	1950 N Stemmons Fwy, Dallas, TX 75207		592185		
Expereo USA Inc.	Multiple	Telecom	CUS - 01000863	\$55,000	\$27,500
Hornig Gow Construction Co. Ltd.	Unit A 12f No. 109 Sec. 3 Minsheng E Rd. Taipei, Taiwan	Electric	10127897	\$900	\$450

Provider	Address	Service(s)	Account Number(s) (If Known)	Average Monthly Expenditures	Adequate Assurance Deposit
Level 3 Communications	One Penn Plaza, New York, NY 6021 Connection Drive, Irving, TX 30 S Wacker Drive, Chicago, IL 12730 Fair Lakes Circle, Fairfax, VA 2605 Meridian Parkway, Durham, NC 26	Telecom	5 - ZDLGQB5D	\$51,000	\$25,500
	6021 Connection Drive, Irving, TX		5 - BGSC5G2H - A		
	9150 Guilford Road, Columbia, MD		5 - MVMQCCSC		
	6021 Connection Drive, Irving, TX 9150 Guilford Road, Columbia, MD		5 - KDKGQ7GB		
	30 S Wacker Drive, Chicago, IL		5 - NBHNZGFG		
M Water Co. Ltd.	55 Wave Place Building, 10th Floor, Wireless Road, Lumpini, Patumwan, Bangkok, 10330, Thailand	Water	631000	\$100	\$50
Magna 5	125 North Myers Street, Charlotte, NC 28202	Telecom	SEA0540022	\$7,000	\$3,500
	9180 Commerce Center Circle, Highlands Ranch, CO 80129		SEA0530526		
Metropolitan Telecommunications	9150 Guilford Road, Columbia, MD 8744 Lucent Blvd, Highlands Ranch, CO 45901 Nokes Blvd, Sterling, VA 12121 Grant St., Thornton, CO 12730 Fair Lakes Cir., Fairfax, VA 7415 Boston Blvd, Wonder Lake, IL 5505 Robin Hood Blvd, Norfolk, VA 2440 Marsh Lane, Carrollton, TX 350 Mt Kemble, Morristown, NJ 2650 Meridan Prwy, Columbia, MD	Telecom	524821	\$20,000	\$10,000
	One Penn Plaza, New York, NY 6021 Connection Drive, Irving, TX	Telecom	526605		

Provider	Address	Service(s)	Account Number(s) (If Known)	Average Monthly Expenditures	Adequate Assurance Deposit
	2305 Kelbe Dr, Little Chute, WI 54140	Telecom	528089		
National Telecom Public Company Limited	55 Wave Place Building, 10th Floor, Wireless Road, Lumpini, Patumwan, Bangkok, 10330, Thailand	Telephone	621015	\$100	\$50
Quality Houses Leasehold Property	55 Wave Place Building, 10th Floor, Wireless Road, Lumpini, Patumwan, Bangkok, 10330, Thailand	Internet	620145	\$30	\$15
Qwest Corporation d/b/a Centurylink	9180 Commerce Center Cir, Littleton, CO 80129	Telecom	87593975	\$40,000	\$20,000
	8744 Lucent Blvd, Highlands Ranch, CO		86880052		
	8744 Lucent Blvd, Highlands Ranch, CO		620488		
Saudi Electric Company	Sari Gate Center, Office # 6 First Floor 21431 Jeddah, Saudi Arabia	Electric	43121 300 455	\$1,000	\$500
Saudi Telecom	N/A	Telecom	1000121878424090	\$10,000	\$5,000
	Bldg. No. RD - 01, Information Technology Communication Complex, Riyadh, Saudi Arabia		2065494798		
			5005797553		
			5028596067		
			5030517190		
			5040223217		
			5040223241		
			5042798594		
			5046223731		
			5047673625		
			5057420261		
			35021138795		
			35021693381		
			35021693411		
35021693462					

Provider	Address	Service(s)	Account Number(s) (If Known)	Average Monthly Expenditures	Adequate Assurance Deposit
			37000583612		
			37000597431		
			37000605370		
			37001309990		
Sims Recycling	2605 Meridian Parkway, Suites 200, Durham, NC 27713 - 5254	Waste Management	4549164381	\$11,000	\$5,500
Taipei Branch, Chunghwa Telecom Co., Ltd.	Unit A 12f No. 109 Sec. 3 Minsheng E Rd. Taipei, Taiwan	Telephone	10087426	\$900	\$450
Tata Communications Americas Inc.	2605 Meridian Parkway, Durham, NC 2605 12121 Grant St, Thornton, CO	Telecom	63834	\$16,000	\$8,000
Telkom	Cnr Main & Sloane Street Bryanston The Campus, Ground Floor, Twickenham Building, Johannesburg, 2021, South Africa	Telephone	441325620001	\$500	\$250
Threshold Communications Inc.	8744 Lucent Blvd, Highlands Ranch, CO	Telecom	20170712	\$23,000	\$11,500
Tot Public Company Limited	55 Wave Place Building, 10th Floor, Wireless Road, Lumpini, Patumwan, Bangkok, 10330, Thailand	Telephone	621000	\$100	\$50
Verizon	9150 Guilford Road, Columbia, MD	Telecom	9516551480001	\$201,000	\$100,500
	9150 Guilford Road, Columbia, MD 350 Mt Kemble, Morristown, NJ		Y2734403		
	N/A	Mobile	823103099 - 00001		
	N/A	Telecom	Y2766804		
Vodafone	Arquiparque 2 Edf. A, Av. Caceres Monteiro 10 5 Esq., Alges 1495 - 192 Miraflores, Portugal	Mobile	303888226	\$200	\$100
Windstream MPLS 5320051	125 North Myers Street, Charlotte, NC 28202	Telecom	5320051	\$20,000	\$10,000
BGE	9150 Guilford Road, Columbia, MD	Electric	615 - 010 - 00	Paid Directly by Cushman & Wakefield on behalf of the Debtors	
ComEd	30 S Wacker Drive, Chicago, IL	Electric	615 - 010 - 00	Paid Directly by Cushman & Wakefield on behalf of the Debtors	
Dominion Virginia Power	5505 Robin Hood Blvd, Norfolk, VA	Electric	615 - 010 - 00	Paid Directly by Cushman & Wakefield on behalf of the Debtors	

Provider	Address	Service(s)	Account Number(s) (If Known)	Average Monthly Expenditures	Adequate Assurance Deposit
Washington Gas	5505 Robin Hood Blvd, Norfolk, VA	Gas	615 - 010 - 00	Paid Directly by Cushman & Wakefield on behalf of the Debtors	