Docket #0015 Date Filed: 4/10/2026

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

In re:	)	Chapter 11
ASCEND ELEMENTS, INC., *et al.*,[1]	)	Case No. 26-90440
Debtors.	)	(Joint Administration Requested)

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

Emergency relief has been requested. Relief is requested not later than 4:00 P.M. (prevailing Central Time) on April 10, 2026.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on April 10, 2026, at 4:00 P.M. (prevailing Central Time) in Courtroom 400, 515 Rusk St., Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Pérez's conference room number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Pérez's homepage. The meeting code is "JudgePerez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Pérez's homepage. Select the case name, complete the required fields and click "Submit" to complete your appearance.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

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The above-captioned debtors and debtors in possession (collectively, the "Debtors") state the following in support of this emergency motion (this "Motion"):

Relief Requested

1. The Debtors seek entry of an order substantially in the form attached hereto (the "Order") (a) approving the Debtors' proposed adequate assurance of payment for future utility services, (b) approving the Adequate Assurance Procedures (as defined herein), (c) prohibiting utility providers from altering, refusing, or discontinuing services, and (d) granting related relief. Pursuant to paragraph 4 of the Complex Case Procedures (as defined herein), the Debtors seek entry of a final order, rather than an interim order subject to a final order at a subsequent hearing.[2]

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 366 of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rules 6003 and 6004, rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"),

[2] Paragraph 4 of the Complex Case Procedures permits final orders, rather than interim orders subject to final orders at a subsequent hearing, to be sought for, among other things, motions to approve adequate assurance procedures under 11 U.S.C. § 366 that (i) do not prejudice the right of a utility to propose alternative procedures; and (ii) provide for a hearing not later than 30 days after the petition date upon any timely filed objection to the adequate assurance procedures.

and the Procedures for Complex Cases in the Southern District of Texas (the "Complex Case Procedures").

Background

5. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of Linh Austin in Support of the Debtors' Chapter 11 Petitions and Emergency First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith on April 9, 2026 (the "Petition Date").[3]

6. On the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors have filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The primary goal of these chapter 11 proceedings is to preserve liquidity, stabilize operations, and provide the breathing room necessary for the Debtors to explore a value-maximizing transaction or other restructuring alternatives for the benefit of all stakeholders. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated as of the date hereof.

Utilities Overview

I. Utility Services and Utility Providers

7. In connection with the operation of their businesses, the Debtors utilize water, gas, electricity, telecommunications, waste removal, and other similar services (collectively,

[3] Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.

the "Utility Services") provided by a number of utility companies (collectively, the "Utility Providers"). A non-exhaustive list of the Utility Providers and their affiliates that provide Utility Services to the Debtors as of the Petition Date (the "Utility Services List") is attached to the Order as **Exhibit A**.[4] Historically, the Debtors have paid on average approximately $294,000 each month for the Utility Services in the aggregate, as calculated based on utility payments made during the past year. The Debtors have provided certain of the Utility Providers with letters of credit or surety bonds. The Debtors estimate the amount of these assurances is approximately $499,000 ("Prepetition Deposits").

8. The Utility Services are essential to maintain the Debtors' business operations. Should any Utility Provider refuse or discontinue service, the Debtors' business operations could be disrupted. Such an impact could, in turn, negatively affect the Debtors' restructuring efforts and the value of the Debtors' estates. The Utility Services are critical to the Debtors' ability to operate safely and in compliance with relevant state and federal guidelines. Accordingly, it is important that the Utility Services continue uninterrupted during these chapter 11 cases.

II. Adequate Assurance Deposit

9. Section 366(b) of the Bankruptcy Code provides that a utility may alter, refuse, or discontinue a chapter 11 debtor's utility service if the utility does not receive from the debtor "adequate assurance of payment" within 30 days after the petition date. 11 U.S.C. § 366(c)(2). Section 366(c)(1)(A) of the Bankruptcy Code defines the phrase "adequate assurance of payment" to mean, *inter alia*, "a cash deposit." 11 U.S.C. § 366(c)(1)(A).

[4] Although the Debtors believe that the Utility Services List includes all of their Utility Providers, the Debtors reserve the right to supplement the list, if they have inadvertently omitted any Utility Provider. Additionally, the listing of an entity on the Utility Services List is not an admission that such entity is a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve the right to contest any such characterization in the future.

10. The Debtors intend to pay postpetition obligations owed to the Utility Providers in the ordinary course of business and in a timely manner. Cash held by the Debtors and generated by operations, along with access to cash collateral, will provide sufficient liquidity to pay the Debtors' Utility Service obligations in accordance with their prepetition practice.

11. To provide additional assurance of payment, the Debtors propose to deposit approximately $20,316 (the "Adequate Assurance Deposit") into a segregated bank account (the "Adequate Assurance Account") within ten business days of entry of the Order. The Adequate Assurance Deposit is equal to approximately one-half of the Debtors' average monthly cost of Utility Services, as calculated based on utility payments made during the past year less the amount of Prepetition Deposits for certain Utility Providers. The Adequate Assurance Deposit will be held in the Adequate Assurance Account for the duration of the Debtors' chapter 11 cases, subject to any adjustments described herein, and may be applied to any postpetition defaults in payment to the Utility Providers. The Adequate Assurance Deposit, in conjunction with the Debtors' cash flow from operations and cash on hand, demonstrates the Debtors' ability to pay for future Utility Services in accordance with prepetition practice (collectively, the "Proposed Adequate Assurance") and constitutes sufficient adequate assurance to the Utility Providers as required by section 366 of the Bankruptcy Code.

III. Adequate Assurance Procedures

12. Any Utility Provider that is not satisfied with the Proposed Adequate Assurance may make a request for additional or different adequate assurance of future payment (each, an "Adequate Assurance Request") pursuant to the adequate assurance procedures set forth in the Order (the "Adequate Assurance Procedures"). The Adequate Assurance Procedures are a streamlined process for Utility Providers to address potential concerns with respect to the Proposed

Adequate Assurance, while also allowing the Debtors to continue their business operations uninterrupted. The Adequate Assurance Procedures permit a Utility Provider to object to the Proposed Adequate Assurance by filing and serving an Adequate Assurance Request upon the Notice Parties (as defined in the Order). The Debtors, in their discretion, may then resolve any Adequate Assurance Request by mutual agreement with the Utility Provider, subject to the Approved Budget, and without further order of the Court. If the Debtors determine that the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors will seek Court resolution of the Adequate Assurance Request. Unless and until a Utility Provider files an objection or serves an Adequate Assurance Request, such Utility Provider shall be (a) deemed to have received adequate assurance of payment "satisfactory" to such Utility Provider in compliance with section 366 of the Bankruptcy Code and (b) forbidden from (i) discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance, or (ii) requiring additional assurance of payment other than the Proposed Adequate Assurance.

IV. Modifications to the Utility Services List

13. The Debtors have made an extensive and good-faith effort to identify all Utility Providers and include them on the Utility Services List. To the extent the Debtors subsequently identify additional Utility Providers within 30 days of the Petition Date (each, a "Subsequently Identified Utility Provider"), the Debtors will seek authority to amend the Utility Services List, with reasonable prior written notice to any Subsequently Identified Utility Provider. For any Subsequently Identified Utility Provider added to the Utility Services List, the Debtors will add to the Adequate Assurance Deposit an amount equal to one-half of the Debtors' average monthly

cost for each Subsequently Identified Utility Provider as soon as practicable, as calculated based on utility payments made during the past year less the amount of Prepetition Deposits for certain Utility Providers. For any Subsequently Identified Utility Provider that is added to the Utility Services List, the Debtors will serve such Utility Provider with a copy of the Court's Order no later than three business days after such Utility Provider is added to the Utility Services List.

14. The Debtors further request that the Order be binding on all Utility Providers, regardless of when any particular Utility Provider was added to the Utility Services List, *provided*, *however*, that if the Debtors supplement the Utility Services List subsequent to the entry of an order granting this Motion, the Debtors will, and subject to the Approved Budget, promptly augment the Adequate Assurance Deposit to include an amount the Debtors estimate in good faith to equal one-half of the Debtors' average monthly cost for each Subsequently Identified Utility Provider, as calculated based on utility payments made during the past year less the amount of Prepetition Deposits for certain Utility Providers. Moreover, if the Debtors remove any Utility Provider from the Utility Services List, the Debtors will provide such Utility Provider with seven days' notice of such removal and, absent a response thereto, reduce the amount of the Adequate Assurance Deposit to the extent that it includes an amount for such removed Utility Provider. If an objection is timely received and the Debtors and the affected Utility Provider are not able to resolve such dispute by mutual agreement, the Debtors will request a hearing before the Court at such date as the Debtors and the Utility Provider may agree, subject to the Court's availability.

V. Prohibition on Altering, Refusing, or Discontinuing Service

15. The Debtors request that all Utility Providers, including Subsequently Identified Utility Providers added to the Utility Services List, be prohibited from altering, refusing, or discontinuing any Utility Services to the Debtors absent further order of the Court.

Basis for Relief

16. Bankruptcy Code section 366 protects a debtor from the immediate termination or alteration of utility services following the commencement of the debtor's chapter 11 case. *See* 11 U.S.C. § 366. Bankruptcy Code section 366(c) requires the debtor to provide "adequate assurance" of payment for postpetition services in a form "satisfactory" to the utility company within thirty days of the petition date, or the utility company may alter, refuse or discontinue service. 11 U.S.C. § 366(c)(2). Bankruptcy Code section 366(c)(1)(A) provides a non-exhaustive list of examples for what constitutes "assurance of payment." 11 U.S.C. § 366(c)(1)(A). Although assurance of payment must be "adequate," it need not constitute an absolute guarantee of the debtor's ability to pay. *See In re Great Atl. & Pac. Tea Co.*, No. 11-CV-1338 (CS), 2011 WL 5546954, at *5 (S.D.N.Y. Nov. 14, 2011) (finding that "[c]ourts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full"); *In re Agrifos Fertilizer, L.P.*, Case No. 01-35220-H2-11, 2002 WL 32054779, at *5 (Bankr. S.D. Tex. Nov. 25, 2002) ("If a debtor demonstrates a prepetition history of regular utility payments and evidence of postpetition liquidity, a deposit may not be necessary.") (citation omitted).

17. When considering whether a given assurance of payment is "adequate," the Court should examine the totality of the circumstances to make an informed decision as to whether the utility will be subject to an unreasonable risk of nonpayment. *See, e.g., In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *Va. Elec. & Power Co. v. Cunha (In re Cunha)*, 1 B.R. 330 (Bankr. E.D. Va. 1979)); *In re Adelphia Bus. Sols., Inc.*, 280 B.R. 63, 81–82 (Bankr. S.D.N.Y. 2002). In determining the level of adequate assurance, however, "a bankruptcy court must focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources."

Va. Elec. & Power Co. v. Caldor, Inc.-N.Y., 117 F.3d 646, 650 (2d Cir. 1997) (internal quotations omitted) (quoting *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987) (abrogated on other grounds by *In re LEASE-A-FLEET, INC.*, 131 B.R. 945 (Bankr. E.D. Pa. 1991))).

18. Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Adequate Assurance Deposit and the Debtors' ongoing ability to meet obligations as they come due in the ordinary course provide assurance that the Debtors will pay their future obligations to the Utility Providers. Termination of the Utility Services could result in the Debtors' inability to operate their businesses to the detriment of all stakeholders. *In re Pilgrim's Pride Corp.*, No. 08-45664 (DML), 2009 Bankr. LEXIS 2, at *6 (Bankr. N.D. Tex. Jan. 4, 2009) ("The consequences of an unexpected termination of utility service to [the debtors] could be catastrophic."); *see also In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321–22 (Bankr. E.D. Pa. 1988) (noting that without utility service the debtors "would have to cease operations" and that section 366 of the Bankruptcy Code "was intended to limit the leverage held by utility companies, not increase it").

19. Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance Procedures proposed herein, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Agrifos Fertilizer, L.P.*, 2002 WL 32054779, at *5 (finding that adequate assurance procedures were appropriate "to implement the provisions of Bankruptcy Code § 366(b) in a large case without undue expense, chaotic termination of utility service, and unnecessary use of judicial resources"); *see also e.g., In re Circuit City Stores Inc.*, No. 08-35653, 2009 Bankr. LEXIS 237, at *16–17 (Bankr. E.D. Va. Jan. 14, 2009) (stating that "the plain language of § 366 of the Bankruptcy Code allows the Court to adopt the [p]rocedures set forth in the [u]tility [o]rder"). Such procedures are important because, without them, the Debtors "could

be forced to address numerous requests by utility companies in an unorganized manner at a critical period in their efforts to reorganize." *In re Circuit City Stores Inc.*, 2009 Bankr. LEXIS 237, at *19.

20. Notwithstanding a determination that the Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Providers believe they have under sections 366(b) and 366(c)(2) of the Bankruptcy Code are wholly preserved under the Adequate Assurance Procedures. *See id.* at *22. The Utility Providers still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See* the Adequate Assurance Procedures set forth in the Order attached hereto. The Adequate Assurance Procedures "avoid a haphazard and chaotic process whereby each [Utility Provider] could make extortionate, last-minute demands for adequate assurance" that would force the Debtors "to pay under the threat of losing critical [Utility Services]." *See In re Circuit City Stores Inc.*, 2009 Bankr. LEXIS 237, at *22–23.

21. Further, the Court possesses the power, under Bankruptcy Code section 105(a), to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions of the Bankruptcy Code, particularly section 366 thereof. Accordingly, the Court should exercise its powers under Bankruptcy Code sections 366 and 105(a) and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance. *See, e.g., In re Aleon Metals, Inc., et al.,* Case No. 25-90305 (CML) (Bankr. S.D. Tex. Aug. 19, 2025); *In re Global Clean Energy Holdings, Inc.*, No. 25-90113 (ARP) (Bankr. S.D. Tex. Apr. 16, 2025) (approving adequate assurance deposit equal to approximately one-half of the debtors' monthly utility expenses for the twelve months prior to the

petition date and procedures for resolving utility providers' requests for additional adequate assurance on a final basis); *In re Northvolt AB*, No. 24-90577 (ARP) (Bankr. S.D. Tex. Nov. 21, 2024) (same); *In re Vertex Energy, Inc.*, No. 24-90507 (CML) (Bankr. S.D. Tex. Sept. 25, 2024) (same); *In re Dig. Media Sols., Inc.*, No. 24-90468 (ARP) (Bankr. S.D. Tex. Sept. 13, 2024) (same).[5]

22. Based on the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interest of the Debtors' estates and should be granted in all respects.

Processing of Checks and Electronic Fund Transfers

23. The Debtors have sufficient unrestricted cash on hand to pay the amounts described in this Motion in the ordinary course of business by virtue of and consistent with the terms of the Cash Management Motion, filed contemporaneously herewith.. Based on the cash management system, the Debtors can readily identify wire transfer requests as relating to an authorized payment in respect of the Utility Services. Accordingly, the Debtors believe there is minimal risk that ACH transfers or wire transfer requests the Court has not authorized will be made inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks, ACH transfers, or wire transfer requests in respect of the relief requested in this Motion.

Emergency Consideration

24. Pursuant to Bankruptcy Local Rule 9013-1, the Debtors request emergency consideration of this Motion. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the commencement of a chapter 11 case if "relief is needed to avoid

[5] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

immediate and irreparable harm." FED. R. BANKR. P. 6003. Failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would imperil the Debtors' restructuring and cause irreparable harm. Further, this relief will save costs and avoid undue administrative burden and confusion only if granted immediately. The Debtors therefore have satisfied the "immediate and irreparable harm" standard and request that the Court approve the Motion on an emergency basis.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

25. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h) to the extent applicable.

Reservation of Rights

26. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission by the Debtors as to the amount of, basis for, or validity of any claim against any Debtor under the Bankruptcy Code or other applicable 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 this Motion or any order granting the relief requested by this 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 by the Debtors as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates (and the rights of all parties in interest are

expressly preserved with respect to such liens); or (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. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

27. .The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) the Banks (as defined in the Cash Management Motion); (d) counsel to certain Senior Secured Noteholders; (e) the United States Attorney's Office for the Southern District of Texas; (f) the state attorneys general for states in which the Debtors conduct business; (g) other governmental or regulatory agencies having a regulatory or statutory interest in these cases; (h) the Utility Providers; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d). In light of the nature of the relief requested, the Debtors submit that no other or further notice is required.

WHEREFORE, the Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: April 10, 2026

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

By: */s/ Ryan Manns*

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Proposed Counsel to the Debtors and Debtors in Possession

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Ryan Manns
Ryan Manns

Certificate of Service

I certify that on April 10, 2026, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas. Additionally, the foregoing document will be served as set forth in a forthcoming affidavit filed by the Debtors' proposed claims agent.

/s/ Ryan Manns
Ryan Manns

Exhibit A

Utility Services List

VENDOR NAME	ADDRESS	ACCOUNT NUMBER[1]	SERVICE TYPE	AVERAGE MONTHLY SPEND ($)	SEMI-MONTHLY SPEND ($)	EXISTING DEPOSIT[2]	PROPOSED UTILITY DEPOSIT ($)
123.NET LLC	24700 NORTHWESTERN HIGHWAY SUITE 700, SOUTHFIELD, MI 48075	504245	TELECOMMUNICATIONS	$540.67	$270.33	$0.00	$270.33
ACC BUSINESS	400 WEST AVENUE ROCHESTER, NY 14611	0001233404	TELECOMMUNICATIONS	$1,247.73	$623.86	$0.00	$623.86
APX NET INC	2 SCHOOL STREET BERWICK, ME 3901	10917	TELECOMMUNICATIONS	$663.97	$331.98	$0.00	$331.98
AT&T	208 S. AKARD ST. DALLAS, TX 75202	287310439670	TELECOMMUNICATIONS	$313.84	$156.92	$0.00	$156.92
CHRISTIAN COUNTY WATER DISTRICT	1940 DAWSON SPRINGS ROAD HOPKINSVILLE, KY 42240	0734-10000-002	WATER	$462.57	$231.29	$0.00	$231.29
CITY OF COVINGTON	2194 EMORY STREET NW COVINGTON, GA 30014	00102323	GAS	$12,199.28	$6,099.64	$0.00	$6,099.64
COMCAST	1701 JOHN F KENNEDY BOULEVARD PHILADELPHIA, PA 19103-2838	822014401133748O	TELECOMMUNICATIONS	$321.26	$160.63	$0.00	$160.63
EVERSOURCE	300 CADWELL DRIVE SPRINGFIELD, MA 1104	7300 109 5568	GAS	$119.36	$59.68	$0.00	$59.68
GEORGIA POWER	241 RALPH MCGILL BOULEVARD NE ATLANTA, GA 30308	19568-47038, 93278-30007, 07738-91044, 78678-37088	ELECTRIC	$96,449.41	$48,224.71	$177,990.00	-
HES ENERGY NET	1820 E 9TH ST HOPKINSVILLE, KY 42240	226709; 224130	TELECOMMUNICATIONS	$130.90	$65.45	$0.00	$65.45
HOPKINSVILLE WATER ENVIRONMENT AUTHORITY	401 EAST 9TH STREET HOPKINSVILLE, KY 42240	0078-63596-001	WATER	$1,835.11	$917.56	$0.00	$917.56
MASSACHUSETTS DEVELOPMENT FINANCE AGENCY	99 HIGH STREET BOSTON, MA 2110	674-343E; 674-343W; 674-343WI; 674-343G	WATER/GAS	$14,365.64	$7,182.82	$0.00	$7,182.82
NATIONAL GRID	170 DATA DRIVE WALTHAM, MA 2451	76923-53064	ELECTRIC	$920.06	$460.03	$0.00	$460.03
PENNYRILE ELECTRIC	2000 HARRISON STREET HOPKINSVILLE, KY 42240	591597001; 591597002; 591597003; 591597004	ELECTRIC	$156,852.34	$78,426.17	$320,886.00	-
SNAPPING SHOALS ELECTRIC MEMBERSHIP CORPORATION	14750 BROWN BRIDGE ROAD COVINGTON, GA 30016	4663077; 4666400	ELECTRIC	$167.27	$83.64	$0.00	$83.64
VERIZON	1095 AVENUE OF THE AMERICAS NEW YORK, NY 10036	457-007-591-0001-15	TELECOMMUNICATIONS	$807.68	$403.84	$0.00	$403.84
WM CORPORATE SERVICES INC	800 CAPITOL STREET SUITE 3000, HOUSTON, TX 77002	31-63563-33006; 31-63568-03007	WASTE MANAGEMENT	$6,537.77	$3,268.88	$0.00	$3,268.88

[1] Although the Debtors have undertaken thorough and good-faith efforts to identify and verify all account numbers for all of their Utility Companies, there is a possibility that some account numbers may have changed or may be otherwise unintentionally inaccurate. To the extent that the Debtors become aware of any inaccuracies, the Debtors will promptly contact the applicable Utility Company to update the account number and confirm that any applicable adequate assurance deposit applies to the updated accurate account number with respect to the applicable Utility Company. The Debtors further encourage any Utility Company to promptly bring to the Debtors' attention any inaccuracies they independently identify.

[2] "Existing Deposits" may be comprised of cash deposits, letters of credit, surety bonds, and/or other forms of credit support.

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

In re:	)	Chapter 11
ASCEND ELEMENTS, INC., *et al.*,[1]	)	Case No. 26-90440
Debtors.	)	(Joint Administration Requested)

ORDER (I) APPROVING THE DEBTORS' PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES, (II) APPROVING ADEQUATE ASSURANCE PROCEDURES, (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE, 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 the entry of an order (this "Order"), (a) approving the Debtors' proposed adequate assurance of payment for future utility services, (b) approving the Adequate Assurance Procedures, (c) prohibiting utility providers from altering, refusing, or discontinuing services, and (d) granting related relief, all as more fully set forth in the Motion and the First Day Declaration; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges* from the United States District Court for the Southern District of Texas, entered May 24, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court 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

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

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

pursuant 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, if any (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 Adequate Assurance Procedures, as further described in the Motion and in this Order, are hereby approved and are deemed adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

2. The $20,316 to be deposited by the Debtors (the "Adequate Assurance Deposit") into a segregated account (the "Adequate Assurance Account") within ten business days of the date hereafter or as soon as reasonably practicable, together with the Debtors' ability to pay for future Utility Services in the ordinary course of business, subject to the Adequate Assurance Procedures, shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

3. The Debtors shall cause a copy of the Motion and this Order to be served on each Utility Provider listed on the Utility Services List no later than three business days after the date this Order is entered.

4. The Debtors are authorized, but not directed, to pay on a timely basis and in accordance with their prepetition practices all undisputed invoices for postpetition Utility Services provided by the Utility Providers to the Debtors. The Utility Providers are hereby prohibited from unilaterally applying any such postpetition payments to any amounts due on account of prepetition Utility Services, including, without limitation, any penalties or interest.

5. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated Adequate Assurance Account during the pendency of these chapter 11 cases, subject to the Adequate Assurance Procedures.

6. The Debtors shall deposit funds in the Adequate Assurance Account in the amount set forth for each Utility Provider in the column labeled "Proposed Adequate Assurance" on the Utility Services List attached hereto.

7. If an amount relating to Utility Services provided postpetition by a Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to: (a) the Debtors; (b) proposed counsel to the Debtors, Norton Rose Fulbright US LLP, 1550 Lamar Street, Suite 2000, Houston, TX 77010, Attn: Ryan Manns (ryan.manns@nortonrosefulbright.com) and Jason Blanchard (jason.blanchard@nortonrosefulbright.com); (c) the Office of the United States Trustee, Southern District of Texas, Region 7, 515 Rusk Street, Suite 3516, Houston, Texas 77002, Attn: Ha Nguyen (ha.nguyen@usdoj.gov) and Vianey Garza (vianey.garza@usdoj.gov); and (d) (d) counsel to Certain Senior Secured Noteholders, Weil, Gotshal & Manges LLP, 700 Louisiana Street, Suite 3700, Houston, Texas 77002, Attn: Stephanie N. Morrison (stephanie.morrison@weil.com) and Emma Wheeler (emma.wheeler@weil.com); and (e) any official committee appointed in these chapter 11 cases (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 the applicable 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 disbursed.

8. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be removed from the Adequate Assurance Account by the Debtors and returned to the Debtors on the earlier of (a) without further order of the Court, reconciliation and payment by the Debtors of the Utility Provider's final invoice in accordance with applicable non-bankruptcy law following the Debtors' termination of Utility Services from such Utility Provider, (b) the effective date of any chapter 11 plan confirmed in these chapter 11 cases, (c) the dismissal of these chapter 11 cases, (d) the consummation of a sale, pursuant to section 363 of the Bankruptcy Code, of all or substantially all assets of the Debtors, or (e) as provided pursuant to, or consistent with, any further order of this Court.

9. The following "Adequate Assurance Procedures" are hereby approved:

a. Subject to paragraphs (b)-(f) hereof, the Debtors will deposit the Adequate Assurance Deposit in the aggregate amount of $20,316 into the Adequate Assurance Account within ten business days of entry of this Order.

b. Any Utility Provider desiring additional assurance of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") on the Notice Parties within fourteen days after entry of this Order by the Court granting the Motion (or for any Subsequently Identified Utility Provider, within fourteen days after receipt of a copy of this Order).

c. Any Additional Assurance Request must (i) be in writing, (ii) identify the location(s) for which the Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account, (iii) summarize the Debtors' payment history relevant to the affected account(s), including any security deposits, and (iv) explain why the Utility

Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

d. Upon the Debtors' receipt of any Additional Assurance Request, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request.

e. The Debtors may, without further order from the Court, resolve any Additional 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, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable, subject to the Approved Budget; *provided*, *however*, that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and agreements shall be available for inspection by any official committee appointed in these chapter 11 cases and the U.S. Trustee, in each case, upon request.

f. If the Debtors and the applicable Utility Provider are not able to reach an alternative resolution within 21 days of receipt of an Additional Assurance Request (the "Resolution Period"), the Debtors or the Utility Provider may request an emergency hearing before the Court to occur within 7 days of the end of the Resolution Period to determine the adequacy of assurance of payment with respect to such Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.

g. Pending resolution of any such Determination Hearing, the Utility Provider submitting such Additional Assurance Request shall 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.

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

11. Any Utility Provider that does not timely file and serve an Additional Assurance Request in accordance with the Adequate Assurance Procedures shall be: (a) deemed to have received adequate assurance of payment "satisfactory" to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (b) forbidden from (i) discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges,

the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance, or (ii) requiring additional assurance of payment other than the Proposed Adequate Assurance.

12. The Debtors are authorized, following the giving of fourteen days' notice to the affected Utility Provider, and the Debtors having received no objection from any such Utility Provider, to remove any Utility Provider from the Utility Services List, and the Debtors shall subtract from the Adequate Assurance Deposit an amount equal to one-half of the Debtors' average monthly cost for each removed Utility Provider as soon as practicable, as calculated based on utility payments made during the past year less the amount of Prepetition Deposits for certain Utility Providers. If an objection is timely received and the Debtors and the affected Utility Provider are not able to resolve such dispute by mutual agreement, the Debtors shall request a hearing before the Court at such date as the Debtors and the Utility Provider may agree, subject to the Court's availability. The Debtors shall only deduct from the Adequate Assurance Deposit the amount set aside for any Utility Provider that the Debtors seek to remove from the Utility Services List, if (a) the seven-day notice period has passed and the Debtors have not received any objection to removal of the applicable Utility Provider by such Utility Provider, or (b) any such objection has been resolved consensually or by order of the Court.

13. Notwithstanding anything in this Order to the contrary, upon a timely motion filed and served on the Notice Parties by any Utility Provider, the Court shall conduct a hearing on or before the date that is thirty (30) days following the Petition Date to resolve any disputes between the Debtors and such Utility Provider regarding the Adequate Assurance Procedures or the Proposed Adequate Assurance.

14. For Subsequently Identified Utility Providers that are added to the Utility Services List within 30 days of the Petition Date, the Debtors will cause a copy of this Order, including the Adequate Assurance Procedures, to be served on such Subsequently Identified Utility Provider no later than three business days after the Utility Provider is added. Any Subsequently Identified Utility Provider added to the Utility Services List shall be bound by the Adequate Assurance Procedures. In addition, the Debtors will augment the Adequate Assurance Deposit to include an amount the Debtors estimate in good faith to equal one-half of the Debtors' average monthly cost for each Subsequently Identified Utility Provider, as calculated based on utility payments made during the past year less the amount of Prepetition Deposits for certain Utility Providers.

15. The Adequate Assurance Procedures set forth herein are for all Utility Providers providing Utility Services to the Debtors and are not limited to those parties or entities listed on the Utility Services List.

16. The Debtors' service of the Motion upon the parties or entities listed on the Utility Services List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code and is not intended, nor should it be construed, to impair the Debtors' rights to contest the assessment or the amount, basis, or validity of any Utility Services that may be alleged to be due, and the Debtors expressly reserve all rights and defenses with respect thereto.

17. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

18. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, and subject to the administrative status afforded pursuant to this Order, nothing in this Order shall be deemed: (a) an admission by the Debtors 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 by the Debtors 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.

19. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(a).

20. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Order, including the following information: (a) the names of the payee; (b) the nature, date, and amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; and (d) the Debtor or Debtors that made the payment. On the last business day of each month, the Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, counsel to certain of the Senior Secured Noteholders, and any statutory committee appointed in these chapter 11 cases every thirty days beginning upon entry of this Order and ending upon entry of an order confirming a plan or dismissing or converting these chapter 11 cases.

21. 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.

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

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

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