

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

	)	
In re:	)	Chapter 11
	)	
AVAYA INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 23-90088 (DRJ)
	)	
Debtors.	)	(Joint Administration Requested)
	)	(Emergency Hearing Requested)

**DEBTORS' EMERGENCY**  
**MOTION FOR ENTRY OF AN 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**

**Emergency relief has been requested. Relief is requested not later than 9:00 a.m. (prevailing Central Time) on February 15, 2023.**

**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 February 15, 2023, at 9:00 a.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, 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 Jones's conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones's homepage. The meeting code is "Judge Jones". 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"**

<sup>1</sup> 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.



**link on Judge Jones’s homepage. Select the case name, complete the required fields and click “Submit” to complete your appearance.**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state the following in support of this motion (this “Motion”):<sup>2</sup>

### **Relief Requested**

1. The Debtors seek entry of an order, substantially in the attached form (the “Order”), (a) determining that the Adequate Assurance Procedures (as defined herein) provide the Utility Providers (as defined herein) with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; (b) prohibiting the Utility Providers from altering, refusing, or discontinuing services; (c) approving procedures for resolving any dispute concerning adequate assurance in the event that a Utility Provider is not satisfied with the Proposed Adequate Assurance (as defined herein); and (d) granting related relief.

### **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). The Debtors confirm their consent to the entry of a final order by the Court.

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”), rules 6003 and 6004 of the Federal Rules of

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<sup>2</sup> The Debtors, together with their non-Debtor affiliates (collectively, “Avaya” or the “Company”), are a leading provider of mission-critical, real-time communication applications. The facts and circumstances supporting this Motion are set forth in the *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”), filed contemporaneously with the filing of this Motion and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 1075-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

### **Background**

5. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. The Debtors have filed a motion requesting joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. 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.

### **Utility Services and Proposed Adequate Assurance**

#### **I. Utility Services and Utility Providers.**

7. In connection with the operation of their businesses, the Debtors obtain, either directly or indirectly, electricity, natural gas, water and sewage, telephone, internet, garbage, recycling, cable, and other similar services (collectively, the “Utility Services”) from several utility companies (each, a “Utility Provider,” and, collectively, the “Utility Providers”). The Debtors obtain certain Utility Services, such as water, sewer, power, and janitorial services, indirectly through the Debtors’ property manager, Cushman & Wakefield (“Cushman”) and several of the Debtors’ landlords. Cushman pays certain Utility Providers directly for the applicable Utility Services.<sup>3</sup> For several of the Debtors’ properties, the Debtors’ landlords obtain Utility Services for the Debtors directly from the Utility Providers pursuant to various lease

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<sup>3</sup> The following Utility Providers are paid directly by Cushman: BGE (Electric); ComEd (Electric); Dominion Virginia Power (Electric); and Washington Gas (Gas).

agreements and subsequently seek reimbursement from the Debtors through Cushman.<sup>4</sup> Cushman draws funds as necessary from the Debtors' bank accounts to pay the Utility Providers and landlords. The Debtors fund the bank accounts approximately twice monthly based on Cushman's estimated charges. While the Proposed Adequate Assurance (as defined herein) does not allocate any amounts toward these Utility Providers, out of an abundance of caution, the Utility Providers directly paid by Cushman are included on the Utility Providers List (as defined herein) and shall continue to be paid by Cushman and the Debtors' landlords in the ordinary course of business in accordance with prepetition practices. A nonexclusive list of the Utility Providers and their affiliates that provide Utility Services to the Debtors as of the Petition Date (the "Utility Providers List") is attached to the Order as Exhibit 1.<sup>5</sup>

8. Given that the Debtors mainly provide communication and networking services and products to other businesses, uninterrupted Utility Services are essential to the Debtors' ongoing operations and the overall success of these Chapter 11 Cases. As of the Petition Date, the Debtors estimate that they owe approximately \$1,250,000 on account of prepetition Utility Services. On average, the Debtors pay approximately \$900,000 each month for the Utility Services. The Debtors estimate that their cost for Utility Services during the thirty days following the Petition Date will be approximately \$1,000,000. To the best of the Debtors' knowledge, none of

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<sup>4</sup> The Debtors also lease certain data processing centers (the "Data Centers" and its operators, the "Data Center Operators"). The Data Center Operators obtain certain Utility Services for the Data Centers. The Debtors do not directly pay any of these Utility Providers, and thus do not identify these Utility Providers in the Utility Providers List (as defined herein).

<sup>5</sup> Although the Debtors believe that the Utility Providers List includes all of their Utility Providers, the Debtors reserve the right to supplement such list if they inadvertently omitted any Utility Provider. Additionally, inclusion or exclusion of an entity on the Utility Providers List is not 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 with respect to any such determination. The Debtors request relief applicable to all Utility Providers, regardless of whether such Utility Provider is specifically identified in Exhibit 1 of the Order.

the Utility Providers hold deposits from the Debtors, and the Debtors are not in possession of any funds allocated for any prepayments for the Utility Services.

9. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations will be severely disrupted, which would impair the Debtors' ability to manage their reorganization efforts and jeopardize the Debtors' revenue-generating capability to the detriment of all stakeholders in these Chapter 11 Cases. It is essential that the Utility Services continue uninterrupted during these Chapter 11 Cases.

## **II. Proposed Adequate Assurance of Payment.**

10. The Debtors intend to timely pay postpetition obligations owed to the Utility Providers in the ordinary course of business. The cash held by the Debtors, the cash generated in the ordinary course of business, and the cash available to the Debtors under their proposed debtor in possession financing facility will provide sufficient liquidity to pay the Debtors' Utility Service obligations in accordance with their prepetition practices during the pendency of these Chapter 11 Cases.

11. To provide additional assurance of payment, the Debtors propose to deposit \$500,000 (the "Adequate Assurance Deposit") into a newly created, segregated account (the "Adequate Assurance Account") as soon as reasonably practicable, but no later than fifteen (15) business days after entry of the proposed Order. The Adequate Assurance Deposit represents an amount equal to approximately half of the Debtors' average monthly cost of Utility Services, calculated based on the Debtors' average utility expenses for the twelve-month period preceding the Petition Date, excluding Utility Services billed directly to Cushman and the Debtors' landlords. The Adequate Assurance Deposit will be held in the Adequate Assurance Account for the benefit of the Utility Providers for the duration of these Chapter 11 Cases and may be applied to any postpetition defaults in payment to the Utility Providers.

12. The Adequate Assurance Deposit, in conjunction with the Debtors paying all Utility Providers current through the Petition Date, the Debtors' cash flow from operations, cash on hand, and cash from the proposed debtor in possession financing (collectively, the "Proposed Adequate Assurance") demonstrate the Debtors' ability to pay for future Utility Services in accordance with their prepetition practices and constitutes sufficient adequate assurance to the Utility Providers in full satisfaction of section 366 of the Bankruptcy Code.

### **III. The Adequate Assurance Procedures.**

13. 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 will implement a streamlined process for Utility Providers to address potential concerns with respect to the Proposed Adequate Assurance, while 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 serving an Adequate Assurance Request upon certain Notice Parties (as defined in the Order). The Debtors, in their discretion, and upon consultation with each of the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group, may then resolve any Adequate Assurance Request by mutual agreement with the Utility Provider without further order of the Court. If the Debtors determine that the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors may seek Court resolution of the Adequate Assurance Request. Absent compliance with the Adequate Assurance Procedures, the Utility Providers including, without limitation, those listed on the Utility Providers List, shall be 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.

**IV. Modifications to the Utility Providers List.**

14. The Debtors have made an extensive and good-faith effort to identify all Utility Providers and include them on the Utility Providers List. To the extent the Debtors subsequently identify additional Utility Providers or discontinue any Utility Services, the Debtors seek authority, in their discretion, and upon consultation with each of the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group, to amend the Utility Providers List to add or remove any Utility Provider. The Debtors further request that the relief requested in this Motion, including the proposed Adequate Assurance Procedures, and any order granting this Motion shall apply to any Utility Provider subsequently added to the Utility Providers List (each, a "Subsequently Identified Utility Provider"), regardless of when such Utility Provider was added to the Utility Providers List. The Debtors will serve a copy of this Motion and the Order on any Utility Provider subsequently added to the Utility Providers List, and any Subsequently Identified Utility Provider shall have twenty-one days from the date of service of this Motion and the Order to make an Adequate Assurance Request. The Debtors shall have the period specified in the proposed Adequate Assurance Procedures to seek to resolve any Subsequently Identified Utility Provider's Adequate Assurance Request by mutual agreement with the Utility Provider and upon consultation with each of the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group without further order of this Court or shall schedule a hearing with this Court to determine the adequacy of assurance payment in accordance with the proposed Adequate Assurance Procedures.

**Basis for Relief**

15. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366.

Section 366(c) of the Bankruptcy Code requires the debtor to provide “adequate assurance” of payment for postpetition services in a form “satisfactory” to the utility provider within thirty days of the petition date, or the utility provider may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of a debtor’s ability to pay. *See In re Tekoil & Gas Corp.*, No. 08-80270G3-11, 2008 WL 2928555, at \*2 n.1 (Bankr. S.D. Tex. July 21, 2008) (citing *In re Viking Offshore (USA) Inc.*, No. 08-31219-H3-11, 2008 WL 782449, at \*3 n.3 (Bankr. S.D. Tex. Mar. 20, 2008) (“[A] debtor may continue to pay a utility, and a utility may continue to provide service, in the absence of an injunction preventing the utility from terminating service.”)).

16. When considering whether a given assurance of payment is “adequate,” courts should examine the totality of the circumstances to determine whether the utility provider will be subject to an unreasonable risk of nonpayment. *See In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979)). 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) (citing *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)).

17. Termination of the Utility Services could result in the Debtors’ inability to operate their businesses to the detriment of all stakeholders. *See In re Pilgrim’s Pride Corp.*, No. 08-45664 (DML), 2009 WL 7313309, at \*2 (Bankr. N.D. Tex. Jan. 4, 2009)

(“The consequences of an unexpected termination of utility service to [the debtors] could be catastrophic.”).

18. Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Debtors endeavor to pay all utility bills on time in the ordinary course of business. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course, in addition to the direct payments being made by Cushman and the Debtors’ landlords on behalf of the Debtors to various Utility Providers, provide assurance that the Debtors will pay their future obligations to the Utility Providers.

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 Circuit City Stores Inc.*, No. 08-35653, 2009 WL 484553, at \*5 (Bankr. E.D. Va. Jan. 14, 2009) (stating that “the plain language of [section] 366 of the Bankruptcy Code allows the Court to adopt the Procedures 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.” *Id.* Notwithstanding a determination that the Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights that 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. The Utility Providers still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. The Adequate Assurance Procedures avoid a haphazard and chaotic process whereby each Utility Provider could make an extortionate, last-minute demand for adequate assurance that would force the Debtors to pay under the threat of losing critical Utility Services.

20. The Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code, and the Debtors request that the Court grant the relief requested herein. Further, the Court possesses the power, under section 105(a) of the Bankruptcy Code, 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. The Court should exercise its powers under sections 366 and 105(a) of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

**Emergency Consideration**

21. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” An immediate and orderly transition into chapter 11 is critical to the viability of the Debtors’ operations. 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. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

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

22. 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).

**Reservation of Rights**

23. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (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 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 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 this 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. 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**

24. The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the

Akin Ad Hoc Group; (d) counsel to the PW Ad Hoc Group; (e) the Prepetition ABL Agent and counsel thereto; (f) the Prepetition Term Loan Agent and counsel thereto; (g) the 6.125% Senior Secured First Lien Notes Trustee and counsel thereto; (h) the 8.00% Exchangeable Senior Secured Notes Trustee and counsel thereto; (i) the 2.25% Convertible Notes Trustee and counsel thereto; (j) counsel to the DIP Term Loan Agent; (k) the proposed DIP ABL Agent and counsel thereto; (l) the Office of the United States Attorney for the Southern District of Texas; (m) the state attorneys general for states in which the Debtors conduct business; (n) the Internal Revenue Service; (o) the Securities and Exchange Commission; (p) the Environmental Protection Agency; (q) other governmental agencies having a regulatory or statutory interest in these cases; (r) the Utility Providers; and (s) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice is required.

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.

Houston, Texas  
Dated: February 14, 2023

*/s/ Patrick J. Nash, Jr.*

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**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Joshua A. Sussberg, P.C. (*pro hac vice* pending)

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-and-

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*Proposed Co-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/ Patrick J. Nash, Jr.*

\_\_\_\_\_  
Patrick J. Nash, Jr., P.C.

**Certificate of Service**

I certify that on February 14, 2023, 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.

*/s/ Patrick J. Nash, Jr.*

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Patrick J. Nash, Jr., P.C.

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

<p>In re:</p> <p>AVAYA INC., <i>et al.</i>,<sup>1</sup></p> <p style="text-align: right;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 23-90088 (DRJ)</p> <p>(Joint Administration Requested)</p> <p><b>Re: Docket No.</b> _____</p>
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**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”)<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.

- 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.

Dated: \_\_\_\_\_, 2023

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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 Miraflares, 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	

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