

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re	:	Chapter 11
Telogy, LLC, <u>et al.</u>	:	Case No. 10-10206 (MFW)
	:	Jointly Administered
Debtors. <sup>1</sup>	:	<b>Ref. Docket No. 11</b>
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**FINAL ORDER: (I) PROHIBITING UTILITIES  
FROM ALTERING, REFUSING OR DISCONTINUING  
SERVICES; (II) DEEMING UTILITY COMPANIES ADEQUATELY  
ASSURED OF FUTURE PERFORMANCE; AND (III) ESTABLISHING  
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion (the “**Motion**”) of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) for an Interim Order<sup>2</sup> and Final Order pursuant to section 366 of title 11 of the United States Code (the “**Bankruptcy Code**”):

(i) prohibiting Utility Companies from altering, refusing or discontinuing services; (ii) deeming utility companies adequately assured of future performance; and (iii) establishing procedures for determining adequate assurance of payment; and upon the Affidavit of Gary B. Phillips, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings; and due and sufficient notice of the Motion and the Interim Order having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors’ executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

<sup>2</sup> Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is granted on a final basis.
2. The terms and conditions of this Order shall be immediately effective and enforceable upon entry.
3. To the extent not previously funded, the Debtors shall furnish Utility Companies with adequate assurance of payment for postpetition services by depositing \$1,630 in an account maintained by the Debtors (the "**Utility Deposit Account**"), which amount may be adjusted by the Debtors without further order of this Court if the Debtors terminate any Utility Service provided by a Utility, make other arrangements with respect to adequate assurance of payment or determine an entity listed on Exhibit A is not a Utility.
4. In the event that a Utility Company believes that additional assurance ("**Additional Adequate Assurance**") is required, it may request such Additional Adequate Assurance pursuant to the procedures set forth below (the "**Additional Adequate Assurance Procedures**"):
  - (a) Any Utility Company desiring Additional Adequate Assurance must serve a written request (an "**Additional Adequate Assurance Request**") on the following parties identified in this paragraph at each of the following addresses: (i) Telogy, LLC, 3200 Whipple Road, Union City, CA 94587, Attn: Gary B. Phillips, Debtors; (ii) Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801, Attn: Donald J. Bowman, Jr. Esq. and Robert F. Poppiti, Jr., Esq., co-counsel to the Debtors; and (iii) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: John C. Longmire, Esq. and Shaunna D. Jones, Esq., co-counsel to the Debtors (the "**Notice Parties**");
  - (b) Any Additional Adequate Assurance Request must: (i) be made in writing; (ii) set forth the type of Utility Services provided as well as the location of the Debtors to which such Utility Service is provided and account number(s); (iii) include a summary of the Debtors' payment history relevant to each affected account(s), including any security deposits; and (iv) include a proposal for what would constitute adequate assurance from the Debtors, along with an explanation as to why the Utility Company

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

- (c) Upon the Debtors' receipt of an Additional Adequate Assurance Request at the addresses set forth above, the Debtors shall have thirty (30) days after the Additional Adequate Assurance Request (the "**Resolution Period**") to negotiate with such Utility Company to resolve such Utility Company's request for additional assurance of payment;
- (d) The Debtors may, in their discretion, resolve any Additional Adequate Assurance Request by mutual agreement with the Utility Company and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Company with Additional Adequate Assurance in the form of, but not limited to, cash deposits, prepayments and or other forms of security, without further order of this Court if the Debtors believe such Additional Adequate Assurance is reasonable;
- (e) If the Debtors determine that an Additional Adequate Assurance Request is not reasonable and/or they are not able to reach an alternative resolution with the Utility Company during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will schedule a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Company (the "**Determination Hearing**") pursuant to section 366(c)(3) of the Bankruptcy Code;
- (f) During any Resolution Period and, if applicable, pending resolution of any Determination Hearing, the particular Utility Company that has requested the Additional Adequate Assurance at issue shall be restrained from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance;
- (g) Unless and until a future order of the Court is entered requiring further assurance of payment, based on the establishment of Proposed Adequate Assurance, a Utility Company shall be deemed to have adequate assurance of payment.

5. A Utility Company shall be deemed to have adequate assurance of payment unless and until: (a) the Debtors, in their sole discretion, agree to (i) such Additional Adequate Assurance Request as may be requested; or (ii) an alternative adequate assurance of payment with the Utility Company during the Resolution Period; or (b) this Court enters an order

at any Determination Hearing requiring that additional adequate assurance of payment be provided.

6. Any Utility Company that does not timely serve an Additional Adequate Assurance Request shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of section 366 of the Bankruptcy Code, and shall further be deemed to have waived any right to seek additional adequate assurance during the course of the Debtors' chapter 11 cases.

7. The Debtors are authorized to supplement, as necessary, the Utility Companies set forth on Exhibit A to the Motion, and this Order shall apply to any such Utility Company subsequently added to such Exhibit A.

8. Any of the Additional Adequate Assurance provided to any Utility Company pursuant to the procedures set forth herein shall be promptly returned to the Debtors at the conclusion of these chapter 11 cases, if not returned or applied earlier.

9. The Debtors are authorized to (i) pay on a timely basis in accordance with their prepetition practices all undisputed invoices in respect of postpetition Utility Services rendered by the Utility Companies to the Debtors and (ii) take all actions necessary to implement the relief granted in this Order.

10. Nothing in this Order or the Motion shall be deemed to constitute the postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code.

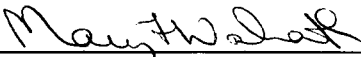
11. The Debtors shall serve a copy of this Order on each Utility Company listed on Exhibit A to the Motion within three (3) business days of the date this Order is

entered, and shall promptly serve this Order on each Utility Company subsequently added by the Debtors to Exhibit A to the Motion.

12. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

13. This Court shall retain jurisdiction to hear and determine all matters arising from, or related to, the implementation and/or interpretation of this Order.

Dated: Wilmington, Delaware  
February 19, 2010

  
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Mary F. Walrath  
United States Bankruptcy Judge