

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re : Chapter 11
 :
Telogy, LLC, et al., : Case No. 10- 10206 ()
 :
 :
Debtors. : Joint Administration Pending
-----X

DEBTORS' MOTION FOR AN INTERIM ORDER AND 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

The debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**")¹ hereby move for entry of an interim order (the "**Interim Order**") and final order (the "**Final Order**") pursuant to section 366 of title 11 of the United States Code (the "**Bankruptcy Code**"): (i) prohibiting Utility Companies (as defined below) 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 (the "**Motion**"). In addition, the Debtors are seeking to schedule a final hearing (the "**Final Hearing**") on the Motion to be held on or before the day that is twenty-five (25) days after the Petition Date (as defined below). In support of the Motion, the Debtors rely upon and incorporate by reference the Affidavit of Gary B. Phillips, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings (the "**Phillips Affidavit**"), which was filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their undersigned proposed co-counsel, respectfully represent:

¹ 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.

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 366 of the Bankruptcy Code.

BACKGROUND

2. On January 24, 2010 (the "**Petition Date**"), Telogy, LLC and e-Cycle, LLC filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases be consolidated for procedural purposes. As of the date hereof, no official committee of unsecured creditors has been appointed.

3. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Phillips Affidavit.

THE UTILITY COMPANIES

4. Many of the utilities that the Debtors require for the operation of their businesses and the management of their property, including water, natural gas, and electricity, are provided by their landlord, Woodstock Development, pursuant to their property lease. With respect to certain other necessary utility services, however, including telephone and garbage services (collectively, the "**Utility Services**"), the Debtors maintain their own accounts with the utility providers (collectively, the "**Utility Companies**"). Attached hereto as Exhibit A is a list of substantially all of the Utility Companies that provide Utility Services to the Debtors as of the Petition Date, along with, among other things, the average monthly cost

of such Utility Services. The relief requested herein is requested with respect to all Utility Companies, and is not necessarily limited to those listed on Exhibit A.²

5. Prior to the Petition Date, the Utility Companies provided Utility Services to the Debtors at various locations. Ordinarily, the Debtors pay each of the Utility Companies upon receipt of a monthly invoice for the Utility Services. None of the Utility Companies hold prepetition deposits from the Debtors. To the best of their knowledge, the Debtors have not had significant defaults or arrearages with respect to undisputed invoices for Utility Services, other than any payment interruptions that may be caused by the commencement of these chapter 11 cases.

RELIEF REQUESTED

6. Pursuant to section 366 of the Bankruptcy Code, during the first 20 days following the commencement of a chapter 11 bankruptcy case, a utility may not alter, refuse, or discontinue service to, or discriminate against, a debtor solely on the basis of the commencement of a case or the failure of the debtor to pay a prepetition debt for Utility Services provided. Following the 20-day period, however, utility companies may alter, refuse or discontinue service if the debtor does not furnish “adequate assurance of payment” of postpetition utility service obligations. Furthermore, following the 30-day period after the commencement of a bankruptcy case, utility companies may alter, refuse or discontinue service if the debtor does not provide adequate assurance of payment of postpetition utility service that

² While the Debtors have exercised their reasonable best efforts to list all of their Utility Companies on Exhibit A, it is possible that certain Utility Companies may have been inadvertently omitted from this list. Accordingly, the Debtors reserve the right, pursuant to the terms and conditions of this Motion and without further order of the Court, to amend Exhibit A to add any Utility Companies that were omitted therefrom and to request that the relief requested herein apply to such entities as well. In addition, the Debtors reserve the right to argue that any of the entities now or hereafter listed in Exhibit A are not “utilities” within the meaning of section 366(a) of the Bankruptcy Code.

is “satisfactory to the utility.”³ Section 366 of the Bankruptcy Code provides, in relevant part, as follows:

- (a) Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.
- (b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

* * *

- (c)(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

11 U.S.C. § 366.

7. If the Utility Companies are permitted to terminate Utility Services on the 21st day after the Petition Date, pursuant to section 366(b) of the Bankruptcy Code, or on the 31st day after the Petition Date, pursuant to section 366(c)(2) of the Bankruptcy Code, the Debtors’ business affairs will be disrupted severely. To avert such harm, absent an order from this Court, the Debtors would be required to pay whatever amounts are demanded by the

³ There is an apparent discrepancy between subsections (b) and (c) of section 366 of the Bankruptcy Code: those two subsections set forth different time periods during which a utility is prohibited from altering, refusing or discontinuing utility service. While section 366(b) of the Bankruptcy Code allows a utility to alter, refuse or discontinue service “if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment,” section 366(c)(2) of the Bankruptcy Code allows a utility in “a case filed under chapter 11” to alter, refuse or discontinue service to a chapter 11 debtor “if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service” 11 U.S.C. § 366.

Utility Companies to avoid the cessation of necessary Utility Services. Accordingly, by this Motion and pursuant to section 366 of the Bankruptcy Code, the Debtors seek entry of the Interim Order and Final Order: (a) prohibiting Utility Companies from altering or discontinuing services; (b) establishing procedures for providing deposits to Utility Companies that request adequate assurance of payment; (c) deeming Utility Companies to have adequate assurance of payment; and (d) establishing procedures for resolving requests for additional assurances of payment.

A. The Proposed Adequate Assurance

8. The Debtors expect that revenues from operations and their use of cash collateral, with the consent of their secured lenders, will be sufficient to pay all postpetition obligations for Utility Services, and intend to continue to pay all such obligations in a timely manner. As an additional measure, the Debtors propose to deposit a sum equal to approximately fifty percent (50%) of their average aggregate monthly payment for Utility Services, or approximately \$1,630, into an account maintained by the Debtors (the “**Utility Deposit Account**”) to provide adequate assurance of payment for future services to the Utility Companies. The Debtors submit that the Utility Deposit Account together with the Debtors’ ability to pay for future Utility Services in the ordinary course of business (collectively, the “**Proposed Adequate Assurance**”), constitutes sufficient adequate assurance to the Utility Companies. If any Utility Company believes additional assurance (“**Additional Adequate Assurance**”) is required, the Debtors propose that such Utility Company be required to request such Additional Adequate Assurance pursuant to the procedures set forth below.

9. Although the Debtors recognize the right of the Utility Companies to evaluate the Proposed Adequate Assurance on a case-by-case basis, in light of the severe

consequences that would result from any interruption in the Debtors' Utility Services, the Debtors propose that the Court approve and adopt the following procedures (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.

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

11. Any Utility Company that does not file 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.

12. The Debtors will serve this Motion and a copy of the Interim Order on the Utility Companies within three (3) business days after entry of the Interim Order granting the relief requested herein.

FINAL HEARING DATE

13. In order to resolve any objection to the proposed adequate assurance procedures set forth above prior to the twentieth day following the Petition Date, the Debtors request that the Court schedule a hearing on the Motion on or before the day that is twenty-five (25) days after the Petition Date.

BASIS FOR RELIEF

14. The policy underlying section 366 of the Bankruptcy Code is to protect debtors from utility providers discontinuing, altering, or refusing to provide utility service upon the filing of a bankruptcy case, while at the same time providing utility companies with adequate assurance that the debtor will pay for postpetition services. See H.R. REP. No. 95-595, at 350 (1978), as reprinted in 1978 U.S.C.C.A.N. 5963, 6306.

15. Section 366(c) of the Bankruptcy Code was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“**BAPCPA**”) effective as of October 17, 2005. Section 366(c) of the Bankruptcy Code provides clarity as to what constitutes assurance of payment and what factors must be excluded from a court’s determination as to the adequacy of the assurance of payment. More specifically, section 366(c)(1) of the Bankruptcy Code defines “assurance of payment” to mean certain specified forms of security, thereby limiting a court’s discretion as to what constitutes “other security” within the meaning of section 366(b) of the Bankruptcy Code. Further, section 366(c)(1)(B) of the Bankruptcy Code affirmatively excludes from the definition of assurance of payment the availability of an administrative expense priority claim. In addition, section 366(c)(3)(B) of the Bankruptcy Code eliminates certain factors from consideration that courts prior to the

enactment of BAPCPA had used to determine whether adequate assurance of payment had been provided.⁴

16. While section 366(c) of the Bankruptcy Code clarifies what constitutes assurance of payment and what can be considered in determining whether such assurance is adequate, it is important to recognize that Congress did not abrogate the fundamental premise of section 366(b) of the Bankruptcy Code, or the relevant case law construing such section, by enacting section 366(c) of the Bankruptcy Code. That is, section 366(c), like section 366(b) of the Bankruptcy Code, provides that the Court is free to determine what amount, if any, is necessary to provide adequate assurance of payment to a utility company. While a court may no longer consider certain facts in determining what constitutes adequate assurance of payment, section 366(c) of the Bankruptcy Code continues to permit a court to determine the amount of deposit necessary to meet the adequate assurance standard.

17. In addition, the applicable standard for assurance of payment continues to be “adequate.” Courts construing section 366(b) of the Bankruptcy Code have long recognized that adequate assurance of payment need not constitute an absolute guarantee of the debtor’s ability to pay. See, e.g., In re Caldor, Inc. - N.Y., 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires [a] [b]ankruptcy [c]ourt to determine whether the circumstances are sufficient to provide a utility with ‘adequate assurance’ of payment. The statute does not require an ‘absolute guarantee of payment.’”) (citations omitted) (hereinafter “Caldor”), aff’d sub nom. Virginia Elec. & Power Co. v. Caldor, Inc. - N.Y., 117 F.3d 646 (2d Cir. 1997); Steinebach v. Tucson Elec. Power Co. (In re Steinebach), 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) (“Adequate assurance of payment is not, however, absolute assurance [A]ll § 366(b)

⁴ Section 366(c)(4) of the Bankruptcy Code also permits a utility company to recover or offset against a prepetition security deposit without notice or an order of the court.

requires is that a utility be protected from an unreasonable risk of non-payment”); In re Penn Jersey Corp., 72 B.R. 981, 982 (Bankr. E.D. Pa. 1987) (hereinafter “Penn Jersey”) (stating that section 366(b) of the Bankruptcy Code “contemplates that a utility receive only such assurance of payment as is sufficient to protect its interests given the facts of the debtor’s financial circumstances”).

18. Furthermore, courts have recognized that “[i]n deciding what constitutes ‘adequate assurance’ in a given case, 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.’” Caldor, 117 F.3d at 650 (emphasis in original) (quoting Penn Jersey, 72 B.R. at 985); see also In re Penn Cent. Transp. Co., 467 F.2d 100, 103-04 (3d Cir. 1972) (upholding lower court’s decision that no utility deposits were necessary where such deposits “would jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected”).

19. The Court has discretion to modify any request for assurance of payment and such assurance of payment need only be adequate. By offering the Proposed Adequate Assurance and the Additional Adequate Assurance Procedures, the Debtors seek to implement an organized process that facilitates the determination of the amount of assurance of payment that is adequate.

20. Without the Additional Adequate Assurance Procedures, the Debtors could be forced to address numerous requests by Utility Companies in an unorganized manner at a critical period in their chapter 11 cases when their efforts should be focused on stabilizing their operations and maximizing value for all of their stakeholders. The orderly process

contemplated by the Additional Adequate Assurance Procedures is necessary for a smooth transition by the Debtors into chapter 11 and will aid in their sale efforts. Moreover, the Additional Adequate Assurance Procedures will ensure that all parties act in good faith by establishing a fair process. This will protect the Debtors and their stakeholders from any attempt by a Utility Company to delay a request for adequate assurance in an attempt to force the Debtors to accede to its request to avoid cessation of essential services.

21. Similar relief to the relief requested herein has been granted by this Court subsequent to the enactment of BAPCPA. See, e.g., In re CCS Medical, Inc., Case No. 09-12390 (CSS) (Bankr. D. Del. July 27, 2009); In re Building Materials Holding Corporation, Case No. 09-12074 (KJC) (Bankr. D. Del. July 16, 2009); In re Aventine Renewable Energy Holdings, Inc., Case No. 09-11214 (KG) (Bankr. D. Del. May 1, 2009); In re Pliant Corporation, Case No. 09-10443 (MFW) (Bankr. D. Del. Mar. 11, 2009); In re Smurfit-Stone Container Corporation, Case No. 09-10235 (BLS) (Bankr. D. Del. Feb. 27, 2009); In re Merisant Worldwide, Inc., Case No. 09-10059 (PJW) (Bankr. D. Del. Feb. 12, 2009).

NOTICE

22. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' prepetition secured lenders; and (c) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis. The Debtors will serve copies of the Motion pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

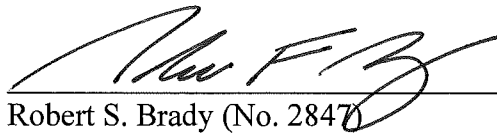
23. The Debtors submit that, under the circumstances, no other or further notice is required.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court schedule a final hearing on the Motion on or before twenty-five (25) days after the Petition Date and enter the Interim Order and Final Order, substantially in the forms annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
January 24, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Robert S. Brady (No. 2847)
Matthew B. Lunn (No. 4119)
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-and-

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Shaunna D. Jones
Andrew D. Sorkin
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Telephone: (212) 728-8000
Facsimile: (212) 728-8111

*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

EXHIBIT A

List of Utility Companies

Utility Company	Address	Account Number
1-800 Conference	P.O. Box 8103, Aurora, IL 60507-8103	02200001316378
AT&T	Payment Center Sacramento, CA 95887-00001	925 962-0863 821 9
	Payment Center Sacramento, CA 95887-00001	510 324-1827 930 4
	P.O. Box 105068 Atlanta, GA 30348-5068	050 828 4955 001
	PO Box 5019 Carol Stream, IL 60197-5019	831-000-1359 982
AT&T Long Distance	P.O. Box 5017 Carol Stream, IL 60197-5017	520493734
AT&T Mobility	P.O. BOX 60017 Los Angeles, CA 90060-0017	194500764
Sprint	P.O. BOX 4181 Carol Stream, IL 60197-4181	364476311
Verizon	PO BOX 28000 Lehigh Valley, PA 18002-8000	717 730-0777 575 87Y
Verizon Wireless	P.O. BOX 9622 Mission Hills, CA 91346-9622	570557102-00002
FRG Waste Resources, Inc.	P.O. BOX 10858 Napa, CA 94581	n/a

EXHIBIT B

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X	:	
In re	:	Chapter 11
	:	
Telogy, LLC, <u>et al.</u> ,	:	Case No. 10- <u>10206</u> ()
	:	
Debtors.	:	Jointly Administered
	:	Ref. Docket No. _____
-----X		

INTERIM 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; AND (IV) SCHEDULING A FINAL HEARING

Upon the motion (the “**Motion**”) of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”)¹ for an Interim Order² 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; (iii) establishing procedures for determining adequate assurance of payment; and (iv) scheduling a final hearing on the Motion; 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 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

¹ 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.

² Capitalized terms used but not defined herein shall have the same meanings ascribed to such terms in the Motion.

ORDERED, ADJUDGED, and DECREED that:

1. The Motion is granted on an interim basis.
2. Until such time as the Final Order is entered by the Court or denied, all Utility Companies are prohibited from (a) discontinuing, altering or refusing service to the Debtors on account of any unpaid prepetition charges, (b) discriminating against the Debtors, or (c) requiring payment of a deposit or receipt of any other security for continued Utility Services as a result of the Debtors' commencement of chapter 11 cases or any outstanding prepetition invoices, other than as set forth in the Motion.
3. The Debtors shall, within ten (10) business days of the entry of this Interim Order, 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 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. The Motion and this Interim Order shall be served by overnight mail, hand delivery or fax on each Utility Company the Debtors believe could be affected by the final relief requested in the Motion within three (3) business days of entry of this Interim Order.

7. Any responses or objections to the Motion and entry of the Final Order must (a) be made in writing, (b) state with particularity the grounds therefor, (c) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, and (d) be served upon co-counsel to the Debtors: (i) 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 deadline by which objections to the Motion and the Final Order must be filed and received by co-counsel to the Debtors is _____, 2010 at 4:00 p.m. (prevailing Eastern Time). A final hearing, if required, on the Motion will be held on _____ 2010 at _____ .m.

(prevailing Eastern Time). If no objections are filed to the Motion and entry of the Final Order, the Court may enter the Final Order without further notice or a hearing.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Interim Order.

Dated: Wilmington, Delaware
January __, 2010

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Proposed Final Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X	:	
In re	:	Chapter 11
	:	
Telogy, LLC, <u>et al.</u> ,	:	Case No. 10- <u>10206</u> ()
	:	
Debtors.	:	Jointly Administered
	:	Ref. Docket No. _____
-----X		

**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**”)¹ for an Interim Order² 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

¹ 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.

² 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
January __, 2010

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT D

Proposed Form of Notice of Entry of Interim Order and Final Hearing

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----x
In re : Chapter 11
Telogy, LLC, et al., : Case No. 10- 10256 (____)
 : Jointly Administered
 :
Debtors. : Objection Deadline: _____, 2010 at 4:00 p.m. (ET)
 : Hearing Date: _____, 2010 at ____m. (ET)
-----x Ref. Docket Nos. _____ and _____

**NOTICE OF ENTRY OF INTERIM ORDER
AND FINAL HEARING ON DEBTORS' MOTION
FOR A INTERIM ORDER AND 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**

PLEASE TAKE NOTICE that on January 24, 2010, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the attached **Motion for an Interim Order and 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** [Docket No. ____] (the "Motion"). On _____, 2010, the United States Bankruptcy Court for the District of Delaware (the "Court") entered the interim order (the "Interim Order") approving the Motion [Docket No. ____]. A copy of the Interim Order, as entered by the Court, is also attached hereto.

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Motion or entry of a final order with respect to the Motion must be filed on or before _____, **2010 at 4:00 p.m. (prevailing Eastern Time)** (the "Objection Deadline") with the United

States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must also serve a copy of the response upon the Debtors' proposed undersigned co-counsel so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A FINAL HEARING ON THE MOTION WILL BE HELD ON _____, 2010 AT [____ .m.] (prevailing Eastern time) BEFORE THE HONORABLE _____, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE , 824 NORTH MARKET STREET, COURTROOM NO. [____], WILMINGTON, DELAWARE 19801. The hearing may be adjourned from time to time.

PLEASE TAKE FURTHER NOTICE that the hearing may be adjourned from time to time, without further notice, other than an announcement of the adjourned date or dates at or before the hearing or at a later hearing.

PLEASE TAKE FURTHER NOTICE that if you fail to properly file and serve a response on or before the Objection Deadline, the Court may grant the relief requested in the Motion without further notice or hearing.

Dated: Wilmington, Delaware
_____, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Robert S. Brady (No. 2847)
Matthew B. Lunn (No. 4119)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
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-and-

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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*