



UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

Caption in compliance with D.N.J. LBR 9004-2(c)

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In re:
TCI 2 HOLDINGS, LLC, et al.,
Debtors.

Chapter 11
Case No.: 09-13654 (JHW)
(Jointly Administered)

ORDER (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICES ON ACCOUNT OF PREPETITION CLAIMS AND (B) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE

The relief set forth on the following

DATED 3/20/2009

 reby

Judith H. Wizmur, Chief Judge
United States Bankruptcy Court

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Debtors: TCI 2 HOLDINGS, LLC, et al.,
Case No.: 09-13654 (JHW)
Caption of Order: ORDER (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICES ON ACCOUNT OF PREPETITION CLAIMS AND (B) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE

The debtors and debtors in possession (collectively, the “Debtors”) filed a Motion (the “Motion”)¹ for an Order under §§ 105, 362, 366, 503(b), and 507(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., (the “Bankruptcy Code”), (A) prohibiting the Debtors’ utility service providers (the “Utility Companies”), including, but not limited to, the Utility Companies listed on Exhibit A² attached to the Motion, from altering, refusing, or discontinuing services on account of outstanding prepetition invoices; and (B) establishing procedures for determining additional adequate assurance and requested expedited consideration; and the Court having carried the Motion to March 17, 2009; and the Debtors having obtained consent to such relief from most of the Debtors’ Utility Companies as reflected in various Consent Orders filed with the Court; and no objection having been filed; and for good cause shown and having heard the statements of counsel in support; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (c) good and sufficient notice of the Motion was provided by the Debtors; and the Court being fully advised in the premises and having determined that just cause for the relief herein granted; and upon the Motion, the Declaration of John P. Burke in Support of First Day Applications and Motions and all of the proceedings had before the Court; and after due deliberation,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

² Nothing contained in Exhibit A shall constitute an admission by the Debtors that an entity contained in such nonexclusive list is a utility entitled to the protections afforded by section 366 or any other provision of the Bankruptcy Code

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2. The Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices with respect to postpetition Utility Services rendered by the Utility Companies.

3. Any Utility Company accepting such payment shall be deemed to be adequately assured of future payment and to have waived any right to seek additional adequate assurances in the form of a deposit or otherwise.

4. Absent any further order of this Court, no Utility Company shall (a) alter, refuse, or discontinue service to, or discriminate against the Debtors solely on the basis of the commencement of this case or on account of any unpaid amount for utility service provided prior to the Petition Date, or (b) discontinue or condition continued service on additional adequate assurance of payment other than either (i) payment in full of prepetition amounts owing; or (ii) a deposit equal to two (2) weeks of utility service, calculated based on the historical average over the twelve (12) months before the Petition Date.

5. Under § 503(b)(1)(A) of the Bankruptcy Code, any unpaid postpetition charges for Utility Services constitute actual and necessary expenses of preserving the Debtors' estates, entitling the Utility Companies to an administrative expense priority under § 507(a)(1) of the Bankruptcy Code.

6. The Debtors' record of payment of prepetition utility bills and the Utility Companies' entitlement to an administrative expense priority under § 507(a)(1) of the Bankruptcy Code for unpaid postpetition charges are deemed to constitute additional adequate assurance of future payment for future utility services pursuant to § 366(b).

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7. Any deposits, bonds, letters of credit or other assurances of payment that were in place prior to the Petition Date shall remain in place and shall continue to be held by those Utility Companies holding the same, except upon entry of further order of this Court.

8. This Order is without prejudice to the rights of any Utility Company that has not already entered into a Consent Order with the Debtors to request from the Debtors additional assurance in the form of deposits or other security; provided, however, that any such request must (a) be made in writing, (b) include a summary of the Debtors' payment history relevant to the affected account and (c) be received by the Debtors within thirty (30) days of the date of service of this Order. Any Utility Company that does not timely and, in writing, request additional adequate assurance of payment shall be deemed to be adequately assured of payment under section 366(b) of the Bankruptcy Code.

9. If the Debtors believe that a request for additional adequate assurance made by a Utility Company, which otherwise satisfies the requirements set forth above, is unreasonable, and the Debtors are unable to resolve the request consensually with the Utility Company, then upon the written request of the Utility Company (the "Request") the Debtors shall file a motion for determination of adequate assurance of payment and set such motion for hearing (the "Determination Hearing") at the next regularly-scheduled omnibus hearing occurring more than twenty (20) days after the date of the Request, unless another hearing date is agreed to by the parties or ordered by the Court.

10. Any Utility Company having made a request for additional adequate assurance of payment shall be deemed to have adequate assurance until the Court enters a final order in

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connection with such a request finding that the Utility Company is not adequately assured of future payment.

11. Any utility company not listed on Exhibit A attached to the Motion, but subsequently identified by the Debtors, shall be served with the Motion and any orders entered with respect thereto and shall be afforded thirty (30) days from the date of service to request

12. Substantially contemporaneously with such service, the Debtors shall file with the Court a supplement to Exhibit A attached to the Motion adding the name of the utility company(ies) so served and not included on Exhibit A attached to the Motion, and this Order shall be deemed to apply to such utility company(ies) from the date of such service, subject to a later order of the Court on a motion for determination of adequate assurance, if any.

13. The Debtors shall serve a copy of the Motion and this Order upon each of the Utility Companies listed on Exhibit A attached to the Motion, at the addresses listed thereon, by first-class mail, postage prepaid, within five (5) business days of the entry of this Order.

14. Nothing in this Order shall be deemed to affect any burden of proof that either the Debtors or any Utility Company may have in a Determination Hearing or to confer upon the Utility Companies listed in Exhibit A to the Motion the status of a “utility” within the meaning of § 366.

15. This Court retains jurisdiction to construe and enforce this Order.

16. The Debtors are hereby authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

17. The requirement pursuant to D.N.J. LBR 9013-2 that the Debtors file a memorandum of law in support of the Motion is hereby waived.

General Information

Court	United States Bankruptcy Court for the District of New Jersey; United States Bankruptcy Court for the District of New Jersey
Docket Number	1:09-bk-13654
Status	Closed