

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)	Chapter 11
PAPER SOURCE, INC., <i>et al.</i>)	Case No. 21-30660-KLP
Debtors.)	(Jointly Administered)
)	
)	

LIMITED OBJECTION TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (A) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICES, (B) PROVIDING UTILITY COMPANIES WITH ADEQUATE ASSURANCE OF PAYMENT, (C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE OF PAYMENT, AND (D) GRANTING RELATED RELIEF FILED BY FERRUM TECHNOLOGY SERVICES, LLC

Ferrum Technology Services, LLC ("Ferrum"), states as follows as its limited objection to the *Debtors Motion for Entry of Interim and Final Orders (A) Prohibiting Utility Companies from Altering or Discontinuing Services, (B) Providing Utility Companies with Adequate Assurance of Payment, (C) Establishing Procedures for Resolving Requests for Additional Assurance of Payment, and (D) Granting Related Relief* [ECF No. 10] ("Motion") in the above-captioned matter(s):

1. Ferrum provides a broad variety of information technology services to the Debtors, including but not limited to trunk phone line services, "dial-tone" service for the Debtors' headquarters and warehouse (which Ferrum obtains from an outside provider and passes through to the Debtors), a cloud-hosted phone system for these locations, IT help desk services for the Debtors' employees, and after-hours IT support.

2. Historically, the total monthly amounts charged to the Debtors by Ferrum for these services would range from approximately \$25,000 to approximately \$30,000, varying largely due to seasonal holiday demand for many of the products sold by Debtors. Help desk services constitute by far the largest share of these monthly charges.

3. Of those amounts, providing “telephone” service is a very small portion. Ferrum itself is a privately owned, unregulated IT service provider, with numerous competitors within its professional and geographic reach. Accordingly, Ferrum cannot be properly categorized as a “utility” within the meaning of § 366 of the Bankruptcy Code.

4. The term “utility” as used in § 366 is not defined by the Bankruptcy Code, but numerous bankruptcy courts have stated that the term ordinarily refers to a “business organization (as an electric company) performing a public service and subject to special governmental regulations,” that has “some special position with respect to the debtor,” and has “a monopoly in the area so that the debtor cannot easily obtain comparable service from another.” *One Stop Realtour Place, Inc. v. Allegiance Telecom, Inc. (In re One Stop Realtour Place, Inc.)*, 268 B.R. 430, 435, 436, 437 (Bankr.E.D.Pa. 2001). *See also Darby v. Time Warner Cable, Inc. (In re Darby)*, 470 F.3d 573, 575 (5th Cir.2006); *Martinez v. Autoridad De Aqueductos Y Alcantarillados (In re Martinez)*, 504 B.R. 722 (Bankr. P.R. 2014); *In re PMC Mktg. Corp.*, 501 B.R. 17, 24 (Bankr.D.P.R.2013); *In re Erving Indus. Inc.*, 432 B.R. 354 (Bankr. Mass. 2010). Ferrum clearly does not meet the criteria to be categorized as a “utility.”

5. Counsel for Ferrum has communicated with Debtors’ counsel regarding the monthly amount of \$1,073 set forth in the “Utility List” (Schedule C to the Motion) which is attributed to Ferrum as a “utility.” Ferrum’s understanding is that the Debtors’

intent with respect to this figure was to carve out and characterize as a “utility” only the amounts paid for telephone “dial tone” service. Ferrum does not agree or concede at this time that such service is a “utility” within the meaning of § 366, but assuming it is, two issues arise.

6. First, Ferrum seeks clarification that it is not being categorized as a “utility” more generally, or for the purposes of its other services such that its other services would be subject to the terms of any order entered pursuant to the Motion.

7. Second, the Motion addresses the rights and duties of the Debtors and Landlords for utility “pass through,” but does not address Ferrum’s situation as a non-Landlord vendor which provides “pass through” services that the Debtors are characterizing as a “utility.” Ferrum is clearly not a “Landlord” under any definition. Given that the “dial tone” services which Ferrum understands are being treated as a “utility” by the Motion can be readily and directly obtained by the Debtors from multiple sources, Ferrum seeks clarification that it will not be treated as, or similar to, a “Landlord” as set forth in the Motion. More particularly, Ferrum seeks clarification that any obligations it may have to provide “pass through” dial tone service will not be enlarged or extended by operation of any order entered pursuant to the Motion.

8. Ferrum reserves the right to raise additional objections to the extent that additional information is provided by the Debtors, and to the extent that the Motion or any proposed order pursuant thereto is further modified.

Respectfully submitted,

/s/ David G. Browne
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Counsel for Ferrum Technology Services, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day March 2021, I caused a copy of the foregoing to be served through the Court's EM/ECF system on all parties receiving notices in these cases. I also caused a copy of the foregoing to be served by either U.S. Mail or e-mail on the Core/2002 List maintained by Epiq as of this date, as set forth in the following page.

/s/ David G. Browne

