

1 NANCY A. MITCHELL (*pro hac vice pending*)  
2 MARIA J. DICONZA (*pro hac vice pending*)  
3 GREENBERG TRAURIG, LLP  
4 The MetLife Building  
5 200 Park Avenue  
6 New York, New York 10166  
7 Telephone: 212-801-9200  
8 Facsimile: 212-801-6400  
9 Email: mitchelln@gtlaw.com  
10 diconzam@gtlaw.com

GREGORY E. GARMAN, NV Bar # 6654  
THOMAS H. FELL, NV Bar # 3717  
TERESA M. PILATOWICZ, NV Bar # 9605  
GORDON SILVER  
3960 Howard Hughes Parkway, 9th flr.  
Las Vegas, Nevada 89169  
Telephone: 702-796-5555  
Facsimile: 702-369-2666  
Email: ggarman@gordonsilver.com  
tfell@gordonsilver.com  
tpilatowicz@gordonsilver.com

11 *Proposed Counsel for the Debtors*  
12 *and Debtors in Possession*

13 **UNITED STATES BANKRUPTCY COURT**  
14 **FOR THE DISTRICT OF NEVADA**

15 In re:

Case No.: BK-S-14-12524-abl  
Chapter 11

16 TELEXFREE, LLC,

**[PROPOSED]**

**Jointly Administered with:**

17  Affects this Debtor

14-12525-abl TelexFree, Inc.  
14-12526-abl TelexFree Financial, Inc

18  Affects all Debtors

19  Affects TELEXFREE, INC.

20  Affects TELEXFREE FINANCIAL, INC

Date: OST REQUESTED  
Time: OST REQUESTED

21 **EMERGENCY MOTION OF THE DEBTORS FOR ENTRY OF AN INTERIM**  
22 **ORDER (A) AUTHORIZING THE MAINTENANCE OF ACCOUNTS AND**  
23 **CONTINUED USE OF EXISTING BUSINESS FORMS AND CHECKS, (B) WAIVING**  
24 **CERTAIN INVESTMENT AND DEPOSIT GUIDELINES & (C) GRANTING**  
25 **ADMINISTRATIVE EXPENSE STATUS TO POST PETITION INTERCOMPANY**  
26 **CLAIMS**

27 The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”)<sup>1</sup>  
28 hereby move the Court (the “Motion”) pursuant to sections 105, 345, 363, 364 and 553 of title  
11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), Rules 6003

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four (4) digits of each Debtor’s federal tax  
identification number, are: TelexFree, LLC (0853), TelexFree, Inc. (1309) and TelexFree Financial, Inc  
(7555). The Debtors’ business address is 225 Cedar Hill Street, Suite 200, Marlborough, Massachusetts  
01752.



1 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rules  
2 2015-2(a) and (b) of the Local Rules of Bankruptcy Practice and Procedure of the United States  
3 Bankruptcy Court for the District of Nevada (the “**Local Rules**”), and the investment and deposit  
4 guidelines (the “**Guidelines**”) promulgated by the Office of the United States Trustee, for entry  
5 of an order: (a) authorizing the maintenance of accounts, the continued use of the primary  
6 operating account, and the continued use of existing business forms and checks; (b) waiving  
7 certain of the investment and deposit Guidelines established by the United States Trustee for the  
8 District of Nevada; (c) granting administrative expense status to postpetition intercompany  
9 claims; and (d) providing any additional relief as is necessary to effectuate the foregoing. In  
10 support of this Motion, the Debtors respectfully state as follows:

11 **I.**  
12 **STATUS OF THE CASE**

13 1. On April 13, 2014 (the “**Petition Date**”), the Debtors commenced these cases (the  
14 “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy  
15 Code.

16 2. The Debtors have continued in possession of their properties and are operating  
17 and managing their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of  
18 the Bankruptcy Code.

19 3. No request has been made for the appointment of a trustee or examiner and a  
20 creditors’ committee has not yet been appointed in these Chapter 11 Cases.

21 **II.**  
22 **JURISDICTION, VENUE, AND STATUTORY PREDICATES**

23 4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and  
24 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within  
25 the meaning of 28 U.S.C. § 157(b)(2).

26 5. The statutory predicates for the relief sought herein are sections 105(a), 345,  
27 363, 364 and 553 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004(h), and Local Rules  
28 2015-2(a) and (b).

1 6. Pursuant to Local Rule 9014.2, the Debtors consent to entry of final order(s) or  
2 judgment(s) by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent  
3 of the parties, cannot enter final orders or judgments consistent with Article III of the United  
4 States Constitution.

5  
6 **III.**  
**BACKGROUND**

7 7. TelexFree, LLC, a Nevada limited liability company ("**TelexFree Nevada**"),  
8 TelexFree, Inc., a Massachusetts corporation ("**TelexFree Massachusetts**") and TelexFree  
9 Financial, Inc, a Florida corporation ("**TelexFree Florida**" and together with TelexFree  
10 Massachusetts and TelexFree Nevada, "**TelexFree**," the "**Debtors**" or the "**Company**") are a  
11 telecommunications business that uses multi-level marketing to assist in the distribution of voice  
12 over internet protocol ("**VoIP**") telephone services. TelexFree's retail VoIP product,  
13 99TelexFree, allows for unlimited international calling to approximately seventy countries for a  
14 flat monthly rate of \$49.90. Customers of the Debtors' VoIP product ("**Customers**") used  
15 approximately 11 million minutes of the 99TelexFree VoIP service in February 2014. Since  
16 99TelexFree was introduced in 2012, Customer usage increased on a monthly basis until March  
17 2014.

18 8. TelexFree is operated as a multi-level marketing company, and currently has  
19 over 700,000 associates or promoters (the "**Promoters**") worldwide. Prior to the filing of these  
20 Chapter 11 Cases, TelexFree compensated Promoters for the sales of the VoIP product, the  
21 placing of advertisements and the recruitment of other Promoters down line. Because questions  
22 were raised about its compensation plan, the Company on March 9, 2014, discontinued its  
23 original compensation plan (the "**Original Comp Plan**") and replaced the Original Comp Plan  
24 with a revised compensation plan (the "**Revised Comp Plan**" and together with the Original  
25 Comp Plan, the "**Pre-Petition Comp Plans**"). At the time of the roll-out of the Revised Comp  
26 Plan, the Company decided to honor certain discretionary payments to Promoters under the  
27 Original Comp Plan. These discretionary payments quickly became a substantial drain on the  
28 Company's liquidity. The Company discontinued the Pre-Petition Comp Plans and ceased

1 making discretionary payments under the Original Comp Plan prior to the Petition Date.

2 9. The Company believes the sales of the 99TelexFree product, the TelexFree  
3 “app,” and other new products will ultimately prove successful and profitable. The Company is  
4 struggling, however, with several factors that required it to seek chapter 11 protection by filing  
5 these Cases. First, the Company experienced exponential growth in revenue between 2012 and  
6 2013 (from de minimus amounts to over \$1 billion), which put tremendous pressure on the  
7 Company’s financial, operational and management systems. Second, although the Company  
8 revised its Original Comp Plan in order to address certain questions that were raised regarding  
9 such plan, the Company believes that the Pre-Petition Comp Plans need to be further revised.  
10 Finally, the trailing liabilities arising from the Original Comp Plan are difficult to quantify and  
11 have resulted in substantial asserted liabilities against the Company, a number of which may not  
12 be valid.

13 10. As a result, the Company filed these Cases to obtain the breathing room to  
14 address its operational and regulatory issues, revise the Pre-Petition Comp Plans, and quantify  
15 and address the claims against it. The Debtors believe that a restructuring of its debt, adoption of  
16 a post-petition revised compensation plan, unveiling of new products (including the TelexFree  
17 app), and return to growing its Customer base will allow the Company to realize its full potential  
18 and generate significant value for its constituents.

19 11. A detailed factual background of the Debtors’ businesses and operations, as  
20 well as the events precipitating the commencement of these Chapter 11 Cases, is more fully set  
21 forth in the *Declaration of William H. Runge III in Support of the Debtors’ Chapter 11 Petitions*  
22 *and Requests for First Day Relief* (the “**First Day Declaration**”), filed on the Petition Date and  
23 incorporated herein by reference.

24 **A. The Debtors’ Cash Management System**

25 12. Prior to the commencement of the Chapter 11 Cases, and in the ordinary course  
26 of their businesses, the Debtors maintained approximately 16 bank, brokerage or other accounts  
27 (collectively, the “**Accounts**”). A list of the Accounts is attached hereto as **Exhibit 1**. As  
28 indicated herein, a number of the Accounts have been closed, but still contain cash or other

1 property of the estates.

2 13. The Debtors' Interim Chief Executive Officer and Chief Financial Officer are  
3 working with Alvarez & Marsal, the Debtors' restructuring consultant, to consolidate the  
4 Debtors' cash resources and rationalize the Debtors' cash management system. The process is  
5 on-going and the Debtors expect that it will be completed in the next few weeks. Until that time,  
6 the Debtors are seeking interim approval to use only the funds currently in the primary operating  
7 account at PNC Bank (the "PNC Account") to fund the Debtors' ordinary course operating  
8 expenses and the costs of administration of these Chapter 11 Cases. The Debtors also seek  
9 approval to maintain the balance of the Accounts pending further order of this Court. Once the  
10 Debtors complete the on-going process of revising the cash management system, the Debtors  
11 anticipate seeking a further order of this Court to implement any revisions.

12 **B. The Accounts**

13 14. TelexFree Florida maintains an account with PNC Bank (the "PNC Account").  
14 The PNC Account is used as the general disbursement account for the Debtors. TelexFree  
15 Florida funds the operations of TelexFree Nevada and TelexFree Massachusetts from the PNC  
16 Account. The Debtors record these transactions and book journal entries to record each entities  
17 intercompany liabilities. As of the Petition Date, approximately \$2.4 million is available in the  
18 PNC Account.

19 15. Other than the PNC Account, the Debtors hold cash in 15 Accounts. A brief  
20 description of each of those Accounts is set forth on **Exhibit 2** attached hereto. By this Motion,  
21 the Debtors seek authority to maintain those Accounts but not to use any funds contained therein  
22 without further order of this Court.

23 16. The Debtors are currently in the possession of several cashier's checks in amounts  
24 that are approximately \$38 million. These cashier's checks are currently stored in a secure safety  
25 deposit box controlled by the Debtors. The Debtors' Interim CEO and CFO control access to the  
26 safety deposit box. The Debtors intend to deposit these cashier's checks into an escrow account  
27 that is to be established by the Debtors after seeking authorization from the Court.

28 17. The Debtors' transition into chapter 11 will be significantly less disruptive if the

1 Accounts are maintained following the commencement of the Chapter 11 Cases with the same  
2 account numbers until the Debtors can rationalize their cash management system. The Debtors  
3 further request authority to deposit funds in and withdraw funds from the PNC Account  
4 postpetition, subject to the same access rights and limitations existing prior to the Petition Date,  
5 including, but not limited to, checks, wire transfers, ACH, electronic funds transfers, and other  
6 debits and to treat the Accounts for all purposes as debtor-in-possession accounts.

7 **B. Existing Business Forms and Checks**

8 18. In the ordinary course of business, the Debtors use pre-printed check stock with  
9 the relevant Debtor's name printed thereon. In addition, the Debtors maintain pre-printed  
10 correspondence and business forms, including, but not limited to, letterhead, envelopes,  
11 promotional materials, and other business forms (collectively, along with the Debtors' checks,  
12 the "**Business Forms**"). To minimize administrative expense and delay, the Debtors request  
13 authority to continue to use their Business Forms substantially in the forms existing immediately  
14 prior to the Petition Date, without reference to the Debtors' "Debtor-in-Possession" status.

15 **C. Intercompany Transactions**

16 19. As referenced herein, *supra*, the Debtors' use of the funds in the PNC Account  
17 give rise to intercompany claims (the "**Intercompany Transactions**").

18 20. The Debtors maintain records of their Intercompany Transactions, including fund  
19 transfers, and thus can ascertain, trace and account for Intercompany Transactions. The Debtors  
20 will continue to maintain records and appropriately reconcile all Intercompany Transactions  
21 postpetition.

22 **IV.**  
**RELIEF REQUESTED**

23 21. By this Motion, the Debtors seek an order: (a) authorizing the maintenance of  
24 the Accounts, the continued use of the primary operating account, and the continued use of  
25 existing Business Forms; (b) waiving certain of the investment and deposit Guidelines set forth  
26 by the United States Trustee for the District of Delaware; (c) granting administrative expense  
27 status to post-petition intercompany claims; and (d) providing any additional relief required in  
28

1 order to effectuate the foregoing. The relief requested herein will help ensure the Debtors'  
2 smooth transition into chapter 11, continue to comply with some essential operational contracts,  
3 and avoid the possible disruptions and distractions that could otherwise divert the Debtors'  
4 attention from more pressing matters during the initial days of these Chapter 11 Cases.

5 22. The Debtors reserve the right, in their sole discretion, to close or otherwise  
6 modify the terms of certain of the Accounts and open new debtor-in-possession accounts as may  
7 be necessary to facilitate the Chapter 11 Cases and operations, or as may otherwise be necessary  
8 to comply with the requirements of any order entered in these Chapter 11 Cases.

9  
10 **V.**  
**BASIS FOR RELIEF REQUESTED**

11 **A. The Court Has the Authority to Grant the Relief Requested.**

12 23. Bankruptcy courts routinely grant chapter 11 debtors authority to continue  
13 utilizing existing bank accounts, treating such request as a relatively simple matter. *See e.g.*,  
14 *Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.)*, 778 F.2d 617, 618 (11th Cir. 1985)  
15 (affirming bankruptcy court's order authorizing the debtor and its subsidiaries to continue using  
16 their cash management systems, even though such relief was "entirely consistent" with  
17 applicable provisions of the Bankruptcy Code); *In re Columbia Gas Sys., Inc.*, 997 F.2d 1039,  
18 1061 (3d Cir. 1993) (Third Circuit emphasized that a requirement to maintain all accounts  
19 separately "would be a huge administrative burden and economically inefficient."); *In re*  
20 *Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987) (court noted that fierce  
21 hostility between the creditors therein even made difficult "seemingly simple matters such as  
22 [the debtor's] motion to continue existing bank accounts and cash management system . . .").

23 24. Indeed, the purpose of section 363(c)(1) is to provide a debtor-in-possession with  
24 the flexibility to engage in those ordinary course transactions necessary to operate its business  
25 without unnecessary oversight by its creditors or the court. *See In re Lavigne*, 114 F.3d 379, 384  
26 (2d Cir. 1997); *In re Enron Corp.*, 2003 WL 1562202, \*15 (Bankr. S.D.N.Y. 2003). Included  
27 within the scope of section 363(c)(1) is a debtor-in-possession's ability to continue "routine  
28

1 transactions” required by such debtor’s cash management system. *See In re Amdura Corp.*, 75  
2 F.3d 1447, 1453 (10th Cir. 1996).

3 25. Moreover, section 105(a) of the Bankruptcy Code provides that “(t)he court may  
4 issue any order, process, or judgment that is necessary or appropriate to carry out the provisions  
5 of this title.” *See* 11 U.S.C. § 105(a). The purpose of section 105(a) is “to assure the bankruptcy  
6 courts power to take whatever action is appropriate or necessary in aid of the exercise of their  
7 jurisdiction.” *See* 2 Collier on Bankruptcy, ¶105.01, at 105-5 to 105-6 (15th ed. rev. 2001).  
8 Thus, section 105 essentially codifies the bankruptcy court’s inherent equitable powers. *See In re*  
9 *Rainbow Magazine, Inc.*, 77 F.3d 278, 284 (9th Cir. 1996) (*citing In re Courtesy Inns, Ltd.*  
10 *(Jones v. Bank of Santa Fe)*, 40 F.3d 1084, 1089 (10th Cir. 1994) and *Chambers v. NASCO, Inc.*,  
11 501 U.S. 32, 33 (1991)) (stating that section 105 is intended to give the bankruptcy court the  
12 inherent power recognized by the Supreme Court in *Chambers*; *see also Management Tech.*  
13 *Corp. v. Pardo*, 56 B.R. 337, 339 (Bankr. D. N.J. 1985) (noting that the court’s equitable power  
14 is derived from section 105 of the Bankruptcy Code). Thus, a court’s power to approve the  
15 continuation of a debtor’s cash management system is provided by the statutory authority of  
16 section 105 and the court’s equitable powers. The authority for, and wisdom of, approving the  
17 continuation of a debtor’s cash management system is so well established that courts generally  
18 enter orders approving the continuation of a debtor’s cash management system in a first day  
19 order or shortly after the beginning of a bankruptcy case. *See, e.g., In re Lehman Brothers*  
20 *Holdings, Inc.*, 2008 WL 4902202, \*2 (Bankr. S.D.N.Y. 2008) (court authorized the debtor to  
21 continue using its prepetition cash management system and bank accounts pursuant to Sections  
22 105(a) and 363(c)).

23 26. Numerous courts have used section 105’s equitable powers under the “necessity  
24 of payment doctrine” to authorize payment of a debtor’s prepetition obligations in order to  
25 preserve and maximize the value of the debtor’s estates. *See Burchinal v. Cent. Wash. Bank (In*  
26 *re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987); *see also Miltenberger v.*  
27 *Logansport, C.& S.W.R. Co.*, 106 U.S. 286, 311-312 (1882) (recognizing the existence of  
28 judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such



1 payment is essential to the continued operation of the debtor); *see also In re Lehigh & New*  
 2 *England Rv. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (courts may authorize payment of prepetition  
 3 claims when there “is the possibility that the creditor will employ an immediate economic  
 4 sanction, failing such payment”); *Ionosphere Clubs*, 98 B.R. at 176-77 (citing *NLRB v. Bildisco*  
 5 *& Bildisco*, 465 U.S. 513, 528 (1984)); *In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1  
 6 (3d Cir. 1972) (holding necessity of payment doctrine permits “immediate payment of claims of  
 7 creditors where those creditors will not supply services or material essential to the conduct of the  
 8 business until their pre-reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R.  
 9 821, 824-845 (D. Del. 1999) (noting that in the Third Circuit, debtors may pay prepetition claims  
 10 that are essential to the continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R.  
 11 189, 191-92 (Bankr. D. Del. 1994) (same).

12 27. This Court has previously authorized debtors’ continued use of its cash  
 13 management systems. *See, e.g., In re Jerry’s Nugget, Inc.*, Case No. 12-19387-mkn, ECF No. 53  
 14 (Bankr. D. Nev. August 17, 2012); *In re Ahern Rentals, Inc.*, Case No. 11-53860-btb, ECF No.  
 15 35 (Bankr. D. Nev. February 6, 2012); *In re 155 East Tropicana, LLC*, 11-22216-bam, ECF No.  
 16 55 (Bankr. D. Nev. August 8, 2011).

17 **B. The Debtors Should be Permitted to Maintain the Accounts**

18 28. As previously discussed, the Debtors maintain 16 different Accounts and conduct  
 19 numerous financial transactions utilizing these Accounts every day. It would cause a significant  
 20 and unnecessary disruption to force the Debtors to open new bank accounts and close the  
 21 existing accounts. Such disruption would provide no benefit to the Debtors’ estates. Therefore,  
 22 on an interim basis, the Debtors should be authorized to (a) continue to fund their businesses and  
 23 operations by payments made from the PNC Account and (b) continue to maintain the Accounts  
 24 listed on Exhibit 2 to this Motion, and should be excepted from certain of the Guidelines<sup>2</sup>

25 \_\_\_\_\_  
 26 <sup>2</sup> The Guidelines were issued in order to assist the U.S. Trustee in supervising the administration of  
 27 chapter 11 cases. Such Guidelines require chapter 11 debtors to, among other things, unless the Court  
 28 requires otherwise:

- a. Close all existing bank accounts and open new accounts which must be designated debtor-in-  
 possession bank accounts;

1 established by the United States Trustee for the District of Nevada.<sup>3</sup>

2 29. To the extent the Accounts are held at banks that have not executed a uniform  
3 depository agreement with the Office of the United States Trustee for the District of Nevada, the  
4 Debtors request that the Court authorize, but not require, the Debtors to attempt to cause such  
5 bank or banks to execute a uniform depository agreement in a form prescribed by the Office of  
6 the United States Trustee within forty-five (45) days of the date of entry of an order authorizing  
7 this Motion, subject to the full reservation of rights of the United States Trustee if a uniform  
8 depository agreement is not executed.

9 30. As part of the requested relief, the Debtors also seek a waiver of the  
10 requirement to establish specific bank accounts for tax payments. The Debtors believe that tax  
11 obligations can be paid most efficiently out of the PNC Account, that the United States Trustee  
12 can adequately monitor the flow of funds into, among, and out of the PNC Account, and that the  
13 creation of new debtor-in-possession accounts designated solely for tax obligations would be  
14 unnecessary and inefficient.

15 31. Subject to section 553 of the Bankruptcy Code, all banks that maintain the  
16 Accounts should be prohibited from offsetting, affecting, freezing, or otherwise impeding the  
17 Debtors' use of any funds deposited in the Accounts on account of, or by reason of, any claim (as  
18 defined in section 101(5) of the Bankruptcy Code) of any such bank against the Debtors that  
19 arose before the Petition Date, absent further order of the Court.

20 **C. The Debtors Should be Permitted to Continue Using Existing Business Forms**

21 32. The Debtors request that this Court authorize them to use all correspondence and

22 \_\_\_\_\_ (continued)

- 23 b. Establish and maintain separate debtor-in-possession accounts for the payment of taxes and  
24 separate debtor-in-possession accounts for cash collateral; and  
25 c. Obtain and utilize new checks for all debtor-in-possession accounts which bear the  
26 designation "Debtor-in-Possession" and contain certain other information related to the  
27 chapter 11 case.

28 <sup>3</sup> One provision of the Guidelines requires a chapter 11 debtor-in-possession to open new bank accounts and close all existing accounts. This requirement, designed to provide a clear line of demarcation between prepetition and postpetition claims and payments, helps to protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. The Guidelines also require that the new bank accounts only be opened in certain financial institutions designated as authorized depositories by the United States Trustee.

1 Business Forms existing immediately before the Petition Date without reference to the Debtors'  
2 status as "debtors-in-possession." As of the Petition Date, the Debtors had a large stock of  
3 Business Forms that they used in the ordinary course of business. Reprinting their Business  
4 Forms to indicate that the Debtors are "Debtors-in-Possession" would impose an unnecessary  
5 burden and expense on the Debtors. There is little doubt that the parties with whom the Debtors  
6 do business shortly will become aware that they are chapter 11 debtors-in-possession. In any  
7 event, the Debtors will add such "Debtors-in-Possession" designation to any checks that they  
8 obtain or create postpetition.

9 **D. The Debtors Should be Permitted to Continue Intercompany Transactions from the**  
10 **PNC Account and such Intercompany Transactions Should be Granted**  
11 **Administrative Priority Expense Status**

12 33. As described above, the use of the PNC Account gives rise to certain  
13 Intercompany Transactions in the ordinary course of their business. If these Intercompany  
14 Transactions are discontinued, the Debtors' operations would be disrupted causing irreparable  
15 harm to the Debtors. It is imperative that the Debtors maintain the ability, as debtors-in-  
16 possession, to maintain the Debtors' current intercompany transactions between the Debtors  
17 related to the PNC Account.

18 34. The Debtors seek authority to continue to enter into such Intercompany  
19 Transactions in the ordinary course of their business. The Debtors maintain records of  
20 substantially all such Intercompany Transactions and can ascertain, trace and account for such  
21 Intercompany Transactions at all times. The Debtors will continue to maintain such records  
22 postpetition.

23 35. As a result of the Intercompany Transactions, at any given time, an individual  
24 Debtor can be rendered a net lender or net borrower. To ensure that each individual Debtor will  
25 not fund, at the expense of its creditors, the operations of another entity, the Debtors respectfully  
26 request that, pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all Intercompany  
27 Transactions be granted administrative priority expense status. Administrative expense  
28 treatment for intercompany claims has been granted in other multi-debtor chapter 11 cases in this

1 District. *See, e.g., In re ATLS Acquisition, LLC*, Case No. 13-10262 (PJW) (Bankr. D. Del. Feb.  
2 20, 2013); *In re Chem Rx Corporation*, 10-11567 (MFW) (Bankr. D. Del. May 13, 2010); *In re*  
3 *Stant Parent Corp.*, 09-12647 (BLS) (Bankr. D. Del. July 29, 2009); *In re Smurfit-Stone*  
4 *Container Corp.*, Case No. 09-10235 (BLS) (Bankr. D. Del. Feb. 23, 2009).

5 36. The Debtors request this authority, subject to the rights, if any, of the parties-in-  
6 interest in these Chapter 11 Cases to challenge the validity of such claims and Intercompany  
7 Transactions, provided that each Debtor shall forbear from exercising, and shall not be entitled to  
8 exercise, any remedy relating to any Intercompany Transaction including, without limitation,  
9 seeking relief from the automatic stay, or seeking any sale, foreclosure, realization upon,  
10 repossession or liquidation of any property of another Debtor, or taking any position with respect  
11 to any disposition of the property, business operations, or the reorganization of another Debtor,  
12 absent further order of this Court. Out of an abundance of caution, the Debtors request that this  
13 Court clarify that this relief will not limit the Debtors' ability to reconcile amounts owed  
14 between and among any Debtor and any affiliate, including netting and setting off obligations  
15 arising from Intercompany Transactions, whether arising pre or postpetition, in the ordinary  
16 course of business, between a particular Debtor and any other Debtor.

17 **E. Bankruptcy Rule 6003 Satisfied and Request for Waiver of Stay**

18 37. The Debtors further submit that because the relief requested in this Motion is  
19 necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein  
20 and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief  
21 requested herein should be granted.

22 38. Specifically, Bankruptcy Rule 6003 provides:

23 Except to the extent that relief is necessary to avoid immediate and  
24 irreparable harm, the court shall not, within 21 days after the filing  
25 of the petition, grant relief regarding the following: . . . (b) a  
26 motion to use, sell, lease, or otherwise incur an obligation  
regarding property of the estate, including a motion to pay all or  
part of a claim that arose before the filing of the petition, but not a  
motion under Rule 4001.

27 Fed. R. Bankr. P. 6003.

28

1 39. One court in the Ninth Circuit has, in an unpublished opinion, addressed the  
2 “immediate and irreparable harm” language in the context of Bankruptcy Rule 6003. That court  
3 noted “that Rule 6003 allows the court to authorize payments on prepetition debt if necessary to  
4 avoid immediate and irreparable harm, but does not require that such harm be to the bankruptcy  
5 estate. The court finds that a delay in payment would result in immediate and irreparable harm to  
6 both the dairy farmers and the debtor, and for this reason authorizes payment now.” *In re*  
7 *Humboldt Creamery, LLC*, 2009 Bankr. LEXIS 2477, 3 n. 3 (Bankr. N.D. Cal. Apr. 23, 2009).  
8 The harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g.,*  
9 *Acierno v. New Castle County*, 40 F.3d 645, 653-55 (3d Cir. 1994).

10 40. The Debtors further seek a waiver of any stay of the effectiveness of the order  
11 approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, “[an] order  
12 authorizing the use, sale, or lease of property other than cash collateral is stayed until the  
13 expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” As  
14 set forth above, the relief requested herein is essential to prevent irreparable damage to the  
15 Debtors’ operations, going-concern value, and their efforts to pursue a sale or restructuring of  
16 their assets and liabilities.

17 41. Accordingly, the relief requested herein is appropriate under the circumstances  
18 and under Bankruptcy Rule 6003 and 6004(h).

19 **VI.**  
20 **NOTICE**

21 42. Notice of this Motion has been given to the following parties or, in lieu thereof, to  
22 their counsel, if known: (a) the Office of the United States Trustee for the District of Nevada; (b)  
23 creditors holding the thirty (30) largest unsecured claims as set forth in the consolidated list filed  
24 with the Debtors’ petitions; (c) those parties requesting notice pursuant to Rule 2002; (d) the  
25 Office of the United States Attorney General for the District of Nevada; (e) the Internal Revenue  
26 Service; (f) the Massachusetts Securities Division; (g) Nevada Department of Taxation,  
27 Bankruptcy Section; (h) Dept. of Employment, Training & Rehab, Employment Security  
28 Division; (i) the Securities and Exchange Commission; and (j) each of the banks holding the

1 Accounts set forth in Exhibit 1 hereto. The Debtors submit that, in light of the nature of the  
2 relief requested, no other or further notice need be given. As the Motion is seeking "first day"  
3 relief, within two (2) business days of the hearing on the Motion, the Debtors will serve copies of  
4 the Motion and any order entered respecting the Motion in accordance with the Local Rules.

5  
6 **VII.**  
**NO PRIOR REQUEST**

7 43. No prior request for the relief sought in this Motion has been made to this or  
8 any other court.

9 **VIII.**  
**CONCLUSION**

10 WHEREFORE, the Debtors respectfully request that this Court enter an order granting  
11 the relief requested herein and that it grant the Debtors such other and further relief as is just and  
12 proper.

13 DATED this 14 day of April, 2014.

14 GORDON SILVER

15 By: 

16 GREGORY E. GARMAN, ESQ.  
17 THOMAS H. FELL, ESQ.  
18 TERESA M. PILATOWICZ, ESQ.  
19 3960 Howard Hughes Pkwy., 9th Floor  
20 Las Vegas, Nevada 89169

21 AND

22 NANCY A. MITCHELL (*pro hac vice pending*)  
23 MARIA J. DICONZA (*pro hac vice pending*)  
24 GREENBERG TRAURIG, LLP  
25 The MetLife Building  
26 200 Park Avenue  
27 New York, New York 10166

28 *Proposed Counsel for the Debtors  
and Debtors in Possession*

**Exhibit 1****List of Accounts**

<b>Bank</b>	<b>Account #</b>	<b>Entity</b>	<b>Type</b>
Propay Inc. 3400 N. Ashton Blvd. Suite 200 Lehi, UT 84043	****97	TelexFREE, LLC	Merchant
Phoenix Payments LLC 7910 South Kyrene Rd, Suite 106. Tempe, Arizona 85284	****1700	TelexFREE, Inc.	Merchant
I-Payout 2500 E Hallandale Beach Blvd Hallandale Beach, FL 33009	****88	TelexFREE, LLC	Merchant
Allied Wallet 9000 Sunset BLVD Suite 820 West Hollywood, CA 90069	****5156	TelexFREE, Inc.	Merchant
Argus Payments 19749 Dearborn Street Chatsworth, CA 91311	****4417	TelexFREE, Ltd.	Merchant
Vantage Payments 8300 N. Hayden Rd. Suite# A207 Scottsdale, AZ85258	****7c81	TelexFREE, Inc.	Merchant
Fidelity Bank 465 Shrewsbury Street, Worcester, MA 01604	****44	TelexFREE, LLC	Brokerage
Fidelity Bank 465 Shrewsbury Street, Worcester, MA 01604	****39	TelexFREE, LLC	Brokerage
Waddell & Reed, Inc. 300 Trade Center Drive Suite 1500 Woburn, MA 01801	****03	TelexFREE, LLC	Brokerage
Middlesex Savings Bank 6 Main St Natick, MA 01760	****6997	TelexFREE, LLC	Brokerage
PNC Bank 2300 North Federal Highway Pompano Beach, FL 33062	****1813	TelexFREE Financial, Inc.	Checking

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Wells Fargo 800 N. Magnolia Ave., 8th Floor Orlando, FL 32803	****3716	TelexFREE, LLC	Brokerage
Wells Fargo 800 N. Magnolia Ave., 8th Floor Orlando, FL 32803	****4252	TelexFREE Financial, Inc.	Checking
Wells Fargo 800 N. Magnolia Ave., 8th Floor Orlando, FL 32803	****3387	TelexFREE Financial, Inc.	Checking
Bank of New England 31 Pelham Rd Salem, NH 03079	****1850	TelexFREE, LLC	Checking
First Citizens	Account recently opened – Do not have detail as of filing date	TelexFREE, LLC	Checking



1 Exhibit 2

2 **Description of Accounts**

3 1. First Citizens: TelexFree Nevada opened an account with First Citizens  
4 Bank prior to the Petition Date in order to establish a relationship with First  
Citizens Bank. The First Citizens Bank account contains a de minimis balance.

5 2. Bank of New England: TelexFree Nevada maintains an operating  
6 account with the Bank of New England. TelexFree Nevada established this  
7 account in early April of 2014 with the intention of treating this account as the  
Debtors' main operating cash account. As of the Petition Date, approximately  
8 \$100,000 is available in the Bank of New England account.

9 3. International Payout Systems, Inc.: After August of 2013, TelexFree  
10 Nevada began to utilize services by International Payout Systems, Inc. ("**I-**  
11 **Payout**") as a third-party provider of cash management systems to receive  
12 payments for the retail VoIP products and membership fees. The I-Payout system  
13 allows TelexFree Nevada to receive payment for its VoIP products and  
14 membership fees from credit card processors, checks, money orders, wire transfer  
15 or other valid cash payment mediums. TelexFree Nevada also uses the I-Payout  
system to credit Promoters for commissions and other fees owed to the Promoters.  
The Promoters are able to access those funds through an e-wallet program  
maintained by I-Payout for the benefit of the Promoters. TelexFree Nevada has  
the ability to transfer excess cash from the I-Payout system to the Company, but  
has only made such transfers rarely prior to the Petition Date.

16 4. Allied: TelexFree Massachusetts a maintains an account with Allied  
17 Wallet, Ltd. ("**Allied**") to collect payments for retail VoIP products and  
18 membership fees. The account with Allied is linked to TelexFree Nevada's  
19 account with I-Payout. Allied collects fees and holds a portion of the funds  
received from the sale of the retail VoIP product and the sale of memberships  
until the six (6) month charge back period expired.

20 5. Argus: A non-debtor affiliate, TelexFree, Ltd maintains an account with  
21 Argus Payments, Inc. ("**Argus**") to collect credit card payments for membership  
22 fees and the sale of retail VoIP products for the benefit of the Debtors. The Argus  
23 account is linked to TelexFree Nevada's account with I-Payout. Argus collects  
24 fees and holds a portion of the funds received from the sale of TelexFree  
25 Nevada's retail VoIP product and the sale of memberships until the six (6) month  
charge back period expires. As TelexFree, Ltd recently established the Argus  
account, the Debtors have not yet received funds from Argus; however, the  
Debtors anticipate that funds will be collected from Argus upon the expiration of  
the charge back period.

26 6. Fidelity Bank: TelexFree Nevada maintains two brokerage accounts  
27 with Fidelity Bank to invest its cash not currently required to fund its operations  
28 (the "**Cash Reserve**"). The Cash Reserves are invested in a variety of assets,

1 including but not limited to, cash, certified deposits, money market funds,  
2 municipal bonds and corporate bonds.

3 7. Waddell & Reed: TelexFree Nevada maintains a brokerage account with  
4 Waddell & Reed, Inc. (“**Waddell**”) to invest certain cash reserves. The cash  
5 reserves are invested in a variety of assets, including but not limited to, cash,  
6 certified deposits, money market funds, municipal bonds and corporate bonds.

7 8. MFS: TelexFree Nevada maintains a brokerage account with Middlesex  
8 Savings Bank (“**MFS**”) to invest certain cash reserves. The cash reserves are  
9 invested in a variety of assets, including but not limited to, cash, certified  
10 deposits, money market funds, municipal bonds and corporate bonds.

11 9. Propay: Until June of 2013, TelexFree Nevada utilized an account with  
12 Propay Inc. (“**Propay**”) to collect payments from Promoters and Customers for  
13 the Debtors’ retail VoIP products and membership fees. Propay collected fees  
14 and held a portion of the funds received from the sale of the retail VoIP product  
15 and the sale of memberships until the six (6) month charge back period expired.  
16 As funds became available, TelexFree Nevada would periodically log into their  
17 account and transfer funds to other bank accounts maintained by the Debtors.  
18 TelexFree no longer uses Propay. As of the Petition Date, approximately \$4.5  
19 million of funds remain with Propay and approximately \$1.5 million is  
20 unrestricted and available to TelexFree Nevada.

21 10. Phoenix: From June of 2013 through August of 2013, TelexFree  
22 Massachusetts utilized an account with Phoenix Payments LLC (“**Phoenix**”) to  
23 collect payments from Promoters and Customers for the Debtors’ retail VoIP  
24 products and membership fees. Phoenix collected fees and held a portion of the  
25 funds received from the sale of the retail VoIP product and the sale of  
26 memberships until the six (6) month charge back period expired. As funds  
27 became available, TelexFree Massachusetts would wire funds to other bank  
28 accounts maintained by the Debtors on a daily basis. TelexFree Massachusetts no  
longer uses Phoenix. As of the Petition Date, approximately \$8.6 million of funds  
remain with Phoenix.

11. Vantage: TelexFree Massachusetts maintained an account with Vantage  
Payments (“**Vantage**”) to collect credit card payments for membership fees and  
the sale of retail VoIP products. Although TelexFree Massachusetts is no longer  
engaged in collecting membership fees or selling retail VoIP products, the funds  
held by Vantage remain subject to a six (6) month charge back period.

12. Wells Fargo: Katia H. Barbosa Wanzeler f/b/o TelexFree Nevada  
maintained a brokerage account with Wells Fargo (“**Wells Fargo**”).  
Approximately \$1.5 million remains in that account. In addition, TelexFree  
Florida maintained two (2) checking accounts with Wells Fargo. All of the Wells  
Fargo accounts were closed prior to the Petition Date. As of the Petition Date the  
Debtors believe approximately \$673 thousand remain in those three accounts.

Exhibit 3

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

NANCY A. MITCHELL (*pro hac vice pending*)  
MARIA J. DICONZA (*pro hac vice pending*)  
GREENBERG TRAURIG, LLP  
The MetLife Building  
200 Park Avenue  
New York, New York 10166  
Telephone: 212-801-9200  
Facsimile: 212-801-6400  
Email: mitchelln@gtlaw.com  
diconzam@gtlaw.com

GREGORY E. GARMAN, NV Bar # 6654  
THOMAS H. FELL, NV Bar # 3717  
TERESA M. PILATOWICZ, NV Bar #9605  
GORDON SILVER  
3960 Howard Hughes Parkway, 9th flr.  
Las Vegas, Nevada 89169  
Telephone: 702-796-5555  
Facsimile: 702-369-2666  
Email: ggarman@gordonsilver.com  
tfell@gordonsilver.com  
tpilatowicz@gordonsilver.com

*Proposed Counsel for the Debtors  
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:  
  
TELEXFREE, LLC,  
  
 Affects this Debtor  
 Affects all Debtors  
 Affects TELEXFREE, INC.  
 Affects TELEXFREE FINANCIAL, INC

Case No.: BK-S-14-12524-abl  
Chapter 11  
  
**[PROPOSED]**  
**Jointly Administered with:**  
  
14-12525 TelexFree, Inc.  
14-12526 TelexFree Financial, Inc  
  
Date:  
Time:

**INTERIM ORDER (A) AUTHORIZING THE MAINTENANCE OF ACCOUNTS, THE  
CONTINUED USE OF THE PRIMARY OPERATING ACCOUNT, AND CONTINUED  
USE OF EXISTING BUSINESS FORMS AND CHECKS, (B) WAIVING CERTAIN  
INVESTMENT AND DEPOSIT GUIDELINES & (C) GRANTING ADMINISTRATIVE  
EXPENSE STATUS TO POST-PETITION INTERCOMPANY CLAIMS,**

Upon the motion (the "Motion") filed by the above-captioned debtors and debtors-in-

1 possession (collectively, the “Debtors”) seeking entry of an order: (a) authorizing the  
2 maintenance of the Debtors’ existing bank accounts, the continued use of the primary operating  
3 account, and the continued use of existing business forms and checks; (b) waiving certain of the  
4 investment and deposit Guidelines promulgated by the Office of the United States Trustee; and  
5 (c) granting administrative expense status to postpetition intercompany claims; and upon the  
6 *Declaration of William H. Runge Emergency Motion of the Debtors for Entry of an Interim*  
7 *Order (A) Authorizing the Maintenance of Accounts and Continued Use of Existing Business*  
8 *Forms and Checks, (B) Waiving Certain Investment and Deposit Guidelines & (C) Granting*  
9 *Administrative Expense Status to Post-Petition Intercompany Claims* (the “**Runge**  
10 **Declaration**”); and it appearing that this Court has jurisdiction to consider the Motion<sup>4</sup> pursuant  
11 to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these Chapter 11 Cases and the  
12 Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that  
13 this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having  
14 determined that the relief requested in the Motion is in the best interests of the Debtors, their  
15 estates, their creditors and other parties in interest; and it appearing that proper and adequate  
16 notice of the Motion has been given and that no other or further notice is necessary; and after due  
17 deliberation thereon; and good and sufficient cause appearing therefor,

18 **IT IS HEREBY ORDERED THAT:**

- 19 1. For the reasons set forth on the record, the Motion is GRANTED as set forth  
20 herein.
- 21 2. The Debtors are authorized to maintain the existing Accounts listed on **Exhibit 1**  
22 to the Motion in the name and with the account numbers existing immediately prior to the  
23 Petition Date.
- 24 3. The Debtors are authorized to maintain and use the PNC Accounts in the name  
25 and with the account numbers existing immediately prior to the Petition Date.
- 26 4. The requirement in the Guidelines that the Debtors establish a specific new bank  
27 account for tax payments is waived.

28 <sup>4</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

1           5.       The Debtors are authorized to deposit funds in and withdraw funds from the PNC  
2 Account by all usual means, subject to the same access rights and limitations existing prior to the  
3 Petition Date, including, but not limited to, checks, wire transfers, automated clearinghouse  
4 transfers, electronic funds transfers, and other debits and to treat the PNC Account for all  
5 purposes as debtor-in-possession accounts.

6           6.       The Debtors are authorized to continue to use their pre-printed checks,  
7 correspondence, and business forms and checks, including, but not limited to, purchase orders,  
8 letterhead, envelopes, promotional materials, and other business forms, substantially in the forms  
9 existing immediately prior to the Petition Date, without reference to the Debtors' debtor-in-  
10 possession status, provided that the Debtors will add the "Debtor-in-Possession" designation to  
11 any new checks that they obtain or create post-petition.

12           7.       The banks listed on Exhibit 1 to the Motion and any and all other financial  
13 institutions receiving or transferring funds from the Debtors are hereby authorized and directed  
14 to continue to service and administer the Accounts of the relevant Debtor as a debtor-in-  
15 possession without interruption and in the usual and ordinary course.

16           8.       PNC Bank is authorized to receive, process, honor and pay any and all checks,  
17 drafts, wires, or ACH transfers drawn on the PNC Account by the holders or makers thereof,  
18 provided that nothing contained herein shall authorize PNC Bank any such bank to honor any  
19 check issued or dated prior to the date of the commencement of these Chapter 11 Cases, except  
20 as otherwise provided by further order of this Court. In no event shall PNC Bank be required to  
21 honor overdrafts or to pay any check, wire or other debit against any the PNC Account that is  
22 drawn against uncollected funds.

23           9.       The Debtors may continue to pay, and the banks may continue to charge and  
24 collect, all customary and usual fees arising from or related to the Accounts.

25           10.       For banks at which the Debtors hold accounts that are not party to a uniform  
26 depository agreement with the Office of the United States Trustee for the District of Nevada, the  
27 Debtors are authorized, but not required, to use their good-faith efforts to attempt to cause the  
28 banks to execute a uniform depository agreement in a form prescribed by the Office of the

1 United States Trustee within forty-five (45) days of the date of this Order. The U.S. Trustee's  
2 rights to seek further relief from this Court on notice in the event that the aforementioned banks  
3 are unwilling to execute a uniform depository agreement in a form prescribed by the U.S.  
4 Trustee are fully reserved.

5 11. Subject to section 553 of the Bankruptcy Code, all banks that maintain the  
6 Accounts are prohibited from offsetting, affecting, freezing, or otherwise impeding the Debtors'  
7 use of any funds in the Accounts on account of, or by reason of, any claim (as defined in section  
8 101(5) of the Bankruptcy Code) of any such bank against the Debtors that arose before the  
9 Petition Date, absent further order of this Court.

10 12. In connection with the ongoing utilization of Intercompany Transfers, the Debtors  
11 shall continue to maintain records with respect to all transfers of cash so that all transactions may  
12 be readily ascertained, traced, recorded properly, and distinguished between prepetition and  
13 postpetition transactions.

14 13. Intercompany loans and other claims created through Intercompany Transactions  
15 are hereby granted administrative priority status pursuant to 11 U.S.C. § 507(a)(2); *provided*,  
16 *however*, that each Debtor shall forbear from exercising, and shall not be entitled to exercise, any  
17 remedy relating to any Intercompany Transaction including, without limitation, seeking relief  
18 from the automatic stay, or seeking any sale, foreclosure, realization upon, repossession or  
19 liquidation of any property of another Debtor, or taking any position with respect to any  
20 disposition of the property, business operations, or the reorganization of another Debtor, absent  
21 further order of this Court; *provided further, however*, that nothing herein shall limit or be  
22 construed to limit the Debtors' ability to reconcile amounts owed between and among any  
23 Debtors, including netting and setting off obligations arising from Intercompany Transactions,  
24 whether arising pre or postpetition, in the ordinary course of business, between a Debtor and  
25 another Debtor.

26 14. Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy**  
27 **Rules**") has been satisfied because the relief requested in the Motion is necessary to avoid  
28 immediate and irreparable harm to the Debtors.

1 15. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and  
2 conditions of this Order shall be immediately effective and enforceable upon its entry.

3 16. The Court shall retain jurisdiction to hear and determine all matters arising from  
4 or relating to the interpretation or implementation of this Order.

5  
6 Submitted by:

7 GORDON SILVER

8  
9 By: \_\_\_\_\_  
10 GREGORY E. GARMAN, ESQ.  
11 THOMAS H. FELL, ESQ.  
12 TERESA M. PILATOWICZ, ESQ.  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169

13 AND

14 NANCY A. MITCHELL (pro hac vice pending)  
15 MARIA J. DICONZA (pro hac vice pending)  
16 GREENBERG TRAUERIG, LLP  
The MetLife Building  
200 Park Avenue  
17 New York, New York 10166

18 *Proposed Counsel for the Debtors*  
19 *and Debtors in Possession*

20  
21  
22  
23  
24  
25  
26  
27  
28