

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

In Re:	)	
	)	
	)	<b>Chapter 11</b>
TELEXFREE, LLC ,	)	Case No. 14-40987-MSH
TELEXFREE, INC.,	)	Case No. 14-40988-MSH
TELEXFREE FINANCIAL, INC.,	)	Case No. 14-40989-MSH
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>

**AFFIDAVIT OF STEPHEN DARR IN SUPPORT OF CONFIRMATION OF FIRST  
AMENDED LIQUIDATING PLAN OF REORGANIZATION**

I, Stephen B. Darr, hereby submit the following affidavit in support of confirmation of the *First Amended Liquidating Plan of Reorganization (the “Plan”)* of Chapter 11 Trustee of *TelexFree, LLC, TelexFree Inc., and TelexFree Financial, Inc. (“TelexFree” or the “Debtors”)*.

**I. Introduction<sup>1</sup>**

1. I am the Chapter 11 Trustee of the Debtors and have served in that capacity since shortly after the commencement of the bankruptcy cases (the “Chapter 11 Cases”).
2. The statements provided herein are based upon information I have derived through my involvement in the Chapter 11 Cases, including an examination of the Debtors’ books and records and discussions with various governmental entities, former employees of the Debtors and former participants in the TelexFree program.

**II. Case Background and Prepetition Events Leading to Bankruptcy Filings**

3. TelexFree ostensibly operated a multi-level marketing enterprise engaged in the sale of voice over internet protocol (“VOIP”) services, but, in actuality, TelexFree operated a Ponzi and pyramid scheme involving as many as a million or more participants in multiple

<sup>1</sup> Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Plan or the Disclosure Statement.



countries (hereinafter, persons who became involved in TelexFree's Ponzi and pyramid scheme shall be referred to as "Participants"). TelexFree, and an affiliated company located in Brazil known as Ympactus Comercial Ltda. ("Ympactus"), together extracted as much as \$1,800,000,000 from individuals located throughout the world over a period of approximately two years.

4. While TelexFree offered to provide a VOIP service for a monthly charge of \$49.90 to conduct international phone calls, TelexFree's primary business was the recruitment of new Participants to generate revenues to enable it to perpetrate the Ponzi scheme while benefiting its principals and high-level Participants.

5. While Participants could purchase a VOIP plan, Participants overwhelmingly purchased membership plans which allowed the Participants to earn 'credits'. Each time that a Participant purchased a membership plan, the Participant established a User Account with TelexFree. Depending on the membership plan purchased, Participants received a number of VOIP service packages and were required to place daily internet advertisements. In exchange for the placement of the advertisements, Participants received TelexFree "credits" on a weekly basis. Participants could also receive credits based upon bonuses or commissions "earned" during their involvement in the scheme. Bonuses and commissions were principally based upon the recruitment of new Participants into the scheme as part of a Participant's "downline."

6. Participants could also receive credits for commissions arising from the sale of the VOIP service. There was no requirement, however, that Participants actually sell the VOIP service, and VOIP sale revenues were an insignificant portion of the total revenues collected by TelexFree. The credits issued to Participants could be redeemed for cash, transferred to another Participant, or applied in satisfaction of an invoice for the purchase of a membership plan.

7. TelexFree's business plan was complicated in and of itself. The scheme's complexity was expanded further, however, through a web of inter-Participant activity. Participants could purchase membership plans by making payment directly to TelexFree. Transactions where Participants paid TelexFree directly to satisfy an invoice for a membership plan or VoIP Package are referred to as "Direct Transactions". Rather than paying funds directly to TelexFree, many Participants became involved in TelexFree by paying their membership fee (and on occasion a VoIP plan fee) directly to a recruiting Participant. In these circumstances, the recruiting Participant retained the payment received from the recruited Participant and satisfied the TelexFree invoice to the recruited Participant by redeeming his/her accumulated credits (hereinafter referred to as "Triangular Transactions").

8. The TelexFree Ponzi and pyramid scheme was modeled after that of Ympactus. Ympactus initially grew much more rapidly than TelexFree, with growth accelerating in the fall of 2012 through the early summer of 2013. In June 2013, the Brazilian authorities suspended the operations of Ympactus and froze its assets in Brazil based upon allegations that it was a Ponzi scheme. Following the shutdown of Ympactus, the focus of the Ponzi scheme shifted to expanding TelexFree. TelexFree's revenues increased dramatically such that by the end of 2013 and early 2014, TelexFree was generating as much as \$50,000,000 per month, without regard to inter-Participant transactions for which cash did not pass to TelexFree. As their operations grew in size and complexity, TelexFree was unable to maintain any semblance of normal banking relationships. Multiple banks closed TelexFree's operating accounts apparently based upon suspicious activity in those accounts.

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9. In March 2014, TelexFree introduced a new business plan in a vain attempt to address the illegal nature of the scheme. The new plan was unanimously rejected by the Participants and triggered a ‘run on the bank’ where \$58,000,000 or more was paid out to certain Participants in several weeks. During the same period, an additional \$100,000,000 was requested by Participants but was not paid. As a consequence of the inability to meet redemption requests, the Debtors sought protection under the Bankruptcy Code.

### **III. Procedural Posture and Critical Rulings During the Chapter 11 Cases**

10. On April 13, 2014 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (“Bankruptcy Code”) with the United States Bankruptcy Court for the District of Nevada (“the Nevada Bankruptcy Court”).

11. The Debtors initially operated as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

12. On the Petition Date, the Debtors filed a motion for joint administration of the cases, with TelexFree, LLC as the lead case. By order dated April 24, 2014, the order for joint administration was approved.

13. Prior to the filings, the Commonwealth of Massachusetts Securities Division (“MSD”) commenced an investigation into the Debtors’ business practices.

14. On or about April 15, 2014, the MSD commenced an administrative proceeding against the Debtors. Also on April 15, 2014, the Securities and Exchange Commission (“SEC”) commenced an action against the Debtors and others in the United States District Court for the District of Massachusetts. The foregoing actions alleged, among other things, that the Debtors were engaged in an illegal pyramid scheme and were raising funds through the fraudulent and

unregistered offering of securities. In connection with the commencement of the SEC action, federal authorities seized the Debtors' assets, books, and records, including forty-six (46) computers and servers comprising the backbone of the Debtors' system of accounting for Participant activity.

15. On or about April 22, 2014, the Office of the United States Trustee filed a motion for the appointment of a Chapter 11 Trustee based upon the allegations of illegal activity.

16. On April 23, 2014, the SEC filed a motion to transfer venue of the cases to the United States Bankruptcy Court for the District of Massachusetts. By order dated May 6, 2014, the motion to change venue was approved. The cases were transferred on May 9, 2014.

17. On May 30, 2014, this Court approved the motion to appoint a Chapter 11 trustee, and I was appointed on June 6, 2014.

18. The principals of the Debtors are Carlos Wanzeler and James Merrill. On or about July 23, 2014, the United States of America indicted Wanzeler and Merrill (the "Indictment") based upon their involvement in the Debtors' pyramid scheme, styled as case no. 14-CR-40028-TSH, pending in the United States District Court for the District of Massachusetts. Merrill has since pled guilty and was sentenced to seventy-two (72) months of incarceration. Wanzeler has fled the country and is believed to be in Brazil.

19. The Indictment also sought a determination that various items of real and personal property standing in the name of the Debtors, Wanzeler, Merrill, and certain related parties constituted proceeds of the commission of offenses that were subject to forfeiture. In connection therewith, the federal government seized more than \$100,000,000 in cash and checks payable to the Debtors, their principals, or their affiliates. Federal authorities also made forfeiture claims against approximately forty (40) other items of real and personal property

standing in the name of Wanzeler, Merrill, and their affiliates, including automobiles, real property, and notes secured by mortgages on real property.

20. In addition to the actions commenced by federal and state authorities, numerous civil actions have been commenced by Participants against the Debtors, their principals, advisors, financial institutions and others who allegedly took part in the scheme. Several of these actions have been transferred to the United States District Court (“USDC”) for the District of Massachusetts to be administered pursuant to the rules governing multi-district litigation, styled as case no. 4:14-md-2566-TSH (the “MDL Action”).

21. On or about October 7, 2015, the Chapter 11 Trustee filed a motion for a determination that TelexFree was operating a Ponzi and pyramid scheme (the “Ponzi Motion”). The Court conducted an evidentiary hearing on the Ponzi Motion on November 24, 2015. On November 25, 2015, the Court found that TelexFree had perpetrated a Ponzi and pyramid scheme and that such finding was the law of the cases.

22. The Ponzi Motion further sought a determination from the Court that the amount of a Participant’s claim should be based upon the amount that the Participant paid to TelexFree, less the amount the Participant received from TelexFree. This methodology for determining claims is referred to as “Net Equity Formula.” Under the Net Equity Formula, only Participants who paid more to TelexFree than they received from TelexFree (“Net Losers”) would be entitled to receive a distribution from the Chapter 11 Cases.

23. The use of the Net Equity Formula in the Chapter 11 Cases was complicated by the unique circumstances presented by the Triangular Transactions. The Chapter 11 Trustee concluded that amounts paid by new Participants for a TelexFree membership plan or VoIP Plan pursuant to a Triangular Transaction should be included in determining Net Equity. Because the

Chapter 11 estates of the Debtors (the “Estates”) would recognize a claim for amounts paid to purchase a TelexFree plan through a Triangular Transaction, fairness required that Participant’s claims should be reduced for amounts paid by a recruited Participant to a recruiting Participant through a Triangular Transaction.

24. By order dated January 26, 2016, the Court approved the use of the Net Equity Formula for determining Participant Claims. The order provided that Participant Claims would be determined based upon the difference between amounts invested into the TelexFree scheme and amounts recovered, including account activity in Triangular Transactions.

25. On September 23, 2015, a group of creditors who separately pursued recovery in the MDL Action amended their complaint to pursue claims against certain Net Winners. Those creditors asserted that they, and not the Chapter 11 Trustee, had the right to sue and collect from those Net Winners. The action by those creditors and their assertion of the right to pursue such claims was in direct conflict with the Chapter 11 Trustee’s exclusive right to pursue claims against the same Net Winners for the benefit of the Estates. As a consequence, on October 7, 2015, the Chapter 11 Trustee brought an action seeking a determination that the Chapter 11 Trustee had the exclusive right to pursue Net Winners in Triangular Transactions.<sup>2</sup>

26. After briefing by the parties, the Court determined on December 18, 2017 that the Chapter 11 Trustee had the sole and exclusive right to pursue claims against Net Winners on account of amounts received from Triangular Transactions. The Court’s proposed findings of fact and conclusions of law were adopted by the USDC on October 1, 2018. The creditors then appealed the findings and conclusions to the Court of Appeals for the First Circuit which also affirmed the Court’s ruling as adopted by the USDC by judgment dated October 29, 2019.

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<sup>2</sup> See adversary proceeding 15-4055.

27. After I was appointed, I filed original and/or amended tax returns for TelexFree for years 2012, 2013, and 2014 asserting no tax liability and requesting refunds for 2012 in the amount of \$886,700 and for 2013 in the amount of \$15,792,982. In December 2016, the Internal Revenue Service (the “Service”) issued a refund for 2013 in the amount of \$15,532,440 (the “2013 Tax Refund”). Following the Chapter 11 Trustee’s receipt of the 2013 Tax Refund, the Service (i) provided notice of the disallowance of substantially all of the expenses deducted by the Chapter 11 Trustee for 2012, 2013, and 2014, (ii) asserted administrative claims totaling \$69,000,000 and prepetition priority and nonpriority claims in excess of \$300,000,000; (iii) demanded a return of the 2013 Tax Refund, and (iv) disallowed the request for refund for 2012.

28. After extensive negotiations, the Service agreed to subordinate the prepetition Claims of \$300,000,000 and \$52,593,821 of its \$69,000,000 in Administrative Claims to the payment of Allowed Administrative Claims and Allowed Participant Claims. The Service did not, however, agree to subordinate its claim for return of the 2013 Tax Refund nor \$1,334,143 of its Administrative Claim for alleged income tax liability for the year 2014. The Service’s continued pursuit of its remaining Administrative Claims created a substantial impediment to my ability to finalize a plan to distribute money to Participants holding Allowed Claims.

29. Consequently, I commenced an action on July 30, 2018 to, among other things, dispute the administrative status of the Service’s claims and the issue was presented to the Court on motions for summary judgment. By judgment dated March 26, 2020, the Court found in favor of the Estates, holding the Service’s claim for the 2013 Tax Refund and its claim for 2014 taxes to be prepetition unsecured claims. This determination was a significant factor leading to the Service Settlement and the formulation of the Plan.



30. On April 22, 2020, after lengthy negotiations and approval process, I entered into the Service Settlement with the Service, which is incorporated into the Plan. The terms of the settlement provide essentially as follows:

- (i) The Service shall retain the payments made by TelexFree for tax year 2012 and the Chapter 11 Trustee shall waive his claim for a tax refund for 2012 in the amount of \$886,700;
- (ii) The 2013 Tax Refund shall be distributed as follows:
  - (a) \$7,741,220.39 to the Chapter 11 Trustee for payment of Administrative Claims and Allowed Claims of Participants;
  - (b) \$7,741,220 to the Service (the "Settlement Payment"); and
  - (c) \$50,000 for distribution to holders of Allowed Vendor Claims;
- (iii) The Service shall have an Allowed Priority Tax Claim, subordinated to the payment of all Allowed Administrative Expense Claims and Allowed Participant Claims, in the amount of \$7,741,220.39;
- (iv) TelexFree shall retain a net operating loss ("NOL") for tax year 2014 in the approximate amount of \$500,000,000 to the extent the Estates or Reorganized Debtors have taxable income during the bankruptcy cases.

31. I believe that the Service Settlement is fair and reasonable and in the best interests of the Estates and their creditors including the Participants who are the holders of Allowed Claims. The Service Settlement finally resolves the Services' substantial Administrative and Priority Claims for tax years 2012 through 2014, thereby removing a major impediment to confirmation of the Plan and payment to Participants who are holders of Allowed Claims. The Service Settlement also provides assurance that the Estates will not become embroiled in further litigation with the Service. Importantly, the agreement allows the Estates and the Reorganized Debtors to retain the NOL to offset any income realized by the Estates and Reorganized Debtors.

32. Absent approval of the Service Settlement, there would be a need to continue the litigation with the Service, which would result in the Estates continuing to incur administrative

costs and would further delay the implementation of a Plan and payment to creditors. The judgments are not final, nor did they resolve the amount of the Service's claim.

33. While I believe that the Estates would prevail after a trial in the Court with respect to the deductibility of the advertising expenses, commissions, Ympactus bad debt, and casualty loss deduction, it appears likely that the Service would appeal that decision and any subsequent adverse decision. In addition to the risks on appeal, there would be additional costs and delays in finally resolving the Service's claim, further delaying payment to Participants.

### **III. Overview of the Plan**

34. The Plan is a plan of liquidation and provides that the Assets will vest on the Effective Date in the Reorganized Debtors. The Plan provides for my appointment as Liquidating Trustee upon the Effective Date to, among other things, administer the Assets, resolve Disputed Claims, and distribute the Assets in accordance with the terms of the Plan.

35. The Plan will be funded from Restitution Funds, SEC Settlement Funds, and Available Cash. The total funds held by the Liquidating Trustee are approximately \$165,000,000, as further described below.

36. Restitution Funds consist of those monies recovered by the United States after the filing of the Chapter 11 Cases and turned over to me. To date, the United States has turned over to me the sum of \$145,471,294. I am informed that additional Restitution Funds will be turned over to me by the United States in the approximate amount of \$11,000,000. The Restitution Funds will be paid to holders of Allowed Participant Claims, less Restitution Costs of up to \$7,500,000.

37. The SEC Settlement Funds consists of those monies recovered by me in connection with certain settlements involving the Estates, the SEC, and third parties. To date, I

have recovered approximately \$2,500,000 in SEC Settlement Funds. The SEC Settlement Funds will be paid to holders of Allowed Participant Claims, net of SEC Settlement Costs equal to ten percent (10%) of such funds to compensate for the costs incurred by the Estates in effecting the SEC settlements and distributing the SEC Settlement Funds to Participants.

38. Available Cash consists of all Cash recovered by me as Chapter 11 Trustee or Liquidating Trustee, after payment or reserve for payment of Administrative Claims, Priority Claims, Priority Tax Claims, payment of Class 4 Claims, and Liquidation Costs.<sup>3</sup> Cash, in turn, means funds held by the Chapter 11 Trustee or the Liquidating Trustee, other than the Restitution Funds and the SEC Settlement Funds, but including the Restitution Costs and the SEC Settlement Costs. Excluding the Restitution and SEC Settlement Costs, I am currently holding approximately \$18,000,000 in Cash. Additional funds in an undetermined amount are expected to be recovered in the future from the Class Action Litigation and other avoidance actions. Since my appointment, I have been paying the Estates' obligations in the ordinary course of business and, therefore, do not believe that there will be any substantial unpaid administrative claims on account of post-petition trade debt.

39. Since my appointment, the professionals that I have retained have filed for and obtained Court approval for interim compensation for the period from their appointment until the spring of 2018. I have not sought or been paid any commission to date. The estimated unpaid fees and expenses of the Chapter 11 professionals through the anticipated Effective Date of June 30, 2020 are as follows: (i) Huron Consulting Group, financial advisors to the Chapter 11 Trustee, fees and expenses for the period April 1, 2018 through the Effective Date of \$4,900,000; (ii) Murphy & King, P.C., counsel to the Chapter 11 Trustee, fees and expenses for the period April 1, 2018 through the Effective Date of \$2,500,000; (iii) KPMG, LLC, tax advisors to the

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Chapter 11 Trustee, fees and expenses for the period March 1, 2018 through the Effective Date of \$800,000; (iv) Milligan Rona, Duran & King, counsel to the class action defendants, for potential fees and expenses totaling \$175,000; and (v) Stoneturn, financial advisors to the class action defendants, for potential fees and expenses totaling \$33,000.<sup>4</sup> I have indicated that I intend to seek approval of a commission for my services during the Chapter 11 cases in the approximate amount of \$3,000,000. I estimate that fees may be due to the Office of the United States Trustee in the amount of approximately \$250,000 based upon the Plan distributions to be made shortly after the Effective Date.

40. The following chart provides a summary of the anticipated recovery to holders of Allowed Claims and Equity Interests under the Plan.

<b>Class</b>	<b>Claim or Equity Interest</b>	<b>Treatment</b>	<b>Estimated Amount of Claims</b>	<b>Projected Plan Recovery</b>
N/A	Service Settlement Claim	Payment in full on or about Effective Date.	\$7,741,220	100%
N/A	Service Subordinated Tax Claims	Subordinated to payment in full of Allowed Administrative Expense Claims and Allowed Participant Claims.	\$7,741,220	0%
	Miscellaneous State Tax Claims	Payment in full upon the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim.	\$200,000	100%
1	Other Priority Claims	Payment in full in full upon the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim.	\$0	100%
2	Participant with claims of \$4,250 or less (estimated)	A single distribution from the Restitution Funds as soon as practicable after the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim.	\$125,000,000	43%

<sup>4</sup> The amounts stated for Milligan Rona and Stoneturn reflect the difference between the budget for such professionals authorized by the Court to be paid from the Estates, subject to court approval, and amounts paid to date.

	number of claims 78,759)			
3	Participant Claims other than Class 2 (estimated number of claims 22,327)	One or more distributions as follows: (i) An initial distribution from the Restitution Funds, the SEC Settlement Funds, and Available Cash, in the approximate amount of 39% of each Allowed Claim, as soon as practicable after the later of the Effective Date or the entry of an order of the Bankruptcy Court allowing such Claim,; (ii) Additional distributions from Restitution Funds, SEC Settlement Funds, and Available Cash as and when such proceeds become available to the Liquidating Trustee, in the estimated range of 2-10% of each Allowed Class 3 Claim.	\$230,000,000	Initial distribution (39%); additional distribution range (2-10%)
4	Vendor Claims (estimated number of claims less than 10)	A single distribution from Available Cash as soon as practicable after the later of the Effective Date or the entry of an order of the Bankruptcy Court allowing such Claim equal to a <i>pro rata</i> share of \$50,000.	\$75,000 to \$125,000	40% to 65%
5	Equity Interests	Equity Interests shall be deemed canceled and terminated as of the Effective Date, and the holders of Equity Interests shall not receive or retain any property or interest in property on account of such Equity Interest.	\$0	0%

**IV. Compliance with the Bankruptcy Code**

41. I have reviewed the Plan and discussed its provisions with my counsel and, based upon my analysis, have determined the following:

42. The Plan contains five classes of Claims and Equity Interests:

- (i) Class 1: Allowed Other Priority Claims;
- (ii) Class 2: Allowed Convenience Participant Claims;
- (iii) Class 3: Allowed General Participant Claims;
- (iv) Class 4: Allowed Vendor Claims;
- (v) Class 5: Equity Interests in the Debtor.

43. Impairment. The holders of Claims and Equity Interests in Classes 2, 3, 4, and 5 are impaired. As set forth in the Report of Plan Voting filed contemporaneously herewith, holders of Claims in Classes 2 and 3 have submitted ballots accepting the Plan. Holders of Claims in Class 1 are unimpaired and are deemed to have accepted the Plan. Holders of Claims in Class 4 have not voted and are deemed to have accepted the Plan. Holders of Equity Interests in Class 5 are impaired and are deemed to have rejected the Plan.

44. Plan and Trustee's Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1), (2)). To the best of my knowledge, and as further set forth herein, the Plan complies with the provisions of the Bankruptcy Code. To the best of my knowledge and belief, I have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the order approving the Disclosure Statement (the "Disclosure Statement Order") in transmitting the solicitation documents and notices to known holders of Claims and Equity Interests in connection with soliciting and tabulating votes on the Plan. To the best of my knowledge and belief, good, sufficient and timely notice of the confirmation hearing has been provided to all known record holders of Claims and Equity Interests and all other parties in interest to whom notice was required to have been provided.

45. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Plan is proposed with the appropriate purpose of restructuring the obligations of the Estates, paying Allowed Claims, and effectuating a successful orderly liquidation.

46. Payments For Services Or Costs And Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made by me as Chapter 11 Trustee or Liquidating Trustee for services or for costs and expenses in or in connection with the Chapter 11 Cases, including all fees and expenses incurred by professional persons, or in connection with the Plan and incident

to the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Court as reasonable, thereby satisfying 11 U.S.C. § 1129(a)(4).

47. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Plan is one of liquidation, and the Debtors currently have no employees. The Debtors' directors and officers are deemed to resign as of the Effective Date. After the Effective Date, I will serve as Liquidating Trustee in order to implement the wind-down of the Reorganized Debtors' affairs.

48. No Rate Changes (11 U.S.C. § 1129(a)(6)). Section 1129(a)(6) is satisfied because the Plan does not provide for any change in rates over which a governmental regulatory commission has jurisdiction.

49. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). Section 1129(a)(7) requires that each holder of a Claim or Equity Interest that is impaired and has not accepted the Plan will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date, that is not less than the amount that it would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date. In the event of a conversion of the Chapter 11 Cases to Chapter 7, the amount and timing of distributions would be adversely affected. A Chapter 7 trustee would be appointed who might have no familiarity with the bankruptcy cases. The Chapter 7 trustee would be entitled to a commission on funds distributed by the Estates. The appointment of a Chapter 7 trustee, and the Chapter 7 trustee's retention of new professionals, would likely result in a substantial learning curve and lessen the institutional knowledge necessary to administer the cases. The Estates have already invested many months and substantial resources in the claims determination process, including the establishment of an electronic, interactive portal for filing claims, the noticing of an initial bar date and extended bar dates over a period of nearly a year, the examination of more than

130,000 claims timely filed, and the implementation of a process for resolving disputed claims. Any effort to alter or replicate this process would cause substantial delays, greatly increase administrative costs, and create significant confusion to the Participants throughout the world who invested in TelexFree. Thus, the amount to be distributed would be less, and any distribution would likely be delayed by a year or more. Consequently, the best interests of creditors requirement set forth in Section 1129(a)(7) of the Bankruptcy Code has been satisfied.

50. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). All Classes of Claims have either: (i) voted to accept the Plan; (ii) are deemed to have accepted the Plan by not casting a Ballot; or (iii) are deemed to have accepted the Plan because they are unimpaired. Equity Interests are impaired and are deemed to have rejected the Plan. The Plan, however, satisfies the requirements of 11 U.S.C. § 1129(b) as set forth herein.

51. Treatment of Administrative Expense Claims and Priority Tax Claims (11 U.S.C. § 1129(a)(9)). The Plan satisfies the requirements of 11 U.S.C. § 1129(a)(9) because, except to the extent the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Allowed Administrative Claims and Professional Fee Claims (11 U.S.C. § 507(a)(2)), Priority Claims (11 U.S.C. § 507(a)(3)-(a)(7)), and Priority Tax Claims (11 U.S.C. § 507(a)(8)), shall be treated in accordance with the provisions of 11 U.S.C. § 1129(a)(9).

52. Voting Classes (11 U.S.C. § 1129(a)(10)). At least one impaired Class under the Plan has voted to accept the Plan. Therefore, the Plan complies with Section 1129(a)(10) of the Bankruptcy Code.

53. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan provides for the liquidation of the remaining Assets and the distribution of such Assets in accordance with the Bankruptcy Code and the Plan. I have sufficient funds to pay in full anticipated Allowed Administrative Claims,



Allowed Priority Claims, and Allowed Priority Tax Claims. Allowed Vendor Claims will be paid a fixed sum equal to a *pro rata* share of \$50,000. Accordingly, the Plan satisfies the feasibility requirements of the Bankruptcy Code.

54. Payment of Fees (11 U.S.C. § 1129(a)(12)). I understand that the Estates must pay on the Effective Date all fees payable under section 1930 of title 28 of the United States Code. The Plan provides that any fees due under this section have been paid or will be paid on or before the Effective Date, and the payment of any such fees after the Effective Date will be the responsibility of the Liquidating Trustee until the entry of a final decree closing the Chapter 11 Cases, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

55. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). No retiree benefits existed in the Chapter 11 Cases. As such, the Estates are not obligated to pay such benefits and 11 U.S.C. § 1129(a)(13) is inapplicable.

56. Domestic Support Obligations, Individuals and Certain Transfers (11 U.S.C. § 1129(a)(14)-(16)). The Estates are not required to pay any domestic support obligations and, therefore, 11 U.S.C. § 1129(a)(14) is satisfied. The Debtors are not individuals and, accordingly, 11 U.S.C. § 1129(a)(15) is inapplicable. The Debtors are moneyed, business or commercial corporations and, accordingly, 11 U.S.C. § 1129(a)(16) is inapplicable.

57. Fair and Equitable; No Unfair Discrimination (11 U.S.C. § 1129(b)). The only impaired nonaccepting Class is Class 5 Equity Interests. With respect to Class 5 holders of Equity Interests, no holders of any interest junior to the Equity Interests will receive or retain under the Plan any property on account of such junior interest. Accordingly, the provisions of 11 U.S.C. § 1129(b) have been satisfied.

58. No Other Plan (11 U.S.C. § 1129(c)). No other plan has been filed in connection with the Chapter 11 Cases.


59. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The Plan has not been filed for the purpose of the avoidance of taxes or the application of Section 5 of the Securities Act of 1933, as amended, and no governmental unit has filed an objection to confirmation of the Plan.

#### CONCLUSION

60. Based on the foregoing, I believe the Plan satisfies the requirements of the Bankruptcy Code, is in the best interests of creditors, and should be confirmed.

I attest that, to the best of my knowledge, the foregoing is true and correct.

Dated: July \_\_, 2020

  
Stephen B. Darr  
Chapter 11 Trustee

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