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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:  
16 TELEXFREE, LLC,

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

17  Affects this Debtor

**[PROPOSED]**  
**Jointly Administered with:**

18  Affects all Debtors

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

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 ORDER**  
22 **AUTHORIZING THE DEBTORS TO HONOR PREPETITION**  
23 **PREPAID VOICE OVER INTERNET PROTOCOL TELEPHONE MINUTES**

24 The above-captioned debtors and debtors in possession (collectively, the “Debtors”)<sup>1</sup>  
25 hereby move the Court (the “Motion”), pursuant to sections 105(a), 363, 1107(a), and 1108 of  
26 title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), for entry  
27 of an order substantially in the form of the proposed order attached hereto as **Exhibit 1**,  
28 authorizing the Debtors to honor voice over internet protocol minutes purchased by the Debtors’

<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 customers prior to the Petition Date (as defined herein). In support of this Motion, the Debtors  
2 respectfully state as follows:

3 **Status of the Case and Jurisdiction**

4 1. On April 13, 2014 (the “**Petition Date**”), each of the Debtors filed a voluntary  
5 petition (the “**Chapter 11 Cases**”) for relief under chapter 11 of the Bankruptcy Code.

6 2. The Debtors have continued in possession of their properties and are operating  
7 and managing their business as debtors in possession pursuant to sections 1107(a) and 1108 of  
8 the Bankruptcy Code.

9 3. No request has been made for the appointment of a trustee or examiner. A  
10 creditors’ committee has not yet been appointed in these cases.

11 4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and  
12 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within  
13 the meaning of 28 U.S.C. § 157(b)(2).

14 5. The statutory predicates for the relief requested herein are sections 105(a), 363,  
15 1107(a), and 1108 of the Bankruptcy Code.

16 **Background**

17 6. TelexFree, LLC, a Nevada limited liability company (“**TelexFree Nevada**”),  
18 TelexFree, Inc., a Massachusetts corporation (“**TelexFree Massachusetts**”) and TelexFree  
19 Financial, Inc, a Florida corporation (“**TelexFree Florida**” and together with TelexFree  
20 Massachusetts and TelexFree Nevada, “**TelexFree**,” the “**Debtors**” or the “**Company**”) are a  
21 telecommunications business that uses multi-level marketing to assist in the distribution of voice  
22 over internet protocol (“**VoIP**”) telephone services. TelexFree’s retail VoIP product,  
23 99TelexFree, allows for unlimited international calling to approximately seventy countries for a  
24 flat monthly rate of \$49.90. Customers of the Debtors’ VoIP product (“**Customers**”) used  
25 approximately 11 million minutes of the 99TelexFree VoIP service in February 2014. Since  
26 99TelexFree was introduced in 2012, Customer usage increased on a monthly basis until March  
27 2014.  
28

1           7.       TelexFree is operated as a multi-level marketing company, and currently has over  
2 700,000 associates or promoters (the “**Promoters**”) worldwide. Prior to the filing of these  
3 Chapter 11 Cases, TelexFree compensated Promoters for the sales of the VoIP product, the  
4 placing of advertisements and the recruitment of other Promoters down line. Because questions  
5 were raised about its compensation plan, the Company on March 9, 2014, discontinued its  
6 original compensation plan (the “**Original Comp Plan**”) and replaced the Original Comp Plan  
7 with a revised compensation plan (the “**Revised Comp Plan**” and together with the Original  
8 Comp Plan, the “**Pre-Petition Comp Plans**”). At the time of the roll-out of the Revised Comp  
9 Plan, the Company decided to honor certain discretionary payments to Promoters under the  
10 Original Comp Plan. These discretionary payments quickly became a substantial drain on the  
11 Company’s liquidity. The Company discontinued the Pre-Petition Comp Plans and ceased  
12 making discretionary payments under the Original Comp Plan prior to the Petition Date.

13           8.       The Company believes the sales of the 99TelexFree product, the TelexFree “app,”  
14 and other new products will ultimately prove successful and profitable. The Company is  
15 struggling, however, with several factors that required it to seek chapter 11 protection by filing  
16 these Chapter 11 Cases. First, the Company experienced exponential growth in revenue between  
17 2012 and 2013 (from de minimus amounts to over \$1 billion), which put tremendous pressure on  
18 the Company’s financial, operational and management systems. Second, although the Company  
19 revised its Original Comp Plan in order to address certain questions that were raised regarding  
20 such plan, the Company believes that the Pre-Petition Comp Plans need to be further revised.  
21 Finally, the trailing liabilities arising from the Original Comp Plan are difficult to quantify and  
22 have resulted in substantial asserted liabilities against the Company, a number of which may not  
23 be valid.

24           9.       As a result, the Company filed these Chapter 11 Cases to obtain the breathing  
25 room to address its operational and regulatory issues, revise the Pre-Petition Comp Plans, and  
26 quantify and address the claims against it. The Debtors believe that a restructuring of its debt,  
27 adoption of a post-petition revised compensation plan, unveiling of new products (including the  
28

1 TelexFree app), and return to growing its Customer base will allow the Company to realize its  
2 full potential and generate significant value for its constituents.

3 10. A detailed factual background of the Debtors' businesses and operations, as well  
4 as the events precipitating the commencement of these Chapter 11 Cases, is more fully set forth  
5 in the *Omnibus Declaration of William H. Runge III in Support of the Debtors' Chapter 11*  
6 *Petitions and Requests for First Day Relief* (the "**First Day Declaration**"), filed  
7 contemporaneously herewith and incorporated herein by reference.

8 **The Prepaid VoIP Minutes**

9 11. As described in the First Day Declaration, the Debtors distribute a retail product:  
10 VoIP services. The Debtors' VoIP product, 99TelexFree, allows a subscriber to make unlimited  
11 international calls to over forty countries. A subscriber pays a monthly fee in order to obtain a  
12 month of service from the Debtors. Prior to the Petition Date, the Debtors sold their VoIP  
13 services to a number of customers who anticipated utilizing the Debtors' services for the month  
14 following their purchase (the "**Prepaid VoIP Minutes**"). The Debtors failure to honor the  
15 Prepaid VoIP Minutes would severely and irreparably harm the Debtors' customer relations, as  
16 many of the Debtors' Customers would be deprived of the services they purchased.

17 **Relief Requested**

18 12. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a),  
19 363, 1107(a) and 1108 of the Bankruptcy Code, authorizing the Debtors to honor the Prepaid  
20 VoIP Minutes purchased by the Debtors' Customers prepetition.

21 **Basis for Relief Requested**

22 13. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in  
23 possession to continue to operate its business. Section 363(c)(1) of the Bankruptcy Code  
24 authorizes the debtor in possession operating its business pursuant to section 1108 of the  
25 Bankruptcy Code to "use property of the estate in the ordinary course of business without notice  
26 or a hearing." 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code  
27 is to provide a debtor in possession with "flexibility to engage in ordinary transactions" required  
28 to operate its business without unneeded oversight by its creditors or the court. *Hunt, Ortman,*

1 *Blasco, Palffy & Rossell, Inc. v. Jim L. Shetakis Distrib. Co. (In re Jim L. Shetakis Distrib. Co.)*,  
2 415 B.R. 791, 797 (D. Nev. 2009); *Shults & Tamm v. Brown (In re Hawaiian Telcom Communs.*,  
3 *Inc.)*, 2012 Bankr. LEXIS 380, 12 (Bankr. D. Haw. Jan. 30, 2012); *In re Roth Am., Inc.*, 975 F.2d  
4 949, 952 (3d Cir. 1992) (“Section 363 is designed to strike [a] balance, allowing a business to  
5 continue its daily operations without excessive court or creditor oversight and protecting secured  
6 creditors and others from dissipation of the estate’s assets.”) (quoting *U.S. ex rel. Harrison v.*  
7 *Estate of Deutscher (In re H&S Transp. Co.)*, 115 B.R. 592, 599 (M.D. Tenn. 1990); *In re*  
8 *Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007)). The Debtors submit that  
9 the ability to honor the Prepaid VoIP Minutes is permitted by sections 363(c), 1107(a), and 1108  
10 of the Bankruptcy Code without further application to the Court. Notwithstanding the foregoing,  
11 out of an abundance of caution, the Debtors seek the Court’s authorization, but not direction, to  
12 honor the Prepaid VoIP Minutes.

13 14. Additionally, section 105(a) of the Bankruptcy Code authorizes the Court to issue  
14 “any order, process, or judgment that is necessary or appropriate to carry out the provisions of  
15 [the Bankruptcy Code].” 11 U.S.C. § 105(a). The purpose of section 105(a) is to “assure the  
16 bankruptcy courts [sic] power to take whatever action is appropriate or necessary in aid of the  
17 exercise of [its] jurisdiction.” 2 COLLIER ON BANKRUPTCY ¶ 105.01 (15th ed. rev. 2010). Thus,  
18 section 105 essentially codifies the bankruptcy court’s inherent equitable powers. *In re Rainbow*  
19 *Magazine, Inc.*, 77 F.3d 278, 284 (9th Cir. 1996) (citing *In re Courtesy Inns, Ltd. (Jones v. Bank*  
20 *of Santa Fe)*, 40 F.3d 1084, 1089 (10th Cir. 1994) and *Chambers v. NASCO, Inc.*, 501 U.S. 32,  
21 33 (1991) (stating that section 105 is intended to give the bankruptcy court the inherent power  
22 recognized by the Supreme Court in *Chambers*)); see also *U.S. ex rel. Gebert v. Transport*  
23 *Administrative Servs.*, 260 F.3d 909, 919 (8th Cir. 2001) (noting that section 105 “gives  
24 bankruptcy courts the power to ‘issue any order, process or judgment that is necessary and  
25 appropriate to carry out the provisions of [bankruptcy Title 11].’”). The Debtors submit that the  
26 relief requested in this Motion is critical to the Debtors and is justified under section 105(a) of  
27 the Bankruptcy Code.  
28

1           15.     A bankruptcy court's exercise of its authority under section 105(a) is necessary to  
2 carry out two central policies underlying chapter 11: (i) to permit the successful rehabilitation of  
3 the debtor, *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984), and (ii) to preserve going  
4 concern value and maximize property available to satisfy all creditors. *Bank of Am. Nat'l Trust*  
5 *& Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999). The ability of the Debtors  
6 to honor the Prepaid VoIP Minutes ensures customer satisfaction and generates goodwill with  
7 customers, thereby retaining current customers, attracting new ones, and ultimately enhancing  
8 revenue and profitability. Maintaining these benefits throughout these chapter 11 cases is  
9 essential to the continued viability of the Debtors' business and the maximization of the estates'  
10 value for all parties in interest. This Court should exercise its equitable powers to grant the relief  
11 requested in this Motion.

12           16.     The success and viability of the Debtors' business and the Debtors' ability to  
13 successfully maximize value for the stakeholders in these cases are dependent primarily upon the  
14 patronage and loyalty of the customers who purchase the VoIP product. The ability to honor the  
15 Prepaid VoIP Minutes is fundamental to the continued success of the Debtors' business; without  
16 the ability to honor the Prepaid VoIP Minutes the Debtors business will be irreparably harmed.  
17 Moreover, honoring the Prepaid VoIP Minutes will preserve customer satisfaction; this will  
18 assist the Debtors in retaining current customers and assist the Debtors in their reorganizational  
19 efforts. Honoring the Prepaid VoIP Minutes is critical to the continuation of customer loyalty  
20 and satisfaction, whereas failure to honor the Prepaid VoIP Minutes would severely and  
21 irreparably impair the Debtors' customer relations and cause a severe loss in customer  
22 confidence. Accordingly, the Debtors submit that they should be authorized to honor the Prepaid  
23 VoIP Minutes.

24           17.     The Debtors respectfully submit that similar relief is warranted in these cases  
25 because their ability to reorganize depends upon the Debtors maintaining the loyalty of their  
26 customers and the going-concern value of their business. Accordingly, the Debtors request the  
27 authority to honor the Prepaid VoIP Minutes.

28     ...

1                                    **Bankruptcy Rule 6003 is Satisfied and Request for Waiver of Stay**

2            18.     The Debtors further submit that because the relief requested in this Motion is  
3 necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein  
4 and in the First Day Declaration, Rule 6003 of the Federal Rules of Bankruptcy Procedure  
5 (the “**Bankruptcy Rules**”) has been satisfied and the relief requested herein should be granted.

6            19.     The Debtors further seek a waiver of any stay of the effectiveness of the order  
7 approving this Motion. Pursuant to Bankruptcy Rule 6004(h) “[an] order authorizing the use,  
8 sale, or lease of property other than cash collateral is stayed until the expiration of ten (10)  
9 days after entry of the order, unless the court orders otherwise.” As set forth above, the  
10 payments proposed herein are essential to prevent irreparable damage to the Debtors’ operations  
11 and the value of their estates. Accordingly, the Debtors submit that ample cause exists to  
12 justify a waiver of the ten (10) day stay imposed by Bankruptcy Rule 6004(h) to the  
13 extent it applies.

14                                    **Notice**

15            20.     Notice of this Motion has been given to the following parties or, in lieu thereof, to  
16 their counsel, if known: (a) the Office of the United States Trustee; (b) creditors holding the  
17 thirty (30) largest unsecured claims as set forth in the consolidated list filed with the Debtors’  
18 petitions; (c) the Office of the United States Attorney General for the District of Nevada; (d) the  
19 Massachusetts Securities Division; (e) the Internal Revenue Service; (f) the Nevada Department  
20 of Employment, Training & Rehab, Employment Security Division; (g) the Nevada Department  
21 of Taxation, Bankruptcy Section; and (h) the Securities and Exchange Commission. The  
22 Debtors submit that, in light of the nature of the relief requested, no other or further notice need  
23 be given.

24                                    **No Prior Request**

25            21.     No prior request for the relief sought in this Motion has been made to this or any  
26 other court.

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Conclusion

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

DATED this 9 day of April, 2014.

GORDON SILVER

By: 

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*Proposed Counsel for the Debtors  
and Debtors in Possession*



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Exhibit 1

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*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:

**ORDER AUTHORIZING THE DEBTORS TO HONOR PREPETITION PREPAID  
VOICE OVER INTERNET PROTOCOL TELEPHONE MINUTES**

1           Upon the motion (the “**Motion**”)<sup>1</sup> of the above-captioned debtors and debtors in  
2 possession (collectively, the “**Debtors**”) seeking entry of an order authorizing the Debtors to  
3 honor voice over internet protocol telephone minutes purchased by the Debtors’ customers  
4 prepetition (the “**Prepaid VoIP Minutes**”); and it appearing that the Court has jurisdiction to  
5 consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these  
6 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it  
7 appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court  
8 having determined that the relief requested in the Motion is in the best interests of the Debtors,  
9 their estates, their creditors and other parties in interest; and it appearing that proper and  
10 adequate notice of the Motion has been given and that no other or further notice is necessary; and  
11 after due deliberation thereon; and good and sufficient cause appearing therefor,  
12

13                           **IT IS HEREBY ORDERED THAT:**

- 14
- 15           1.       The Motion is GRANTED as set forth herein.
  - 16           2.       The Debtors are authorized but not directed to honor the Prepaid VoIP Minutes.
  - 17           3.       The relief granted herein shall not constitute or be deemed to be an assumption or  
18 an authorization to assume, pursuant to section 365 of the Bankruptcy Code, any executory  
19 contract or unexpired lease to which the Debtors are a party and all such rights are hereby  
20 expressly reserved.
  - 21           4.       Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy**  
22 **Rules**”) has been satisfied because the relief requested in the Motion is necessary to avoid  
23 immediate and irreparable harm to the Debtors.
  - 24           5.       Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and  
25 conditions of this Order shall be immediately effective and enforceable upon its entry.  
26
- 27

28           <sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

1           6.     The Debtors are authorized and empowered, but not directed, to take all actions  
2 necessary to implement the relief granted in this Order.

3           7.     The Court retains jurisdiction with respect to all matters arising from or related to  
4 the implementation of this Order.

5  
6 Submitted By:

7 GORDON SILVER

8  
9 By:

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13 AND

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