

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

In re:

TELEXFREE, LLC,
TELEXFREE, INC.
TELEXFREE FINANCIAL, INC.

Debtors.

Chapter 11 Cases

14-40987-MSH
14-40988-MSH
14-40989-MSH

Jointly Administered

**VERIFIED APPLICATION BY STEPHEN B. DARR, CHAPTER 11 TRUSTEE,
TO RETAIN MURPHY & KING, PROFESSIONAL CORPORATION AS COUNSEL**

Pursuant to 11 U.S.C. §§ 327 and 330, Federal Rule of Bankruptcy Procedure 2014 and Massachusetts Local Bankruptcy Rule 2014-1, Stephen B. Darr, the duly appointed Chapter 11 trustee (the "Trustee") of the bankruptcy estates (the "Estates") of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors") respectfully requests that this Court to enter an order authorizing the Trustee to retain Murphy & King, Professional Corporation ("M&K") as counsel to the Trustee. In further support of this application, the Trustee states as follows:

JURISDICTION

1. The Court has jurisdiction to consider and determine this application pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are contained in 11 U.S.C. §§327 and 330 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2014 and Massachusetts Local Bankruptcy Rule 2014-1.



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BACKGROUND

3. 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 (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of Nevada.

4. On May 6, 2014, the motion of the Securities and Exchange Commission (the "Commission") to transfer venue of the Debtors' cases to this Court was allowed and the cases were transferred on May 9, 2014.

5. On May 30, 2014, this Court approved the motion by the Office of the United States Trustee to appoint a Chapter 11 trustee, and the Trustee was appointed on June 6, 2014.

6. The administration of the Debtors' Estates is likely to be complex. The Debtors stated that they operated a telecommunications business that used multi-level marketing to assist in the distribution of voice over internet protocol telephone services. Individuals were allegedly promised substantial returns for placing TelexFree advertisements and for recruiting additional individuals. Shortly following the Petition Date, on April 15, 2014, the Commission initiated a civil suit against the Debtors, and others captioned as *Securities and Exchange Commission v. TelexFree, Inc., et al*, Civ. Action No. 14-11858 (the "Civil Action") alleging that the Debtors operated a pyramid scheme in violation of the Securities Act of 1933 and the Exchange Act of 1934. Upon information and belief, in connection with the Civil Action, the Commission has seized substantial sums from the Debtors and their principals.

7. The principals of the Debtors as of the Petition Date were Carlos Wanzeler and James Merrill. Upon information and belief, Mr. Wanzeler is no longer in the United States and Mr. Merrill is being held in federal custody. The Debtors have not filed schedules or statements. Upon information and belief, the number of parties who may assert claims against the Debtors could be in the hundreds of thousands.

RETENTION OF MURPHY & KING, PROFESSIONAL CORPORATION

8. The Trustee seeks an order authorizing the employment of M&K, pursuant to Sections 327(a) and 330 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2014, Massachusetts Local Bankruptcy Rule 2014-1, and consistent with the guidelines adopted by the Executive Office for the United States Trustees from time to time under 28 U.S. C. §586(a)(3) (the “Guidelines”).

9. Under Section 327(a) of the Bankruptcy Code, a trustee is authorized to employ attorneys to assist in carrying out the trustee’s duties under the Bankruptcy Code, so long as such attorneys are disinterested persons and do not hold any interest adverse to the debtor or its estate with respect to the matter on which such attorneys are employed. See 11 U.S.C. § 327(a).

10. The Trustee seeks to engage M&K as counsel to provide necessary legal services in connection with his administration of the Estates, without limitation, the following:

- a. Consultation with the Trustee concerning all matters relating to the administration of the Debtors’ Estates;
- b. Providing assistance to the Trustee in preparing the motions, notices, complaints, and any other pleadings and documents that must be prepared or reviewed by an attorney and which are necessary to the administration of the cases;
- c. Representing the Trustee at all hearings and matters pertaining to his role as trustee of the Debtors’ Estates;
- d. Advising and assisting the Trustee in connection with the potential disposition of any property;
- e. Advising the Trustee concerning executory contract and unexpired lease assumptions, lease assignments, rejections, restructurings and recharacterization of contracts and leases;
- f. Assisting in discussions and coordinating with the United States Trustee, the Commission, the Department of Justice, other parties in interest, and professionals hired by same, as requested;
- g. Representing the Trustee in the Civil Action and any other matters as

necessary and appropriate;

- h. Advising the Trustee regarding his ability to initiate actions to collect and recover property for the benefit of the Estates;
- i. Reviewing and analyzing the claims of the Debtors' creditors, the treatment of such claims, including the potential avoidance of liens and the preparation, filing or prosecution of any objections to claims, and developing a resolution process for such claims;
- j. Commencing and conducting any and all litigation necessary or appropriate to assert rights held by the Estates, protect assets of the Debtors' Estates other than with respect to matters to which the Trustee retains special counsel;
- k. Taking all necessary or appropriate actions in connection with a plan or plans of reorganization or liquidation which may be filed in this matter and all related documents; and
- l. Providing such other legal services as may be requested by the Trustee.

11. M&K has substantial experience and knowledge in matters of trustee representation in proceedings under the Bankruptcy Code, including experience in administering complex estates and coordinating with governmental authorities with respect to extant criminal and civil matters which may be pending. Moreover, M&K has substantial experience with telecommunications matters, particularly in the bankruptcy context, and has the varied and substantial resources necessary to represent the Trustee with respect to the matters set forth above. Accordingly, the proposed employment of M&K as counsel is appropriate and in the best interests of the Estates.

12. The current customary and normal hourly rates for the services to be rendered by M&K are as follows:

<u>Position</u>	<u>Hourly Rates</u>
Partner	\$450-\$635
Associate	\$200-\$470
Paraprofessional	\$190

From time to time, M&K adjusts its usual hourly billing rates in the ordinary course of its business.

13. M&K has agreed to provide a public service discount for the benefit of the Debtors' bankruptcy Estates by capping its usual hourly rates for services rendered by partners of M&K in this matter at \$550 per hour through December 31, 2015. In the event that M&K's services are required beyond that date, M&K has agreed to provide a similar discount against its adjusted partner hourly rates. M&K agrees to follow the Guidelines in connection with its services and applications for compensation.

14. The Trustee has not provided M&K with a retainer in this matter.

15. Based upon the information provided by M&K, the billing rates for services to be rendered by M&K in these cases are comparable to or less than those charged for other non-bankruptcy engagements.

16. The Trustee is generally familiar with rates charged by legal professionals in the Boston market. In connection with retaining counsel in this matter, the Trustee interviewed seven firms and inquired as to their hourly rates. Based upon the Trustee's experience and those interviews, M&K's hourly rates are reasonable and competitive with, and often lower than, rates charged by firms performing comparable services in the District of Massachusetts, particularly considering its agreement to discount its fees as detailed above.

DISINTERESTEDNESS OF M&K

17. In connection with this application, M&K has submitted the *Affidavit of Harold B. Murphy in Support of Application by Chapter 11 Trustee to Retain Murphy & King, Professional Corporation as Counsel* (the "Affidavit") in accordance with Federal Rules of Bankruptcy Procedure 2014 and 2016, and MLBR 2014-1. To the best of the Trustee's knowledge,

information and belief, neither M&K, nor any shareholder or associate thereof, holds any interest adverse to the Debtors or their Estates with respect to the matters for which M&K is to be employed.

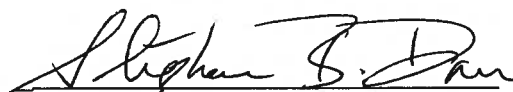
18. Based upon the Affidavit, M&K is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code.

19. M&K will further amend or supplement the Affidavit as necessary.

WHEREFORE, the Trustee respectfully requests that this Court issue an order authorizing the Trustee to retain M&K as his counsel and granting to the Trustee such other and further relief this Court deems necessary and proper under the circumstances.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

STEPHEN B. DARR,
CHAPTER 11 TRUSTEE OF
TELEXFREE, LLC, TELEXFREE, INC., AND
TELEXFREE FINANCIAL, INC.


Stephen B. Darr

Dated this 17 day of June 2014
671034

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**AFFIDAVIT OF HAROLD B. MURPHY IN SUPPORT OF
APPLICATION BY CHAPTER 11 TRUSTEE TO RETAIN
MURPHY & KING, PROFESSIONAL CORPORATION AS COUNSEL**

Pursuant to Federal Rule of Bankruptcy Procedure 2014(a), MLBR 2014-1 and 28 U.S.C.

§ 1746, I, Harold B. Murphy, hereby state as follows:

1. I am a shareholder of the law firm of Murphy & King, Professional Corporation, One Beacon Street, Boston, Massachusetts ("M&K"). I make this affidavit (the "Affidavit") in connection with the *Verified Application by Stephen B. Darr, Chapter 11 Trustee, to Retain Murphy & King, Professional Corporation as Counsel* (the "Application") in the above-referenced jointly-administered Chapter 11 proceeding.

2. I am generally familiar with the business of M&K and have made inquiry concerning the facts set forth herein prior to making this Affidavit.

3. M&K maintains records of all of its clients, the matters on which it represents its clients, and the other parties which have a substantial role in such matters. M&K has reviewed such records and documents to determine M&K's connections with the above-captioned (the "Debtors").

4. Upon information and belief, in accordance with Fed. R. Bankr. P. 2014(a) and MLBR 2014-1, neither I nor any shareholder of M&K has any connections or relationships with the Debtors, their creditors, or any other party in interest, their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee.

5. M&K does not represent, nor is it represented by, any other authorized professional specifically in connection with this case or on a regular basis or in connection with an extensive matter in another case.

6. Insofar as I have been able to ascertain, M&K, its shareholders, associates and I do not hold or represent any interest adverse to that of the Debtors' bankruptcy estates.

7. I believe that both M&K and I are "disinterested persons" as that term is defined in Section 101(14) of the Bankruptcy Code. Furthermore, insofar as I have been able to ascertain, none of M&K, any shareholder or associate thereof, or myself, is connected with any Bankruptcy Judge in the District of Massachusetts, or the United States Trustee or any person employed in the office of the United States Trustee, so as to render the retention of M&K as counsel to the Trustee inappropriate under Fed. R. Bankr. P. 5002(b).

8. M&K and I have conducted, and will continue to conduct, research into any relationships that M&K may have with the Debtors and their creditors, any accountants, attorneys or other professionals of the foregoing, and any other parties interested in this case. Although M&K has undertaken, and will continue to undertake, an investigation to identify any contacts with the Debtors or parties in interest, it is possible that such contacts have not been discovered. To the extent any such contacts are discovered, M&K will notify the Court by filing and serving a supplemental affidavit.

9. M&K agrees to follow the guidelines adopted by the Executive Office for the United States Trustees from time to time under 28 U.S. C. §586(a)(3) (the “Guidelines”) in connection with its services and applications for compensation.

10. The current customary and normal hourly rates for services rendered by M&K are as follows:

<u>Position</u>	<u>Hourly Rates</u>
Partner	\$450-\$635
Associate	\$200-\$470
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From time to time, M&K adjusts its usual hourly billing rates in the ordinary course of its business.

11. M&K has agreed to provide a public service discount for the benefit of the Debtors’ bankruptcy Estates by capping its usual hourly rates for services rendered by partners of M&K in this matter at \$550 per hour through December 31, 2015. In the event that M&K’s services are required beyond that date, M&K has agreed to provide a similar discount against its adjusted partner hourly rates.

12. The following is provided in response to the request for additional information set forth in ¶D.1 of Appendix B of the Guidelines:

Question: Did you agree to any variations from, or alternatives to, your standard customary billing arrangements for this engagement?

Response: Yes. M&K has agreed to provide a public service discount for the benefit of the Debtors’ bankruptcy Estates by capping its usual hourly rates for services rendered by partners of M&K in this matter at \$550 per hour through December 31, 2015. In the event that M&K’s services are required beyond that date, M&K has agreed to provide a similar discount against its adjusted partner hourly rates.

Question: Do any of the professionals included in this engagement vary their rate based on the geographic location of the bankruptcy case.

Response: No.

Question: If you represented the client in the 12 months prepetition, disclose your billing rates and material financial terms for the prepetition engagement, including any adjustments during the 12 months prepetition. If your billing rates and material financial terms have changed postpetition, explain the difference and the reasons for the difference.

Response: Not applicable. M&K did not represent the client prepetition.

Question: Has your client approved your prospective budget and staffing plan, and if so, for what budget period?

Response: M&K has discussed staffing of these cases and a proposed work plan with the Trustee. M&K has agreed to develop an agreeable budget with the Trustee as more information becomes available and to periodically update the budget during the pendency of these cases.

13. Any compensation, fee or allowance which may be claimed by me or by M&K will belong wholly to the law firm and will not be divided, shared or pooled, directly or indirectly, with any other person or firm.

14. Neither I nor M&K have been paid a retainer in this matter.

15. I shall amend this statement immediately upon my learning that (A) any of the within representations are incorrect or (B) there is any change of circumstances relating thereto.

16. During the period of M&K's retention as counsel to the Trustee, neither I nor M&K will hold any interest adverse to the interest of the Debtors' estate, and will not cease to be a disinterested person, as defined in 11 U.S.C. § 101(14).

17. I have reviewed the provisions of MLBR 2016-1.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.


Harold B. Murphy

Dated: June 12, 2014
671336

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DECLARATION REGARDING ELECTRONIC FILING

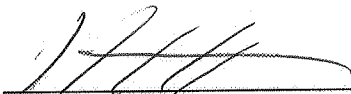
PART I - DECLARATION OF PETITIONER

I, Harold B. Murphy, hereby declare under penalty of perjury that the information contained in the *Affidavit of Harold B. Murphy in support of Application by Chapter 11 Trustee to Retain Murphy & King, Professional Corporation as Counsel* (the "Document"), filed electronically and contemporaneously with this declaration, is true and correct. I understand that this DECLARATION is to be filed with the Clerk of Court electronically concurrently with the electronic filing of the Document. I understand that failure to file this DECLARATION may cause the Document to be struck and any request contained or relying thereon to be denied, without further notice.

I further understand that pursuant to the Massachusetts Electronic Filing Local Rule (MEFLR)-7(a) all paper documents containing original signatures executed under the penalties of perjury and filed electronically with the Court are the property of the bankruptcy estate and shall be maintained by the authorized CM/ECF Registered User for a period of five (5) years after the closing of this case.

Dated: June 17, 2014

Signed:


Harold B. Murphy