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ALSO PRESENT (via telephone): STEPHEN DARR
Chapter 11 Trustee
265 Franklin Street
Boston, MA 02210

TIM MARTIN
Huron Consulting Group

TINAMARIE FEIL
BMC Group, Inc.

1 P R O C E E D I N G S

2 THE COURT: This is Judge Hoffman.

3 Are we ready to proceed, Regina?

4 THE COURTROOM DEPUTY: Yes, your Honor.

5 THE COURT: Okay. Why don't you call --

6 THE COURTROOM DEPUTY: Calling Case No. 14-40987,

7 TelexFree, LLC.

8 Will the parties please identify themselves for the
9 record, starting with counsel to the chapter 11 trustee?

10 MR. LIZOTTE: Andrew Lizotte for the trustee, your
11 Honor.

12 MR. MURPHY: Good afternoon, your Honor. Harry Murphy
13 for the trustee as well.

14 MR. DARR: Good afternoon, your Honor. Stephen Darr,
15 trustee.

16 MS. TINGUE: Your Honor, good afternoon. Lisa Tingue
17 for the U. S. Trustee.

18 THE COURT: Anyone else who --

19 MR. MARTIN: Your Honor, this is Tim Martin with Huron
20 Consulting Group.

21 THE COURT: I'm sorry. Mr. Martin, Huron. Okay. Got
22 it.

23 MR. MARTIN: Yes, your Honor.

24 THE COURT: Anyone else who wants to be heard who is
25 on the line who needs to identify themselves?

1 MS. FEIL: Your Honor, Tinamarie Feil from BMC Group,
2 the trustee's proposed solicitation and voting agent. I'm here
3 in case you have any questions.

4 THE COURT: Thank you.

5 Anyone else?

6 (No response)

7 THE COURT: All right. As, as you, all of you may or
8 may not know, there is also a separate livestream of this
9 hearing in listen-only mode for folks who want to stay on top
10 of the proceedings. And so I would ask to begin with having
11 trustee's counsel just hit the highlights of where the case
12 stands and what is the chapter 11 plan going to look like in
13 the point of view of the participants?

14 MR. LIZOTTE: Yes, your Honor. First, with respect to
15 -- Andrew Lizotte, your Honor.

16 First, with respect to noticing, the, the internet
17 connection that the Court just referenced was provided to all
18 of the participants who either have conditionally allowed
19 claims or whose claims have not yet been resolved.

20 Secondly, in accordance with the notice last week, the
21 trustee provided participants with an opportunity for an
22 access-only line if they had any objections or concerns about
23 the disclosure statement.

24 And thirdly, there was an electronic mail deposit
25 where people could e-mail questions or concerns about the

1 disclosure statement or the status of the case. With respect
2 to the e-mail service, we received about 150 e-mail inquiries,
3 your Honor. None of them were in the form of objections to the
4 disclosure statement. Most were in the nature of requests for
5 information either asking for the, the meaning of the
6 disclosure statement hearing or whether there are any further
7 hearings, questions about individual claims, and questions
8 about the status of distributions and the trustee has provided
9 a response to everyone that sent in an e-mail inquiry.

10 We are asking today for approval by the Court of the
11 adequacy of the disclosure statement so that we can set up a
12 hearing on confirmation of the plan. The plan, principally,
13 divides those participants who were involved in the TelexFree
14 program into two categories. The first category are those
15 participants who have an allowed claim of \$4,250 or less, which
16 comprises approximately 80 percent of all the people who have
17 potentially allowed claims. Those individuals will have an
18 opportunity to receive under the plan a single distribution
19 equal to 43 percent of their claim, which would be paid shortly
20 after the plan was approved. The -- those -- that group of
21 participants would also have an opportunity to elect if they
22 chose to be treated with the second pool of participants.

23 The second pool of participants will be all those
24 participants who have allowed claims of more than \$4,250. With
25 respect to that group, your Honor, there will be an initial

1 distribution after approval of the plan estimated to be
2 approximately 39 percent of allowed claims. So it's slightly
3 less than the one-time distribution to the small, the smaller
4 convenience class group, but the second group with the larger
5 claims will have an opportunity for one or more additional
6 distributions and some additional recoveries under the plan.

7 The trustee, your Honor, proposes to send the
8 participants electronically a plan summary substantially in the
9 form that is appended to the disclosure statement, your Honor.
10 The plan summary is intended to simplify the process and the
11 burden on the participants. The, the ballot, and the KCC
12 website, the trustee run by the trustee's claims agent, will
13 both have the full plan and the full disclosure statement that
14 people can view online. Those two documents total
15 approximately 80 or 90 pages. The plan summary document is
16 approximately 2-1/2 pages and we're asking as part of today's
17 hearing that the Court approve the form of that document which
18 will be sent electronically to all the participants in
19 connection with the hearing on confirmation of the plan. That
20 plan summary document will tie directly into a ballot by which
21 participants can vote to accept or reject the plan and also to
22 provide individualized payment information if they wish to
23 receive a payment through Venmo or PayPal or any other form.

24 So this is a customized ballot. Each participant will
25 receive a unique link to their ballot and they will be sent by

1 e-mail a unique username and passcode. The ballot will also
2 provide the trustee an opportunity to ensure compliance with
3 certain laws as to participants who are not residents, in
4 particular, the so-call OFAC compliance, which is the Office of
5 Foreign Assets Control.

6 A couple of --

7 THE COURT: So with that, let me, let me interrupt
8 you.

9 MR. LIZOTTE: Yes.

10 THE COURT: You say that there's a plan summary
11 attached to the disclosure statement?

12 MR. LIZOTTE: It's attached to the motion to approve
13 the disclosure statement, your Honor.

14 THE COURT: Okay. What exhibit is it?

15 MR. LIZOTTE: It is Exhibit --

16 THE COURT: I'm not finding it.

17 MR. LIZOTTE: -- B. It's Exhibit B, your Honor, and
18 it's entitled Important Notice Regarding Liquidating Plan.

19 THE COURT: Oh, I see. Okay, got it. I, I have seen
20 that. I didn't realize that was what you were talking about.

21 Okay. Go ahead.

22 MR. LIZOTTE: Yes, your Honor.

23 So just, just to quickly walk through the exhibits to
24 the disclosure statement motion.

25 Exhibit A is a proposed form of order.

1 Exhibit B is the Important Notice, which I referred to
2 as the plan summary.

3 Exhibit C, your Honor, is a template of the customized
4 form of ballot that would be sent to participants and would
5 serve the multiple functions that I referenced.

6 And the last exhibit, your Honor, is a ballot for
7 creditors who are not participants in the TelexFree program,
8 just general creditors of which there are comparatively few,
9 your Honor.

10 THE COURT: What is the treatment for general
11 creditors in the plan?

12 MR. LIZOTTE: There is a single lump sum distribution,
13 your Honor, where each of these creditors will receive a pro
14 rata distribution on \$50,000. The trustee projects that the
15 total pool of these creditors is fairly small, your Honor, in
16 the range of 100 to 125,000.

17 THE COURT: So the -- the -- the first group, the
18 participants under 4250, what is that, Class 1? What --

19 MR. LIZOTTE: No. Class --

20 THE COURT: What's the class?

21 MR. LIZOTTE: Class 1, your Honor, is the so-called
22 other priority claims, which is the, you know, the statutory
23 priority claims, but are not taxes. I suspect that there will
24 not be anyone in that class.

25 Class 2, your Honor, is the so-called convenience

1 class of participants who have allowed claims of \$4,250, or
2 less.

3 Class --

4 THE COURT: And are you -- are you -- are you allowing
5 -- Class, Class 3 is the over, over 4250?

6 MR. LIZOTTE: That's correct, your Honor.

7 THE COURT: Are you allowing those folks to elect to
8 drop down to Class 2?

9 MR. LIZOTTE: No, your Honor. There's an election
10 process for convenience creditors to go into the general pool.
11 There is not a reverse election.

12 THE COURT: Okay. Got that.

13 And then the general unsecured nonparticipants, what
14 class are they?

15 MR. LIZOTTE: They are Class 4, your Honor.

16 THE COURT: Got it. Okay.

17 MR. LIZOTTE: Class, and Class 5 is, is the equity
18 class, which will receive nothing under the plan.

19 THE COURT: Yep. Got it. Okay.

20 MR. LIZOTTE: So I -- a couple of housekeeping items,
21 your Honor, with respect to these documents. We have made a
22 couple of minor changes to the, the plan summary document, the
23 so-called Important Notice. One is that the username and
24 passcode will be e-mailed to participants separately and will
25 not be referenced directly in the notice. And secondly, we

1 will ask people who wish to participate in the plan hearing to
2 provide their own interpreter, as we have done with this
3 hearing and with the claims resolution hearings, your Honor.

4 With respect to the disclosure statement order, we had
5 a provision toward the end that provided a phone number and a
6 dial-in. Given the way this hearing has been managed, your
7 Honor, we will probably want to alter that last paragraph to
8 notify people that there will be a listen-in and a participant
9 dial-in opportunity in connection with the plan hearing which
10 will be sent out at some point prior to the plan hearing.

11 So I would propose to make a, a modification to the
12 end of the disclosure statement order to provide the noticing
13 procedures consistent with today's hearing.

14 If your Honor has any other questions, I'm happy to
15 address. Otherwise, perhaps it would be appropriate to discuss
16 a confirmation schedule.

17 THE COURT: No. I have some questions we need to talk
18 about first in no particular order of importance.

19 While we're on the subject of the classes, so Class 3
20 will have an initial dividend of 39 percent and a possible
21 further dividend down the road. And that, those future
22 dividends are going to be what, pro rated? How -- is there any
23 formula for what that's going to look like?

24 MR. LIZOTTE: It would be pro rated out, your Honor.
25 I believe the disclosure statement projected a range of

1 recovery of 2-to-10 percent of allowed claims. The source of
2 those recoveries would be any additional funds that are
3 provided by the liquidation of assets by the U. S. Attorney,
4 which have been seized, or any additional recoveries by the
5 trustee in connection with the pending avoidance actions.

6 THE COURT: Yes, I see. Okay. All right.

7 Let's start with some questions or clarifications in
8 the disclosure statement, itself. Let me get to it.

9 I'm looking on Page 7 on my copy from the, from the
10 court's docket, Paragraph 8. What do I need to get my
11 distribution? Do you see that?

12 MR. LIZOTTE: Yes, your Honor.

13 THE COURT: Okay. So this is a, a provision that is
14 unusual in that, typically, a ballot is to be voted thumbs up
15 or thumbs down on whether a plan should be confirmed. It's
16 optional. Nobody is every required to submit a ballot. They
17 could choose not to. But what you're -- you're -- here, if I
18 understand it correctly, you are using the ballot not only for
19 purposes of voting, but also as a way of getting information in
20 order to make a distribution.

21 So no one will get money unless they submit a ballot,
22 do I read that correctly?

23 MR. LIZOTTE: Well, your Honor, the, the intention is
24 to capture two essential pieces of information here. One is
25 the manner in which people would prefer to get paid because the

1 check-writing process could be quite cumbersome. And secondly
2 is, the trustee is unable to make a distribution to a
3 nonresident absent compliance with OFAC. Now if someone did
4 not provide a ballot and still had an allowed claim, the, the
5 trustee would certainly work with them throughout the process
6 to, to get confirmation of these pieces of data, but given the
7 size of the pool that we're dealing with this seemed to be, by
8 far, the most cost-effective way to capture the essential data
9 to be able to make a distribution to them.

10 THE COURT: No, I, I understand that and I'm not
11 telling you that I, I disagree with it. I'm just saying that
12 it's an important -- actually it's, it's a critical point and
13 it needs to be -- and because you use, you're using the ballot
14 for that purpose, people don't ordinarily think of a ballot as
15 being other than a vote and this is more than a vote. This is,
16 this is a form that they need to be able to participate in a
17 distribution.

18 So my point here is that you need to follow through
19 with this information in, in more than, more than this Page 7
20 of the disclosure statement. So, for example, in your, in your
21 plan summary -- you call it the plan summary -- the notice, in
22 the order, this has to be repeated on the ballot, "If you do
23 not submit this ballot, you will not get paid," and it has to
24 be reinforced multiple times so that everybody understands that
25 and it's not just something to throw away.

1 MR. LIZOTTE: No. We, we appreciate that, your Honor.
2 The, with respect to the, the so-called plan summary, on Page 2
3 in all caps and bold there is a statement of the necessity of
4 the ballot, including the electronic payment information. I'm
5 happy to add that into the proposed order as well if your Honor
6 would like.

7 THE COURT: And -- and in the -- on the ballot itself.

8 MR. LIZOTTE: On the ballot itself, sure.

9 THE COURT: And -- and -- that's the most important so
10 that it's, it's visible and people, people see that.

11 MR. LIZOTTE: Yes, your Honor.

12 THE COURT: Okay.

13 Let's go back to -- I've been around here. Hold on.

14 (Pause)

15 THE COURT: Back to the disclosure statement, Page 31,
16 8.3, Estimation of Claims. First sentence, I think, is a
17 little bit off. It says, "After the effective date, the
18 liquidating trustee may at any time estimate any disputed claim
19 in his reasonable discretion, regardless of whether," and then
20 go down. It says, "whether the bankruptcy court has ruled on
21 any such objection." It doesn't make sense to me that if the
22 bankruptcy court has ruled on a claim objection one way, that
23 the liquidating trustee can ignore that ruling and in his
24 reasonable discretion estimate the disputed claim. That can't
25 be what you're saying.

1 So I think you just need to clarify that language.

2 MR. MURPHY: We'll clarify.

3 MR. LIZOTTE: Yeah. Your Honor, we -- we will -- we
4 will -- we understand the Court's concern. We will clarify
5 that.

6 THE COURT: All right, good.

7 On Page 34, Section 9.6, Selection of Agents and
8 Standard of Care. You got it?

9 MR. LIZOTTE: Yes, your Honor.

10 THE COURT: The last sentence, last line, "The
11 standard of care set forth in Section 7.8 of this plan." I
12 think you mean Section 9.8 of this disclosure statement.

13 MR. LIZOTTE: Yes, your Honor. It, it probably should
14 have said "of the plan," but I'm happy to make the reference
15 directly inside the disclosure document.

16 THE COURT: Well, there is no Section 7.8(a) of the
17 plan. That's why I thought it, it was a mistake. But anyway,
18 you can refer to the plan, if you can find it. Otherwise, it's
19 right there on the same page below in 9.8.

20 MR. LIZOTTE: Okay. Yes, your Honor.

21 THE COURT: And then let's go to Page 42, 12.5, the
22 injunction provision. So my only point on this is that if you
23 include injunctive language in your plan, then if I read Rule
24 2002(c) correctly, it requires that the notice that goes out to
25 creditors of, of confirmation have language in the notice

1 itself in bold or caps telling folks that there's going to be
2 an injunction issued and unless you tell me that that 2002,
3 Rule 2002(c)(3) doesn't apply in this case, then you need to
4 add some language to your notices in compliance with 2002(c),
5 okay?

6 MR. LIZOTTE: Yes, your Honor. We'll, we'll review as
7 to whether that, that is a requirement, your Honor. We'll
8 follow up.

9 THE COURT: Yeah. What it says in the, says in the
10 Rule it, it applies to "an injunction against conduct not
11 otherwise enjoined under the Code." So my guess is there'd be
12 not much purpose in just repeating what the Code says, that
13 these injunctions tend to be much broader than, than that.

14 And so, in any case, it would make sense to, to comply
15 with that, with that Rule. It's easy enough to add some
16 language to your notices.

17 MR. LIZOTTE: Yes, your Honor. We're not, we weren't
18 intending to go beyond what's customarily included in a plan,
19 but we will look into that, your Honor.

20 THE COURT: Okay.

21 Then in the, the motion that's, the motion to approve
22 with all of the exhibits, let's go through a couple of those
23 exhibits here and see where we are with it.

24 So the first, what is it, it's Exhibit A, is the, the
25 order approving disclosure statement and setting all the dates.

1 So the, the record date is going to be the date of this order,
2 yes, isn't it? Is it the date of the approval?

3 MR. LIZOTTE: That's, that's correct, your Honor.

4 THE COURT: Okay. And then -- so you're going to,
5 you're going to send out a, Exhibit B. The Exhibit B notice
6 goes to the participant creditors.

7 What are you going to send to the general unsecured
8 creditors for notice?

9 MR. LIZOTTE: They would, they would get a, a customary
10 ballot and the plan and disclosure statement, your Honor.

11 And --

12 THE COURT: But also, they need notice of the
13 confirmation. They going to get this order, I take it. This
14 is what typically gets sent.

15 MR. LIZOTTE: And -- and the -- and the order -- and
16 the order, correct. That's correct, your Honor.

17 THE COURT: Right, yeah. Okay.

18 So this is where, if you're going to comply with
19 2002(c), this is where that language needs to go and also, it
20 needs to go into the, what you call the plan summary notice
21 that goes to the participating creditors.

22 MR. LIZOTTE: Yes, your Honor.

23 THE COURT: And then -- so yes.

24 And in -- so getting, getting to Paragraph 13 of the
25 order approving the disclosure statement, I -- I -- we're not

1 sure how we're going, what this hearing is going to look like,
2 whether it's going to be in court or a hybrid with some in
3 court and some virtual.

4 So where is it here? Oh, it's Paragraph 12.

5 MR. LIZOTTE: Yes.

6 THE COURT: So you -- you're assuming telephonic. So
7 can, can we do it -- can we leave our options open and indicate
8 that, the date and time of the hearing here and indicate that
9 there'll be further notice as to how the hearing will be
10 conducted, or something like that so that we can follow that up
11 later once we know what we're going to be, whether we'll be
12 back in court? 'Cause this is not going to happen until the
13 end of July, right?

14 MR. MURPHY: Your Honor, if I can. It's Harry Murphy.
15 Just briefly.

16 The noticing agent's on the phone. Assuming an order
17 is entered today or tomorrow, I'm told that service could be
18 made as early as, as June 1.

19 THE COURT: Okay.

20 MR. MURPHY: And the package --

21 THE COURT: So early July.

22 MR. MURPHY: Yes.

23 THE COURT: That would get us to early July.

24 MR. MURPHY: Yeah. And, and the thinking behind that
25 is the one sentiment that Huron has relayed to us about

1 participants, as with the reasons for shortening the disclosure
2 statement hearing, is people are very anxious to receive their
3 distribution.

4 So I don't anticipate that it's going to be a
5 contested confirmation hearing. We hope that -- we expect
6 we're going to be, receive more than the requisite ballots.
7 And so, again, I, I don't know what your Honor's schedule is,
8 but I just wanted to let that be known.

9 We -- the, the process of sending this out, as, as
10 Mr. Lizotte indicated, of individualized ballots tied in with
11 people is why it takes four or five days to get that done. But
12 what, you know, if you were thinking about running dates from
13 June 1, you know, I would, we would hope that we could be heard
14 in early July.

15 THE COURT: Yeah. And by then, we're, we're expecting
16 we'll be, we'll be back in court on a limited basis if things
17 progress as they have been up to now. And so that's why I'm
18 thinking we should leave the Paragraph 12 a little open for
19 further information about how the hearing will be conducted and
20 how people can participate.

21 MR. MURPHY: Yes, your Honor. We can make that change
22 similar to like the, the way we provide opportunities to
23 participate. That's should be -- notice of that should be
24 provided later.

25 MR. LIZOTTE: Yes, your Honor. I will, I will propose

1 some modifications to that paragraph to address the, the
2 opportunities that we're, in connection with this hearing, that
3 that may be an alternative, depending on where the Court is at.

4 MR. MURPHY: Correct.

5 THE COURT: The next exhibit, which is the notice to
6 the participants, and where is that language about the ballot,
7 Mr. Lizotte?

8 MR. LIZOTTE: It's about two-thirds of the way down on
9 the second page, your Honor.

10 MR. MURPHY: Bold language.

11 MR. LIZOTTE: It's -- it's in the -- it's in the
12 section called Complete and Return Your Ballot By. The bottom
13 half of that paragraph is in bold.

14 (Pause)

15 THE COURT: Yes. So I, I would add -- at the end of
16 that I would add the sentence, "You will not receive a
17 distribution unless you submit the ballot."

18 MR. LIZOTTE: Yes, your Honor.

19 THE COURT: And then in the, the electronic with the
20 screenshots that come after the notice, just want to clarify
21 something here.

22 So it's -- in the, in the electronic form of ballot in
23 Item 3, "Skip Item 3 and move on to Item 4 if you wish to
24 remain in Class" -- "in a Class 2 convenience claim" -- "if you
25 wish to remain a Class 2 convenience claim participant."

1 Is there a button? All I see here is a button for
2 yes. Is there a button for skip?

3 MR. LIZOTTE: The claims agent is on the phone. I
4 would ask Tinamarie if she could explain the functionality of
5 that provision.

6 MS. FEIL: Yes. Let me just take a quick look at the
7 live site here.

8 We will add that. There is, there is not. The
9 instruction is skip Item 3 and move to Item 4 if you wish to
10 remain.

11 THE COURT: Right.

12 MS. FEIL: So the, the theory was to just skip this if
13 you wanted to remain or click yes if --

14 THE COURT: Yeah. As long as the -- the -- as long as
15 the user can skip it. Usually, you got to press something to
16 move on on these things. I don't know. I -- I just -- I just
17 want to bring it to your attention. As long as they --

18 MS. FEIL: Thank you.

19 THE COURT: -- can actually accomplish the skipping.

20 MS. FEIL: Correct. It is not a required checkbox.
21 So it, it would skip to the next one, if they so choose.

22 THE COURT: All right. Okay.

23 All right. So that's all I had.

24 Let me open the floor to anyone else on the call who
25 would like to be heard.

1 Ms. Tingue, is the U. S. Trustee onboard with this?

2 MS. TINGUE: Yes, your Honor. The U. S. Trustee is
3 onboard with this.

4 THE COURT: Okay.

5 MS. TINGUE: Thank you.

6 THE COURT: Anyone else want to be heard?

7 (No response)

8 THE COURT: So I'm going to approve the disclosure
9 statement, once I receive a revision with all the things we've
10 been talking about, and including the revision to the order,
11 itself.

12 And we can talk about dates. Let's see what we have
13 here. All right. We're -- so we're, we're going to shoot for
14 as early in July as we can manage. I'm going to get you a date
15 after the hearing. I have to talk to staff to figure this out.

16 But I understand the urgency of this and the need to
17 get these, this money out to people as soon as we can.

18 MR. LIZOTTE: Yes, your Honor.

19 THE COURT: And obviously, whatever -- so this is all
20 going to get keyed off of when you can, Mr. Lizotte, when you
21 can get me the papers back on, on the record so that, on the
22 docket, so that I can act on them. So the sooner you get those
23 in, the, the easier it'll be for us to come up with a date in
24 early July.

25 MR. LIZOTTE: Just --

1 THE COURT: All right?

2 MR. LIZOTTE: I -- I -- I anticipate that we'd be
3 able to get you all the modifications by tomorrow, your Honor.

4 THE COURT: Perfect. That'll give us plenty of time
5 to work with. Okay.

6 And then we get these signed and then it goes to the
7 noticing agent to pull together the necessary work to get the
8 notices out, hopefully, early next week.

9 MR. LIZOTTE: Yes, your Honor.

10 THE COURT: Does that make -- okay.

11 All right. Is there anything else we need to talk
12 about?

13 MR. LIZOTTE: I don't believe so.

14 THE COURT: Okay. Well --

15 MR. MURPHY: No. Thank you, your Honor. Thank you,
16 your Honor.

17 THE COURT: Thank you all for your hard work and on to
18 confirmation.

19 MR. LIZOTTE: Right, your Honor.

20 MS. TINGUE: Thank you, your Honor.

21 THE COURT: Okay. Thank you all.

22 THE COURTROOM DEPUTY: The court is in recess.

23 (Proceedings concluded at 2:36:43 p.m.)

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CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Janice Russell

June 8, 2020

Janice Russell, Transcriber

Date