

ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: May 27, 2104

REGULAR  X  CONSENT       EFFECTIVE DATE                       N/A

DATE: May 20, 2014

TO: Public Utility Commission

FROM: Kay Marinos <sup>Km</sup> <sup>BSC</sup>

THROUGH: Jason Eisdorfer and Bryan Conway <sup>BSC</sup>

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket CP 1556)  
Request to Open an Investigation Pursuant to ORS 756.515 and Request  
TelexFree LLC to Show Cause Why its Certificate of Authority Should Not  
be Revoked.

**STAFF RECOMMENDATION:**

Staff recommends that the Commission open an investigation at this Public Meeting, pursuant to ORS 756.515, and order TelexFREE, LLC (TelexFREE or Company) to show cause why its certificate of authority should not be revoked.

**DISCUSSION:**

On March 25, 2014, TelexFREE filed an application for a certificate of authority to offer interexchange private line services throughout the state of Oregon. Staff reviewed the application for completeness and verified that the Company holds a current registration with the Oregon Secretary of State to do business in Oregon. Staff also investigated whether or not the Company had any previous certificates or money owed to the Commission. On March 26, the Commission issued a public notice of the application in accordance with OAR 860-032-0005(7). No oppositions to the application were filed during the twenty-day notice period. As all the requirements for the application were met, on April 17, 2014, the Commission granted the requested certificate in Order No. 14-131 in Docket CP 1556.

On April 21, 2014, Joseph Isaacs, the attorney for TelexFREE, filed a letter with the Commission. The letter, which was dated April 18th and addressed to all state commissions including Oregon, requested that the commissions disassociate Mr. Isaacs and his firm from matters relating to TelexFREE. The letter stated that TelexFREE had filed for bankruptcy on Monday, April 14, 2014, and that both the Massachusetts SEC

(on April 15) and the US SEC (on April 16) had filed cases against the Company for allegedly running a Ponzi scheme. Additionally, the SEC obtained a full asset freeze. The case was unsealed on April 17th, the day before the date of Mr. Isaac's letter, and the very same day that the Commission issued an order granting the Company's application for a certificate of authority. A copy of Mr. Isaac's letter is attached. Staff confirmed the accuracy of the information included in the letter.

Staff made several attempts to contact Mr. James Merrill, the Company contact indicated on the application, to discuss the allegations. Available information indicates that Mr. Merrill is one of the owners of the Company. Using the contact information on the certificate application, Staff tried to contact Mr. Merrill by phone on two occasions – once on April 24, 2014 and again on May 2nd. The phone system went to voice mail on both occasions and the Staff members each left a voice message for Mr. Merrill to contact them regarding Mr. Isaac's letter and the status of the Company's certificate. Staff also sent an e-mail to Mr. Merrill on May 2nd stating the same information as the voice message. Finally, on May 7th a letter was sent via overnight delivery to Mr. Merrill at the Company's address in Massachusetts. Tracking information from UPS indicated that the letter was delivered. Staff has received no call backs or follow-ups from Mr. Merrill or anyone else from TelexFREE to date.

From news reports, it appears that the office building is shuttered. The options on the website [www.telexfree.com](http://www.telexfree.com) essentially link to a notice about the Company's filing for bankruptcy and it appears that new customers cannot enroll. The Company's assets were frozen and the bankruptcy venue was moved from Nevada to Massachusetts where many of the alleged victims reside.

On May 9th, Mr. Merrill and Carlos N. Wanzeler, another principal of the Company, were charged in a federal criminal complaint with conspiracy to commit wire fraud. Mr. Merrill was arrested and Mr. Wanzeler is considered to be a fugitive. A copy of the U.S. Attorney's Office news release entitled "Owners of TelexFREE Charged in \$1 Billion Pyramid Scheme" is attached.

OAR 860-032-0007 specifies the conditions that apply to certificate holders. Condition (4) requires for competitive providers that "the books and records of the certificate holder must be open to inspection by the Commission to the extent necessary to verify information required of the certificate holder. The books and records must be maintained according to the applicable rules of the Commission." Condition (11) requires that the certificate holder "respond in a timely manner to Commission inquiries."

OAR 860-032-0015 specifies the conditions under which the Commission can cancel or suspend a company's certificate. Condition (b) is that "the certificate holder has failed to comply with the terms and conditions of the certificate." Condition (c) is that the certificate holder "intentionally provided to the Commission incomplete, inaccurate, false, or misleading information."

The allegations facing the Company raise serious issues as to whether or not the Company should be permitted to retain its certificate of authority. Staff has been unable to reach anyone from the Company to obtain further information. Staff stated in its communications that the Company may request that the Commission cancel its certificate under the current circumstances. It is unlikely that any services will be offered in Oregon as the Company's assets are frozen, it is in bankruptcy proceedings, and its offices are the target of federal government activity. Nevertheless, cancelling the Company's certificate to provide services in Oregon would foreclose the possibility.

Under ORS 756.515(1), if the Commission believes that "an investigation of any matter relating to any public utility or telecommunications utility or other person should be made .... The commission may on motion summarily investigate any such matter, with or without notice." Staff has gathered sufficient evidence that it believes indicates that the Company's certificate of authority should be cancelled. However, Staff requests that an investigation be opened as the procedural mechanism for requiring the Company to show cause why its certificate of authority should not be revoked. If the Company does not show cause or request a hearing, the Commission should cancel the certificate of authority.

Based upon advice of counsel, Staff is requesting that this public meeting be considered TelexFREE's opportunity to present information that its certificate should not be cancelled or request a hearing. In addition to all the attempts to contact the Company, Staff has also sent a copy this public meeting memo to the email and mail address on file at the Commission, as well as sending a copy to the Company's registered agent.

#### **CONCLUSION:**

Staff recommends that the Commission open an investigation and determine if the Company shows cause why its certificate should not be cancelled, or requests a hearing. If the Company does not show cause, Staff recommends that the Commission close the investigation and order the Company's certificate cancelled.

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**PROPOSED COMMISSION MOTION:**

An investigation be opened and the Company ordered to show cause why its certificate of authority should not be cancelled.

CP 1556 Investigation



April 18, 2014

To: Commission Secretaries  
ALL United States Public Utility (Service) Commissions  
Re: TelexFREE, LLC's petitions (applications) to provide telecommunications services  
in your state.

Dear Sir:

It has come to my attention this week that my client TelexFREE, LLC, whom has applied for or has recently been approved to provide telecommunications services in your state, has misrepresented their intentions, their business model, their customer base and the source of all of their revenue, income and profits declared on their 2013 financial statements that were provided to this commission for the approval of their petitions (applications in some jurisdictions).

In my twenty years as a consultant to telecommunications carriers and applicants, I have never experienced a client who provided such false and misleading information. Apparently the affidavits signed by the ex-managing member, Jim Merrill were not truthful either. Both ISG-Telecom staff and the Commissions have been duped by their misleading information.

This Monday, April 14, 2014 TelexFREE filed for Chapter 11 bankruptcy in Nevada to avoid returning over \$1 Billion dollars to its representative. On Tuesday April 15, 2014 the Massachusetts SEC (through the Commonwealth's Secretary of State Office) filed a civil case against the company accusing them of running a billion dollar Ponzi scheme for selling unregistered securities (the heart of all of their revenues). On Wednesday the United States Securities & Exchange Commission filed a sealed case against the company, their principles and top four promoters of the alleged fraud. The SEC also obtained a full asset freeze of the company and all of its principles the same day in District court in Massachusetts. The case was unsealed yesterday afternoon (see attached).

In light of these recent events this week, I can no longer consult to this type of entity or its principles, morals, ethics and principles prevail as do my 20 year relationship with staff at the various PUC's around the county.

All future correspondence regarding TelexFREE, LLC should be directed directly to Mr. Jim Merrill, ex-managing member and 50% owner at the company at 225 Cedar Hill Street, Suite 200, Marlborough, MA 01752. Please disassociate my firm with these alleged crooks.

Sincerely,

Joseph Isaacs

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## Owners of TelexFree Charged in \$1 Billion Pyramid Scheme

May 9, 2014

**BOSTON** – James M. Merrill and Carlos N. Wanzeler, principals of TelexFree, Incorporated and related entities, were charged today in a federal criminal complaint, charging them with conspiracy to commit wire fraud.

Merrill, 53, of Ashland, Mass. and Wanzeler, 45, of Northborough, Mass., were charged in a one count criminal complaint filed in U.S. District Court in Worcester, Mass. If convicted, each face up to 20 years in prison. Merrill was arrested today by federal authorities and made an initial appearance in U.S. District Court in Worcester. A federal arrest warrant was issued for Wanzeler who is a fugitive.

United States Attorney Carmen Ortiz said, "The scope of this alleged fraud is breathtaking. As alleged, these defendants devised a scheme which reaped hundreds of millions of dollars from hard working people around the globe."

"I am very proud of the tireless efforts of my special agents. Investigating the flow of illicit money across U.S. borders and the criminal enterprises behind that money is one of our top priorities," said Bruce Foucart, Special Agent in Charge of Homeland Security Investigations. "While pyramid schemes are nothing new, the potential scope of this case will hopefully serve as an educational lesson for all. The main point is clear; if it sounds too good to be true, it probably is."

According to the complaint affidavit, TelexFree, Inc., and TelexFree LLC (collectively, "TelexFree") provided "voice-over-internet-protocol" ("VOIP") telephone services, for which customers can sign up via a web site maintained by TelexFree. It is alleged that TelexFree was actually a pyramid scheme and that between January 2012 and March 2014, TelexFree purported to aggressively market its VOIP service by recruiting thousands of "promoters" to post ads for the product on the Internet. Each promoter was required to "buy in" to TelexFree at a certain price, after which they were compensated by TelexFree, under a complex compensation structure, on a weekly basis so long as they posted ads for TelexFree's VOIP service on the Internet.

It is alleged that the ad-posting requirements were a meaningless exercise, in which promoters cut and pasted ads into various classified ad sites provided by TelexFree which were already saturated with ads posted by earlier participants. According to the affidavit, TelexFree derived only a fraction of its revenue from sales of VOIP service – less than 1% of TelexFree's hundreds of millions of dollars in revenue over the last two years. The overwhelming majority of its revenue – the other roughly 99% – came from new people buying into the scheme. TelexFree was allegedly only able to pay the returns it had promised to its existing promoters by bringing in money from newly-recruited promoters.

On or about March 8, 2014, TelexFree announced changes to its compensation system. On April 14, 2014, TelexFree filed for bankruptcy. In its filings with the bankruptcy court, TelexFree stated, among other things, that it changed its compensation plan "because questions were raised" about the prior plan and that, after changing the plan, the "discretionary payments ... quickly became a substantial drain on the Company's liquidity."

On April 16, 2014, the Securities and Exchange Commission obtained a restraining order to freeze assets of TelexFree and eight related individuals. Since then, the U.S. Attorney's Office has executed 37 seizure warrants for assets in the tens of millions of dollars.

It is further alleged that in 2013, TelexFree reported sales of \$1.016 billion, while known sales of the TelexFree VOIP product represented less than 0.1% percent of TelexFree's total revenues.

United States Attorney Ortiz, SAC Foucart and Vincent B. Lisi, Special Agent in Charge of the Federal Bureau of Investigation, Boston Field Division, made the announcement today. The case is being prosecuted by Assistant U.S. Attorneys Cory Flashner and Andrew Lelling of Ortiz's Worcester Branch Office and Economic Crimes Unit, respectively.

**If you believe that you are a victim of the alleged TelexFree, Inc. scheme, please send your contact information to the following address:**  
**USAMA.VictimAssistance@usdoj.gov**

The details contained in the complaint affidavit are allegations. The defendants are presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.