

# ISG-Telecom Consultants

**VIA USPS PRIORITY MAIL**

March 17, 2014

Executive Secretary  
Alabama Public Service Commission  
RSA Building  
100 N. Union Street, Suite 850  
Montgomery, Alabama 36101



Re: TelexFREE, LLC - Application for Resale Interexchange Authority.

Dear Sir:

Enclosed please find an original and one (1) copy of the TelexFREE's Application for a Certificate of Public Convenience and Necessity to provide interexchange telecommunications services in Alabama. The entire packet was also filed electronically today. Enclosed also find the filing fee in the amount of \$100.

Please acknowledge receipt of this filing by file stamping and returning a copy of this letter to the address below.

Questions concerning this Application may be addressed directly to me.

Sincerely,

/s/ Joseph Isaacs

Joseph Isaacs  
Consultant to TelexFREE

4274 Enfield Court, Suite 1600, Palm Harbor, Florida 34683  
Telephone: 727-738-5553 Facsimile: 727-939-2672  
<http://www.isg-telecom.com> [isaacs@isg-telecom.com](mailto:isaacs@isg-telecom.com)

# **APPLICATION**

**FOR CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY  
TO PROVIDE  
TELECOMMUNICATIONS SERVICES  
IN THE STATE OF ALABAMA**

## SECTION I

### GENERAL

**I-1** Corporate Name: **TelexFREE, LLC**

d/b/a (if applicable): **n/a**

**I-2** Street: **225 Cedar Hill Street, Suite 200**

City: **Marlborough**

State: **MA**

County: **n/a**

Country: **USA**

Zip: **01752**

Telephone Number: **888-670-4890**

FAX Number: **508-460-3330**

Web Address: **www.telexfree.com**

Name of employee (s) with authority to respond to Commission requests regarding tariff/regulatory matters or financial/annual reports (list information for each):

#### Financial/Annual Reports

Name:

**Joe Craft**

Official Title:

**CFO**

Direct Telephone Number:

**812-641-0477 ext. 107**

Email:

**joe@joecraftcpa.com**

#### Tariff/Regulatory

Name:

**Joseph Isaacs**

Official Title:

**Consultant**

Direct Telephone Number:

**727-738-5553**

FAX Number:

**727-939-2672**

Email:

**isaacs@isg-telecom.com**

#### Primary Contact

Name:

**Jim Merrill**

Official Title:

**Managing Member**

Direct Telephone Number:

**508-460-3333**

FAX Number:

**508-460-3330**

Email:

**jmerrill@telexfree.com**

- I-3** Types of services for which authority is requested. (i.e. Local Exchange Service, Long Distance Interexchange Service, Long Distance Resale Service, Alternate Operator Services, Prepaid Service, etc.) Please include all services which the company intends to provide.

**The Company requests certification as a Long Distance Interexchange Service and a Long Distance Resale Service.**

Indicate how service(s) will be provided (i.e. Facilities-Based, UNE-P, UNE)

**The Applicant intends to offer services on a resale basis initially and then on a facility basis as markets warrant and permits.**

- I-4** Attorney (if applicable) **Not applicable- See contact info in #I-2 under tariff**  
Address:  
City: State:  
Zip: Telephone Number:

- I-5** Registered Agent in Alabama: **InCorp Services, Inc.**  
Address: **2094 Myrtlewood Drive**  
City: State: Zip: **Montgomery, AL 36111**  
Telephone Number: **888-727-3372**

- I-6** Geographic area to be served:

**Entire State of Alabama**

**I-7** Anticipated date of service: **April 1, 2014**

**I-8** States in which applicant is authorized to provide service:

**Currently Applicant is authorized to provide interexchange services in California, Connecticut, Kentucky, Missouri, North Carolina, Nebraska, Texas and Washington.**

**I-9** States in which applicant is currently providing service:

**Same as in I-8**

**I-10** Mechanism by which applicant intends to bill for services:

**Applicant intends to bill for services using in-house accounting software.**

SECTION II  
ORGANIZATION

**II-1** Type of Organization:

- a. Individual.....( )
- b. Partnership.....( )
- c. Corporation.....( )
- d. Other (Identify).....( X )

**II-2** If a corporation:

- a. Attach a copy of articles of incorporation and current bylaws.
- b. Nonresident corporation - attach a copy of Certificate of Authority issued by the Secretary of State granting corporation's authority to do business in Alabama.

**See attached as “Exhibit B”**

**II-3** If a partnership:

- a. Attach a copy of the partnership agreement.
- b. Attach a list showing name and address of all partners.

**Applicant is a multi-member LLC (OWNED IN ITS ENTIRETY BY JIM MERRILL & CARLOS WANZELER)**

**See Operating Agreement attached as “Exhibit A”**

## SECTION III

### FINANCIAL

- III-1** Attach a current certified financial statement including balance sheet, income statement, cash flow statement, and statement of retained earnings (if applicable).

**See attached as “Exhibit C”**

- III-2** Facilities, if any:

- a. Attach statement describing means or method by which facility will be financed. (Attach copies of any agreements, commitments, or other evidence as to source and availability of capital funds.)

**Applicant has no intent to deploy facilities in Alabama**

- b. Attach itemized estimated cost of proposed facilities.

**Applicant currently does not possess an itemized cost for facilities as it plans on offering services on a resale basis only.**

- c. Attach itemized estimated operating expenses to be incurred in providing proposed service.

**Applicant has determined that additional operating costs are minimal in light of service being provided in multiple other jurisdictions.**

- III-3** Provide a list of the number of prospective subscribers and estimated annual operating revenues.

**Applicant intends to have 5,000 interexchange customers after the first 12 months in Alabama. Applicant estimates its monthly operating revenues at approximately 20K monthly.**

- III-4** Provide a description of any proposed or existing agreement of interconnecting service between applicant and any other telecommunications company.

**Currently the Applicant has resale agreement negotiations in process with a national IXC, which will cover the State of Alabama upon approval of this application.**

- III-5** Provide a description any lease or rental contract concerning any property - (real and/or personal) possessed, controlled or occupied by applicant, or by any subsidiary to which applicant owns and in which he has a controlling interest, or any parent company of which he is a subsidiary.

**Applicant has not yet entered into any lease agreements for property in Alabama.**

- III-6** If a subsidiary corporation, provide a list of the parent organization and submit a copy of most recent annual report.

**Applicant is not a subsidiary of any other entity**

- III-7** Attach statement that provides copy of three-year projected cash flow statement and/or market feasibility study.

**Attached as “Exhibit D”**



## **SECTION IV**

### **ENGINEERING**

- IV-1** Provide a statement that describes fully the facility to be provided by applicant for rendering the proposed service at each location, if applicable.

n/a

- IV-2** Provide a statement that describes transmission capabilities of applicant.

n/a

- IV-3** Attach a statement that provides the location of switching equipment.

Currently these are not applicable to the Applicant as it plans on offering services through resale. Applicant agrees to provide this information to the Commission, if deemed necessary in the future.

## SECTION V

### LICENSES

- V-1** Attach a copy of each certificate, license or other operating authority applicable to Alabama issued to Applicant by any federal authority.

**Applicant currently has no other operating authorities in Alabama.**

## SECTION VI

### TARIFFS

Each applicant shall file a proposed tariff as follows:

- VI-1** The tariff must provide services and descriptions, rates or charges, rules, and regulations proposed by the company for Commission approval. (Refer to sample tariff at [www.psc.state.al.us](http://www.psc.state.al.us))

**See attached “Exhibit E” – IXC Tariff**

- VI-2** The tariff must enumerate and define the classifications of services available to subscribers. Attach a copy of the proposed form of contract governing each service to be furnished by applicant to its subscribers.

**Not applicable**

- VI-3** Requirements for size, form identification, and filing of tariffs:

- a. All tariffs including maps shall be in loose leaf form of size eight and one-half inches by eleven inches and shall be plainly printed or reproduced on paper of good quality.
- b. A margin of not less than three-fourths inch without any printing thereon, shall be allowed at the binding edge of each tariff sheet.
- c. Tariff sheets are to be numbered consecutively by section, sheet, and revision number. Each sheet shall show an issue date, effective date, revision number, section number, sheet number, name of the company, name of the tariff, and title of the section in a consistent manner.
- d. An official tariff filing (original plus ten copies) shall be made to the Alabama Public Service Commission.

Overnight Delivery Address:

Secretary  
Alabama Public Service Commission  
RSA Building  
100 N Union Street, Suite 850  
Montgomery, Alabama 36101

NOTE: Applicants can elect to file an electronic copy of the application and tariff. Prior to submitting the tariff, contact the Secretary's Office at 334-242-5218 to obtain approval/authorization.

Secretary  
Alabama Public Service Commission  
P.O. Box 304260  
Montgomery, Alabama 36130-4260

## **SECTION VII**

### **SUBMISSION OF APPLICATION**

All of the following must be submitted before an application will be considered valid and scheduled for hearing:

- VII-1** The application fee of one hundred (\$100) dollars made payable to the “Alabama Public Service Commission” must be attached to original copy.<sup>1</sup>

NOTE: Any application for certification or additional/amended certification submitted to the Commission that does not have the required fee attached will be considered an invalid/incomplete application and will not be processed further.

#### **SEE ATTACHED**

- VII-2** An original plus ten copies of the completed application and proposed tariff must be provided.

**APPLICANT SUBMITS THE FILING ELECTRONICALLY AND THEREFORE ONLY SUBMITS AN ORIGINAL, ONE COPY AND FILING FEE OF \$100.00**

- VII-3** Application and application fee should be submitted to the address listed in Section VI – 3.d.

<sup>1</sup> The *Communications Reform Act of 2005*, CODE OF ALABAMA 1975, Section 37-2A-9b, Standards for New Entrants, states: “Every application for a Certificate of Public Convenience and Necessity by a new entrant to provide telecommunications service in this state shall be accompanied by an application fee in the amount of one hundred dollars (\$100).”

**SECTION VIII**  
**REPRESENTATION**

Applicant's Attorney or Representative:

Name: Joseph Isaacs, Consultant

Address: 4274 Enfield Ct., Suite 1600

City: State: Palm Harbor, Florida 34685

Telephone: 727-738-5553

Applicant understands that the filing of this application does not constitute nor guarantee operating authority. Applicant will submit any additional materials as required by the Commission. Applicant will also file annual/financial reports and pay annual inspection and supervision fees as required under Section 37-2-41, Code of Alabama 1975.

## OATH

### OATH

State of Massachusetts )

County of Middlesex )

Jim Merrill, who personally appeared before the undersigned, an officer duly authorized to administer oaths, who first being duly sworn, deposes and says that he is the Managing Member and President of TelexFREE, LLC - in this application, that he has read the same and knows the contents thereof, and that the statements made herein are true to the best of her knowledge and belief.

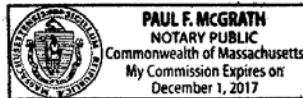
*Jim Merrill* President

(Signature of Affiant)

*Paul F. McGrath*  
Subscribed and sworn before me, this 5<sup>th</sup> day of March, 2014.

(SEAL)

My Commission Expires  
12-1-17



(\*) If applicant is a corporation, insert "President" or "Secretary." If applicant is a firm or partnership, insert "Partner."

(\*) If applicant is a corporation, insert "President" or "Secretary." If applicant is a firm or partnership, insert "Partner."

**EXHIBIT “A”**

**Operating Agreement of TelexFREE, LLC**



**“Exhibit B”**

**Certificate of Organization in Nevada  
and  
Certificate of Foreign Authority from Alabama SOS**



# TELEXFREE, LLC

[New Search](#)[Manage this Business \(/businessSearch/managerT7Business?businessEntityNumber=E0380642012-3\)](#)[Calculate Fees](#)[Print \(\)](#)

Business Entity Information			
Status:	Active	File Date:	07/19/2012
Type:	Domestic Limited-Liability Company	Entity Number:	E0380642012-3
Qualifying State:	NV	List of Officers Due:	07/31/2014
Managed By:	Managers	Expiration Date:	
Foreign Name:		On Admin Hold:	No
NV Business ID:	NV20121446825	Business License Exp:	07/31/2014

Additional Information	
	Central Index Key

Registered Agent Information			
Name:	BWFC PROCESSING CENTER, LLC	Address 1:	3960 HOWARD HUGHES PKWY STE 500
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89169
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Limited-Liability Corporation		
Jurisdiction:	NEVADA	Status:	Active

[View all business entities under this registered agent \(\)](#)

Officers		<input type="checkbox"/> Include Inactive Officers	
Manager - JAMES M MERRILL			
Address 1:	4705 S DURANGO DR #100-J51	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89147	Country:	USA
Status:	Active	Email:	
Manager - CARLOS N WANZELER			
Address 1:	4705 S DURANGO DR #100-J51	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89147	Country:	USA
Status:	Active	Email:	

Actions/Amendments	
<a href="#">Click here to view 4 actions/amendments associated with this company ()</a>	

[Disclaimer \(\)](#)

Jim Bennett  
Secretary of State

P.O. Box 5616  
Montgomery, AL 36103-5616

# STATE OF ALABAMA

**I, Jim Bennett, Secretary of State of Alabama, having custody of the  
Great and Principal Seal of said State, do hereby certify that**

pursuant to the provisions of Title 10A, Chapter 1, Article 5, Code of Alabama  
1975, and upon an examination of the entity records on file in this office, the  
following entity name is reserved as available:

**TelexFree, LLC**

This name reservation is for the exclusive use of BWFC Processing Center, LLC,  
825 E Main St, Boonville, IN 47601 for a period of one year beginning March 08,  
2014 and expiring March 08, 2015



RES651244

**In Testimony Whereof, I have hereunto set my  
hand and affixed the Great Seal of the State, at the  
Capitol, in the city of Montgomery, on this day.**

03/08/2014

Date

A handwritten signature in black ink, appearing to read 'Jim Bennett', is written over a horizontal line.

Jim Bennett

Secretary of State



# STATE OF ALABAMA

## FOREIGN LIMITED LIABILITY COMPANY (LLC) APPLICATION FOR REGISTRATION

Alabama	Sec. Of State	FLL
298-090	Date	03/08/2014
	Time	14:20
	File	\$150.00
	Exp	\$100.00
	Total	\$250.00

1. NAME OF THE FOREIGN ENTITY AS RECORDED IN THE JURISDICTION IN WHICH IT WAS FORMED/ORGANIZED

TelexFree, LLC

2. NAME OF THE FOREIGN ENTITY FOR USE IN ALABAMA ONLY IF DIFFERENT FROM LEGAL NAME\*

\*A FICTITIOUS NAME MAY BE USED ONLY IF THE LEGAL NAME IS NOT AVAILABLE FOR USE IN ALABAMA OR THE NAME DOES NOT CONTAIN THE WORDS "LIMITED LIABILITY COMPANY" OR THE ABBREVIATION "LLC" OR "LLC" (10A-1-5.06)

3. IF A FICTITIOUS NAME IS USED THE UNDERSIGNED CERTIFIES THE RESOLUTION OF THE LLC'S GOVERNING AUTHORITY TO ADOPT THE FICTITIOUS NAME FOR USE IN ALABAMA AND AFFIRMS THE AUTHORITY TO MAKE SUCH A CERTIFICATION UNDER 10A-1-7.07

4. A COPY OF THE NAME RESERVATION ALREADY SUBMITTED TO THE SECRETARY OF STATE IS ATTACHED AT THE END OF THIS DOCUMENT

5. ENTITY'S JURISDICTION OF FORMATION

Nevada

6. DATE OF ENTITY'S FORMATION IN THE STATE/COUNTRY OF JURISDICTION

07/19/2012

7. THE UNDERSIGNED CERTIFIES THAT THE FOREIGN ENTITY EXISTS AS A VALID LIMITED LIABILITY COMPANY UNDER THE LAWS OF THE ENTITY'S JURISDICTION OF FORMATION.

8. THE FOREIGN ENTITY WILL BEGIN OR BEGAN TRANSACTING BUSINESS IN ALABAMA

03/08/2014

9. ADDRESS OF PRINCIPAL OFFICE

225 Cedar Hill St., Ste 200  
Marlborough, MA 01752

MAILING ADDRESS

225 Cedar Hill St., Ste 200  
Marlborough, MA 01752

10. NAME AND ADDRESS OF REGISTERED AGENT FOR SERVICE OF PROCESS

Incorp Services, Inc.  
2094 Myrtlewood Dr  
Montgomery, AL 36111

03/08/2014

DATE

James Merrill Manager

ELECTRONIC SIGNATURE & TITLE

In order to review the sections of the Code of Alabama 1975 referred to in the filing form you may access [www.sos.alabama.gov/GovtRecords](http://www.sos.alabama.gov/GovtRecords) and click the "Code of Alabama" link to review.

**“Exhibit C”  
Financials**

Confidential treatment requested  
“FILED UNDER SEAL”

Telexfree LLC  
Profit & Loss  
January - December 2013

	<u>Total</u>
Income	
Income	0.00
Income - paid through bank	119,575,477.02
Income - paid through system	<u>572,240,960.21</u>
Total Income	<b>\$ 691,816,437.23</b>
Sales	<u>0.00</u>
Total Income	<b>\$ 691,816,437.23</b>
Cost of Goods Sold	
Direct Inbound Dial & Access Numbers	15,256.18
Telecom & Database Network Expense	397,322.12
Termination	<u>1,850,898.35</u>
Total Cost of Goods Sold	<b><u>\$ 2,263,476.65</u></b>
Gross Profit	<b>\$ 689,552,960.58</b>
Expenses	
Advertising	16,568.75
Agent Commission - paid through bank	50,424,998.61
Agent Commission - paid through system	572,240,960.21
Bank Charges	161,804.71
Charitable Contributions	7,500.00
Credit Card Fees	16.10
Depreciation	9,575.10
Events	109,454.62
Filing and regisitered agent fees	1,579.00
Income tax expense	
Federal Income Tax Expense	21,613,289.00
State income and franchise taxes	<u>3,705,135.30</u>
Total Income tax expense	<b>\$ 25,318,424.30</b>
Interest Expense	14,127.09
Meals and Entertainment	2,808.87
Merchant Fees	1,038,788.45
Miscellaneous	65,555.90
Office Expenses	12,910.27
Office Rental	10,603.92
Office Supplies	1,956.33
Payroll Expenses	
Payroll Fees	425.05
Payroll Reimbursement Expense	58,006.04

Payroll Salaries	0.00
Payroll Tax Expense	-384.50
<b>Total Payroll Expenses</b>	<b>\$ 58,046.59</b>
Personnel	18,750.00
Postage & Delivery	113.77
Product Development	6,000.00
Professional Fees	225,256.49
Accounting	43,085.37
Attorney	162,801.09
<b>Total Professional Fees</b>	<b>\$ 431,142.95</b>
Promotion Expense	110,893.86
Refund	733,638.50
Chargebacks	666,390.91
Charged Twice	46,353.20
Fraud	646,292.90
<b>Total Refund</b>	<b>\$ 2,092,675.51</b>
Small Items Not Capitalized	728.16
Software Development	81,287.50
Subcontractor	50,524.82
Technology Consultant	
Professional Consultant IT	440,682.36
<b>Total Technology Consultant</b>	<b>\$ 440,682.36</b>
Telecom tax expense	23,403.93
Travel	133,924.45
Travel Meals	21.99
Website Domain	649.81
<b>Total Expenses</b>	<b>\$ 652,886,477.93</b>
<b>Net Operating Income</b>	<b>\$ 36,666,482.65</b>
Other Income	
Interest Earned	2,731.65
<b>Total Other Income</b>	<b>\$ 2,731.65</b>
Other Expenses	
Loss on Investment	48,662.88
Other Expenses	0.00
Penalties & Settlements	186,719.86
<b>Total Other Expenses</b>	<b>\$ 235,382.74</b>
<b>Net Other Income</b>	<b>-\$ 232,651.09</b>
<b>Net Income</b>	<b>\$ 36,433,831.56</b>

**Telexfree LLC**  
**Balance Sheet**  
**As of December 31, 2013**

	<u>Total</u>
<b>ASSETS</b>	
Current Assets	
Bank Accounts	
100103 ProPay	98,463.24
100104 TD Bank 2808	0.00
100105 TD Bank 0334	0.00
100106 TD Bank 8409	295,921.23
100107 Citizens Bank	0.00
100109 Fidelity Bank 3842	-200.00
100110 Fidelity Bank Sweep 7884	2,041.16
100111 e-Wallet	31,640,192.30
100113 Middlesex Savings	5,467,660.06
	<hr/>
Total Bank Accounts	<b>\$ 37,504,077.99</b>
Other current assets	
Loan to TelexElectric, LLLP	2,022,329.00
Loan to Telexfree Financial Inc	3,800,475.30
Loan to Telexfree Inc	0.00
Loan to TelexMobile	500,870.00
Loan to Ympactus	291,808.02
Propay Reserve	4,468,411.11
	<hr/>
Total Other current assets	<b>\$ 11,083,893.43</b>
	<hr/>
Total Current Assets	<b>\$ 48,587,971.42</b>
Fixed Assets	
Accumulated Depreciation	-9,575.10
Equipment	86,541.68
	<hr/>
Total Fixed Assets	<b>\$ 76,966.58</b>
Other Assets	
Citizens Bank Investment	0.00
Fidelity Investment	18,068,960.59
Middlesex Savings Acc 0260	2,000,000.00
Organizational Costs	3,475.00
Security Deposits	5,944.00
Software	97,948.56
Waddell and Reed, Inc	7,299,408.73
	<hr/>
Total Other Assets	<b>\$ 27,475,736.88</b>
	<hr/>
<b>TOTAL ASSETS</b>	<b>\$ 76,140,674.88</b>
<b>LIABILITIES AND EQUITY</b>	
Liabilities	
Current Liabilities	



<b>Credit Cards</b>		
American Express		0.00
Bank of America Braz Help 0033		0.00
Bank of America Telexfree 2658		0.00
<b>Total Credit Cards</b>	<b>\$</b>	<b>0.00</b>
<b>Other Current Liabilities</b>		
Commissions Payable		7,642,550.42
Craft Trust Financial		0.00
Federal Income Taxes Payable		21,613,289.00
Loan from Telexfree Inc.		5,390,753.49
Payable to Brazilian Help, Inc		2,671.76
Shareholder Loan		50.00
State/Local Income Tax Payable		3,924,262.30
Telecom taxes payable		23,403.93
<b>Total Other Current Liabilities</b>	<b>\$</b>	<b>38,596,980.90</b>
<b>Total Current Liabilities</b>	<b>\$</b>	<b>38,596,980.90</b>
<b>Total Liabilities</b>	<b>\$</b>	<b>38,596,980.90</b>
<b>Equity</b>		
Retained Earnings		1,109,862.42
Net Income		36,433,831.56
<b>Total Equity</b>	<b>\$</b>	<b>37,543,693.98</b>
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$</b>	<b>76,140,674.88</b>

**“Exhibit D”  
Proforma Financials**

Applicant currently does not have proformas and its current financials  
Show considerable net worth.

**“Exhibit E”  
IXC Tariff No.1**

# **Operating Agreement of TelexFree, LLC a Nevada Limited Liability Company**

This Limited Liability Company Agreement is made and effective as of the July 19<sup>th</sup> 2012, by all the initial Members of the Limited Liability Company.

In consideration of the mutual covenants herein, the Parties hereby form a Limited Liability Company upon the following terms and conditions:

## **Article I DEFINITIONS**

As used in this Limited Liability Company Agreement:

1.1 Adjusted Capital Account shall mean, at any time, the balance, if any, in the Capital Account of a Member, at the end of the relevant fiscal period, after giving effect to the following adjustments:

- a. credit to such Capital Account any amounts that such Member is obligated to restore pursuant to any provisions of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of U. S. Treasury Regulation Section 1.704-2(g)(1) and U. S. Treasury Regulation Section 1.704-2(i)(5), or any successor provisions; and
- b. debit to such Capital Account the items described in U. S. Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the U. S. Treasury Regulations and shall be interpreted consistently therewith.

1.2 Affiliate (and, with a correlative meaning, Affiliated) shall mean, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. As used in this definition, "control" (including, with correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

1.3 Agreement means this Limited Liability Company Operating Agreement.

1.4 Assignee means a person who has been assigned a Member's interest.

1.5 Assigning Member means a Member who has assigned his or her membership interest.

1.6 Available Cash shall mean, for the purposes of calculating the Rebate at the end of any Fiscal Period, the Cash Available for Distribution at the end of such Fiscal Period calculated excluding the Rebate with respect to such Fiscal Period.

1.7 Capital Account shall mean, with respect to any Member, the capital account maintained for such Member in accordance with Section 3.5.

1.8 Cash Available For Distribution shall mean for any period, the excess, if any, of: (i) the sum of (a) the cash on hand of the Company and (b) any reasonable amounts withdrawn from the reserves of the Company at the discretion of the Board over (ii) the amount of any reasonable additional reserves of the Company set aside during such period at the discretion of the Board.

1.9 Company means TelexFree, LLC, a Limited Liability Company created under this agreement.

1.10 Company Minimum Gain shall have the meaning of "partnership minimum gain" set forth in U. S. Treasury Regulations Section 1.704-2(b)(2) and 1.704-2(d).

1.11 Fiscal Period shall mean, subject to the provisions of Section 706 of the Code: (i) the period commencing on the date of formation of the Company and ending on December 31<sup>st</sup> of the year of formation, (ii) any subsequent 12 month period commencing on January 1 and ending on December 31, (iii) the period commencing on January 1 and ending on the date on which all of the assets of the Company are distributed to Members pursuant to Article IX, and (iv) any portion of the periods described in clauses (i), (ii) and (iii) of this sentence for which the Company is required to allocate Net Income, Net Losses or other items of Company income, gain, loss or deduction pursuant to Article 4 or distribute proceeds pursuant to Article 5.

1.12 Gross Asset Value shall mean with respect to any Company asset, the asset's adjusted basis for federal income tax purposes, except as follows:

- a. the initial Gross Asset Value of any asset contributed by a Member to the Company shall be its fair market value on the date of the contribution;
- b. the Gross Asset Value of all Company assets will be adjusted to equal their respective fair market values, as determined by the Tax Matters Partner, as of the date of (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis capital contribution, (ii) the distribution by the Company of property as consideration for a Member's interest in the Company, and (iii) the liquidation of the Company, within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i) and (ii) above shall be made only if the Tax Matters Partner determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

- c. the Gross Asset Value of any Company asset distributed (including, without limitation, in any liquidation under Article XII thereof) to any Member shall be adjusted to equal its fair market value as of the date of distribution, unreduced by any liability secured by such asset; and
- d. the Gross Asset Value of Company assets will be increased or decreased to reflect any adjustment to the adjusted basis of such assets under Code Sections 734(b) or 743(b), but only to the extent that the adjustment is taken into account in determining Capital Accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and paragraph (f) of the definition of Net Income or Net Losses; provided however, that Gross Asset Values shall not be adjusted pursuant to this paragraph (d) to the extent that the Tax Matters Partner determines that an adjustment pursuant to paragraph (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (d); and

If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraphs (a), (b), or (d) above, such Gross Asset Value shall thereafter be adjusted by the depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Losses.

1.13 Majority with respect to Members, unless otherwise specified in this Agreement, means a vote by persons who collectively own more than fifty percent (50%) of the Voting Rights of the Limited Liability Company as determined under this agreement.

1.14 Super Majority with respect to Members, unless otherwise specified in this Agreement, means a vote by persons who collectively own more than eighty-nine percent (89%) of the Voting Rights of the Limited Liability Company as determined under this agreement.

1.15 Majority with respect to Managers, unless otherwise specified in this Agreement, means those managers consisting of more than fifty percent (50%) of the member managers.

1.16 Super Majority with respect to Member Managers, unless otherwise specified in this Agreement, means those managers consisting of more than eighty-nine percent (89%) of the member managers.

1.17 Member Nonrecourse Debt shall have the meaning of "partner nonrecourse debt" as set forth in Treasury Regulation Section 1.704-2(b) (4).

1.18 Member Nonrecourse Debt Minimum Gain means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulations Section 1.704-2(i).

1.19 Member Nonrecourse Deductions shall have the meaning of "partner nonrecourse deductions" set forth in Treasury Regulations Section 1.704-2(i).

1.20 Net Income and Net Losses shall mean for each Fiscal Period, an amount equal to the Company's items of taxable income or loss for such Fiscal Period, determined in accordance with Section 703 of the Code (for this purpose all items of income, gain, loss and deduction required to be separately stated pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments (without duplication):

- a. any income that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss shall be added to taxable income or loss;
- b. any expenditures of the Company described in Section 705(a)(2)(B) or that are treated as Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income or Net Losses, shall be subtracted from such taxable income or loss;
- c. in the event that the Gross Asset Value of any Company asset is adjusted pursuant to the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Net Income or Net Losses;
- d. gain or loss resulting from the disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;
- e. in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account depreciation with respect to each asset of the Company for such Fiscal Period in an amount which bears the same ratio to the beginning Gross Asset Value of such asset as the federal income tax depreciation, amortization or cost recovery deduction for such Fiscal Period bears to such asset's beginning adjusted tax basis; provided however, that if the adjusted tax basis is zero, the depreciation shall be determined by any reasonable method determined by the Tax Matters Partner.
- f. to the extent an adjustment to the adjusted basis of any Company asset pursuant to Section 734(b) or 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(4) of the Treasury Regulations to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account in computing Net Income or Net Losses; and
- g. notwithstanding any other provision of this definition, any items specially allocated pursuant to Section 4.2 shall not be considered in determining Net Income or Net Losses.

The amounts of items of Company income, gain, loss, or deduction available to be specifically allocated pursuant to Section 4.2 hereof shall be determined by applying rules analogous to those set forth in paragraphs (a) through (f) hereof.

1.21 Nonrecourse Deductions shall have the meaning specified in Treasury Regulation Section 1.704-2(b)(1).

1.22 Nonrecourse Liability shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

1.23 Notice

- a. A writing, delivered by first class mail, addressed to the last address known to the sender; or
- b. A writing, delivered to the recipient in person.

1.24 Person means any individual, Company, joint venture, association, Corporation, Limited Liability Company, or trust.

1.25 Property means anything of value.

1.26 State means the state in which the Limited Liability Company is formed, unless indicated otherwise.

1.27 Unit Percentage with respect to a Member shall mean the percentage obtained by multiplying (i) a fraction where the numerator is the number of Units held by such Member and the denominator is the total number of Units held by all Members by (ii) 100%.

## **Article II**

### **BASIC STRUCTURE**

2.1 The Parties hereby form a Limited Liability Company pursuant to the Limited Liability Company Act of the State of Nevada. The Members shall execute and cause to be filed the Articles of Organization as required under NRS Chapter 86.

2.2 The business of the Company shall be conducted under the name of TelexFree, LLC.

2.3 The business and purpose of the Limited Liability Company shall be to engage in any lawful act or activity in which a Company may engage, including, but not limited to, engaging generally in any and all phases of the business of owning, holding, managing, controlling, acquiring, purchasing, disposing of, or otherwise dealing in or with any interests or rights in any real or personal property, directly or through one or more other Companies or other entities or arrangements.



2.4 The principal place of business of the Limited Liability Company shall be at the County of Clark, State of Nevada, or at such other place as the Company Members may from time to time designate.

2.5 No real or other property of the Company shall be deemed to be owned by any Member individually, but shall be owned by and title shall be vested solely in the Company. The interests of the Members in the Company shall constitute personal property.

2.6 The Limited Liability Company shall commence on the date first above written and shall continue for sixty five (65) years, unless sooner terminated by law, extended by the Managers and Members, or as herein provided.

### **Article III CAPITAL CONTRIBUTIONS**

3.1 Initial Capital Contributions: The initial capital contributions of the Members shall be listed on the attached Schedule "A", Members Listing Statement. The percentage interests express the percentage or units held by each member

3.2 Additional Capital Contributions: There shall be no additional capital contributions to the capital of the Company unless otherwise agreed to in writing by all of the Members.

3.3 Nature of Interests: All property owned by the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity. No Member shall have any direct ownership of any Company property.

3.4 No Withdrawal of Capital Contributions, except upon the dissolution and liquidation of the Company as set forth in Article IX hereof, no Member shall have the right to withdraw its capital contributions.

3.5 Maintenance of Capital Accounts:

- a. The Company shall establish and maintain Capital Accounts for each Member in accordance with the following provisions:
- b. to each Member's Capital Account there shall be credited (x) the amount of any cash and the initial Gross Asset Value of any property (other than cash) contributed to the Company by such Member, (y) such Member's allocable share of Net Income and (z) the amount of any Company liabilities assumed by such Member which are secured by any property distributed to such Member; and
- c. to each Member's Capital Account there shall be debited (x) the amount of money and the Gross Asset Value of any property distributed to such Member pursuant to any provision of this Agreement, (y) such Member's allocable share of Net Losses and (z) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

- d. This Section and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Treasury Regulations. Notwithstanding that a particular adjustment is not set forth in this Section, the Capital Accounts of the Members shall be adjusted as required by, and in accordance with, the capital account maintenance rules of Treasury Regulations Section 1.704-1(b).

3.6 No Interest on Capital Contributions: Capital contributions to the Company shall not bear interest.

3.7 Limitation on Liability for Members: No Member shall personally be liable for any of the debts or losses of the Company beyond such Member's capital interest in the Company.

3.8 Rights of Priority: Except as herein provided, the individual Members shall have no right to any priority over each other as to the return of capital contributions.

## **Article IV**

### **DIVISION OF PROFITS AND LOSSES**

4.1 Allocations of Net Income and Net Losses from Operations: After making all allocations provided for in section 4.2 below, for each Fiscal Period, Net Income and Net Losses shall be allocated among the Members ratably in proportion to their respective Unit Percentages. No item of loss or deduction of the Company shall be allocated to a Member, if such allocation would result in a negative balance in such Member's Capital Account. Such loss or deduction shall be allocated first among the Members with positive balances in their Capital Accounts in proportion to (and the extent of) such positive balances and thereafter to Members in accordance with their Unit Percentage.

4.2 Special Allocations: The following special allocations shall be made in the following order and prior to any other allocations under this Agreement:

- a. Minimum Gain Chargeback. Notwithstanding any other provision of this Article IV and except as otherwise provided in Section 1.704-2(f) of the Treasury Regulations, if there is a net decrease in Company Minimum Gain during any Fiscal Period of the Company, each Member shall be specially allocated items of Company income and gain for such Fiscal Period (and, if necessary, subsequent Fiscal Periods) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, as determined under Treasury Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f) and (j). This Section 4.2(a) is intended to comply with the minimum gain chargeback requirement in such

- Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.
- b. **Member Minimum Gain Chargeback.** Notwithstanding any other provision of this Article IV if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt, then, except as otherwise provided in Treasury Regulations Section 1.704-2(i), each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i), shall be specially allocated items of Company income and gain for such Fiscal Period (and, if necessary, subsequent Fiscal Periods) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4) and (j)(2). This Section 4.2(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.
  - c. **Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, any Adjusted Capital Account deficit as quickly as possible, provided that an allocation pursuant to this Section 4.2(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account deficit after all other allocations provided for in this Section have been tentatively made as if this Section 4.2(c) were not in the Agreement.
  - d. **Nonrecourse Deductions.** Nonrecourse Deductions for any Fiscal Period shall be allocated to the Members in the manner determined by the Tax Matters Partner.
  - e. **Member Nonrecourse Deductions.** In accordance with Section 1.704-2(i)(1) of the Treasury Regulations, any item of Company loss or deduction which is attributable to Member Nonrecourse Debt for which a Member bears the economic risk of loss (such as a non-recourse loan made by a Member to the Company or an otherwise non-recourse loan to the Company that has been guaranteed by a Member) shall be allocated to that Member to the extent of its economic risk of loss.
  - f. **Code Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Company asset is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) (2) or (4) to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Sections of the Treasury Regulations.

4.3 Tax Allocations: Code Section 704(c). Except as otherwise provided for in this 4.3, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Members in the same manner as the correlative item of book income, gain, loss or deduction is allocated pursuant to Sections 4.1 and 4.2. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, items of income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for U.S. federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted tax basis of such property at the time of contribution to the Company for U.S. Federal income tax purposes and its initial Gross Asset Value at the time of contribution using an allocation method in accordance with applicable Treasury Regulations determined by the Tax Matters Partner.

In the event the Gross Asset Value of any Company asset is adjusted in accordance with the definition of Gross Asset Value hereof, subsequent allocations of items of income, gain, loss, and deductions with respect to such asset shall take account of any variation between the adjusted tax basis of such asset for federal income tax purposes and its adjusted Gross Asset Value in a manner consistent with the principles of Code Section 704(c) and the Treasury Regulations thereunder.

Any elections or other decisions relating to allocations under this Article IV shall be made by the Tax Matters Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this 4.3 are solely for purposes of U.S. federal, state, and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Income or Net Losses, other items, or distributions pursuant to any provision of this Agreement.

4.4 Distributions: Subject to Sections 4.5, 4.6 and 4.7, at such times as the Board shall deem appropriate, the Board shall ascertain the amount of Cash Available for Distribution and distribute the same to the Members in the following order and priority, provided, however, that notwithstanding the foregoing, to the extent there is any Cash Available for Distribution, the Board shall distribute the same at the end of each fiscal quarter to the Members to the extent of the Tax Distribution pursuant to 4.4(a) hereof:

- a. first, to the Members pro rata, up to an amount equal to the excess of (A) the product of (I) the cumulative amount of Net Income in excess of Net Losses allocated to such Member pursuant to this Agreement and (II) 40% over (B) the cumulative amount of distributions previously made to such Member pursuant to this 4.4(a) (the "Tax Distribution"); and
- b. the balance of the Cash Available for Distribution shall be distributed to the Members in proportion to their relative Unit Percentages.

4.5 No Right to Distributions: No Member shall have the right to demand or receive distributions of any amount, except as expressly provided in this Article IV.

4.6 Restrictions on Distributions: The foregoing provisions of this Article IV to the contrary notwithstanding, no distribution (including any Tax Distribution) shall be made

if, and for so long as, such distribution would violate any contract or agreement to which the Company is then a party or any law, rule, regulation, order or directive of any governmental authority then applicable to the Company.

4.7 **Withholding:** The Company is authorized to withhold from distributions to a Member, or with respect to allocations to a Member, and to pay over to a federal, foreign, state or local government, any amounts required to be withheld pursuant to the Code, or any provisions of any other federal, foreign, state or local law or, if no sufficiently large distribution is imminent, the Company may require the relevant Member to promptly reimburse the Company for the amount of tax withheld and paid over by the Company. Any amounts so withheld shall be treated as having been distributed to such Member pursuant to this Article IV for all purposes of this Agreement, and shall be offset against the current or next amounts otherwise distributable to such Member.

## **Article V**

### **RIGHTS AND POWERS OF THE MANAGERS**

5.1 The business of the Company shall be under the control of the Manager(s) who shall act by a majority vote, unless specified elsewhere in this Agreement, in all business affairs. For these purposes, each Manager shall have one vote.

5.2 **Powers of the Managers:** The Managers shall have the authority to exercise the powers reasonably necessary in order to pursue the Company's purposes including, but not limited to, the following:

- a. To obtain, sell, convey, mortgage, encumber, lease, exchange, pledge, partition, plat, subdivide, improve, repair, surrender, abandon, or otherwise deal with or dispose of any and all real property of whatsoever character and wheresoever situated at such time or times and in such manner and upon such terms as the Managers deem expedient and proper. To give options therefore, to execute deeds, transfers, leases, pledges, mortgages, and other instruments of any kind. Any leases and contracts may extend beyond the term of the Limited Liability Company.
- b. To acquire any personal property for the use of the Company.
- c. To purchase, invest in, or otherwise acquire, and to retain any and all stocks, bonds, notes, or other securities, or any variety of real or personal property, including stocks or interests in investment trusts and common trust funds, operated and managed by a corporate trustee.
- d. To sell, transfer, assign, convey, lease, exchange, or otherwise dispose of any or all of the assets of the Company upon such terms and conditions as the Members deem advisable, including a deferred payment sale or an exchange for other assets of any kind.
- e. To place record title to, or the right to use, Company assets in the name of a Manager or the name of a nominee for any purpose convenient or beneficial to the Company.

- f. To open and to close checking accounts, savings accounts, and safety deposit boxes in banks or similar financial institutions, with or without indication of any fiduciary capacity; To deposit cash in and withdraw cash from such accounts and boxes, with or without any indication of any fiduciary capacity; To hold such accounts and securities in bearer form, or in the name of a Manager or in the name of a nominee, with or without indication of any fiduciary capacity.
- g. To borrow money upon terms acceptable to the Managers from any person or entity, to pledge or mortgage any property as security therefore, and to renew any indebtedness incurred by the Managers.
- h. To employ brokers, consultants, attorneys, accountants, architects, engineers, property managers, leasing agents, and other agents, persons, or entities deemed appropriate to the conduct of the Company business, including, without limitation, a Manager, and/or any persons or entities related to a Manager or in which a Manager has an interest.
- i. To adjust, arbitrate, compromise, sue, defend, settle, abandon, or otherwise deal with any and all claims in favor of or against the Company.
- j. To acquire and enter into any contract of insurance which the Managers deem necessary and proper for the protection of the Company, for the conservation of its assets, or for any purpose convenient or beneficial to the Company.
- k. To execute and deliver on behalf of the Company such documents or instruments as the Managers deem appropriate in the conduct of the Company business. No person, firm, or corporation dealing with the Company shall be required to inquire into the authority of the Managers to take any action or make any decisions.
- l. To make employment contracts, to pay pensions, and to establish pension and other incentive plans of any or all of its Employees.
- m. To establish, invest, and maintain reserves for the benefit of the Company in such amounts as the Managers, in their sole discretion, shall determine, and to expend such reserves in such amounts and for such purposes as the Managers shall determine.
- n. To lend money upon terms acceptable to the Managers to any person or entity, and to enter into contracts and agreements which are not arms-length if they are consistent with the best interests of the Company.

5.3 Tax Matters Partner: The Managers by a majority vote shall designate an eligible person to be the "Tax Matters Partner" as defined under Section 6231(a)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), and the Tax Matters Partner shall have all the powers and responsibilities of such position as provided in the Code and the Treasury Regulations thereunder. The Tax Matters Partner is specifically directed and authorized to take whatever steps are necessary or desirable to perfect such designation, including filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required under the Code or Treasury Regulations. The Tax Matters Partner shall cause to be prepared and shall sign all tax returns of the Company, make any tax elections for the Company allowed under the Code, Treasury Regulations or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company and monitor any governmental tax authority in any

audit that such authority may conduct of the Company's books and records or other documents.

## **Article VI**

### **MANAGER RESTRICTIONS**

6.1 No Manager or Member Manager shall, without the consent of a majority of the Members, endorse any note or act as an accommodation Party, or otherwise become surety for any person in any transaction involved in the Company.

6.2 No Manager shall, except with the consent of a majority of the Members, mortgage, grant a security interest in its share in the Company or the Company capital assets or property, or do any act detrimental to the best interests of the Company or which would make it impossible to carry on the ordinary purposes of the Company.

6.3 No Manager, including a Member Manager, shall possess Company property, or assign his or her interest or rights in specific Company property for other than a Company purpose, nor shall he or she assign the Company's property in trust for creditors or on an assignee's promise to pay the creditors of the Company.

6.4 Except as approved by the specific written consent of all the Members at the time, a Member Manager will cease to be a Manager of the Company (forfeit his/her rights and powers as a Manager), but shall retain his/her rights and interests as a Member, if the Manager:

- a. Makes an assignment or whose Member interest is subject to an involuntary assignment for the benefit of creditors or others;
- b. Files a voluntary petition in bankruptcy;
- c. Is adjudicated as bankrupt or insolvent;
- d. Files a petition or answer seeking for himself, herself or itself readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him, her or it in any proceeding decried in the preceding subparagraph;
- f. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the all or any substantial part of his, her, or its properties;
- g. Is subject to the commencement of any proceeding, against the Member Manager seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, and the proceeding is not dismissed within 120 days after commencement of the proceeding; or
- h. Is subject to the appointment without his/her or its consent or acquiescence of a trustee, receiver, or liquidator of a Member Manager or of all or any substantial part of his, her or its properties and the appointment is not vacated or stayed within 90 days after initiation of the appointment or, if a stay is granted, 90 days after the expiration of any such stay the appointment is not vacated or terminated.

## **Article VII**

### **TIME, COMPENSATION, AND TERM OF MANAGERS**

7.1 The Managers shall devote such time, attention, and care to the affairs of the Company as is reasonable and prudent.

7.2 Compensation for Services. The Managers and Member Managers shall be entitled to receive compensation for services rendered to the Company, which shall be in addition to their respective share of Company profits. The compensation for the personal services shall be reviewed periodically and adjusted appropriately. Compensation shall be reasonable in relationship to the services performed. All such compensation shall be characterized and reported as guaranteed payments for personal services (per Internal Revenue Code Section 707(c)) and shall be payable without regard to the income of the Company and shall be treated as an expense of the Company in determining its net profits and net losses.

7.3 Personal Service Contract. In choosing Managers in this Limited Liability Company, the Members are relying upon their knowledge of the character, integrity, family relationship and business acumen of the Manager and/or Member Managers. As a result, the Member Managers' right to manage the affairs of the Company's personal service contract with the Members cannot be assigned to any other person or entity. In the event a Member Manager attempts to make a voluntary or an involuntary assignment of that Member Manager's management rights, the assignment shall be void and that 7.4 Member Manager shall be deemed to have violated its duties under this Agreement and his, her or its management rights shall immediately terminate. From that point forward, said Member Manager shall be a Member as set forth in this Agreement.

7.4 Members (other than the Member Managers) shall have no rights to management or business making of the Company.

7.5 Member Managers shall so serve until the happening of one of the following events:

- a. The Member Manager is removed by a super majority vote of the LLC Members approving removal of the Member Manager.
- b. The expiration of the Company as required by law;
- c. The Member Manager withdraws; or
- d. The death or incompetence of the Member Manager.

7.6 Expulsion of a Member. The Member Managers may terminate the interest of a Member and expel such Member for any of the following reasons:

- a. If the Member is not also a Member Manager, for interfering in the management of the Company affairs or by holding himself, herself, or itself out to others as having the power to act for or bind the Company.
- b. For engaging in conduct which could result in the Company's losing its chosen tax status.



- c. For engaging in conduct which tends to bring the Company into disrepute or such Member's interest becomes subject to attachment, garnishment, or similar legal proceedings.
- d. For failing to meet any commitment to a Member Manager in accordance with any written undertaking.

In each of the foregoing events, the termination shall not result in forfeiture to the Member of the value of his or her interest in the Company at the time of the termination.

## **Article VIII**

### **INITIAL MEMBERS AND MANAGERS**

8.1 The Member(s) of the Company and their membership share shall be as listed on Schedule "A", attached hereto and made a part of by this reference.

- a. The Company shall be initially organized with at least one Member.
- b. If at any time shall the Company have less than two Members, then the remaining Member shall admit at least one more Member immediately to the Company.

8.2 Managers shall be elected or vacancies may be filled by one of the following methods: At each annual meeting of the Members or;

- a. At a special meeting of the Members or;
- b. At any time by written unanimous consent of the Members.

## **Article IX**

### **LIABILITY AND STANDARD OF CARE OF MEMBERS**

9.1 No Member exercising ordinary business judgment shall be liable, responsible, or accountable in damages or otherwise to the Company or any Member for any act or failure to act on behalf of the Company within the scope of the authority conferred on the Members by this Agreement or by law unless such act or omission was performed or omitted fraudulently or in bad faith or constituted wanton and willful misconduct, deceit, or a wrongful taking.

## **Article X**

### **BOOKS, RECORDS AND ACCOUNTING**

10.1 **Accounting Year:** The Company's accounting year shall end on December 31<sup>st</sup> of each year.

10.2 **Books and Records; Accounting:** The Company shall keep or cause to be kept at the office of the Company (or at such other place as the Board in its discretion shall determine) full and accurate books and records regarding the status of the business and financial condition of the Company.

10.3 Form K-1: After the end of each Fiscal Period, the Tax Matters Manager shall cause to be prepared and transmitted, as promptly as possible, all tax returns of the Company, including, without limitation, federal income tax Form K-1 and any required similar tax form for each Member.

10.4 Annual Statements: At the end of the year, the Managers shall cause the Company's accountant to prepare a balance sheet setting forth the financial position of the Company as of the end of that year and a statement of operations (income and expenses) for that year. No later than ninety (90) days from the end of the fiscal year, the Managers shall provide each Member a report of business and operations of the Company. The report shall contain a copy of the balance sheet and a statement of operations shall be delivered to each Member as soon as it is available. The report shall contain a financial report showing the Company's profit or loss for the year and the allocation thereof among the Members, together with the applicable tax information of the Company. Copies of all income tax returns filed by the Company also shall be furnished to all Members.

10.5 Each Member shall be deemed to have waived all objections to any transaction or other facts about the operation of the Company disclosed in the balance sheet, statement of operations, and income tax returns unless he or she shall have notified the Managers in writing of his or her objections within sixty (60) days of the date on which each such document is mailed.

10.6 The Managers shall maintain at the office of the Company's resident agent, the principal place of business or at any other lawful and secure location that they may deem fit and proper within or without the United States of America:

- a. A copy of the stamped Articles of Organization and all Certificates of Amendment to them, together with executed copies of any powers of attorney pursuant to which any Certificate of Amendment has been executed;
- b. A copy of the Company's Operating Agreement;
- c. Any other records or documents the Company is required to make available for duplication and/or inspection, by members, the secretary of state and/or law enforcement officials, or other third parties as required by chapter 86 of the Nevada Revised Code.

## **Article XI**

### **TRANSFER OF A MEMBER'S INTEREST**

11.1 No Member Manager shall have the power to confer upon a non-Member the attributes of the Member Manager's interests in the Company without the unanimous consent of the non-transferring Members.

11.2 No Member shall have the power to confer upon a non-Member the attributes of the Member's interests in the Company without the unanimous consent of the non-transferring Members.

11.3 The Members shall not sell, assign, pledge, or otherwise transfer or encumber in any manner or by any means whatever, their share in all or any part of their interests of the Company now owned or after acquired to a non-Member, without having first obtained the consent of or offered such share to the other Members and to the Company in accordance with the terms and conditions of this Agreement.

11.4 It is understood and agreed to by the Parties hereto that the interest owned by a Member may be owned jointly by said Member and his or her spouse. The Members agree that the spouses of the respective Members shall in all respects be bound by this Agreement and that in the event that a Member is required to sell his or her interest pursuant to this Agreement, the respective spouse must comply with this Agreement and shall execute any and all documents required as a result thereof.

11.5 No Member or other person who has become the holder of interest in this Company shall transfer, assign, or encumber all or any portion of such interest in the Company during any fiscal year if such transfer, assignment, or encumbrance would, in the sole discretion of the Member Managers, result in the termination of the Company for purposes of the then applicable provisions of the Internal Revenue Code of 1986, as amended.

11.6 Adjustment of Tax Basis: Upon the transfer of an interest in the Company (including a purchase of such interest by the Company) or the distribution of an asset of the Company to a Member, the Company may, at the sole discretion of the Member Managers, elect, pursuant to Section 754 of the Internal Revenue Code of 1986 as amended, to adjust the basis of the Company Property as allowed by Sections 734(b) and 743(b) thereof. The election, if made, will be filed with the Company information income tax return for the first taxable year to which the election applies.

11.7 Sale. A Member may sell his or her Company interest according to the terms of this Agreement, but only after such Member has first offered it to the Company and the other Members as follows:

- a. The Member shall give written notice to the Company that such Member desires to sell his or her interest. The Member shall attach to that notice the written offer of a prospective purchaser to buy the interest. This offer shall be complete in all details, including the purchase price and terms of payment. The Member shall certify that the offer is genuine and in all respects what it purports to be.
- b. For one hundred twenty (120) days from receipt of the written notice from the Member, the Company shall have the option to retire the interest of the Member at the price and on the terms contained in the offer submitted by the Member.
- c. If the Company does not retire the interest of the Member, then the other Members shall have the option to acquire such Member's interests at the price and on the terms contained in the offer submitted by the Member according to the terms of this Agreement. The Members who exercise this option may acquire such Member's interest in proportion to their respective capital interests, unless

they otherwise agree to a different percentage, within sixty (60) days after the termination of the Company's option to buy.

- d. If neither the Company nor any of the Members exercise the option to acquire such Member's interest, the Member shall be free to sell his or her Company interest to the said prospective purchaser at the price, according to the terms of this Agreement, and on the terms contained in the certified offer submitted by the Member.

11.8 Except as herein provided, a Member shall not assign his or her Company interest. However, a Member may assign his or her Company interest to other Members without the consent of any other Member.

11.9 Transfer of Member Manager's Interest: The transferee of a Member Manager's interest shall acquire such interest in the capacity of a Member only (non-Member Manager).

11.10 Upon the death or legal incompetence of an individual Member, such Member's authorized representative shall have all of the rights of a Member for the purpose of settling or managing such Member's estate. The authorized representative shall have such power as the decedent or incompetent possessed to assign such Member's interest in the Company to an assignee and to join with such assignee in making application to substitute such assignee as a Member.

11.11 No Member (or other person) who has become the holder of interest in the Company shall transfer, assign, or encumber all or any portion of such interest in the Company unless such Member has obtained the prior written consent of the Director of the Securities Commission, if required under the Commission's rules, and the written opinion of counsel for the Company that the transfer will not violate any federal or state securities laws.

11.12 Cessation of a Legal Entity: Upon the bankruptcy, insolvency, dissolution, or other cessation to exist as a legal entity, of a Member that is not an individual, the authorized representative of such entity shall have all the rights of a Member for the purpose of effecting the orderly winding up and disposition of the business of such entity. The authorized representative shall have such power as such entity possessed to assign such interest of the entity in the Company to an assignee and to join with such assignee in making application to substitute such assignee as a Member.

11.13 Restriction on Transfer because of Tax Effect: No Member or other person who has become the holder of interest in this Company shall transfer, assign, or encumber all or any portion of such interest in the Company during any fiscal year if such transfer, assignment, or encumbrance would, in the sole discretion of the Tax Matters Partner, result in the termination of the Company for purposes of the then applicable provisions of the Internal Revenue Code of 1986, as amended.

11.14 Exemption from Restrictions: The requirement of Members or Company consent under Paragraphs 11.1, 11.2, 11.3 and 11.8 above shall not apply to a transfer of an interest in the Company to any person who is a Member, a descendant of the Member, a trust for the benefit of the Member which is revocable by the Member, or an entity owned and controlled 100% by the Member. In all cases, no person or entity may become a new or substituted Member unless he, she or it first tenders to the Company a writing (in form and content acceptable to the Company) by which the person or entity agrees to be bound by the provisions of this Agreement, except for a person designated successor in interest pursuant to Paragraph 24.15.

11.15 Status of Recipients: No purported recipient or lien holder of any transferor who fails to provide such written Agreement and who fails to gain any required consents shall become a Member of the Company; he or she shall receive only the share of Net Profits and Net Losses and such distributions as the original Member or the prior holder of an interest in the Company (the "Transferor" herein) would have received but for the sale, assignment, transfer, etc. Moreover, prior to formal admission into the Company as a Member, no recipient or assignee shall have any right (i) to vote on any matter, (ii) to interfere in or participate in the management or administration of the Company's business or affairs, (iii) to require any information regarding or on account of the Company's transactions, or (iv) to inspect the Company's books and records.

## **Article XII**

### **INSURANCE COVERAGE**

12.1 During the course of the term for which this Company is formed; the Company should, if economically practical and available, carry liability insurance in such amounts as are deemed appropriate by the Managers.

## **Article XIII**

### **SUBSTITUTED MEMBERS**

13.1 Conditions: No assignee (or transferee) of the whole or any portion of a Member's interest in the Company shall have the right to become a substituted Member in place of such assignor unless all of the following conditions are satisfied:

- a. The Managers and Member Managers (hereafter referred to as the "Managers"), in their sole and absolute discretion, have unanimously consented in writing to the admission of the assignee as a substituted Member.
- b. The fully executed and acknowledged written instrument of assignment sets forth the intention of the assignor that the assignee become a substituted Member and the assignment has been filed with the Company.
- c. The Company interest being acquired by the assignee consists of all of the assigning Member's interest.
- d. The assignor and assignee execute and acknowledge such other instruments as the Managers may deem necessary or desirable to effect such admission, including

the written acceptance and adoption by the assignee of the provisions of this Agreement and such assignee's execution, acknowledgment, and delivery to the Managers of a power of attorney, the form and content of which shall be provided by the Managers.

- e. A reasonable transfer fee, not exceeding fifteen percent (15%) of the present value of the transferred Company interest, has been paid by the assignee to the Company.

13.2 Consent not Required: No consent of any of the Members is required to effect the substitution of a Member, except that a Member who assigns his or her interest must evidence his or her intention that the assignee be admitted as a substituted Member in such Member's place and he or she must execute all necessary instruments.

13.3 Voting Interests: In the event a vote of the Members shall be taken pursuant to this Agreement for any reason, a Member shall, solely for the purpose of determining the number of Company interests held by such Member in weighing such Member's vote, be deemed the holder of any Company Interests assigned by such Member in respect of which the assignee has not become a substituted Member; provided that under no circumstances shall an assignee have such voting rights.

## **Article XIV**

### **INVOLUNTARY ASSIGNMENT**

14.1 No Company Dissolution. If a Member's interest is the subject of any valid levy, foreclosure, charging order, execution, or other similar involuntary proceeding (an "involuntary assignment"), the Company shall not dissolve. Instead, such Member ("involuntary Assignee") shall be deemed to have assigned such Member's interest in the Company for the entire period during which the involuntary assignment remains in force.

14.2 Rights of involuntary Assignor: A Member who becomes an involuntary Assignor shall forfeit, for the entire period during which the involuntary assignment remains in force, such Member's allocation of Net Profits and Net Losses attributable to that Member's interest in the Company. Also, notwithstanding any provision herein to the contrary, in no event shall any involuntary Assignor have the right to participate in the management, voting or the administration of the Company's business, affairs, or assets, or have access to the Company's books, records and annual statements.

14.3 Rights of involuntary Assignee: Any person or entity that becomes an assignee of a Member's interest through an involuntary assignment ("involuntary Assignee") shall receive, for the entire period during which the involuntary assignment remains in force, such Member's allocation of Net Profits and Net Losses attributable to that Member's interest in the Company, and shall receive only the distributions attributable to that Member's interest. In no event and under no circumstances shall any involuntary Assignee have any right to participate in the management, voting or the administration of the Company's business, affairs, or assets, or to become a substituted Member. That is, for the entire period during which the involuntary assignment remains in force, any such

voting rights shall be automatically terminated. Neither shall the involuntary Assignee have access to the Company's books, records and annual statements.

For the duration of the involuntary assignment an involuntary Assignee shall assume, subject to all of the provisions herein, full dominion and control of the involuntary Assignor's interest in the Company and shall become, in effect, a Member of the Company only for tax reporting purposes.

- a. **Tax Items.** All tax items associated with the assigned Company interest shall be allocated to the involuntary Assignee, regardless of whether distributions are actually made, and appropriate tax forms shall be issued to and in such involuntary Assignee's name. Upon satisfaction or other valid expiration of the order, the involuntary assignment shall be automatically voided, and the involuntary Assignor shall have all of his, her or its prior rights, title and interest restored as a Member. That is, the involuntary assignment and the later abolition of such involuntary assignment shall occur without any further formality, consent or requirement.
- b. **Involuntary Assignee's Consents and Obligations.** An involuntary Assignee, by seeking and obtaining an involuntary assignment against the Company Interest of a Member, hereby consents and agrees for the duration of the involuntary assignment (i) to be bound by all the provisions, terms and covenants of the Company Agreement (as though such involuntary Assignee were a signatory thereto); (ii) to fulfill, honor and pay all duties, obligations or liabilities which the involuntary Assignor would otherwise owe to the Company; and (iii) to be responsible for and pay such federal, state and local income taxes, and any other applicable taxes, expenses, assessments and obligations of whatever nature allocated to the involuntary Assignor's Company interest, regardless of whether profits, income, capital or other property have, in fact, been distributed to the involuntary Assignee.

## **Article XV**

### **INCOMPETENCE OR DEATH OF A MEMBER**

15.1 The legal representative of a deceased or incompetent Member or, in the case of a Member that is a person other than an individual, the legal representative of a dissolved or terminated Member has:

- a. All the rights of the Member for the purpose of settling or administering the Member's property;
- b. Power to assign the Member's interest in accordance with this Agreement;
- c. To give an assignee the right to become an additional Member under this Agreement.

## **Article XVI MEETINGS**

16.1 Annual Meetings of Members: Annual meetings of Members are not mandatory, and if actually held, shall be held on such date and at such time as shall be designated from time to time by the Managers and stated in the written notice of the meeting. At the meeting, the Members shall transact such other business as may properly be brought before the meeting.

16.2 Special Meetings of Members: Special meetings of the Members, for any purpose or purposes, may be held by waiver of notice and consent and shall be called by the Managers at the written request of Members owning not less than ten percent (10%) of the entire capital or profit interest of the Company. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at a special meeting of the Members shall be limited to the purposes stated in the written notice unless all of the Members agree to do otherwise.

16.3 Voting at Annual and Special Meetings. All Members shall have the right to vote at the annual meeting and any special meetings concerning business which may properly be brought before the meeting according to their respective percentage share of capital interest. Except as otherwise set forth herein, a majority of such capital shall control.

16.4 No Meeting or Vote Required if Written Consent. Whenever the vote of the Members at a meeting is required or permitted to be taken, the meeting and vote of the Members may be dispensed with if the written consent to such action is obtained from Members having no less than the minimum percentage of the vote required of such action.

16.5 Manager Meetings. The Managers may hold meetings, both regular and special, either within or without the state of the Company's principal place of business. Regular meetings of the Managers may be held without notice at such time and at such place as shall from time to time be determined by the Managers. Special meetings of the Managers may be called by a Manager on one (1) day's notice to each Manager, either personally or by mail or by telegram. At all meetings of the Managers, a majority of the Managers shall constitute a quorum for the transaction of business, and the act of a majority of the Managers present at any meeting at which there is a quorum shall be the act of the Managers. Any action required or permitted to be taken at any meeting of the Managers may be taken without a meeting if the Managers who have the necessary votes to take such action consent in writing.

16.6 Telephone Conference: Members may participate in a meeting by means of telephone conference or similar communications equipment. All persons participating in a meeting pursuant to such equipment shall constitute presence in person at such meeting.



## **Article XVII**

### **DISSOLUTION OF THE COMPANY**

17.1 Dissolution: The Company shall be dissolved upon the occurrence of either of the following events (each such event, a "Liquidation Event"):

- a. When the period fixed for the duration of the Company set forth in this Agreement expires.
- b. By written Agreement signed by the majority in interest of Members.
- c. By judicial order from a Court of competent jurisdiction.

17.2 Liquidation:

- a. In the event that a Liquidation Event shall occur, then the Company shall be liquidated and its affairs shall be wound up by the Managers. All proceeds from such liquidation shall be distributed in accordance with the provisions of NRS Chapter 86.521, and all Units shall be cancelled. Distributions to the Members shall be made in accordance with the Members' relative Capital Account balances.
- b. Prior to any liquidation or dissolution of the Company, a proper accounting shall be made to the Members from the date of the last previous accounting to the date of dissolution.
- c. In the event the Board determines that a portion of the Company's assets are best distributed in kind to the Members, then such assets shall be so distributed in kind to the Members in undivided shares therein as tenants in common in accordance with the Members' relative Capital Account balances.
- d. Upon the completion of the distribution of the Company's assets, the Company shall be terminated and the Managers shall cause the Company to execute and file articles of dissolution in accordance with NRS Chapter 86.541.

## **Article XVIII**

### **COVENANT NOT TO COMPETE**

18.1 As part of the consideration for this Agreement, each Member agrees:

18.2 That at no time during the term of this Agreement will a Member for him or herself, or in behalf of any person or entity, engage in business or service now engaged by Company business within a radius of one hundred (100) miles of the place of business of the Company. Member will not, directly or indirectly, solicit or attempt to solicit business or patronage of any person or entity within such territory for the purpose of promoting business and service now engaged by the Company, except on behalf of the Company;

18.3 That during the term of this Agreement, Member will not service contracts and accounts from, or work in, the above-described territory for any person or entity other than the Company selling products or services identical, similar, or incidental to the business of the Company; and

18.4 That if any Member withdraws from the Company, he will not, within the above-described territory and for a period of two (2) years thereafter, directly or indirectly carry on, engage in, or be interested in the business or service now engaged by the Company.

## **Article XIX**

### **REGISTERED AGENT**

19.1 The Company shall continuously maintain an agent in this state for service of process on the Company.

19.2 This agent shall be an individual residing in this state, a domestic corporation, or any Member of the Company.

19.3 The registered agent of the Company may resign by filing an original and one copy of a signed written notice of resignation with the Secretary of State of this state or any other such governmental person or agency as required by law.

19.4 The resignation of the registered agent is effective thirty (30) days after filing notice with the Secretary of State of this state or any other governmental person or agency as required by law.

## **Article XX**

### **LOAN TO THE COMPANY**

20.1 Any Member may loan money to the Company.

20.2 Any loan to the Company by a Member shall be at a reasonable rate of interest.

20.3 Except as may be otherwise provided by law, the lending Member has the same rights and risks as any person making a loan to the Company who is not a Member.

## **Article XXI**

### **LIABILITY OF MEMBERS**

21.1 Unless otherwise provided by law, the liability of the Members is limited to their actual capital accounts, including capital contributions each Member makes or agrees to make to the Company.

## **Article XXII**

### **VIOLATION OF THIS AGREEMENT**

22.1 Any Member who shall violate any of the terms, conditions, and provisions of this Agreement shall keep and save harmless the Company property and shall also indemnify the other then-Members from any and all claims, demands, and actions of every kind and

nature whatsoever which may arise out of or by reason of such violation of any of the terms and conditions of this Agreement.

### **Article XXIII**

#### **POWER OF ATTORNEY**

23.1 Documents: Each Member and involuntary Assignee hereby irrevocably constitutes and appoints each Manager as his or her true and lawful attorney, in his or her name, place, and stead, to make, execute, acknowledge, and file:

- a. Any certificate or other instrument which may be required to be executed or filed by the Company or which the Managers shall deem advisable to execute or file.
- b. Any and all amendments or modifications to the instruments described herein.
- c. All documents which may be required to effectuate the dissolution and termination of the Company.

23.2 Property and Claims. Each Member and involuntary Assignee does hereby appoint the first named Manager as his or her true and lawful attorney, in his or her name, place, and stead, to do the following:

- a. To purchase, deal with property, and manage the same including, without limitation, to sign, deliver, or record all deeds, contracts of sale, or other instruments conveying title to the property, either in the names of the Members or in the name of the Company.
- b. To establish bank accounts for the Company and to deposit and withdraw funds therefrom, solely upon his or her signature.
- c. To demand, sue for, levy, or recover all sums of money, debts, rents, or other demands or claims of any nature whatsoever which are or shall be due the Company in such manner as a Manager shall determine to be advisable.

23.3 Powers Coupled with an Interest. Each Member and involuntary Assignee expressly agrees and intends that the foregoing powers of attorney are coupled with an interest.

23.4 Assignment. The foregoing powers of attorney shall survive the delivery of an assignment (whether voluntary or involuntary) by any of the Members of the whole or any portion of his or her Company interests.

23.5 Notice. From time to time, the Managers may, at their sole discretion, send notice to the Members of actions taken. If objection is not received by the Managers within thirty (30) days of said notice, then said action shall be binding upon all of the Members.

## **Article XXIV MISCELLANEOUS**

24.1 Execution in Counterparts: This Agreement may be executed in any number of counterparts with the same effect as if all Parties had signed the same document. All counterparts shall be construed together and shall constitute one Agreement. Each Party shall become bound by the Agreement immediately upon affixing his or her signature hereto, independently of the signature of any other Party.

24.2 Sole Agreement: This Agreement and the exhibits hereto constitute the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior Agreements and understandings pertaining thereto.

24.3 Choice of Law: This Agreement and all rights and liabilities of the Members, assignees, substituted Members, the Company, and the assets of the Company shall be subject to and governed by the internal laws of the above named state - not the laws pertaining to choice or conflict of laws.

24.4 Severability: If any provision of this Agreement, or the application thereof, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable law.

24.5 Agreement Binding: This Agreement shall be binding upon the Parties hereto and upon their heirs, executors, administrators, successors, or assigns, and the Parties hereto agree for themselves and their heirs, executors, administrators, successors and assigns to execute any and all instruments in writing which are or may become necessary or proper to carry out the purpose and intent of this Agreement.

24.6 Titles and Subtitles: Titles of the articles, paragraphs, and subparagraphs are placed herein for convenient reference only and shall not to any extent have the effect of modifying, amending, or changing the express terms and provisions of the Company Agreement.

24.7 Words and Gender or Number: As used herein, unless the context clearly indicates the contrary, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

24.8 Member: Unless the context requires otherwise, any reference to a Manager shall include all Managers and any reference to the Managers shall mean any Manager. Any reference to Member shall include both Managers and Members.

24.9 Company Interest: Unless the context requires otherwise, any reference to an interest in the Company shall mean the capital interest in the Company.

24.10 Amendments: Except with respect to vested rights of the Members, this Company Agreement may be amended at any time by a super majority vote of the Members. A copy of any amendment shall be promptly mailed or delivered to each Member at such Member's last known address.

24.11 Opinion of Counsel: The doing of any act or the failure to do any act by any Member (the effect of which may cause or result in loss or damage to the Company), if pursuant to opinion of legal counsel employed by the Managers on behalf of the Company, shall not subject such Member to any liability. Further, the Managers shall not be liable for any error in judgment or any mistake of law or fact or any act done in good faith in the exercise of powers and authority conferred upon them, but shall be liable only for gross negligence or willful default.

24.12 Notice: Any and all notices provided for herein shall be given in writing by first class mail. The notice shall be addressed to the last address known to the sender or delivered to the recipient in person. Notice of a meeting shall be mailed not less than ten (10) nor more than sixty (60) days before the date of the meeting and shall state the date, time, and location of the meeting and the purpose or purposes of the proposed meeting.

24.13 Waiver in General: No failure by any Party to insist upon the strict performance of any covenant, duty, Agreement, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, duty, Agreement, or condition.

24.14 Waiver of Action for Partition: Each of the Parties hereto irrevocably waives any statutory, equitable, or other rights that he or she may have to maintain any action for partition with respect to the Company property.

24.15 Successor in Interest. Each individual Member shall have the unrestricted right to designate his or her successor in interest (following death) as to his or her interest in the Company, including his or her interest in any loan pursuant to Paragraph 4.4 above, by delivering an acknowledged instrument in writing to a Manager. All Members shall honor any such designation as a contractual obligation hereunder. In the absence of any such designation or evidence of a contrary intent, the Manager shall recognize the deceased Member's heirs at law as his or her successors in interest hereunder (as determined by the Manager according to the laws of intestate succession of the deceased Member's State of domicile). No such actual or deemed designation shall be treated as a testamentary transfer within the meaning of any statute's requirements for one's last will and testament.

24.16 Confidentiality. No Member, without the Managers' express written consent, may divulge to others any information not already known to the public pertinent to the services, customers, assets, income or operations of the Company, whether before or after the Company's dissolution.

24.17 Arbitration. Any controversy or claim arising out of or relating to this Agreement shall only be settled by arbitration in accordance with the rules of the American Arbitration Association, by one Arbitrator, and shall be enforceable in any court having competent jurisdiction.

24.18 Validity. If any portions of this Agreement shall be held invalid or inoperative, then, insofar as it is reasonable and possible,

- a. the remainder of this Agreement shall be considered valid and operative, and
- b. effect shall be given to the intent manifested by the portion held invalid or inoperative.

IN WITNESS WHEREOF, the Parties have hereunto set their hand the date first above written.

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Carols Costa, Manager

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Carols Costa, Member

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Carols N. Wanzeler, Manager

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Carols N. Wanzeler, Member

---

James M. Merrill, Manager

---

James M. Merrill, Member

## **Schedule "A"**

### **Managers: Carlos Costa, Carlos N. Wanzeler, James M. Merrill Capital Contribution and Addresses of Members of TelexFree, LLC**

Member's Name: Carlos Costa  
Member's Address: Av Hugo Musso  
2042 condominio Cote Azzur  
Ed: Cannes Apt 404  
Vitorica, ES  
CEP 29101936  
Brazil

Member's Capital Contribution: \$ \_\_\_\_\_ (ex: equipment and supplies)  
Member's Percentage Ownership: Thirty Percent (30%)

Member's Name: Carlos N. Wanzeler  
Member's Address: 41A Mount Avenue  
Worcester, MA 01606

Member's Capital Contribution: \$ \_\_\_\_\_ (ex: equipment and supplies)  
Member's Percentage Ownership: Fifty Percent (50%)

Member's Name: James M. Merrill  
Member's Address: 1 Coburn Drive  
Ashland, MA 01721

Member's Capital Contribution: \$ \_\_\_\_\_ (ex: equipment and supplies)  
Member's Percentage Ownership: Twenty Percent (20%)

TELECOMMUNICATIONS SERVICES

RESALE INTEREXCHANGE TELECOMMUNICATIONS SERVICES  
AND RULES AND REGULATIONS  
GOVERNING SERVICE

This tariff is on file with the Alabama Public Service Commission.

In addition, the tariff may be inspected, during normal business hours, at TelexFREE, LLC

225 Cedar Hill Street, Marlborough, MA 01752

Toll Free Telephone Number: 1-888-670-4890

Issued: March 19, 2014  
Issued By:

Effective: \_\_\_\_\_, 2014

Jim Merrill, Managing Member  
TelexFREE, LLC  
225 Cedar Hill Street, Suite 200  
Marlborough, MA 01752



CHECKLIST

Tariff sheets are effective as of the date shown. Revised sheets as named below contain all changes from the original tariff that are in effect on the date thereof.

PAGE	REVISION NO.	PAGE	REVISION NO.
1	Original	23	Original
2	Original	24	Original
3	Original	25	Original
4	Original	26	Original
5	Original	27	Original
6	Original	28	Original
7	Original	29	Original
8	Original	30	Original
9	Original	31	Original
10	Original	32	Original
11	Original	33	Original
12	Original	34	Original
13	Original		
14	Original		
15	Original		
16	Original		
17	Original		
18	Original		
19	Original		
20	Original		
21	Original		
22	Original		

Issued: March 19, 2014  
Issued By:

Effective: \_\_\_\_\_, 2014

Jim Merrill, Managing Member  
TelexFREE, LLC  
225 Cedar Hill Street, Suite 200  
Marlborough, MA 01752

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Issued: March 19, 2014  
Issued By:

Effective: \_\_\_\_\_, 2014

Jim Merrill, Managing Member  
TelexFREE, LLC  
225 Cedar Hill Street, Suite 200  
Marlborough, MA 01752

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Issued By:

Effective: \_\_\_\_\_, 2014

Jim Merrill, Managing Member  
TelexFREE, LLC  
225 Cedar Hill Street, Suite 200  
Marlborough, MA 01752

**CONCURRING CARRIERS**

None

**CONNECTING CARRIERS**

None

**OTHER PARTICIPATING CARRIERS**

None

**EXPLANATION OF SYMBOLS**

- (C) To signify **changed** condition or regulation
- (D) To signify **deleted or discontinued** rate, regulation or condition
- (I) To signify a change resulting in an **increase** to a Customer's bill
- (M) To signify that material has been **moved from** another Tariff location
- (N) To signify a **new** rate, regulation condition or sheet
- (R) To signify a change resulting in a **reduction** to a Customer's bill
- (T) To signify a change in **text** but no change to rate or charge

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**TARIFF FORMAT**

- A. **Sheet Numbering** - Sheet numbers appear in the heading of each sheet. Sheets are numbered sequentially. However, occasionally, when a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.
- B. **Sheet Revision Numbers** - Revision numbers also appear in the upper right corner of each sheet. These numbers are used to determine the most current sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the 3rd Revised Sheet 14. Because of various suspension periods, deferrals, etc. the Commission follows in its Tariff approval process, the most current sheet number on file with the Commission is not always the sheet in effect. Consult the Check Sheet for the sheet currently in effect.
- C. **Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of code is subservient to its next higher level:
- 2.
  - 2.1.
  - 2.1.1.
  - 2.1.1.A.
  - 2.1.1.A.1.
  - 2.1.1.A.1.(a).
  - 2.1.1.A.1.(a).I.
  - 2.1.1.A.1.(a).I.(i).
  - 2.1.1.A.1.(a).I.(i).(1).
- D. **Check Sheets** - When a Tariff filing is made with the Commission, an updated Check Sheet accompanies the Tariff filing. The Check Sheet lists the sheets contained in the Tariff with a cross reference to the current revision number. When new sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this sheet if these are the only changes made to it (i.e., the format, etc., remains the same, just revised revision levels on some sheets). The Tariff user should refer to the latest Check Sheet to find if a particular sheet is the most current on file with the Commission.

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### **APPLICATION OF TARIFF**

This Tariff contains the rates, terms and conditions applicable to the provision of specialized resold intrastate common carrier telecommunications services by TELEXFREE LLC between various locations within the State of Alabama.

All services are interstate offerings. Intrastate service is an add-on service available only if the Customer subscribes to the Company's interstate offerings.

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS**

Account Code: A numerical code, one or more of which are available to a Customer to enable identification of individual users or groups of users on an account and to allocate costs of service accordingly.

Called Station: The terminating point of a call (i.e., the called number).

Calling Card: A card issued by Company containing such account numbers assigned to its Customer which enables the charges for calls made to be properly billed on a pre-arranged basis.

Commission: Alabama Public Service Commission

Company: TELEXFREE LLC (“Telex”)

Credit Card: A valid bank or financial organization card, representing an account to which the costs of products and services purchased by the card holder may be charged for future payment. Such cards include those issued by VISA or MasterCard.

Customer: The person, firm, corporation or other entity which orders or uses service and is responsible for payment of charges and compliance with tariff regulation.

Dedicated Access: Non-switched access between a Customer’s premises and the point of presence of the Company’s underlying carrier.

Disconnect or Disconnection: The termination of a circuit connection between the originating station and the called station or the Company’s operator.

Subscriber: See “Customer” definition.

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**SECTION 2 - RULES AND REGULATIONS****2.1. UNDERTAKING OF THE COMPANY**

- 2.1.1. Company's services are furnished for telecommunications originating and/or terminating in any area within the State of Alabama.
- 2.1.2. Company is a non-facilities-based provider of resold interexchange telecommunications to Customers for their direct transmission and reception of voice, data, and other types of communications.
- 2.1.3. Company resells access, switching, transport, and termination services provided by interexchange carriers.
- 2.1.4. Subject to availability, the Customer may use account codes to identify the users or user groups on an account. The numerical composition of the codes shall be set by Company to assure compatibility with the Company's accounting and billing systems and to avoid the duplication of codes.
- 2.1.5. The Company's services are provided on a monthly basis unless otherwise provided, and are available twenty-four (24) hours per day, seven (7) days per week.
- 2.1.6. Request for service under this Tariff will authorize the Company to conduct a credit search on the Customer. The Company reserves the right to refuse service on the basis of credit history, and to refuse further service due to late payment or nonpayment by the Customer.

**2.2. LIMITATIONS OF SERVICE**

- 2.2.1. Service is offered subject to availability of the necessary facilities and/or equipment and subject to the provisions of this Tariff.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.2. LIMITATIONS OF SERVICE, Continued**

- 2.2.2. Company reserves the right to immediately disconnect service without incurring liability when necessitated by conditions beyond the Company's control or when the Customer is using the service in violation of either the provisions of this Tariff or the Commission rules.
- 2.2.3. The Company does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission or for failure to establish connections.
- 2.2.4. The Customer obtains no property right or interest in the use of any specific type of facility, service, equipment, telephone number, process or code. All rights, titles and interests remain, at all times, solely with the Company.
- 2.2.5. Prior written permission from the Company is required before any assignment or transfer. All regulations and conditions contained in this Tariff shall apply to all such permitted assignees or transferees, as well as all conditions of service.
- 2.2.6. The Company reserves the right to refuse an application for service by a present or former Customer who is indebted to the Company for service previously rendered pursuant to this Tariff until the indebtedness is satisfied.

**2.3. USE**

- 2.3.1. Service may be used for the transmission of communications by the Customer for any lawful purpose for which the service is technically suited.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.3. USE, Continued**

- 2.3.2. Service may not be used for any unlawful purpose or for any purpose for which any payment or other compensation is received by the Customer, except when the Customer is a duly authorized and regulated common carrier. This provision does not prohibit an arrangement between the Customer, authorized user or joint user to share the cost of service.
- 2.3.3. Application for service may be made verbally or in writing. The name(s) of the Customer(s) desiring to use the service must be set forth in the application for service.
- 2.3.4. The Company strictly prohibits use of the Company's services without payment or an avoidance of payment by the Customer by fraudulent means or devices including providing falsified calling card numbers or invalid calling card numbers to the Company, providing falsified or invalid credit card numbers to the Company or in any way misrepresenting the identity of the Customer.

**2.4. LIABILITIES OF THE COMPANY**

- 2.4.1. The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission occurring in the course of furnishing service or other facilities and not caused by the negligence of the Customer, commences upon activation of service and in no event exceeds an amount equivalent to the proportionate charge to the Customer for the period of service during which such mistakes, omissions, interruptions, delays, errors or defects in transmission occur. For the purpose of computing such amount, a month is considered to have thirty (30) days. To the extent permitted by law, the Company will in no event be responsible for any indirect, incidental, consequential, reliance, special, lost revenue, lost savings, lost profits, or exemplary or punitive damages, regardless of the form of action, whether in contract, tort, negligence of any kind whether active or passive, strict liability or otherwise. The terms of this Section shall apply notwithstanding the failure of any exclusive remedy.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.4. LIABILITIES OF THE COMPANY, Continued**

- 2.4.2. Company is not liable for any act or omission of any other company or companies furnishing a portion of the service.
- 2.4.3 Except as expressly warranted in writing by Company, Company makes no warranty or guarantee, express or implied, and Company expressly disclaims any implied warranties of merchantability and fitness for a particular purpose.
- 2.4.4. Company shall be indemnified and held harmless by the Customer against:
- A. Claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade name or service mark arising out of the material, data, information or other content transmitted over Company's facilities; and
  - B. Claims for patent infringement arising from combining or connecting company's facilities with apparatus and systems of the Customer; and
  - C. All other claims arising out of any act or omission of the Customer in connection with any service provided by Company.
- 2.4.5. The Company is not liable for any defacement of, or damage to, the equipment or premises of a Customer resulting from the furnishing of services when such defacement or damage is not the result of the Company's negligence.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.4. LIABILITIES OF THE COMPANY, Continued**

- 2.4.6. Company shall not be liable for and the Customer indemnifies and holds harmless from any and all loss claims, demands, suits, or other action or liability whatsoever, whether suffered, made instituted or asserted by the Customer or by any other party or person, for any personal injury to, death of any person or persons, and for any loss, damage, defacement or destruction of the premises of the Customer or any other property, whether owned by the Customer or by others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of equipment or wiring provided by Company where such installation, operation, failure to operate, maintenance, condition, location or use is not the direct result of Company's negligence.
- 2.4.7. No agents or employees of connecting, concurring or other participating carriers or companies shall be deemed to be agents or employees of the Company without written authorization.
- 2.4.8. The Company is not liable for any failure of performance hereunder due to causes beyond its control, including, but not limited to, unavoidable interruption in the working of its circuits or those of another common carrier; acts of nature, storms, fire, floods, or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or any other governmental entity having jurisdiction over the Company or of any department, agency, commission, bureau, corporation, or other instrumentality or any one or more of such instrumentality or any one of more of such governmental entities, or of any civil or military authority; national emergencies, insurrections, riots, rebellions, wars, strikes, lockouts, work stoppages, or other labor difficulties; or notwithstanding anything in this Tariff to the contrary, the unlawful acts of the Company's agents and employees, if committed beyond the scope of their employment.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.4. LIABILITIES OF THE COMPANY, Continued**

- 2.4.9. The Company shall not be liable for damages or adjustments, refunds, or cancellation of charges unless the Customer has notified the Company of any dispute concerning charges, or the basis of any claim for damages, after the invoice is rendered by the Company for the call giving rise to such dispute or claim, unless ordered by the Commission pursuant to Alabama law. The Company shall not be responsible for claims made outside the thirty (30) day period. Any such notice must set forth sufficient facts to provide the Company with a reasonable basis upon which to evaluate the Customer's claim or demands.
- 2.4.10. The Company shall not be liable for any damages, including usage charges, that the Customer may incur as a result of the unauthorized use of its communications equipment. The unauthorized use of the Customer's communications equipment includes, but is not limited to, the placement of calls from the Customer's premises and the placement of calls through Customer-controlled or Customer-provisioned equipment that are transmitted or carried over the Company's network services without the authorization of the Customer. The Customer shall be fully liable for all such charges.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.5. INTERRUPTION OF SERVICE**

- 2.5.1. Credit allowance for interruptions of service which are not due to Company's testing or adjusting, to the negligence of the Customer, or to the failure of channels, equipment and/or communications equipment provided by the Customer, are subject to the general liability provisions set forth in Section 2.4., herein. It shall be the obligation of the Customer to notify Company of any interruptions of service. Before giving such notice, the Customer shall ascertain that the trouble is not being caused by any action or omission of the Customer, not within the Customer's control.
- 2.5.2. For purposes of credit computation for leased facilities, every month shall be considered to have 720 hours. No credit shall be allowed for an interruption of a continuous duration of less than two (2) hours.
- 2.5.3. The subscriber shall be credited for an interruption of two (2) hours or more at the rate of 1/720th of the monthly charge for the facilities affected for each hour or major fraction thereof that the interruption continues.

Credit formula:  $\text{Credit} = (A/720) \times B$

A - outage time in hours

B - total monthly charge for affected utility

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.6. RESTORATION OF SERVICE**

The use and restoration of service in emergencies shall be in accordance with Part 64, Subpart D of the Federal Communications Commission's Rules and Regulations, which specifies the priority system for such activities.

**2.7. MINIMUM SERVICE PERIOD**

The minimum service period is one month (30 days).

**2.8. PAYMENTS AND BILLING**

- 2.8.1. Charges for service are applied on a recurring basis. Service is provided and billed on a monthly (30 day) basis. The billing date is dependent on the billing cycle assigned to the Customer. Service continues to be provided until canceled by the Customer.
- 2.8.2. The Customer is responsible in all cases for the payment of all charges for services furnished to the Customer. Charges are based on actual usage, and are billed monthly in arrears.
- 2.8.3. Billing is payable upon receipt and past due thirty (30) days after issuance and posting of invoice. Bills not paid within thirty (30) days after the date of posting are subject to a 1.5 percent late payment charge for the unpaid balance.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.8. PAYMENTS AND BILLING, Continued**

- 2.8.4. The Customer will be charged a fee not more than allowed by S.C. Code Anns. 34-11-70 whenever a check or draft presented for payment of service is dishonored by the institution upon which it is drawn. The current fee allowed is \$30.00.
- 2.8.5. Billing disputes should be addressed to Company's customer service organization via telephone. Customer service representatives are available from 8:00 AM to 6:00 P.M. Central Time. Messages may be left for Customer Services from 5:01 PM to 7:59 AM Central Time, which will be answered on the next business day. In the event of an emergency that threatens customer service, Customer Service Staff may be paged.
- 2.8.6. In the case of a dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled with mutual satisfaction, the Customer can take the following course of action:
- A. First, the Customer may request, and the Company will perform, an in-depth review of the disputed amount. The undisputed portion and subsequent bills must be paid on a timely basis or the service may be subject to disconnection.
  - B. Second, if there is still disagreement over the disputed amount after the investigation and review by a manager of the Company, the Customer may appeal to the Alabama Public Service Commission for its investigation at the following address and/or phone number:

Office of Regulatory Staff  
Consumer Services Division  
1401 Main Street, Suite 900  
Columbia, SC 29201  
800-922-1531

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.9. CANCELLATION BY CUSTOMER**

- 2.9.1. Customer may cancel service by providing notice to Company thirty (30) days prior to cancellation.
- 2.9.2. Customer is responsible for usage charges and associated local exchange company charges, if any, while still connected to the Company's service, even if the customer utilizes services rendered after the Customer's request for cancellation has been made.
- 2.9.3. Any non-recoverable cost of Company expenditures shall be borne by the Customer if:
  - A. The Customer orders service requiring special facilities dedicated to the Customer's use and then cancels the order before such service begins, before completion of the minimum period or before completion of some period mutually agreed upon with the Customer for the non-recoverable portions of expenditures; or
  - B. Liabilities are incurred expressly on behalf of the Customer by Company and not fully reimbursed by installation and monthly charges; and
  - C. If based on an order for service and construction has either begun or has been completed, but no service provided.

**2.10. CANCELLATION BY COMPANY**

- 2.10.1. Company reserves the right to immediately discontinue furnishing the service to Customers without incurring liability:
  - A. In the event of a condition determined to be hazardous to the Customer, to other customers of the utility, to the utility's equipment, the public or to employees of the utility; or

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.10. CANCELLATION BY COMPANY, Continued****2.10.1. Continued**

- B. By reason of any order or decision of a court or any other governmental authority which prohibits the Company from furnishing such service; or
- C. If the Company deems such refusal necessary to protect itself or third parties against fraud or to otherwise protect its personnel, agents, facilities or services without notice; or
- D. For unlawful use of the service or use of the service for unlawful purposes; or
- E. If the Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past, current or planned use of Company's services.

**2.10.2. Company may discontinue service according to the following conditions upon five (5) days' notice:**

- A. For violation of Company's filed tariffs; or
- B. For the non-payment of any proper charge as provided by Company's Tariff; or
- C. For Customer's breach of the contract for service between the utility and Customer.

**2.10.3. The discontinuance of service(s) by the Company pursuant to this section does not relieve the Customer of any obligations to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance. The remedies available to the Company set forth herein shall not be exclusive and the Company shall at all times be entitled to all the rights available to it under law or equity.**

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.10. CANCELLATION BY COMPANY, Continued**

- 2.10.4. The Company may refuse to permit collect calling, calling card and third-number billing which it determines to be fraudulent and/or may limit the use of these billing options or services.

**2.11. INTERCONNECTION**

- 2.11.1. Service furnished by Company may be interconnected with services or facilities of other authorized communications common carriers and with private systems, subject to the technical limitations established by Company. Any special interface of equipment or facilities necessary to achieve compatibility between the facilities of Company and other participating carriers shall be provided at the Customer's expense.
- 2.11.2. Interconnection between the facilities or services of other carriers shall be under the applicable terms and conditions of the other carriers' tariffs. The Customer is responsible for taking all necessary legal steps for interconnecting Customer-provided terminal equipment or communications equipment with Company's facilities. The Customer shall secure all licenses, permits, rights-of-way and other such arrangements necessary for interconnection.

**2.12. DEPOSITS AND ADVANCE PAYMENTS**

To ensure payment for services, the Company may at any time and at its sole discretion require the Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of its responsibility for prompt payment of bills. Deposits will only be asked for on dedicated services. Customer deposits would consist of a one week letter of credit, inclusive of one week prepaid estimated usage to be adjusted as usage increases. All deposits will conform to S.C. Reg. 103-631.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.13. CREDIT LIMIT**

The Company may, at any time and at its sole discretion, set a credit limit for any Customer's consumption of Services for any monthly period.

**2.15. SCHOOLS AND LIBRARIES DISCOUNT PROGRAM**

- 2.15.1. The Schools and Libraries Discount program permits eligible schools (public, private, grades Kindergarten through 12) and libraries to purchase the Company's services offered in this tariff at a discounted rate, in accordance with the Rules adopted by the F.C.C. in its Universal Service Order 97-157, issued May 8, 1997 and the Alabama State Public Service Commission in its Opinion and Order 97-11 Adopting Discounts for Services for Schools and Libraries, issued June 25, 1997. The Rules are codified at 47 Code of Federal Regulation (C.F.R.) 54.500 *et. seq.*

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.15. SCHOOLS AND LIBRARIES DISCOUNT PROGRAM, Continued**

2.15.2. As indicated in the Rules, the discounts will be between twenty (20) and ninety (90) percent of the pre-discount price, which is the price of services to schools and libraries prior to application of a discount. The level of discount will be based on an eligible school or library's level of economic disadvantage and by its location in either an urban or rural area. A school's level of economic disadvantage will be determined by the percentage of its students eligible for participation in the national school lunch program, and a library's level of economic disadvantage will be calculated on the basis of school eligibility in the public school district in which the library is located. A non-public school may use either eligibility for the national school lunch program or other federally approved alternative measures to determine its level of economic disadvantage. To be eligible for the discount, schools and libraries will be required to comply with the terms and conditions set forth in the Rules. Discounts are available only to the extent that they are funded by the federal universal service fund. Schools and libraries may aggregate demand with other eligible entities to create a consortium.

2.15.3. Obligations of eligible schools and libraries are as follows:

- A. Schools and libraries and consortia shall participate in a competitive bidding process for all services eligible for discounts, in accordance with any state and local procurement rules.
- B. Schools and libraries and consortia shall submit requests for services to the Schools and Libraries Corporation, as designated by the FCC, and follow established procedures.
- C. Services requested will be used for educational purposes.
- D. Services will not be sold, resold or transferred in consideration for money or any other thing of value.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.15. SCHOOLS AND LIBRARIES DISCOUNT PROGRAM, Continued****2.15.4. Obligations of the Company are as follows:**

- A. Company will offer discounts to eligible schools and libraries on commercially available telecommunications services contained in this tariff. Those services contained in this tariff which are excluded from the discount program, in accordance with the Rules are included as an attachment to this tariff.
- B. The Company will offer services to eligible schools, libraries and consortia at prices no higher than the lowest price it charges to similarly situated non-residential customers for similar services (lowest corresponding price).
- C. In competitive bidding situations, the Company may offer flexible pricing or rates other than in this tariff, where specific flexible pricing arrangements are allowed, subject to Alabama State Public Service Commission approval.

**2.15.5. Discounted rates for schools and libraries will be based on the following:**

- A. Discounts for eligible schools and libraries and consortia shall be set as a percentage from the pre-discount price, which is the price of services to schools and libraries prior to application of a discount.
- B. The discount rate will be applied to eligible intrastate services purchased by eligible schools, libraries or consortia.
- C. The discount rate is based on each school or library's level of economic disadvantage as determined in accordance with the F.C.C. Order or other federally approved alternative measures (as permitted by the Rules) and by its location in either an urban or rural area.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.16. HEALTH CARE PROVIDERS' SUPPORT PROGRAM****2.16.1. General**

The purpose of the Health Care Providers Support Program is to enable public and non-profit rural health care providers to have access to telecommunications services necessary for the provision of health care services at rates comparable to those paid for similar services in urban areas. The Health Care Providers Program offers eligible public and non-profit health care providers located in rural areas reduced rates for Company intrastate services available in this Tariff. Such Services must be purchased in accordance with the Rules adopted by the Federal Communications Commission (FCC) in its Universal Service Order 97-157, issued May 8, 1997 and codified at 47 Code of Federal Regulations (C.F.R.) 54.601 *et. seq.*, and any amendments made thereto.

- A. To be eligible for the reduced rates, rural health care providers are required to comply with the terms and conditions set forth in the FCC rules.
- B. Reduced rates are available only to the extent that they are funded by the federal universal service fund.
- C. Eligible rural health care providers may aggregate demand with other entities to create a consortium. Universal service support shall apply only to the portion of eligible service used by an eligible health care provider.
- D. Responsibility of eligible health care providers:
  - 1. Rural health care providers and consortia shall participate in a competition bidding process for all services eligible for reduced rates in accordance with any state and local procurement rules.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.16. HEALTH CARE PROVIDERS' SUPPORT PROGRAM, Continued****2.16.1. General, Continued****D. Responsibility of eligible health care providers, Continued**

2. Rural health care providers and consortia shall submit requests for services to the program Administrator, as designated by the FCC, and follow established procedures.
3. Services requested must be used for purposes related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law.
4. A health care provider that cannot obtain toll-free access to an Internet service provider and who is eligible for support for limited toll-free access under the Rules must certify that it lacks toll-free Internet access and that it is an eligible health care provider.
5. Services cannot be sold, resold or transferred in consideration for money or any other thing of value.

**E. Responsibility of the Company:**

1. The Company shall offer the rates and charges as specified in Section 4 to eligible health care providers to the extent that facilities and Services are available and offered.
2. The Company shall offer services to eligible rural health care providers and consortia at prices no higher than the highest urban rate as defined in the FCC Order and Rules.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.16. HEALTH CARE PROVIDERS' SUPPORT PROGRAM, Continued****2.16.1. General, Continued****E. Responsibility of the Company, Continued**

3. In competitive bidding situations, where specific flexible pricing arrangements are allowed, the Company may offer flexible pricing (to determine the reduced rate) subject to Alabama Commission of Public Utilities approval.

**2.16.2. Rates and Charges**

The following price adjustments will be available to eligible rural health care providers, except subparagraph C., which shall be available to all eligible health care providers, regardless of location.

- A. A reduced rate for telecommunications services, using a bandwidth capacity of up to 1.544 Mbps, not to exceed the highest tariffed or publicly available rate charged to a commercial customer for a similar service provided over the same distance in the nearest city in Alabama State with a population of at least 50,000.
- B. An exemption from some mileage charges for any telecommunications services, using a bandwidth capacity of up to 1.544 Mbps, that is necessary for the provision of health care services. The exempted mileage includes the distance between the rural health care provider and the most distant perimeter of the nearest city in Alabama State with a population of 50,000 or more, less the standard urban distance, which is the maximum average diameter of all cities with population of 50,000 or more in the state.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.16. HEALTH CARE PROVIDERS' SUPPORT PROGRAM, Continued****2.13.2 Rates and Charges, Continued**

- B. Each eligible health care provider that cannot obtain toll-free access to an Internet service provider is entitled to receive toll charge credits for toll charges imposed for connecting to an Internet service provider as per the FCC Rules. Such toll charges are available pursuant to applicable toll tariffs.

**2.17. FLEXIBLE PRICING**

- 2.17.1 Flexible pricing sets minimum and maximum rates that can be charged for telephone service. The Company may change a specific rate within the established range of rates on one day's notice to Customers and the Commission.
- 2.17.2 The Company may change prices at any time subject to regulatory requirements by filing a revised Effective Rate Schedule, Addendum, with the Commission. A rate shall not be changes unless it has been in effect for at least thirty (30) days.
- 2.17.3 Individual written notice to Customers of rate changes shall be made in accordance with Commission regulations.
- 2.17.4. A Customer may request that the Company disconnect service that is provided under the flexible pricing due to a price increase. The Customer will be credited for the difference between the new price and the old price retroactive to the effective date of the price increase if the Customer notifies the Company of its desire to disconnect service within twenty (20) days of receiving notification of the price increase.

**2.18 MARKETING PRACTICES**

Company intends to comply with SC PSC Order 95-658 with respect to its marketing practices. The Company hereby asserts and affirms that as a reseller of intrastate telecommunications service, the Company will not indulge or participate in deceptive or misleading telecommunications marketing practices to the detriment of consumers in Alabama, and the Company will comply with those marketing procedures, in any, set forth by the Public Service Commission.

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**SECTION 3 - DESCRIPTION OF SERVICE****3.1. TIMING OF CALLS**

- 3.1.1. The Customer's long-distance usage charge is based on the actual usage of Company's service. Usage begins when the called party answers, (i.e. when any two-way communication, often referred to as "conversation time" is possible). When the called party answers is determined by hardware supervision in which the local telephone company sends a signal to the carrier's switch or the software utilizing audio tone detection. When software answer supervision is employed, up to sixty (60) seconds of ringing is allowed before it is billed as usage of the network. A call is terminated when either the called or calling party hangs up.
- 3.1.2. The minimum call duration for billing purposes for all calls is eighteen (18) seconds with six (6) second billing increments thereafter.
- 3.1.3. Any portion of an applicable increment, after the appropriate minimum time for the call, will be rounded upward to the next increment. Calls less than the minimum length will be rounded to the minimum length.
- 3.1.4. There is no billing for incomplete calls.

**3.2. MINIMUM CALL COMPLETION RATE**

Customers can expect a call completion rate of not less than ninety (90) percent during peak use periods for all Feature Group D Equal Access "1 plus" services. The call completion rate is calculated as the number of calls completed (including calls completed to a busy line or to a line which remains unanswered by the called party) divided by the number of calls attempted.

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**SECTION 3 - DESCRIPTION OF SERVICE, Continued****3.4 DISTANCE CALCULATIONS**

- 3.3.1. Usage charges for all mileage sensitive products are based on the airline distance between rate centers associated with the originating and terminating points of the call.
- 3.3.2. The airline mileage between rate centers is determined by applying the formula below to the vertical and horizontal coordinates associated with the rate centers involved. The Company uses the rate centers that are produced by Bell Communications Research in the NPA-NXX V & H Coordinates Tape and Bell's NECA Tariff No. 4.

**Formula:**

$$\sqrt{\frac{(V1-V2) + (H1 - H2)}{10}}$$

**3.4. SERVICE OFFERING****3.4.1. Switched Access Services**

Switched access services allows a customer to establish a communications path between two stations by using uniform dialing plans, as well as access to operator assisted calling.

**A. Inbound Switched Service**

Inbound switched service receives inbound intrastate calls on switched access lines using 800, 866, 877 or 888 number(s).

**B. Outbound Switched Service**

Outbound switched service sends outbound intrastate calls on switched access lines by dialing "1+ten digits" for InterLATA calls.

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**SECTION 3 - DESCRIPTION OF SERVICE, Continued**

- 3.5 Operator Services is a service offering subscribers access to operator assisted calling including person-to- person, collect, station-to-station and third number billed calls.
- 3.6 Directory Assistance is offered as an ancillary service exclusively to the Company's customers. Directory Assistance is accessible by dialing "1", the area code of the desired number and "555-1212."

**3.7 PROMOTIONS**

The Company may, from time to time, engage in special promotions of new or existing Service offerings of limited duration designed to attract new Customers or to increase existing Customer awareness of a particular offering. The promotional offerings are subject to the availability of the services and may be limited to a specific geographical area or to a subset of a specific market group; provided, however, all promotional offerings shall be approved by the Commission with specific starting and ending dates.

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**SECTION 4 - RATES****4.1. SERVICE CHARGES**General Rate Information**4.1.1 Call Duration**

Customers shall be charged a minimum amount for all completed calls equivalent to 6 seconds of their subscribed rate plan with a minimum charge for an initial 18 second interval.

**4.1.2 RBOC - ITC Surcharge**

Dedicated rates pursuant to this tariff are based upon the condition that the Customer will terminate at least 80% of Customer's total termination usage and originate at least 85% of the Customers total origination usage through a tandem owned and operated by a Regional Bell Operating Company ("RBOC"). The Company shall apply a surcharge of three cents (\$0.03) per minute of use to the number of minutes that exceed twenty (20%) percent of the total non-RBOC termination minutes and four cents (\$0.04) per minute of use to the number of minutes that exceed fifteen (15%) percent of the total Non-RBOC origination minutes.

**4.1.3 Charge for Non-Billable Toll Free Calls**

If a Customer's usage of a toll-free number results in the non-billable (non-completed) calls for such toll-free number in any month to be greater than seven (7%) percent of the billable completed calls for such toll-free number in that month, the Company may charge the Customer a non-discounted two cent (\$0.02) charge for each non-billable call.

**4.1.4 Toll-Free Minimum Usage Charge**

If a customer does not use \$100.00 of switched inbound toll-free usage in a billing month, then a fifteen (\$15.00) dollar minimum usage charge will be billed for each toll-free number terminating to switched local telephone line(s) reserved for the Customer.

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**SECTION 4 - RATES****4.2 RATE SCHEDULES**

	<u>Current Rates</u>	<u>Maximum Rates</u>
4.2.1 <u>Inbound Switched Service</u>		
Inbound Switched Service	\$0.089 per minute	\$0.089 per minute
4.2.2 <u>Outbound Switched Service</u>		
Outbound Switched Service	\$0.059 per minute	\$0.059 per minute

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**SECTION 4 – RATES****4.3 OPERATOR ASSISTED CALLS**

Per Call Services and Rates	<u>RATE</u>
Busy Line Verification	\$2.00
Operator Verification/Interrupt Service	\$2.00
Third Number Billed	\$2.00
Collect	\$2.00
Person-to-Person	\$4.00
Station-to-Station	\$2.00
911 Emergency Service	\$0.00
Per minute rate	\$1.00

**4.4 DIRECTORY ASSISTANCE**

	<u>Min. Per Call</u>	<u>Max. Per Call</u>
Directory Assistance	\$1.10	\$2.00
Directory Assistance Call Completion	\$1.10	\$2.00

**4.5 MISCELLANEOUS CHARGES****4.5.1. Late Payment Charge**

Billing is payable upon receipt and past due thirty (30) days after issuance and posting of invoice. Bills not paid within thirty-one (31) days after the date of posting are subject to a 1.5 percent late payment charge for the unpaid balance.

**4.5.2. Returned Check Charge**

The Customer will be charged a fee not more than allowed by S.C. Code Anns. 34-11-70 whenever a check or draft presented for payment of service is dishonored by the institution upon which it is drawn. The current fee allowed is \$30.00.

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**SECTION 4 – RATES****4.6 INDIVIDUAL CASE BASIS (ICB) ARRANGEMENTS**

Arrangements will be developed on a case-by-case basis in response to a bona fide request from a Customer or prospective Customer to develop a competitive bid for a Service offered under this Tariff. Rates quoted in response to such competitive requests may be different than those specified for such Services in this Tariff. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis, and made part of this Tariff.

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1 STATE OF ALABAMA  
2  
3 BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION  
4

5 DOCKET NO. \_\_\_\_\_  
6

7 Application of TELEXFREE LLC )  
8 For a Certificate of Public Convenience and Necessity )  
9 to Provide Interexchange and Local Exchange )  
10 Telecommunications Services )

11  
12  
13  
14 TELEXFREE LLC  
15

16 Testimony of  
17

18 JIM MERRILL  
19  
20  
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1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND TELEPHONE**  
2 **NUMBER.**

3 **A.** My name is JIM MERRILL. My business address is 225 Cedar Hill Street, Marlborough,  
4 Massachusetts 01752. My telephone number is (508) 460-3333.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 **A.** I am the Managing Member and President for TELEXFREE LLC (“TELEX”), the  
7 Applicant in this proceeding, and its parent company TELEXFREE Group, Inc.

8 **Q. WHAT ARE YOUR RESPONSIBILITIES WITH TELEXFREE**  
9 **CORPORATION?**

10 **A.** As Managing Member of TELEXFREE, I am responsible for TELEXFREE’s technology  
11 platforms, the day-to-day operations, excluding sales and marketing, and for the  
12 company’s ongoing profitability.

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND,**  
14 **PROFESSIONAL EXPERIENCE.**

15 I have extensive professional and industry specific experience necessary to ensure  
16 TELEXFREE’s continued success. I hold an Associate’s degree in marketing from  
17 Westfield State University in Massachusetts. I have seven years of management  
18 experience and ten years of telecommunications experience through TELEXFREE.

19 **Q. HAS TELEXFREE REGISTERED TO DO BUSINESS IN ALABAMA?**

20 **A.** Yes, TELEXFREE is a registered LLC formed in Nevada in 2012.

1   **Q.    ARE YOU FAMILIAR WITH THE APPLICATION SUBMITTED BY YOUR**  
2       **COMPANY TO THIS COMMISSION?**

3   **A.**    Yes, I am.

4   **Q.    DID YOU HAVE HELP IN PREPARING THIS TESTIMONY?**

5   **A.**    Yes, I did. TELEXFREE's Regulatory Consultant, Joseph Isaacs of ISG-Telecom  
6       Consultants aided in the preparation of my testimony.

7   **Q.    DO YOU CONFIRM THE STATEMENTS AND REPRESENTATIONS MADE IN**  
8       **THAT APPLICATION?**

9   **A.**    Yes, I do.

10  **Q.    WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

11  **A.**    My testimony addresses TELEXFREE's practices and proposed Alabama services, and  
12       demonstrates that TELEXFREE possesses the financial, technical, managerial, and  
13       operational capabilities to operate as a provider of competitive local exchange and  
14       Interexchange telecommunications services in Alabama, as well as TELEXFREE's intent  
15       to comply with all applicable Commission regulations.

16  **Q.    PLEASE DESCRIBE THE AUTHORITY THAT TELEXFREE SEEKS FROM**  
17       **THE COMMISSION.**

18  **A.**    TELEXFREE seeks a certificate of authority to provide resold interexchange  
19       telecommunications services throughout the State of Alabama. TELEXFREE proposes to  
20       provide its services through the resale of ILEC services within the State of Alabama.

1   **Q.    HAS TELEXFREE OR ITS AFFILIATES BEEN AUTHORIZED TO PROVIDE**  
2       **SUCH SERVICE IN ANY OTHER JURISDICTIONS?**

3   **A.**    Yes, TELEXFREE is authorized to provide interexchange services in California,  
4       Connecticut, Kentucky, Missouri, North Carolina, Nebraska, Texas and Washington.

5   **Q.    HAS TELEXFREE EVER BEEN DENIED AUTHORIZATION BY A STATE**  
6       **REGULATORY AGENCY?**

7   **A.**    No, TELEXFREE has never been denied authorization by any State or Federal regulatory  
8       agency.

9   **Q.    HAS TELEXFREE PROVIDED SERVICE UNDER ANY OTHER NAME?**

10  **A.**    TELEXFREE has not provided telecommunications services under any other name in the  
11       State of Alabama.

12  **Q.    HAVE ANY COMPLAINTS OR JUDGEMENTS BEEN LEVIED AGAINST THE**  
13       **COMPANY?**

14  **A.**    No complaints or judgments have been levied against the company.

1    **Q.     PLEASE DESCRIBE THE CORPORATE STRUCTURE OF TELEXFREE**

2    **A.**     TELEXFREE is a Limited Liability Company organized under the laws of the State of  
3           Nevada. A copy of its Articles of Formation are attached to TELEXFREE’s application  
4           as Exhibit “A”. TELEXFREE currently employs 11 individuals in administration, sales  
5           and marketing, accounting, and operations positions at its headquarters in Alabama.  
6           TELEXFREE has not or does not currently provide local service in Alabama under any  
7           other name.

8    **Q.     PLEASE ADDRESS TELEXFREE’S MANAGERIAL AND TECHNICAL**  
9           **QUALIFICATIONS.**

10   **A.**     TELEXFREE possesses the managerial and technical qualifications to provide local  
11           exchange and Interexchange telecommunications service in Alabama. TELEXFREEs  
12           management team has considerable experience in marketing, network operations,  
13           financial analysis/accounting, customer service, training, sales, regulatory, and other  
14           relevant areas. A description of the telecommunications experience and expertise of  
15           TELEXFREE’s key management personnel is attached to TELEXFREE’s application at  
16           Exhibit “G”. As the resumes of TELEXFREE’s key personnel reflect, these individuals  
17           have substantial experience in various aspects of telecommunications operations. Each  
18           member of TELEXFREE’s management team will draw upon his or her own experience,  
19           as well as the collective experience of the entire management team, to ensure that  
20           TELEXFREE is managed and operated efficiently and profitably.

1   **Q.     PLEASE DESCRIBE TELEXFREE’S FINANCIAL QUALIFICATIONS.**

2   **A.**     TELEXFREE is financially qualified to provide the proposed telecommunications  
3           services within Alabama. (Please see Financial Statements attached to the Application as  
4           “Exhibits C-E”).

5   **Q.     PLEASE DESCRIBE THE TYPES OF SERVICES THAT TELEXFREE**  
6           **PROPOSES TO OFFER IN ALABAMA.**

7   **A.**     TELEXFREE seeks authority to provide competitive interexchange telecommunications  
8           services through resale of the services of other certificated carriers including AT&T  
9           Alabama.

10  **Q.     HOW WILL TELEXFREE PROVIDE THESE SERVICES?**

11  **A.**     TELEXFREE will resell or utilize the services of existing facilities-based carriers in  
12           Alabama, including the services offered by incumbent local exchange carriers (“ILECs”)  
13           and other competitive local exchange carriers (“CLECs”). TELEXFREE currently has no  
14           plans to own facilities in Alabama in the future, and thus seeks authority to provide only  
15           resold interexchange telecommunications services in Alabama.

16  **Q.     WHAT GEOGRAPHIC AREAS WILL TELEXFREE SERVE?**

17  **A.**     TELEXFREE seeks authority to provide resold local services and resold interexchange  
18           services throughout the state of Alabama. TELEXFREE requests statewide authority so  
19           that it may expand its service areas in the future as market conditions warrant.

20  **Q.     HOW DOES TELEXFREE INTEND TO MARKET ITS SERVICES?**

21  **A.**     TELEXFREE intends to utilize in-house marketing staff as well as outside salespersons  
22           and agents.

1 **Q. HOW WILL TELEXFREE RESPOND TO CUSTOMER INQUIRIES AND**  
2 **COMPLAINTS?**

3 **A.** TELEXFREE will handle customer service orders, requests, inquiries, and/or complaints  
4 through its national toll-free number (888-670-4890). This number will be printed on  
5 customer invoices. TELEXFREE's customer service center is currently available twenty  
6 four hours a day, seven days a week. Resolution and/or escalation of customer service  
7 complaints will be handled in conformity with applicable Commission regulations.

8 **Q. WHO IS THE PERSON WITHIN TELEXFREE THAT IS RESPONSIBLE FOR**  
9 **THE HANDLING OF CONSUMER COMPLAINTS, INCLUDING THOSE THAT**  
10 **MAY BE FORWARDED TO THE COMPANY BY THIS COMMISSION?**

11 **A.** Initially, Danielle Goss, our Customer Service Manager will assume overall responsible  
12 for handling consumer complaints.

13 **Q. IF AUTHORIZED TO PROVIDE COMPETITIVE TELECOMMUNICATIONS**  
14 **SERVICES, WILL TELEXFREE ABIDE BY THE RULES, REGULATIONS,**  
15 **POLICIES AND ORDERS OF THIS COMMISSION AND THE LAWS OF THE**  
16 **STATE OF ALABAMA, IN ITS PROVISION OF COMPETITIVE INTRASTATE**  
17 **LOCAL EXCHANGE AND INTEREXCHANGE SERVICES, AS NOW**  
18 **ADOPTED OR THAT MAY BE ADOPTED?**



1    **A.**    Yes we will. As a new player in the competitive local service industry, TELEXFREE  
2           will provide service in the State in full compliance with any and all rules and regulations  
3           that have been or may be adopted relating to the provision of local exchange and  
4           Interexchange services, as well as any other applicable state or federal rules, regulations,  
5           or statutes. For example, TELEXFREE will comply with any requirements that the  
6           Commission and/or the State of Alabama may feel are necessary to preserve and advance  
7           universal service, protect the public safety and welfare, ensure the continued quality of  
8           local services, and safeguard the rights of consumers. TELEXFREE will also comply  
9           with all statutory and Commission requirements including the filing of tariffs; customer  
10          notification of rate increases; customer billing and credit issues; access to  
11          telecommunications for persons with disabilities; and the filing of regulatory reports and  
12          the payment of regulatory assessments, the preservation of records and procedures  
13          governing the establishment of credit, billing, deposits, and the termination of service.  
14          TELEXFREE does not plan to offer pay per call services.

15   **Q.    DID TELEXFREE REQUEST ANY WAIVERS IN ITS APPLICATION?**

16   **A.**    Yes, TELEXFREE has requested waivers from any requirements that its financial records  
17          be maintained in conformance with the Uniform System of Accounts. We currently  
18          maintain our records in accordance with GAAP; and therefore, do not possess the  
19          detailed cost data required by USOA. We also requested to be exempt from the  
20          publication of a local directory. We will make arrangements with the incumbent carrier to  
21          include our customers in the directory published by the incumbent LEC. Because  
22          TELEXFREE's service territory will mirror those of the incumbent's, TELEXFREE has  
23          requested a waiver of the map filing requirement.

1 **Q. WILL TELEXFREE'S USE OF GAAP PROVIDE SUFFICIENT DETAIL FOR**  
2 **THE CALCULATION OF APPLICABLE TAXES?**

3 **A.** TELEXFREE will maintain sufficient detail to facilitate the calculation of applicable  
4 taxes including the preparation of the Alabama Gross Receipt Tax returns.

5 **Q. DID TELEXFREE REQUEST FLEXIBLE REGULATORY TREATMENT FOR**  
6 **ITS LOCAL EXCHANGE SERVICES?**

7 **A.** Yes, the Company will be a non-dominant, competitive provider of telecommunications  
8 services. We understand that the flexible regulatory treatment requires that we file  
9 maximum rates for our service offerings. Local tariff filings would be presumed valid  
10 once they are filed subject to the Commission's right to investigate the filing within thirty  
11 (30) days.

12 **Q. HOW WILL ALABAMA CONSUMERS BENEFIT FROM TELEXFREE**  
13 **SERVICES?**

14 **A.** Granting of TELEXFREE's Application will introduce a telecommunications service  
15 provider committed to providing high quality, innovative, and technologically advanced  
16 services that will further increase telecommunications services in Alabama.  
17 TELEXFREE's network will utilize state-of-the-art technology. TELEXFREE's service  
18 offerings will increase consumer choice, improve the quality and efficiency in  
19 telecommunications services and will likely lead to the reduction of consumer costs, as  
20 well as stimulate development of additional services by providing competitive incentives  
21 to other providers. Thus, granting TELEXFREE's application is in the public interest.

1    **Q.     HOW WILL TELEXFREE GUARD AGAINST SLAMMING?**

2    **A.**     As a new competitive entrant into the market, TELEXFREE has never had an incident of  
3           slamming or any other form of customer complaint. TELEXFREE will comply with  
4           Alabama law and any current and/or revised Federal Communications Commission's  
5           ("FCC's") regulations regarding how carriers may change a consumer's local exchange  
6           carrier or Primary Interchange Carrier ("PIC"), pursuant to 47 C.F.R. §64.110 *et seq.*. In  
7           general, primary local exchange carrier or PIC changes will require the customer's  
8           signature.

9    **Q.     DOES THIS CONCLUDE YOUR TESTIMONY?**

10   **A.**     Yes, it does. I reserve the right, however, to amend or modify my testimony, as  
11           appropriate.

12   **---END OF TESTIMONY---**

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