

NICK MAZANEC

Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI)

840 Helena Avenue

Helena, MT 59601

(406) 444-2040

Attorney for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF:)	CASE NO.	SEC-2014-106
)		
)		
TELEXFREE, INC. f/k/a COMMON)	NOTICE OF PROPOSED AGENCY	
CENTS COMMUNICATIONS, INC.;)	ACTION AND OPPORTUNITY FOR	
TELEXFREE, LLC; JAMES MERRILL;)	HEARING	
AND CARLOS WANZELER,)		
)		
)		
Respondents.)		
)		

Staff of the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq. (Act), is proposing to the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), that she take specific action against TelexFREE, Inc. f/k/a Common Cents Communications, Inc.; TelexFREE, LLC; James Merrell; and Carlos Wanzeler (collectively, Respondents) for violations of the Act. The Commissioner has authority to take such action under §§ 30-10-102, 30-10-107, 30-10-216, 30-10-302, 30-10-304, 30-10-305, and 30-10-309. Service of process is pursuant to § 30-10-107(8).

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true, and, therefore, justify and support the relief requested.

ALLEGATIONS OF FACT

1. TelexFREE, Inc. is a for-profit corporation organized under the laws of the Commonwealth of Massachusetts. Co-founder Carlos Wanzeler incorporated the entity on December 31, 2002, under the name Common Cents Communications, Inc. Wanzeler amended the name to TelexFREE, Inc. on February 15, 2012.

2. TelexFREE, LLC is a limited liability company organized under the laws of the State of Nevada. TelexFREE, LLC registered with the Montana Secretary of State on July 19, 2012.

3. Carlos Wanzeler is a co-founder of TelexFREE, Inc. and TelexFREE, LLC. He serves as the Chief Executive Officer of TelexFREE, Inc., and Manager of TelexFREE, LLC.

4. James Merrill is a co-founder of TelexFREE, LLC. He serves as President, Secretary, Director, and Registered Agent of TelexFREE, Inc; and Manager and Registered Agent for TelexFREE, LLC.

5. Respondents operate what they represent to be a multilevel distribution company (TelexFREE). According to Respondents, TelexFREE offers participants the opportunity to sell a Voice over Internet Protocol software product.

6. Until recently, the TelexFREE program also included a purportedly lucrative passive income component involving the purchase of "AdCentral" memberships. Respondents claimed this membership allowed participants to earn income by posting pre-drafted advertisements on pre-selected internet sites. Participants were also compensated upfront for recruiting other

AdCentral members, and could allegedly earn residual income through downline revenue sharing.

7. On July 22, 2013, Respondents filed a Form MLD-1 with the CSI in an attempt to register TelexFREE as a multilevel distribution company conducting business in Montana. The form Respondents submitted was obsolete and no longer accepted by the CSI.

8. According to Respondents' records, Respondents had already solicited and obtained Montana participants for several months prior to the July 22, 2013, MLD-1 filing.

9. On August 6, 2013, the CSI requested in writing that Respondents provide the following information in support of the registration form:

- a. A list of all TelexFREE Montana participants, including name, address, phone number, consideration paid to date, compensation received to date, initial date of participation, and name and address of the individual sponsoring each participant;
- b. Copies of all agreements, solicitation documentation, sales materials, marketing materials, brochures, any policy and procedure manual, any customer receipt, and any other information made available to prospective participants;
- c. A sample TelexFREE start-up kit; and
- d. A list, including the date, time, and location, of any recruitment, demonstration, or other meeting involving TelexFREE held in Montana since January 1, 2012.

10. On October 9, 2013, Respondents' attorney provided the following information:

- a. An incomplete spreadsheet of Montana TelexFREE participants. The spreadsheet did not include each participant's sponsor, telephone number, or compensation received to date;

- b. A link to the TelexFREE website, www.telexfree.com. The website purportedly contained all agreements, solicitation documentation, sales materials, marketing materials, brochures, any policy and procedure manual, any customer receipt, and any other information made available to and maintained for present and prospective TelexFREE participants;
- c. A statement that TelexFREE did not provide startup kits; and
- d. A statement that one Billings, Montana, participant was holding meetings regarding TelexFREE twice weekly.

11. The CSI subsequently learned that Respondents' spreadsheet not only failed to provide all requested fields of information, but also failed to accurately disclose all consideration paid to date by at least one participant.

12. In October of 2013, the CSI notified Respondents that they needed to file the correct Form MLD to register in Montana.

13. On October 24, 2013, Respondents' attorney notified the CSI that Respondents were in the process of gathering information to re-submit their application and, in the meantime, had ceased offering the TelexFREE program in Montana.

14. Despite Respondents' assertion that they no longer offered the TelexFREE program to Montanans, the CSI subsequently received information to the contrary. For example, one Montana participant alone made five TelexFREE purchases following the date Respondents claimed to have stopped offering the program in Montana.

15. On February 25, 2014, the CSI again requested supporting documentation from Respondents. Respondents' attorney told the CSI that Respondents would not complete the registration process, again stating that TelexFREE was not offering its program to Montanans.

16. To date, the CSI has identified 34 Montana TelexFREE participants who collectively paid over \$70,000 into the TelexFREE program. Because Respondents have failed to accurately disclose all Montana participant information, the CSI believes more Montana participants may exist.

17. On April 14, 2014, TelexFREE, Inc. and TelexFREE, LLC filed for Chapter 11 bankruptcy in the state of Nevada.

18. On April 15, 2014, the Securities and Exchange Commission filed a complaint in federal district court against Respondents and related parties. The complaint alleges that TelexFREE is an illegal pyramid scheme, that Respondents illegally issued securities to participants, and that Respondents otherwise engaged in securities violations.

19. On April 15, 2014, the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth filed an administrative complaint against TelexFREE, Inc. and TelexFREE, LLC. The complaint alleges that TelexFREE is an illegal pyramid and Ponzi scheme, that Respondents illegally issued securities to participants, and that Respondents otherwise engaged in securities violations.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to § 30-10-101 et seq.
2. A “person” is an individual, a corporation, a partnership, or an association. § 30-10-103(16).
3. Respondents are persons as defined under § 30-10-103(16).
4. It is unlawful for a person to transact business in Montana as a multilevel distribution company unless the person is registered or subject to an exemption. § 30-10-216(1).

5. The CSI may by order deny the registration of any multilevel distribution company if the Commissioner finds that the order is in the public interest and that the registrant has filed a registration application that is incomplete in any material respect or contained a materially false or misleading statement. § 30-10-216(6)(a).

6. It is unlawful for any person to knowingly make or cause to be made, in any document filed with the CSI, any materially false or misleading statement. § 30-10-302.

7. Respondents violated § 30-10-216(1) when they offered and sold the TelexFREE program to Montana participants while not being registered with the CSI.

8. Respondents violated § 30-10-216(6)(a) when they submitted a supplemental registration spreadsheet that did not include all requested fields of information, and that failed to accurately disclose all consideration paid to date by Montana participants.

9. Respondents violated § 30-10-302 when they submitted a supplemental registration information spreadsheet that failed to accurately disclose all consideration paid to date by Montana participants.

10. Respondents violated § 30-10-302 when they represented in writing to the CSI that Respondents had ceased operations in Montana when, in fact, they continued offering TelexFREE to Montana participants.

RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

1. Pursuant to § 30-10-305, imposition of a fine not to exceed \$5,000 for each identifiable violation of the Act.

2. Pursuant to § 30-10-305, an order directing Respondents to cease and desist from offering, promoting, or operating the TelexFREE program in Montana or using Montana participants.

3. Pursuant to § 30-10-309, restitution for all financial losses incurred by investors in Respondents' enterprises.

4. Any other relief deemed just and proper.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, and to present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, § 2-4-601 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and the nature of the hearing.

If you wish to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Nick Mazanec, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Should you request a hearing on the matters raised in this Notice, a hearing must be held within a reasonable period of time unless postponed by mutual consent of the parties, pursuant to § 30-10-305.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.* (1973), 164 Mont. 139, 520 P.2d 103, and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Nick Mazanec, attorney for the CSI, at 840 Helena Avenue, Helena, MT, 59601, 406-444-2040. If you retain counsel, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 23rd day of April, 2014.



NICK MAZANEC
Attorney for the CSI