

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
CONSUMER FRAUDS AND PROTECTION BUREAU**

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In the Matter of

DOLPHIN CAPITAL CORP.

Respondent.
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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW §63(15)**

Pursuant to the provisions of Article 22-A of the General Business Law ("GBL") and Section 63 of the Executive Law ("EL"), ELIOT SPITZER, Attorney General of the State of New York, caused an investigation to be made into the business practices of NORVERGENCE, Inc. and NORVERGENCE CAPITAL LLC, including the assignment and procurement of certain Equipment Rental Agreements to and for several leasing companies, including respondent DOLPHIN CAPITAL CORP. Based upon his investigation, the Attorney General has made the following findings:

1. NorVergence, Inc. is a New Jersey corporation with its principal place of business located at 550 Broad Street, Newark, New Jersey 07102. Prior to the filing of an involuntary bankruptcy proceeding on June 30, 2004 (Docket 04-32079-RG), NorVergence, Inc. was engaged in the business of offering for sale and reselling telecommunications service, together with the provision of certain telecommunications equipment, to small businesses and not-for-profit organizations in the State of New York.

2. NorVergence Capital LLC is a limited liability corporation and a subsidiary of NorVergence, Inc., with offices at 550 Broad Street, Newark, New Jersey 07102. NorVergence

Capital LLC is a debtor, along with NorVergence, Inc. in the bankruptcy proceeding, Docket 04-32079-RG. Prior to the bankruptcy, NorVergence Capital LLC, together with NorVergence, Inc., was engaged in the business of offering for sale and reselling telecommunications service, together with the provision of certain telecommunications equipment, to small businesses and not-for-profit organizations in the State of New York. NorVergence, Inc. and NorVergence Capital LLC are hereinafter collectively referred to as "NorVergence."

3. Respondent DOLPHIN CAPITAL CORP.(hereinafter "Dolphin Capital") is a corporation organized and existing under the laws of the State of Massachusetts, with its principal place of business located at 1720A Crete St., P.O. Box 56, Moberly, Missouri 65270. Dolphin Capital is one of the leasing companies which held Equipment Rental Agreements with NorVergence customers in the State of New York and elsewhere.

NorVergence's Fraudulent Business Scheme

4. Since at least 2002 and continuing until shortly before the NorVergence bankruptcy filing in June 2004, NorVergence was in the business of offering to sell and reselling telecommunications services as integrated long-term packages, including local and long distance telephone, cellular and high speed Internet access. NorVergence marketed its services principally to small businesses and not-for-profit organizations with high credit ratings, and which, for the most part, did not have in-house counsel or technology personnel. NorVergence's salespeople personally visited these entities, offering to provide telecommunications services at greatly reduced prices compared to the prices charged by the customers' then current service providers.

5. NorVergence represented that customers would receive over a five year period, dramatic savings of 20-60% on telecommunications services and unlimited free minutes.

NorVergence claimed to be offering these services through its purported alliances with Nortel Networks and Qwest Communications. NorVergence further represented that its highly beneficial service offering was made possible by a purportedly proprietary, technologically innovative, and carrier neutral "black box" called, the "Matrix Solution," that would be installed on the customer's premises. In fact, the "Matrix Solution" did not eliminate per minute charges or make cost savings possible.

6. The cost savings in NorVergence's proposal had nothing to do with the "black box" or other innovative technology touted by NorVergence. Rather, NorVergence constructed its cost savings proposals simply by applying a discount of 20-30% to the potential customer's current cost for telecommunications services. In fact, NorVergence chose this discounted price without regard to the actual cost of providing the services (which was generally much higher).

7. The promised savings were set forth in the form of a "Cost Savings Proposal," and were represented as a monthly cost for an integrated service package, including the cost of telecommunications services and rental of related hardware.

8. Through deceptive and high pressure sales tactics and outright trickery, NorVergence salespeople signed customers up, putting the bulk (i.e., at least 80%) of the service agreement into an equipment finance lease, designated "Equipment Rental Agreement," purportedly for the Matrix box. The rental payments due on the Equipment Rental Agreements varied from approximately \$200 to \$5,700 per month (or \$12,000 to over \$340,000 over a 60 month lease), while the actual price of the Matrix was not greater than \$1,500. Customers were not provided the option to purchase the box.

9. Potential customers were told falsely by the NorVergence salespeople that they

needed to "qualify" for NorVergence's telecommunications services, which were in high demand and available only to a limited number of applicants. The NorVergence salespeople further told the customers that the forms were non-binding and no-risk, and merely served to reserve the circuitry and hardware, while the customers' "qualifications" were being investigated.

10. The Equipment Rental Agreements that were included in the stack of supposedly non-binding forms were, in actuality, noncancellable agreements. Contrary to the customers' understanding of the transaction as presented by NorVergence's salespeople, the Agreements, under these circumstances, were fraudulently characterized as UCC Article 2A finance leases for the Matrix box. As such, these Agreements were designed to obtain the special protections applicable to equipment finance leases.

11. Under the circumstances, the Equipment Rental Agreements are unconscionable in that they contain terms that are unreasonably and unfairly harsh and one-sided in favor of NorVergence and the leasing companies. In fact, included in the fine print of the Equipment Rental Agreements are provisions that purported to:

- a. remove any obligations by assignees of NorVergence to the customers;
- b. in many cases require that all legal actions relating to the agreement be brought in a forum distant from the customer's place of business, and in other cases, in a forum where the leasing company that would take an assignment was located, which was unknown at the time the customer signed the contract (the latter being known as "floating jurisdiction clauses");
- c. characterize the vast majority of the total fees agreed to by the customer as payments for the Matrix box which grossly exceeded its actual price and value;
- d. characterize the Equipment Rental Agreement as a finance lease under Article 2A

of the Uniform Commercial Code in a fraudulent and unconscionable attempt to gain the protections of equipment finance leases. In fact, the Agreement was for an integrated telecommunications service offering, although the service component was not documented in the Agreements. Moreover, the equipment purportedly financed under the Agreement was not first offered for sale to the customers or offered in a buy-out to the customer at the end of the Agreement's five-year term;

e. suggest that the customers were given information about the comparative costs of purchasing and renting the Matrix box that enabled them to make a reasoned decision to rent rather than purchase (i.e., "You understand that the Equipment may be purchased for cash or it may be rented."), when, in fact, the customers had no opportunity to purchase the Matrix, and were not provided any information about the costs of the box; and

f. waive all the customer's defenses to demands for payment, even if the promised services were not provided ("hell or high water clauses").

12. Soon after the customers signed the Equipment Rental Agreements, NorVergence assigned the Agreements to one of the leasing companies. In some cases, the NorVergence salesperson had the customer sign an Equipment Rental Agreement directly with the leasing company as "owner."

13. The leasing companies paid NorVergence the full five year Equipment Rental Agreement value less a "lease factor" such that NorVergence received approximately 75-85% of the value of the Equipment Rental Agreements up front.

14. The NorVergence business plan was a "Ponzi" scheme. NorVergence deceived small, unsophisticated businesses into signing sham equipment finance leases with

unconscionable terms, and obtained up front payments from the assignment or procurement of those sham leases. NorVergence then used these payments to purchase the telecommunications services it resold to its customers. Yet even with those monies, the NorVergence business plan was doomed to fail before NorVergence could fulfill the five year term it promised to provide service to the customers because (a) NorVergence was selling unlimited local, long distance, high speed Internet and wireless service for a fixed monthly price, while it was actually liable to Qwest, T-Mobile, and other carriers on a per minute toll basis; (b) the cost of providing the unlimited service NorVergence was selling far exceeded the small payments that customers were required to make directly to NorVergence for their telecommunications service, together with the monies NorVergence received from the leasing companies; and (c) NorVergence had promised the customers long-term (i.e., five year) service, but had no long-term contracts in place to provide that service.

15. Less than three years after NorVergence put its scheme into effect, NorVergence failed to pay its obligations to its carriers and suppliers, triggering the filing of an involuntary Chapter 11 bankruptcy proceeding against it. Service to the customers was turned off on or about July 15, 2004.

16. Although NorVergence had represented to its customers that its Matrix box could be used with any carrier of their choice, after the termination of telecommunications service, the customers could not find carriers who would use the Matrix box to provide service to them. In fact, the customers were required to pay significantly more for their telecommunications services despite their having the Matrix box which NorVergence had touted as a cost savings solution.

17. Even after the termination of telecommunications service to the customers, and

while the customers were required to pay higher costs for alternative telecommunications services provided by other carriers which had no use for the Matrix and Soho boxes, the leasing companies, including Dolphin Capital, improperly continued to enforce the Equipment Rental Agreements as against the customers.

18. The practices which NorVergence engaged in as set forth in paragraphs 4 through 15 are fraudulent, deceptive and misleading under Article 22-A of the General Business Law and under Executive Law § 63(12), and the Equipment Rental Agreements NorVergence entered into with its customers are unconscionable under Executive Law § 63(12) and Uniform Commercial Code ("UCC") 2-302. Accordingly, the Equipment Rental Agreements should be rescinded as of the date that telecommunications services to NorVergence's customers was terminated.

19. It now appears that respondent is willing to enter into this Assurance of Discontinuance ("Assurance") for purposes of settlement only, and does not admit to, and expressly denies, any violation of law, factual findings, and legal conclusions contained herein; and the Attorney General accepts this Assurance pursuant to Executive Law § 63(15) in lieu of commencing a statutory or other proceeding against respondent pursuant to Article 22-A of the General Business Law and Section 63(12) of the Executive Law.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by and between DOLPHIN CAPITAL CORP. and the Attorney General that:

1. This Assurance of Discontinuance shall be binding upon and extend to DOLPHIN CAPITAL CORP.(hereinafter "Dolphin Capital"), its principals, officers, directors, agents

(including, but not limited to third party collection agents), employees, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any persons who have authority to control or who, in fact, control and direct its business. Dolphin Capital is entering into this Assurance for purposes of settlement only.

2. As to each customer listed on the chart annexed hereto as Exhibit A which elects to participate in the settlement terms agreed to herein and any participating guarantor for such customer (hereinafter collectively referred to as a "participating New York customer"), Dolphin Capital agrees to the following:

a. forgive 87.5% of the remaining principal balance due on the participating New York customer's obligations to Dolphin Capital under the Dolphin Capital Equipment Rental Agreements as of July 15, 2004 as set forth on Exhibit A;

b. forgive any late fees or penalties assessed on the participating New York customer's accounts on or after July 15, 2004;

c. forgive any insurance charges assessed on the participating New York customer's accounts on or after July 15, 2004;

d. fully credit the participating New York customer for any payments it has made to Dolphin Capital on or after July 15, 2004, and issue refunds to participating New York customers whose payments have exceeded the sum of (i) 12.5% of the remaining principal balance and (ii) any unpaid late fees, penalties and insurance charges assessed prior to July 15, 2004; and

e. within thirty (30) calendar days of the customer's acceptance of the proposed settlement, withdraw any and all adverse credit reports filed with any company or agency as to customers who stopped making payments on their Equipment Rental Agreements on or after July

15, 2004, by notifying in writing each of the companies and agencies to whom they furnished information that the reports are to be withdrawn. Respondent shall furnish customers with copies of such letters by mailing the copies to such customers' last known addresses.

f. within thirty (30) calendar days of the customer's acceptance of the proposed settlement, as to any customers based upon whose Equipment Rental Agreements Dolphin Capital has filed a UCC 1 Financing Statement, Dolphin Capital must file a Financing Statement Amendment (Form UCC 3) terminating all security interests against such customers and in such Equipment Rental Agreements. Respondent shall furnish customers with copies of the UCC 3 filing by mailing the copies to such customers' last known addresses.

g. all participating New York customers, whose remaining principal balance is a positive number, after all payments are credited as set forth in paragraph a. above, and who pay the settlement balance in full within thirty (30) calendar days of their election to participate in Dolphin Capital's settlement offer, shall be entitled to an additional 2.5% forgiveness on their outstanding principal balance as of July 15, 2004, as set forth in Exhibit A.

3. Dolphin Capital agrees to accept, in full satisfaction of any participating New York customer's obligations to Dolphin Capital under the Dolphin Capital Equipment Rental Agreements, the amounts provided for in paragraph 2 of this Assurance (hereinafter "Settlement Balance") to be paid in accordance with paragraphs a. or b. below:

a. If the New York customer's Settlement Balance is equal to \$5,000 or less, it shall either make a lump sum payment of the entire Settlement Balance or pay off the Settlement Balance in up to twelve (12) monthly installment payments, at the customer's election, with the first installment payment to be due on a date at least thirty (30) days after the date of mailing of

an invoice by Dolphin Capital following the customer's or guarantor's acceptance of the Settlement Program

b. If the New York customer's Settlement Balance is greater than \$5,000, it shall either make a lump sum payment of the entire Settlement Balance or pay off the Settlement Balance in up to twenty-four (24) monthly installment payments, at the customer's election, with the first installment payment to be due on a date at least thirty days after the date of mailing of an invoice by Dolphin Capital following the customer's or guarantor's acceptance of the Settlement Program

c. Notwithstanding the provisions of paragraphs a. and b. above, nothing in this Assurance will be construed to preclude Dolphin Capital in its sole discretion from entering into mutually acceptable alternative payment schedules with New York customers.

4. Dolphin Capital represents that it has not assigned any Equipment Rental Agreements of former NorVergence customers or the rights thereto to other leasing companies.

5. Within twenty (20) calendar days of the Effective Date of this Assurance, Dolphin Capital shall mail a letter in the form annexed hereto as Exhibit B to each New York customer and any guarantor for such customer listed on Exhibit A. Such letter shall inform the New York customers and guarantors of the opportunity to participate in the settlement described herein, of the Settlement Balance due from that customer and/or guarantor, and of the customer's and/or guarantor's options for paying the Settlement Balance if they elect to participate in the settlement. If the customer and/or guarantor is entitled to a refund under the Settlement Program a letter in the form annexed hereto as Exhibit C will be mailed.

6. Each New York customer and/or guarantor who elects to participate in the

settlement described herein and pay the Settlement Balance shall complete, execute and deliver to Dolphin Capital within sixty (60) days of the mailing of the letter referenced in paragraph 5 of this Assurance a document entitled "Settlement and Mutual Releases," in the form annexed hereto as Exhibit D, which shall be included with the letter to New York customers, whereby the participating New York customer shall (a) elect and agree to pay the Settlement Balance in accordance with one of the payment options described in paragraph 3; and (b) release Dolphin Capital of any and all claims arising out of the customer's Dolphin Capital Equipment Rental Agreement. If the customer and/or guarantor is entitled to a refund under the Settlement Program a "Settlement and Mutual Releases" in the form annexed hereto as Exhibit E will be mailed. Any New York customer and/or guarantor who expressly declines to participate in the Settlement Program, who initiates or continues any legal action against Dolphin Capital that is inconsistent with the Release required by the Settlement Program, or who fails to respond to the Settlement Program within ninety (90) days of the mailing of the letter referenced in paragraph 5 of this Assurance shall be deemed to have declined to participate in the Settlement Program (hereinafter referred to as a "non-participating New York customer").

7. As to any participating New York customer that executes the Settlement and Mutual Releases described in paragraph 6 above, Dolphin Capital agrees completely to settle and release any and all claims that Dolphin Capital has or may have had prior to the Effective Date of this Assurance against the New York customer and all of its subsidiaries, parents, affiliates, predecessors, successors, assigns, officers, directors, employees, shareholders, agents and guarantors for any and all damages, restitution, equitable relief, costs, attorneys' fees and penalties related to, based upon or arising out of the participating New York customer's

Equipment Rental Agreement. Dolphin Capital further agrees that it will not institute any civil action against the participating New York customer for breach of the Equipment Rental Agreement or otherwise seek to enforce the Equipment Rental Agreement against the participating New York customer, provided that the customer satisfies its obligations under the terms of the Settlement and Mutual Releases described in paragraph 6 herein.

8. As to any participating New York customer which thereafter defaults under the Settlement and Mutual Releases described in paragraph 6 above, Dolphin Capital shall not institute legal proceedings in any court outside the State of New York, unless the customer takes the position that it is subject to jurisdiction only in a forum other than the State of New York.

9. Dolphin Capital shall notify all current and future employees, agents and/or independent contractors involved in invoicing and servicing Dolphin Capital's portfolio of Equipment Rental Agreements with NorVergence customers, of this Assurance of Discontinuance and shall make it available for their review, by posting it on its company website and employee database. All such employees, agents and independent contractors shall be bound by the terms of this Assurance of Discontinuance.

AFFIDAVITS OF COMPLIANCE

10. Within sixty (60) days of the Effective Date of this Assurance, Dolphin Capital shall submit an affidavit to the Attorney General, subscribed to by an officer of the corporation, attesting that it sent the letters to the New York customers and guarantors listed in Exhibit A in accordance with the terms of paragraph 5 of this Assurance, and providing an accounting of the customers and guarantors who elected to participate in the settlement, including the customers'

Settlement Balances and payment schedules elected or agreed upon. Within one year thereafter, Dolphin Capital shall submit to the Attorney General an affidavit setting forth its compliance with the provisions of this Assurance, together with an accounting of the New York customers and guarantors who elected to participate in the Settlement Program, including the terms of their payment schedules and payments made. Subsequently, on or after the second anniversary of the date of this Assurance, the Attorney General may request in writing a further updated affidavit setting forth Dolphin Capital's compliance with the provisions of this Assurance and an updated accounting of the New York customers and guarantors who elected to participate in the Settlement Program, including the terms of their payment schedules and payments made, and Dolphin Capital shall submit such an affidavit within forty-five (45) calendar days of any such request.

MISCELLANEOUS

11. Nothing contained herein shall be construed as relieving Dolphin Capital of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed permission to engage in any act or practice prohibited by such law, regulation or rule.

12. The acceptance of this Assurance by the Attorney General shall not be deemed approval by the Attorney General of any of Dolphin Capital's business practices, and Dolphin Capital shall make no representation to the contrary.

13. Unless otherwise provided, all notices as required by this Assurance shall be provided as follows:

To the Attorney General:

**Shahla F. Ali, Assistant Attorney General
New York State Attorney General's Office
Bureau of Consumer Frauds & Protection
120 Broadway, 3rd Floor
New York, New York 10271
tel. (212) 416-6698
fax. (212) 416-6003**

To DOLPHIN CAPITAL CORP.:

**Bradley Shron
General Counsel
DOLPHIN CAPITAL CORP.
1720A Crete Street
P.O. Box 56
Moberly, Missouri 65270**

RIGHTS OF CUSTOMERS

14. Nothing in this Assurance shall be construed to prevent any customer from pursuing any right or remedy at law which any customer may have against respondent, except to the extent that a customer executes a Settlement and Mutual Releases pursuant to this Assurance.

EFFECTIVE DATE

15. This Assurance shall be effective on the date that it is signed by an authorized representative of the Attorney General's Office ("Effective Date").

VIOLATION AS PRIMA FACIE PROOF OF LAW VIOLATION

16. If Respondent violates this Assurance, such violation shall constitute prima facie proof of violation of the applicable laws in any civil action or proceeding thereafter commenced

by the Attorney General.

ENTIRE ASSURANCE OF DISCONTINUANCE

17. The terms stated herein constitute the entire terms of this Assurance.

WHEREFORE, the following signatures are affixed hereto this ___ day of May, 2006.

DOLPHIN CAPITAL CORP.

By: _____



ELIOT SPITZER, ATTORNEY
GENERAL OF THE STATE
OF NEW YORK

By: TERRYL BROWN CLEMONS
ASSISTANT DEPUTY ATTORNEY
GENERAL
DIVISION OF PUBLIC ADVOCACY

[Exhibit A - Chart]

[Exhibit B]- Notice of Settlement Offer

**NOTICE TO FORMER NEW YORK NORVERGENCE CUSTOMERS WHO HAVE
EQUIPMENT RENTAL AGREEMENTS WITH DOLPHIN CAPITAL CORP. AND TO
ANY GUARANTORS**

[Date]

Dear [name of New York Lessee and/or Guarantor]:

You are receiving this notice because the records of DOLPHIN CAPITAL CORP.(hereinafter "Dolphin Capital ") reflect that [Lessee] entered into an Equipment Rental Agreement (referred to herein as the "Rental Agreement") with Dolphin Capital, either directly or by assignment from NorVergence, Inc. ("NorVergence") and other third parties in connection with its prior service from NorVergence, Inc. Pursuant to an agreement with the Attorney General of the State of New York (the "Attorney General"), Dolphin Capital is offering you the opportunity to participate in a Settlement Program in which you may pay off any outstanding balance on the Rental Agreement at a substantial discount and settle any and all disputes between you and Dolphin Capital arising from the Rental Agreement.

The Settlement Program Offered By Dolphin Capital

If you elect to participate in this Settlement Program, Dolphin Capital will (a) forgive 87.5% of the remaining principal balance due under [Lessee's] Rental Agreement as of July 15, 2004; (b) forgive any late fees or penalties assessed on [Lessee's] account on or after July 15, 2004; (c) forgive any insurance charges assessed on [Lessee's] account on or after July 15, 2004

and (d) fully credit you for any payments that you have made to Dolphin Capital on or after July 15, 2004. In the event [Lessee's] payments have exceeded the sum of (I) 12.5% of the remaining balance due as of July 15, 2004 and (ii) any unpaid late fees, penalties and insurance charges assessed prior to July 15, 2004, you would receive a refund of the amount in excess of 12.5% if you elect to participate in the settlement.

(a) regardless of the amount of your Settlement Balance, if you pay the entire Settlement Balance within thirty (30) calendar days of the date you elect to accept this offer, you will receive an additional 2.5% forgiveness of the remaining principal balance. [For example you are entitled to pay off the entire Settlement Balance, within thirty (30) calendar days of your election to participate in this offer, in an amount reflecting a total forgiveness of 90% of the outstanding principal balance].

In exchange for the benefits provided above, you must agree to release Dolphin Capital from any claims concerning your Rental Agreement, as described more fully below. You must also agree to pay the "Settlement Balance," which is the amount equal to 12.5% of the outstanding principal balance under the Rental Agreement as of July 15, 2004, or 10% if you pay the entire Settlement Balance within 30 calendar days of the date you elect to accept this offer, plus any unpaid late fees, penalties and insurance charges assessed prior to July 15, 2004, minus any payments made on Lessee's account on or after July 15, 2004. You may elect to pay the Settlement Balance in one of the following ways:

(b) If your Settlement Balance is equal to \$5,000 or less, you may either (I) make a lump sum payment of the entire Settlement Balance, or (ii) pay off the Settlement Balance in up to twelve (12) equal monthly installment payments, with the first installment payment to be due on

_____, 2006. Dolphin Capital will mail you an invoice for the first installment payment, no later than thirty (30) days prior to the date such payment is due.

(c) If your Settlement Balance is greater than \$5,000, you may either (i) make a lump sum payment of the entire Settlement Balance, or (ii) pay off the Settlement Balance in up to twenty-four (24) equal monthly installment payments, with the first installment payment due _____, 2006. Dolphin Capital will mail you a bill for the first installment payment, no later than thirty (30) days prior to the date such payment is due.

If you have any questions about these payment options, please call Dolphin Capital at [dedicated telephone number].

You will also have the right at any time to prepay the remainder of the Settlement Balance without penalty.

To inform Dolphin Capital of your acceptance of this Settlement Program, you must complete, sign and return to Dolphin Capital, by [date 60 days from the date of the mailing of this notice] the enclosed document entitled "Settlement and Mutual Releases." In that document, you must (a) elect and agree to pay the Settlement Balance according to one of the two payment options described above (either lump-sum or installment); and (b) fully release Dolphin Capital from, and agree not to sue Dolphin Capital for, any and all claims (including any claims as a member or representative of a putative class action) that you have or may have had against Dolphin Capital based upon [Lessee's] Rental Agreement. If you are currently involved in any litigation with Dolphin Capital over [Lessee's] Rental Agreement and you wish to participate in the Settlement Program, you and Dolphin Capital will mutually dismiss that action with prejudice. If you are involved in a multiple party action with Dolphin Capital, you and Dolphin

Capital will mutually cooperate to achieve a dismissal of your claims against Dolphin Capital and Dolphin Capital's claims against you in that action. Dolphin Capital, in turn, will fully release you from, and agree not to sue you for or to dismiss you from, any and all claims that it has or may have had against you based upon [Lessee's] Rental Agreement. Both you and Dolphin Capital will retain all rights under law to enforce the "Settlement and Mutual Releases."

IMPORTANT: If you elect to participate in the Settlement Program, but thereafter fail to pay Dolphin Capital the Settlement Balance as promised in the Settlement and Mutual Releases, Dolphin Capital may seek to enforce the Settlement and Mutual Releases by use of any of the remedies available to it under the law.

Dolphin Capital has agreed to this Settlement Program for the purpose of avoiding the expense and inconvenience of litigation and it is not an admission on the part of Dolphin Capital that it engaged in any form of unlawful conduct or business practices. Indeed, Dolphin Capital expressly denies that it engaged in any such unlawful conduct or business practices and expressly denies that it is liable to any person or entity in connection with the rental of NorVergence telecommunications equipment.

If You Decide Not To Participate In The Settlement Program:

You are not obligated to participate in the Settlement Program agreed to by Dolphin Capital and the Attorney General, and you have the right to consult with an attorney of your choosing before you decide whether to participate in the Settlement Program. Nothing in the settlement between Dolphin Capital and the Attorney General prevents you from pursuing any right or remedy at law which you may have against Dolphin Capital, except to the extent that you elect to participate in this settlement and execute a Release. If you elect not to participate in the

program, or if you enroll in the Settlement Program but change your mind and notify Dolphin Capital before making your first payment that you wish to terminate your participation in the Settlement Program, then Dolphin Capital may seek to enforce the Rental Agreement in full and may make use of any of the remedies available to it under the law. Dolphin Capital has agreed, however, that it will not institute any legal proceedings against you in any court outside the State of New York, unless you take the position that you are subject to jurisdiction only in a forum other than the State of New York.

What You Would Be Agreeing To Pay If You Enroll In The Settlement Program:

Dolphin Capital has the following information about the Rental Agreement and what the Settlement Program would require you to pay:

- 1. **Principal balance remaining as of July 15, 2004:** _____
- 2. **Line 1 reduced by 87.5%:.....** _____
- 3. **Plus unpaid late fees, penalties and insurance charges assessed prior to July 15, 2004.....** _____
- 4. **Credit for payments received on or after July 15, 2004:.....** _____
- 5. **Total remaining Settlement Balance to be paid:** _____

Monthly payment option: _____ per month for _____ months

- 6. **Optional 2.5% discount if fully paid within thirty (30) calendar days:.....** _____
- 7. **Reduced Settlement Balance if paid within thirty (30) calendar days.....** _____

Please call [phone number] if you have any questions regarding this Settlement Program or your Rental Agreement account.

Very truly yours,

Dolphin Capital Corp.

[Exhibit C]-Notice of Settlement Offer For Customers Entitled to Refund

**NOTICE TO FORMER NEW YORK NORVERGENCE CUSTOMERS WHO HAVE
EQUIPMENT RENTAL AGREEMENTS WITH DOLPHIN CAPITAL CORP. AND TO
ANY GUARANTORS**

[Date]

Dear [name of New York Lessee and/or Guarantor]:

You are receiving this notice because the records of DOLPHIN CAPITAL CORP. (hereinafter "Dolphin Capital") reflect that [Lessee] entered into an Equipment Rental Agreement (referred to herein as the "Rental Agreement") with Dolphin Capital, either directly or by assignment from NorVergence, Inc. ("NorVergence") and other third parties in connection with its prior service from NorVergence, Inc. Pursuant to an agreement with the Attorney General of the State of New York (the "Attorney General"), Dolphin Capital is offering you the opportunity to participate in a Settlement Program in which you may resolve any outstanding balance on the Rental Agreement at a substantial discount and settle any and all disputes between you and Dolphin Capital arising from the Rental Agreement.

The Settlement Program Offered by Dolphin Capital:

If you elect to participate in this Settlement Program, Dolphin Capital will (a) forgive 87.5% of the remaining principal balance due under [Lessee's] account on or after July 15, 2004; (b) forgive any late fees or penalties assessed on [Lessee's] account on or after July 15, 2004; (c) forgive any insurance charges assessed on [Lessee's] account on or after July 15, 2004 and (d)

fully credit you for any payments that you have made to Dolphin Capital on or after July 15, 2004. In the event [Lessee's] payments have exceeded the sum of (i) 12.5% of the remaining balance due as of July 15, 2004 and (ii) any unpaid late fees, penalties and insurance charges assessed prior to July 15, 2004, you would receive a refund of the amount in excess of 12.5% if you elect to participate in the settlement.

In exchange for the benefits provided above, you must agree to release Dolphin Capital from any claims concerning your Rental Agreement, as described more fully below. You must also agree to resolve the "Settlement Balance," which is the amount equal to 12.5% of the outstanding principal balance under the Rental Agreement as of July 15, 2004, plus any unpaid late fees, penalties and insurance charges assessed prior to July 15, 2004, minus any payments made on Lessee's account on or after July 15, 2004. If you elect to resolve the Settlement Balance you will be entitled to a refund check which Dolphin Capital will mail to you on or before [date 30 days from mailing of acceptance of Settlement Program].

To inform Dolphin Capital of your acceptance of this Settlement Program, you must complete, sign and return to Dolphin Capital, by [date 60 days from the date of the mailing of this notice] the enclosed document entitled "Settlement and Mutual Releases." In that document, you must (a) elect and agree to resolve the Settlement Balance; and (b) fully release Dolphin Capital from, and agree not to sue Dolphin Capital for any and all claims (including any claims as a member or representative of a putative class action) that you have or may have had against Dolphin Capital based upon [Lessee's] Rental Agreement. If you are currently involved in any litigation with Dolphin Capital over [Lessee's] Rental Agreement and you wish to participate in the Settlement Program, you and Dolphin Capital will mutually dismiss that action with

prejudice. Dolphin Capital, in turn, will fully release you from, and agree not to sue you for or to dismiss you from, any and all claims that it has or may have had against you based upon [Lessee's] Rental Agreement. Both you and Dolphin Capital will retain all rights under law to enforce the "Settlement and Mutual Releases."

Dolphin Capital has agreed to this Settlement Program for the purpose of avoiding the expense and inconvenience of litigation and it is not an admission on the part of Dolphin Capital that it engaged in any form of unlawful conduct or business practices. Indeed, Dolphin Capital expressly denies that it engaged in any such unlawful conduct or business practices and expressly denies that it is liable to any person or entity in connection with the rental of NorVergence telecommunications equipment.

If You Decide Not to Participate In The Settlement Program:

You are not obligated to participate in the Settlement Program agreed to by Dolphin Capital and the Attorney General, and you have the right to consult with an attorney of your choosing before you decide whether to participate in the Settlement Program. Nothing in the settlement between Dolphin Capital and the Attorney General prevents you from pursuing any right or remedy at law which you may have against Dolphin Capital, except to the extent that you elect to participate in this settlement and execute a Release. If you elect not to participate in the program, or if you enroll in the Settlement Program but change your mind and notify Dolphin Capital before resolving the Settlement Balance that you wish to terminate your participation in the Settlement Program, then Dolphin Capital may seek to enforce the Rental Agreement in full and may make use of any of the remedies available to it under the law. Dolphin Capital has agreed, however, that it will not institute any legal proceedings against you in any court outside

the State of New York, unless you take the position that you are subject to jurisdiction only in a forum other than the State of New York.

What You Would Be Agreeing To If You Enroll In The Settlement Program:

Dolphin Capital has the following information about the Rental Agreement and what you would be refunded under the Settlement Program:

- | | | |
|----|---|-----------|
| 1. | Principal balance remaining as of July 15, 2004:
..... | _____ |
| 2. | Line 1 reduced by 87.5%..... | _____ |
| 3. | Plus unpaid late fees, penalties and insurance
charges assessed prior to July 15, 2004 | _____ |
| 4. | Credit for payments received on or after July
15, 2004..... | _____ |
| 5. | Total remaining Settlement Balance : | (_____) |

You would be entitled to a refund of \$ _____ payable on or before
[date- 30 days form mailing of acceptance of Settlement Program].

Please call [phone number] if you have any questions regarding this Settlement Program
or your Rental Agreement account.

Very truly yours,

DOLPHIN CAPITAL CORP.

[Exhibit D]

SETTLEMENT AND MUTUAL RELEASES

between

[NEW YORK LESSEE AND GUARANTOR] and DOLPHIN CAPITAL CORP.

I, _____, on behalf of the entity named above (the "Lessee") and/or as personal guarantor (together, the "Lessee and/or Guarantor"), elect to take advantage of the Settlement Program agreed to by the Attorney General of the State of New York and DOLPHIN CAPITAL CORP. (hereinafter "Dolphin Capital") to pay off Lessee's Rental Agreement with Dolphin Capital (the "Rental Agreement") at a substantial discount and to settle any and all disputes between Lessee and/or Guarantor and Dolphin Capital arising from the Rental Agreement. With this Settlement and Mutual Releases I am: (1) enrolling in the Settlement Program and choosing a repayment option; and (2) entering into a mutual release of claims with Dolphin Capital and related parties.

I understand that Dolphin Capital and the Attorney General of the State of New York have agreed to the terms of this Settlement Program for the purpose of avoiding the expense and inconvenience of litigation, and it is not an admission on the part of Dolphin Capital that it engaged in any form of unlawful conduct or business practices, and Dolphin Capital expressly denies that it engaged in any such unlawful conduct or business practices, and expressly denies that it is liable to any person or entity in connection with the Rental Agreement.

1. Enrolling In The Settlement Program

I understand that, upon Lessee's and/or Guarantor's acceptance of this Settlement

Program, Dolphin Capital will:

- (a) forgive 87.5% of the outstanding principal balance under the Rental Agreement as of July 15, 2004;
- (b) forgive any late fees or penalties assessed on the Lessee's account on or after July 15, 2004;
- (c) forgive any property insurance charges assessed on the Lessee's account on or after July 15, 2004;
- (d) fully credit any payments Lessee and/or Guarantor has made to Dolphin Capital on or after July 15, 2004; and
- (e) withdraw any and all adverse credit reports Dolphin Capital filed as a result of not receiving payment on the Rental Agreement on or after July 15, 2004.

I also understand that Dolphin Capital's records reflect the following information about

Lessee's Rental Agreement account:

- 1. **Principal balance remaining as of July 15, 2004:**..... _____
- 2. **Line 1 reduced by 87.5% [+2.5% if elect to pay within 30 days]:**..... _____
- 3. **Plus any unpaid late fees, penalties or insurance charges assessed prior to July 15, 2004:**..... _____
- 4. **Credit for payments received on or after July 15, 2004:**..... _____
- 5. **Settlement Balance:**..... _____

Lessee and/or Guarantor agree to pay the amount on Line 5 by the method checked here

and request that Dolphin Capital invoice Lessee and/or Guarantor accordingly:

_____ Pay the Settlement Balance on Line 5 in a lump sum by the date specified in the Dolphin Capital invoice, which payment date shall be at least 30 days after the date of mailing of such invoice.

_____ Pay the Settlement Balance on Line 5 in [12 or 24] equal monthly installments of [payment amount], beginning on the date specified in the first Dolphin Capital invoice, which payment date shall be at least 30 days after the date of mailing of such invoice. I understand that Lessee and/or Guarantor may prepay the remainder of the Settlement Balance at any time without penalty.

I understand that if Lessee and/or Guarantor fail to pay the Settlement Balance as promised, Dolphin Capital may seek to enforce the Settlement and Mutual Releases in full and make use of any of the remedies available to it under the law. However, Dolphin Capital will not file suit against Lessee and/or Guarantor in any court outside the State of New York, unless Lessee and/or Guarantor take the position that Lessee and/or Guarantor are subject to jurisdiction only in a forum other than the State of New York.

Lessee and/or Guarantor may change their mind and withdraw from the Settlement Program by notifying Dolphin Capital of that decision **in writing** before the first payment under the Settlement Program is due. Notice must be sent to the same address as this Settlement and Mutual Releases.

2. Release Of Claims

I understand that, in exchange for the opportunity to pay off the Rental Agreement at a substantial discount, Lessee and/or Guarantor hereby release and discharge Dolphin Capital and all of its subsidiaries, parents, affiliates, predecessors, successors and assigns, officers, directors, employees, shareholders and agents (the "Dolphin Capital Parties") from, and covenant not to file or pursue any lawsuit or claim in any place against any Dolphin Capital Party for, any and all claims (including claims as a member or representative of a proposed class action) that Lessee and/or Guarantor has or may have had against it for any and all damages, restitution, equitable

relief, attorneys' fees and/or penalties based upon the Rental Agreement. Lessee and/or Guarantor further agree that if they are currently involved in any litigation arising from the Rental Agreement, Lessee and/or Guarantor and Dolphin Capital will mutually dismiss that litigation with prejudice.

In exchange for Lessee and/or Guarantor's payment to Dolphin Capital pursuant to this Settlement and Mutual Releases, Dolphin Capital hereby releases and discharges Lessee and/or Guarantor from, and covenants not to file or pursue any lawsuit or claim in any place against Lessee and/or Guarantor for, any and all claims that Dolphin Capital has or may have had against Lessee and/or Guarantor and all of its subsidiaries, parents, affiliates, predecessors, successors, assigns, officers, directors, employees, shareholders, agents, and guarantors for any and all damages, equitable relief, attorneys' fees and penalties based upon the Rental Agreement.

I hereby acknowledge and represent that I have read this Settlement and Mutual Releases; that I have had the opportunity to consult with a lawyer concerning it; that Lessee and/or Guarantor are voluntarily entering into this Settlement and Mutual Releases; that neither Dolphin Capital nor its agents or attorneys have made any representations or promises concerning the terms or effects of this Settlement Agreement other than those set forth in this document; and I understand that this is a full and final release of all claims Lessee and/or Guarantor has or may have against the Dolphin Capital Parties concerning the Rental Agreement.

I further agree that this Settlement and Mutual Releases constitutes the entire agreement among the parties hereto, may not be changed orally and may not be modified or amended except pursuant to an agreement in writing signed by all of the parties hereto, unless Lessee and/or Guarantor change their mind as provided above.

The signatory for the Lessee below represents that he or she is duly authorized to enter into this Settlement Agreement and Mutual Releases on behalf of the Lessee.

This Settlement and Mutual Releases shall be deemed accepted upon your return to Dolphin Capital of an executed copy of this agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned has caused this Settlement and Mutual Releases to be executed this ____ day of _____, 2006.

Dated: _____

[NAME OF NEW YORK LESSEE]

By: _____

[Name]

[Title]

[Address]

By: _____

[Name], as Guarantor

DOLPHIN CAPITAL CORP.

By: _____

FILL OUT COMPLETELY AND SEND TWO SIGNED ORIGINALS TO DOLPHIN CAPITAL CORP. AT:

PLEASE KEEP A COPY FOR YOUR RECORDS. A FULLY EXECUTED DOCUMENT WILL BE SENT TO LESSEE AND ANY GUARANTOR.

[Exhibit E] [For Customers Entitled to Refund]

SETTLEMENT AND MUTUAL RELEASES

between

[NEW YORK LESSEE AND GUARANTOR] and DOLPHIN CAPITAL CORP.

I, _____, on behalf of the entity named above (the "Lessee") and/or as personal guarantor (together, the "Lessee and/or Guarantor"), elect to take advantage of the Settlement Program agreed to by the Attorney General of the State of New York and DOLPHIN CAPITAL CORP. (hereinafter "Dolphin Capital") to resolve Lessee's Rental Agreement with Dolphin Capital (the "Rental Agreement") at a substantial discount and to settle any and all disputes between Lessee and/or guarantor and Dolphin Capital arising from the Rental Agreement. With this Settlement and Mutual Releases I am: (1) enrolling in the Settlement Program; and (2) entering into a mutual release of claims with Dolphin Capital and related parties.

I understand that Dolphin Capital and the Attorney General of the State of New York have agreed to the terms of this Settlement Program for the purpose of avoiding the expense and inconvenience of litigation, and it is not an admission on the part of Dolphin Capital that it engaged in any form of unlawful conduct or business practices, and Dolphin Capital expressly denies that it engaged in any form of unlawful conduct or business practices, and expressly denies that it is liable to any person or entity in connection with the Rental Agreement.

1. Enrolling In The Settlement Program

I understand that, upon Lessee's and/or Guarantor's acceptance of this Settlement Program, Dolphin Capital will:

- (a) forgive 87.5% of the outstanding principal balance under the Rental Agreement as

of July 15, 2004;

- (b) forgive any late fees or penalties assessed on the Lessee's account on or after July 15, 2004;
- (c) forgive any property insurance charges assessed on the Lessee's account on or after July 15, 2004;
- (d) fully credit any payments lessee and/or Guarantor has made to Dolphin Capital on or after July 15, 2004; and
- (e) withdraw any and all adverse credit reports Dolphin Capital filed as a result of not receiving payment on the Rental Agreement on or after July 15, 2004.

I also understand that Dolphin Capital's records reflect the following information about

Lessee's Rental Agreement account:

1.	Principal balance remaining as of July 15, 2004	_____
2.	Line 1 reduced by 87.5%.....	_____
3.	Plus any unpaid late fees, penalties or insurance charges assessed prior to July 15, 2004.....	_____
4.	Credit for payments received on or after July 15, 2004.....	_____
5.	Settlement Balance.....	() _____

Dolphin Capital will send a refund check in the amount of () within 30 days of the mailing of Lessee's and/or Guarantor's acceptance of the Settlement Program.

Lessee and/or Guarantor may change their mind and withdraw from the Settlement Program by notifying Dolphin Capital of that decision in writing before the refund check under the Settlement Program is due. Notice must be sent to the same address as this Settlement and Mutual Releases.

2. **Release Of Claims**

I understand that, in exchange for the opportunity to resolve the Equipment Rental Agreement at a substantial discount, Lessee and/or Guarantor hereby releases and discharge Dolphin Capital and all of its subsidiaries, parents, affiliates, predecessors, successors and assigns, officers, directors, employees, shareholders and agents (the "Dolphin Capital Parties") from, and covenant not to file or pursue any lawsuit or claim in any place against any Dolphin Capital Party for, any and all claims (including claims as a member or representative of a proposed class action) that Lessee and/or Guarantor has or may have had against it for any and all damages, restitution, equitable relief, attorneys' fees and/or penalties based upon the Rental Agreement. Lessee and/or Guarantor further agree that if they are currently involved in any litigation arising from the Rental Agreement, Lessee and/or Guarantor and Dolphin Capital will mutually dismiss that litigation with prejudice.

In exchange for Lessee and/or Guarantor's resolution of the Settlement Balance pursuant to this Settlement and Mutual Releases, Dolphin Capital hereby releases and discharges Lessee and/or Guarantor from, and covenants not to file or pursue any lawsuit or claim in any place against Lessee and/or Guarantor for, any and all claims that Dolphin Capital has or may have had against Lessee and/or Guarantor and all of its subsidiaries, parents, affiliates, predecessors, successors, assigns, officers, directors, employees, shareholders, agents, and guarantors for any and all damages, equitable relief, attorney's fees and penalties based upon the Rental Agreement.

I hereby acknowledge and represent that I have read this Settlement and Mutual Releases; that I have had the opportunity to consult with a lawyer concerning it; that Lessee and/or Guarantor are voluntarily entering into this Settlement and Mutual Releases; that neither Dolphin Capital nor its agents or attorneys have made any representations or promises concerning the

terms or effects of this Settlement Agreement other than those set forth in this document; and I understand that this is a full and final release of all claims Lessee and/or Guarantor has or may have against the Dolphin Capital Parties concerning the Rental Agreement.

I further agree that this Settlement and Mutual Release constitutes the entire agreement among the parties hereto, may not be changed orally and may not be modified or amended except pursuant to an agreement in writing signed by all of the parties hereto, unless Lessee and/or Guarantor change their mind as provided above.

The signatory for the Lessee below represents that he or she is duly authorized to enter into this Settlement Agreement and Mutual Releases on behalf of the Lessee.

This Settlement and Mutual Releases shall be deemed accepted upon your return to Dolphin Capital of an executed copy of this agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned has caused this Settlement and Mutual Releases to be executed this ____ day of _____, 2006.

Dated: _____

[NAME OF NEW YORK LESSEE]

By: _____

[Name]

[Title]

[Address]

By: _____

[Name], as Guarantor

DOLPHIN CAPITAL CORP.,

By: _____

**FILL OUT COMPLETELY AND SEND TWO SIGNED ORIGINALS TO DOLPHIN
CAPITAL CORP. AT:**

**PLEASE KEEP A COPY FOR YOUR RECORDS. A FULLY EXECUTED DOCUMENT
WILL BE SENT TO LESSEE AND ANY GUARANTOR.**