

PARTY PROPS, INC.	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
VS.	§	58TH JUDICIAL DISTRICT
	§	
POPULAR LEASING USA, INC.,	§	
	§	
Defendant.	§	JEFFERSON COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Party Props, Inc. ("Plaintiff"), and moves for summary judgment that:

- the acceleration clause in the equipment rental agreement (the "Rental Agreement")¹ involved in this case is a penalty and, therefore, unenforceable;
- the "floating" forum selection and choice of law provision in the Rental Agreement is unenforceable;
- all matters regarding the Rental Agreement are governed by Texas law;
- the Rental Agreement is actually a secured transaction, is within the scope of Texas usury laws, and is not within the scope of Article 2A of the Uniform Commercial Code (the "UCC");²
- the Rental Agreement is not a "finance lease;"
- Defendant violated Texas usury laws by charging at a rate in excess of that permitted by law;
- the "Hell or High Water" clause in the Rental Agreement does not apply;
- the waiver of claims and defenses in the Rental Agreement does not apply;
- Defendant is not entitled to recover any rentals or other damages in connection with the Rental Agreement because it has failed to mitigate its damages; and

¹ The terms "Rental Agreement", lessor, lessee, and lease are used for brevity, reference, and due to the caption on the "Rental Agreement". Neither these terms nor the use thereof in this pleading or otherwise is intended to be or is an admission or acknowledgement that any of such transactions is a "true lease" or "finance lease" as opposed to a conditional sale or secured transaction, or that any of such transactions is within the scope of Article 2A of the Uniform Commercial Code.

² References to Article 2A of the UCC in this motion or elsewhere by Plaintiff in this case are made subject to and without waiving Plaintiff's contention that Article 2A does not apply in this case.

- under the doctrine of res judicata, the judgment granted to the Texas Attorney General which determined that the NorVergence rental agreements were void *ab initio* preclude any claims by or liability to Popular Leasing USA, Inc. ("Defendant") under the Rental Agreement.

In support, Plaintiff respectfully shows as follows:

Preliminary Statement

1. Plaintiff strongly maintains that the various exculpatory provisions in the Rental Agreement and related receipt for the Equipment are oppressive and unconscionable, and purport to denude Plaintiff and other victims of many rights and remedies. This motion, however, addresses the sloppy draftsmanship of the Rental Agreement and undisputed facts which render that agreement unenforceable as a matter of law.

Introduction

2. This case is part of the massive Norvergence scandal, which involves approximately 11,000 small businesses nationwide and 1,100 Texas small businesses. Plaintiff and other small businesses were fraudulently induced into entering into agreements for discounted telecommunications services. As part of those transactions, Plaintiff and others were induced to sign "rental" agreements for the subject equipment, which had marginal value at best, and is now worthless.

3. NorVergence, Inc., as both lessor and supplier, entered into the Rental Agreement, under which it was to provide certain telecommunications equipment and accessories (collectively the "Equipment") to Plaintiff. NorVergence entered into three service agreements together with the Rental Agreement under which NorVergence was to provide Plaintiff with telecommunications services.

4. NorVergence failed to complete installation of the Equipment, and never provided any of the agreed telecommunications services. NorVergence filed bankruptcy on June 30, 2004

and ceased operations. Consequently, the Equipment is totally useless. Defendant claims that the Rental Agreement was assigned to it by NorVergence, and has counterclaimed for sums it claims to be owed under that agreement.

Plaintiff's Summary Judgment Evidence

5. This motion is supported by:
- a. the Rental Agreement, labeled Exhibit 1;
 - b. Defendant's most recent counterclaim;
 - c. the Affidavit of Jan Rocco, labeled Exhibit 2;
 - d. the Memorandum Opinion by which the Beaumont Court of Appeals denied of Defendant's petition for mandamus in connection with this case, labeled Exhibit 3;
 - e. the Affidavit of William G. Waites, labeled Exhibit 4 (with copies of Mr. Waites' Curriculum Vitae and expert report attached as exhibits thereto);
 - f. a document produced by Defendant pursuant to a request for production, labeled Exhibit 5;
 - g. a copy of the transcript of the oral deposition of Defendant's corporate representative, R. Daniel Kinealy, labeled Exhibit 6; and
 - h. the judgment regarding Norvergence rental agreements which the Texas Attorney General obtained in *State of Texas v. Norvergence, Inc.*, labeled Exhibit 7.

True and correct copies of the same are attached to this motion and incorporated by reference.

The Rental Acceleration Clause

6. The pertinent portions of the Rental Agreement provide as follows:

DEFAULT: Each of the following is a "Default" under this Rental: ... (b) you fail to perform any of your obligations under this Rental or in any other agreement with us or any of our affiliates, and this failure continues for 10 days after we have notified you....

REMEDIES: If a default occurs, we may do one or more of the following: ... (b) require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to (i) all amounts then due under this rental plus, (ii) all unpaid Rental Payments for the remainder of the term plus our anticipated

residual interest in the Equipment as discounted to present value at the rate of 6% per annum....”

The Rental Acceleration Clause Is An Unenforceable Penalty

7. Under Texas law, an acceleration clause in a lease or rental agreement is a penalty when the clause permits the lessor to accelerate future rentals as immediately due and owing upon even a minor default. Such clauses are unenforceable as a matter of law.

8. The rental acceleration clause in the Rental Agreement is clearly a penalty because it may be invoked in the event Plaintiff “fail[s] to perform *any* of [its] other obligations under this Rental....” [Emphasis added]. It does not matter if the lessor does not invoke the acceleration clause for minor defaults. It also does not matter if the alleged default in this case is nonpayment. Therefore, the rental acceleration provisions in the Rental Agreement are unenforceable *as a matter of law*.

The “Floating” Forum Selection and Choice of Law Provision

9. The Rental Agreement contains the following provision:

This agreement shall be governed, by construed and enforced in accordance with the laws of the State in which Renter's principal offices are located or, if this Lease is assigned by Renter, the State in which, the assignee's principal offices are located, without regard to such State's choice of law considerations and all legal actions relating to this Lease shall be venued exclusively in a state, or federal court located within that State, such court to be chosen at Renter or Renter's assignee's sole option. You hereby waive, right to a trial by jury in any lawsuit in any way relating to this rental.

10. Defendant has unsuccessfully asserted that this clause permits and requires litigation in the state where its home offices are located, which Defendant alleges to be Missouri. Defendant also apparently claims that this provision requires application law of that state.

The "Floating" Forum Selection and Choice of Law Provision Is Unenforceable

11. Plaintiff has sought declaratory judgment that the "floating" forum selection and choice of law provision in the Rental Agreement (in the paragraph captioned "APPLICABLE LAW") is not enforceable because:

- a. the "floating" clause does not name any particular state, and thus fails to provide reasonable notice to Plaintiff that it would be subject to being haled into or required to litigate in the courts of any particular state or that the law of another state would apply, and thus contravenes the purpose of providing certainty as to forum and applicable law; and
- b. the "floating" clause is not set out conspicuously in print, type, or other form of writing that is bold-faced, capitalized, underscored, or otherwise set out in such a manner that a reasonable person against whom the provision may operate would notice.

12. Plaintiff respectfully submits that the Court has already disposed of this claim in regard to the "floating" forum selection clause through its denial of Defendant's motion to dismiss. This Court's decision was vindicated in the Beaumont Court of Appeals' denial of Defendant's petition for mandamus.³

13. Plaintiff further shows that the "floating" choice of law provision is unenforceable because Defendant cannot satisfy the requirements under the UCC for enforcing that clause. The UCC requires a reasonable relation between the transaction and the chosen state.

14. The Rental Agreement does not satisfy the reasonable relation test because it was negotiated only in Texas,⁴ was executed by Plaintiff in Texas⁵ and by NorVergence in New Jersey, and was wholly performable in Texas. The subject equipment was to be and was located

³ *In re Popular Leasing USA, Inc.*, 2005 WL 3047065, 09-05-00223-CV (Tex. App. – Beaumont Aug. 12, 2005, orig. proceeding). A true and correct copy of the Memorandum Opinion is shown in Exhibit 3 to this motion.

⁴ Rocco Aff. ¶3.

⁵ *Id.*

in Texas.⁶ Had Defendant's business partner, NorVergence, provided the related service and not defrauded Plaintiff, the ostensible payment obligations would have been performable by Plaintiff sending checks from its place of business in Texas, final payment on which would occur at Lakeview's bank in Texas. *Nothing* occurred in Missouri at or before the time the Rental Agreement was entered into and fully executed.⁷

**Texas Law Applies Because Texas Bears The Most Appropriate
And Significant Relationship To The Rental Agreement**

15. Inasmuch as the "floating" choice of law provision is clearly unenforceable, Texas law governs all matters regarding the Rental Agreement. If the Uniform Commercial Code applies, then the Rental Agreement is governed by the law of the state bearing an appropriate relation to those agreements. If not, the agreements are governed by the law of the state bearing the most substantial relationship to the agreements and the parties.

16. Texas law clearly applies under both of these standards. The Rental Agreement and connected service agreement were solicited, negotiated, and partially executed in Texas. They were performable in Texas; the Equipment was to be delivered and installed there, and the purported payment obligations were to be discharged by sending of checks from Plaintiff's place of business in Texas. Therefore, Texas law applies.

The Rental Agreement Is Actually A Secured Transaction

17. Plaintiff anticipates that Defendant will assert that the Rental Agreement is a "true lease" as opposed to a secured loan in order to evade Texas usury laws and to avail itself of various provisions of Article 2A of the UCC.

18. Plaintiff's summary judgment evidence, however, establishes that the Rental Agreement is indeed a secured transaction. A transaction is intended to create a security interest

⁶ Rocco Aff. Ex. 1. The Rental Agreement provides that the equipment is to be at the location indicated therein, which is Plaintiff's place of business.

⁷ See Rocco Aff. ¶3.

when, as in this case and all of the Norvergence rental agreements, the primary term of the agreement exceeds the remaining economic life of the subject goods.⁸ Plaintiff's expert witness, William G. Waites, has stated in his summary judgment affidavit and in his report that the Equipment would not have had any remaining economic life at the end of the 60-month term even if satisfactory telecommunications had been provided throughout that period.⁹ Defendant cannot properly controvert this evidence because it has not filed any expert designation or report in regard to the value or characteristics of the Equipment.¹⁰

19. Therefore, the Rental Agreement is a secured transaction *as a matter of law*.

Texas Usury Laws Apply

20. Plaintiff acknowledges that Texas usury laws do not apply to "true leases." Because the Rental Agreement is, for the reasons alleged above, a secured transaction as opposed to a "true lease", it is subject to Texas usury laws.¹¹

21. Defendant's corporate representative, R. Daniel Kinealy, testified in a deposition that the sums payable under the Norvergence rental agreements assigned to Popular consisted of principal and interest.¹²

⁸ Tex. Bus. & Com. Code §1.203(b), (b)(1)(Tex. UCC)(Vernon 200_).

⁹ Waites aff. ¶5. Mr. Waites' report is shown in Exhibit 2 to his summary judgment affidavit. His report was timely filed in accordance with the most recent Amended Discovery Control Plan Order.

¹⁰ The deadline for Defendant to file its designation of experts and expert reports was April 15, 2006. Defendant only designated its attorneys as experts. Therefore, Defendant will be unable to controvert Mr. Waites' testimony.

¹¹ See e.g. *Kinerd v. Colonial Leasing Co.*, 800 S.W.2d 187, 190 (Tex. 1990).

¹² Kinealy depo. p. 129, lines 11-25, p. 130, lines 1-8 (shown in Ex. 6 to this motion). The pertinent deposition testimony is as follows:

15 Q. Unearned Income refers to?

16 A. Well, the contracts, whether they're

17 rental agreements or leasing agreements, are set up

18 along the concept of an installment contract, so

19 that the monthly payment includes a component of

20 both principal and interest, so the total amount due

21 under a contract, at the beginning of that contract

Article 2A Does Not Apply

21. Article 2A applies to personal property leases, and does not apply to purported leases which are actually disguised secured transactions. Again, Article 2A does not apply to the Rental Agreement because the Rental Agreement is a secured transaction instead of a lease.

The Lease Is Not A Finance Lease

22. Defendant relies upon statutes which apply only to "finance leases." Article 2A provides that a personal property lease is a "finance lease" when the subject equipment is provided by a third party, known as a vendor or supplier.¹³ The Rental Agreement in this case is clearly not a "finance lease" because Norvergence was both the original lessor and the supplier of the Equipment.

Defendant Violated Texas Usury Laws

23. Defendant violated Texas usury laws by charging at a rate in excess of that permitted by law. The maximum annual interest rate which may be charged when there is not

22 and throughout it, you have a portion of the
23 outstanding obligation that represents interest and
24 a portion that represents principal.
25 As those contracts are paid down,

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1 typically in the beginning of those contracts, the
2 fixed monthly rental payment goes more towards
3 paying an interest component, and a lesser amount
4 goes towards reducing the principal obligation.
5 Towards the end of the contracts, it is
6 just the opposite. More of the payment is going to
7 pay down a principal balance, and a smaller amount
8 represents the interest payment.
9 Q. How does that play into unearned income?
10 Is unearned income the interest equivalent?
11 A. Right. It is the interest component in
12 future periods that are not yet due.

This Kincaid deposition was taken by an Assistant Attorney General for the State of Florida in *State of Florida vs. Commerce Commercial Leasing, LLC et al*, Case No. 2004CA002515, in the Circuit Court of the Second Judicial Circuit, in and for DeLeon County, Florida on January 19, 2005. This deposition was vigorously defended by Defendant's Florida attorney, Albert F. Tellechea.

¹³ Tex. Bus. & Com. Code §2A.103(a)(7)(Tex. UCC)(Vernon 200_).

agreement to a particular rate is 6%. The Rental Agreement does not state a rate of interest, other than for default interest and present valuation of future "rentals" under the defective acceleration clause. Consequently, the maximum annual interest any rate which could be contracted for or charged in regard to the Rental Agreement is 6%.

24. Defendant, pursuant to one of Plaintiff's requests for production, produced a document which states an interest rate of 14.27%.¹⁴ Therefore, Defendant charged and contracted for usurious interest, as is subject to penalties under the Texas Finance Code for such conduct.

The "Hell Or High Water" Clause Does Not Apply

25. Defendant relies heavily upon a "Hell or High Water" clause in the Rental Agreement which purports to require payment even if the telecommunications services for which the Equipment was to be used were not provided.

26. The "Hell or High Water" clause is not enforceable because the only statute which addresses or even mentions such clauses is found in Article 2A of the UCC and, as discussed above, Article 2A does not apply because the Rental Agreement is a secured transaction as opposed to a lease.

27. Even if Article 2A applies, the "Hell or High Water Clause" in the Rental Agreement is still unenforceable because, as discussed above, the Rental Agreement does not fall within the statutory definition of a "finance lease." The only statute regarding the "Hell or High Water" clause only applies to "finance leases."

¹⁴ This document is captioned Internal Rate of Return and Lease Summary, which was bates stamp BP 00342, and is attached to this motion as Exhibit 4 and incorporated by reference. It is the same document form as that testified to in the deposition of R. Daniel Kinealy in *State of Florida vs. Commerce Commercial Leasing, LLC et al*, Case No. 2004CA002515, In the Circuit Court of the Second Judicial Circuit, in and for DeLeon County, Florida on January 19, 2005. Kinealy depo. p. 126, lines 24-25, pp. 127-131 (shown in Ex. 6 to this motion).

The Waiver Of Claims And Defenses Does Not Apply

28. Defendant asserts that, by taking assignment of the Rental Agreement from Norvergence, it may enforce the purported waiver of claims and defenses in that agreement.

Waiver Does Not Apply to Usury

29. The waiver of claims and defenses, at the very most, applies only to personal defenses under the UCC. It does not apply to real defenses, such as illegality. Usury constitutes illegality under Texas law.

Defendant Had Notice of Claims and Defenses

30. In order to defeat certain "personal" defenses through this waiver, the assignee must establish that it took the assignment, in good faith, for value, and without notice of any claim or defense. The purported waiver of claims and defenses in the Rental Agreement is not enforceable because a portion of Plaintiff's claims and defenses are based upon defective provisions contained in that agreement itself. Defendant knew or should have known that the rental acceleration clause is an unenforceable penalty, and that the nonspecific "floating" forum selection and choice of law provision is unenforceable. These defects were plainly apparent from the Rental Agreement itself.

31. Defendant likewise had notice of the usurious interest charged and contracted for in connection with the Rental Agreement at the time it took the assignment. Defendant's own document shows that this rate was calculated at the time of the assignment. Further, this document shows the amount attributed to be the purchase price for the Equipment. Defendant knew or should have known at the time of the assignment of the amount of interest by deducting that "price" from the gross original rental balance purportedly payable under the Rental Agreement and thereby derived the annual interest rate.¹⁵

¹⁵ Plaintiff maintains that such sums were payable only if the related telecommunications services were provided; Defendant asserts that these sums were payable regardless of provision of service.

Defendant's Close Connection and Special Voice With Norvergence

32. The purported waiver of claims and defenses is also unenforceable due to the close connection between Defendant and NorVergence and the "special voice" which Defendant exercised in drafting. The "close connection doctrine" provides that such waivers may not be enforced when there is a close connection between the assignor and the assignee; the "special voice concept is a Texas variant of that doctrine.

33. The Master Program Agreement, two amendments of that agreement, and massive involvement between these two entities shows that there was a close connection between Defendant and NorVergence.¹⁶ Defendant was authorized under at least one of those program agreements to sign rental agreements on Norvergence's behalf, even prior to formation of the agreements which were supposedly assigned thereafter.¹⁷ Defendant's portfolio includes between **\$24,000,000.00** and **\$30,000,000.00** in rental agreements acquired from Norvergence.¹⁸

¹⁶ See generally Kinealy depo. pp. 43-46, 92-93, 100-104, 106.

¹⁷ Kinealy depo., p. 106, lines 4-7 (shown in Ex. 6 to this motion). The pertinent deposition testimony is as follows:

- 4 Q. This numbered paragraph 1, that gives
5 Popular the right to sign these rental agreements on
6 behalf of NorVergence, right?
7 A. That's correct.

¹⁸ Kinealy depo., p. 46, lines 11-25, p. 47, lines 1-8 (shown in Ex. 6 to this motion). The pertinent deposition testimony is as follows:

- 11 Q. What is the current value of the
12 NorVergence portfolio for Popular Leasing?
13 A. On a net basis, our entire portfolio is
14 approximately 24 million dollars.
15 Q. You said "net basis," what does that
16 mean?
17 A. Principal obligation, if you will.
18 Q. That's the sum of the remaining payments
19 due?
20 A. No, that is not.
21 Q. Okay.
22 A. The sum of the remaining payments due
23 would be approximately 29 million to 30 million
24 dollars.

This close connection also establishes that Defendant was "inextricably intertwined" with NorVergence. Moreover, Defendant's former president referred in a letter to Norvergence as Defendant's "business partner."¹⁹

25 Q. Does the 24 million represent money

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1 actually paid by Popular Leasing to NorVergence?

2 A. In approximation of that, yes. It is

3 the remaining principal balance, plus any earned

4 interest that would have been realized on those

5 balances.

6 Q. Of that 24 million, approximately what

7 percentage was in default?

8 A. Approximately 17 million dollars of it.

¹⁹ Kinealy depo., p. 15, lines 1-25, p. 16, lines 1-8, Ex. 2 to Kinealy depo. (all shown in Ex. 6 to this motion). The pertinent deposition testimony is as follows:

2 (Pop Deposition Exhibit 2 marked for
3 identification.)

4 BY MR. NEWTON:

5 Q. Mr. Kinealy, I have given you a document

6 marked Pop 2, which is a letter from Mr. Horton

7 dated October 24th to Alex Wolf and Bob Fine.

8 A. Yes.

9 Q. Mr. Horton is the president of Popular

10 Leasing, correct?

11 A. That's correct, he is.

12 Q. The last sentence of the first paragraph

13 says: "It is always beneficial to be able to meet

14 directly with our business partners."

15 A. Correct.

16 Q. What meaning does that phrase have in

17 this letter from Popular Leasing?

18 A. Well, the gentlemen that you cited the
19 letter was written to, Alex Wolf and Bob Fine, were
20 officers of NorVergence. Popular Leasing did have
21 business relationships with NorVergence. We were
22 working with them at the time this letter was
23 written.

24 Q. So they would be a business partner?

25 A. In a sense that, yes. We were doing

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1 business with them, and we had conducted business

2 together, and we are anticipating doing future

3 business, they would be a partner in those

4 activities.

5 Q. In contrast, are the individual

6 customers, the lessees, were they considered by

7 Popular Leasing to be business partners?

8 A. Those are considered to be customers.

Defendant Failed To Mitigate Damages

34. It is axiomatic that a party seeking to recover damages must take action to mitigate damages.

35. Plaintiff has tendered the Equipment to Defendant for over one and one half years. Defendant has nonetheless failed to take any action to recover the Equipment. Defendant has failed to take any action to mitigate the damages alleged in its counterclaim. Defendant is thus not entitled to an award of damages on its counterclaim.

The Texas Attorney General's Judgment Is Res Judicata

36. The Attorney General for the State of Texas subsequently filed suit against NorVergence, complaining of the same wrongful conduct as that alleged above.²⁰ In that case, the Court entered judgment under which it was "ORDERED, ADJUDGED, AND DECREED that all contracts and rental agreements between NorVergence and Texas consumers, businesses or persons are hereby declared void *ab initio* and unenforceable."²¹

37. Defendant was and is in privity with NorVergence in regard to the Rental Agreement. Consequently, the judgment alleged in the preceding paragraph of this petition is *res judicata* and is binding upon Defendant and preclude any claims by or liability to Defendant under the Rental Agreement.

²⁰ *State of Texas v. NorVergence, Inc.*, Harris County District Courts Cause 2004-65357, in the 270th District Court, Harris County, Texas.

²¹ Default Judgment Against Defendant NorVergence, Inc. (p. 4)(shown in Ex. 7 to this motion).

Prayer

Plaintiff respectfully requests that it be granted summary and declaratory judgment that:

1. the rental acceleration clause set forth in the paragraphs of the Rental Agreement captioned "DEFAULT" and "REMEDIES" is a penalty and void and unenforceable; and
2. the "floating" forum selection and choice of law provisions in the Rental Agreement are unenforceable, and that the Rental Agreement, and that the Rental Agreement is governed by Texas law;
3. the Rental Agreement is actually a secured transaction, is within the scope of Texas usury laws, and is not within the scope of Article 2A of the UCC;
4. the Rental Agreement is not a "finance lease;"
5. Defendant violated Texas usury laws by charging at a rate in excess of that permitted by law;
6. the "Hell or High Water" clause in the Rental Agreement does not apply to the Rental Agreement or Plaintiff;
7. the waiver of claims and defenses in the Rental Agreement does not apply to the Rental Agreement or Plaintiff;
8. Defendant is not entitled to recover any rentals or other damages in connection with the Rental Agreement because it has failed to mitigate its damages; and
9. the judgment alleged in this motion is *res judicata* and is binding upon Defendant and preclude any claims by or liability to Defendant under the Rental Agreement; and

Plaintiff also respectfully requests that it be granted other and further relief to which it may be entitled.

Respectfully submitted,

/s/ Anthony L. Vitullo
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ATTORNEYS FOR PLAINTIFF

Certificate of Service

The undersigned certifies that on April 25, 2006, a true and correct copy of the foregoing motion and attached affidavits and exhibits was sent via facsimile to John R. Jones at facsimile (713) 225-2894.

/s/ Hubert Oxford, IV
Hubert Oxford, IV



NorVergence



Equipment Rental Agreement

Rental Number

Renter (Full Legal Name) NorVergence, Inc.				Renter (Full Legal Name) Party Props, Inc.			
Address 550 Broad St 3rd Floor				Address 520 W 25th St			
City Newark	State NJ	County Essex	Zip Code 07102	City Houston	State Texas	County	Zip Code 77008-1902
Telephone Number 873-242-7500				Telephone Number 713-88-5438		Federal Tax ID Number 76-0441006	
State of Organization							

Dear Customer: We've written this Equipment Rental Agreement (the "Rental") in simple and easy-to-read language because we want you to understand its terms. Please read this Rental carefully and feel free to ask us any questions you may have about it. We use the words you and your to mean the Renter indicated above. The we, us and our refer to the Renter indicated herein.

Rental Agreement: We agree to rent to you and you agree to rent from us the Equipment listed below (the "Equipment"). You promise to pay us the Rental Payments shown below according to the payment schedule below.

Quantity	Equipment Model & Description	Serial Number
1	Matrix 2001 (2 cards)	

Equipment to be new unless otherwise noted: ☒ Used ☐ Reconditioned ☐

Equipment Location (if different from Renter address above)
Address

City	State	County	Zip Code	Renter Contact Name	Telephone Number

RENTAL TERM 60 Months

Transaction Terms: Rental Payment \$ 753.40 (plus applicable taxes) Security Deposit \$ 0

☒ If checked the first payment is due approximately 60 days after date of acceptance.

Your payments shown above may not include any applicable tax. If any taxes are due, you authorize us to pay the tax when it is due and agree to reimburse us by adding a charge to your Rental Payment. You authorize us to insert or correct missing or incorrect information on the Rental we will send you notice of such changes. Payments will be applied first to past due balances, taxes, fees and late charges, and then to the current amount due.

You agree to all the terms and conditions shown above and the reverse side of this Rental, that those terms and conditions are a complete and exclusive statement of our agreement and that they may be modified only by written agreement between you and us. Terms or oral promises which are not contained in this written Rental may not be legally enforced. You also agree that the Equipment will not be used for personal, family or household purposes. You acknowledge receipt of a copy of this Rental. Your obligations to make all Rental Payments for the entire term are not subject to set off, with holding or deduction for any reason whatsoever.

This Rental is not binding on us unless we accept it by signing below. You authorize us to record a UCC-1 financing statement or similar instrument, and appoint us as your attorney-in-fact to execute and deliver such instrument, in order to show our interest in the Equipment.

THIS RENTAL MAY NOT BE CANCELLED OR TERMINATED EARLY.

Renter: NorVergence, Inc.	Renter: Party Props, Inc.
By: X J Buchanan	By: X Julie Hess
Accepted on behalf of Renter on: 11-1-03	Name (print) Julie Hess
	Date/Title: 10/16/03 CEO

You agree that a facsimile copy of this Rental bearing signatures may be treated as an original.

Guaranty: In this guaranty, you mean the person(s) making the guaranty, and we, us and our refer to the Renter indicated above. You will unconditionally, jointly and severally guarantee that the Renter will make all payments and pay all the other charges required under this Rental and under any other agreement now or hereafter entered into between the Renter and us (the "agreement") when they are due and will perform all other obligations under the agreement(s) fully and promptly. You also agree that we may make other arrangements with the Renter and you will still be responsible for these payment and other obligations. We do not have to notify you if the Renter is in default. If the Renter defaults, you will immediately pay in accordance with the default provisions of this Rental all sums due under the terms of this Rental and you will perform all other obligations of Renter under this Rental. It is not necessary for us to proceed first against the Renter before enforcing this guaranty. You will reimburse us for all the expenses we incur in enforcing and all our rights against the Renter or you, including attorney fees. THE SAME STATE LAW AS THE RENTAL WILL GOVERN THIS GUARANTY. YOU AGREE TO JURISDICTION AND VENUE AS STATED IN THE PARAGRAPH TITLED APPLICABLE LAW OF THE RENTAL.

Personal Guaranty:	Personal Guaranty:
By: X(sign) _____, Individually	By: X(sign) _____, Individually
Name (print) _____	Name (print) _____

NOV 11 2003

09-16-2003

BP 00447

Equipment Rental (continued)

RENT/TERM OF RENTAL: You agree to pay us the amount specified in this Rental as the Rental Payment (plus any applicable taxes) whose each payment is due. Your acceptance of the Equipment will be conclusively and irrevocably established upon the receipt by us of your confirmation (verbal or written) of such acceptance. However, if you have not received us with confirmation of acceptance or provided us with written notice of non-acceptance of the Equipment, in either case, within 10 days after delivery of the Equipment, you will be deemed to have accepted and irrevocably accepted the Equipment and to have authorized us to pay for the Equipment. The term of this Rental begins on a date designated by us after receipt of all required documentation and acceptance by us ("Commencement Date") and continues for the number of months designated as a "Rental Term" on the face of this Rental. The Rental Payments are payable in advance periodically as stated in or on any schedule to this Rental. You agree to pay an initial Rental Payment in the amount of one-thirtieth (1/30th) of the Rental payment for each day from and including the Effective Date ("which shall be the date the Equipment is installed") until the day preceding the Commencement Date.

PAYMENT: You authorize us to charge the Rental Payment by not more than 15% due to changes in the Equipment configuration, which may occur prior to our acceptance of this Rental. Respective endorsements on checks you send to us will not reduce your obligation to us. Whenever any Rental Payment or other payment is not made when due, you agree to pay us, within one month, a late charge of the greater of ten percent (10%) of the payment or \$25.00 for each delayed payment for our internal operating expenses arising as a result of each delayed payment, but only to the extent permitted by law.

LOCATION AND OWNERSHIP OF EQUIPMENT: You will keep and use the Equipment only at "the Equipment location address." You agree that the Equipment will not be removed from that address unless you get our written permission in advance to move it. You agree to pay the costs incurred by us to verify installation of the Equipment prior to commencement or during the term of the Rental. We are the owner of the Equipment and have title to the Equipment.

USE, MAINTENANCE AND INSTALLATION: You are responsible for protecting the Equipment from damage except for ordinary wear and tear and from any other kind of loss while you have the Equipment. If the Equipment is damaged or lost, you agree to continue to pay rent. You will not move the Equipment from the Equipment location so long as we can check the Equipment's condition, condition and proper maintenance. You will use the Equipment in the manner for which it was intended, as required by all applicable manuals and instructions, and keep it suitable for any manufacturer's certification and/or standard, full service maintenance contract. At your own cost and expense, you will keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. All replacement parts and repairs will become our property. You will not make any permanent alterations to the Equipment.

REDELIVERY OF EQUIPMENT; RENEWAL: You shall provide us with written notice, by certified mail, sent not less than 120 days nor more than 180 days prior to the expiration of the Rental Term or any renewal Rental Term of your intention prior to exercise any option to purchase all but not less than all of the Equipment of us grant you such an option or cancel the Rental and return the Equipment to us at the end of the Rental Term. If you elect to return the Equipment to us at the expiration of the original or any renewal term of the Rental, you agree to return the Equipment in accordance with the original or any renewal term of the Rental. If we have not received written notice from you of your intention to purchase or return the Equipment, the Rental will automatically renew for successive one-year periods commencing at the expiration of the original Rental Term. If this Rental is renewed, the first renewal payment will be due the first day after the original Rental Term expired. Any security deposit held by us shall continue to be held to secure your performance for the renewal period.

LOSS; DAMAGE; INSURANCE: You are responsible for and accept the risk of loss or damage to the Equipment. You agree to keep the Equipment insured against all risks of loss in an amount at least equal to the replacement cost until this Rental is paid in full and we let us as loss payee. You will also carry public liability insurance with respect to the Equipment and the use thereof and let us as additional insured. You will give us written proof of this insurance before this Rental Term begins. You agree to promptly notify us in writing of any loss or destruction or damage to the Equipment and you will, at our option, (a) repair the Equipment to good condition and working order, (b) replace the Equipment with like Equipment in good repair, condition and working order, acceptable to us and transferable to such replacement Equipment to us, such Equipment shall be subject to the Rental and be deemed the Equipment, or (c) pay to us the present value of the loss or an unpaid Rental Payment for the full Rental term plus the estimated Fair Market Value of the Equipment at the end of the originally scheduled Rental term, all discounted at six percent (6%) per year whereupon the Rental shall terminate. All proceeds of insurance received by us as a result of such loss or damage will be applied, where applicable, toward the replacement or repair of the Equipment or the payment of your obligation. IF YOU DO NOT GIVE US PROOF OF PHYSICAL DAMAGE INSURANCE, WE MAY (BUT WILL NOT BE OBLIGATED TO) OBTAIN OTHER PHYSICAL DAMAGE INSURANCE AND CHARGE YOU A FEE FOR IT, ON WHICH WE MAY MAKE A PROFIT, OR WE MAY CHARGE YOU A MONTHLY CHARGE EQUAL TO 0.25% OF THE ORIGINAL EQUIPMENT COST PLUS TO THE INCREASED CREDIT RISK TO US AS WELL AS TO COVER OUR INCREASED INTERNAL OVERHEAD COSTS OF REQUESTING PROOF OF PHYSICAL DAMAGE INSURANCE FROM YOU.

ASSIGNMENT: YOU MAY NOT SELL, PLEDGE, TRANSFER, ASSIGN OR SUBRENT THE EQUIPMENT OR THIS RENTAL. We may sell, assign or transfer all or any part of this Rental and the Equipment without notifying you. The new owner will have the same rights that we have, but not our obligations. You agree you will not assert against the new owner any claims, defenses or set-offs that you may have against us.

TAXES AND FEES: You agree to pay when due all sales and use taxes, personal property taxes and all other taxes and charges, license and registration fees, relating to the ownership, leasing, rental, sale, purchase, possession or use of the Equipment as part of this Rental or as set by law. You agree to pay us any estimated taxes when we request payment. You agree that we pay any taxes or charges on your behalf in excess of the estimated taxes previously collected, you shall reimburse us for all such payments and shall pay us a late charge (as described in the paragraph third Payment) on such payments if applicable with the next payment. You agree to pay us a monthly fee up to one hundred and fifty cents of one percent (1.50%) of the original Equipment cost to reimburse us for our costs of preparing, reviewing and filing any such returns. You agree, and we have the right to (i) bill monthly the estimated applicable personal property taxes together with the fees described herein and (ii) bill any remaining estimated amount due upon assessment of such taxes, without regard to any discounts we may obtain. You also agree to appoint us as your attorney-in-fact to sign your name to any document for the purposes of such filing, so long as the filing does not interfere with your right to use the Equipment. We may charge you and you shall pay to us a one time administrative fee of up to \$75.00 to reimburse us for documentation and investigation costs. You also agree to pay us for any filing and releasing fees prescribed by the Uniform Commercial Code or other law including filing or other fees incurred by us.

LIABILITY: We are not responsible for any losses or injuries caused by the installation or use of the Equipment. You agree to reimburse us for and to defend us against any claims for the losses or injuries caused by the Equipment.

DEFAULT: Each of the following is a "Default" under this Rental: (a) you fail to pay any Rental Payment or any other payment when due, (b) you fail to perform any of your other obligations under this Rental or in any other agreement with us or with any of our affiliates, and this failure continues for 10 days after we have notified you of it, (c) you become insolvent, you declare or are declared, you fail to pay your debts as they mature, you assign your assets for the benefit of your creditors, or you enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding, or (d) any guarantor of this Rental dies, is declared bankrupt or becomes subject to one of the events listed in this paragraph.

REMEDIES: If a Default occurs, we may do one or more of the following: (a) cancel or terminate this Rental or any of all other agreements that we have entered into with you; (b) require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to (i) all amounts then due under this Rental plus, (ii) all unpaid Rental Payments for the remainder of the term plus our anticipated residual interest in the Equipment each discounted to present value at the rate of 6% per annum; (c) deliver the Equipment to us as set forth in the paragraph third Return of Equipment; (d) peacefully repossess the Equipment without court order and you will not make any claims against us for damages or trespass or any other reason; and (e) exercise any other right or remedy available at law or in equity. You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees and costs. If we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. You agree that if notice of sale is required by law to be given, 10 days notice shall constitute reasonable notice. You will remain responsible for any amounts that are due after we have applied such net proceeds. All our remedies are cumulative, and in addition to any other remedies provided for by law and may be exercised either concurrently or separately. Any failure or delay by us to exercise any right shall not operate as a waiver of any right, other or future right or to modify the terms of this Rental.

SECURITY DEPOSIT: We will retain any required security deposit to ensure your performance of your obligations. Any security deposit is non-interest bearing. We may, but are not obligated to, apply any security deposit to cure any default by you, in which event you will promptly reimburse any amount so applied. If you are not in default, any security deposit will be returned to you within 60 days after the end of the original or renewal Rental Term (or as otherwise required by applicable law), or in your discretion we may apply the security deposit towards your purchase of the Equipment (if we grant you a purchase option).

RETURN OF EQUIPMENT: If (a) a Default occurs, or (b) you do not purchase the Equipment at the end of the Rental Term, you will immediately return the Equipment to any location(s) and address (es) we may designate in the Uniform Commercial Code. The Equipment must be properly packed, labeled and insured in accordance with the manufacturer's recommendations or specifications, freight prepaid and insured, maintained in accordance with the paragraph third Use, Maintenance and Installation, and in "average salable condition." "Average Salable Condition" means that all of the Equipment is immediately available for use by a third party buyer, user or Renter, other than yourself, without the need for any repair or refurbishment. All Equipment must be free of markings. You will pay us for any pricing or defective parts or accessories, including materials and labor. You will continue to pay Rental Payments until the Equipment is received and accepted by us.

ARTICLE 2A STATEMENT: YOU AGREE THAT IF ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE IS DEEMED TO APPLY TO THIS RENTAL, THIS RENTAL WILL BE CONSIDERED A FINANCE LEASE THEREUNDER. YOU WAIVE YOUR RIGHTS AND REMEDIES UNDER ARTICLE 2A OF THE UCC.

APPLICABLE LAW: You understand that the Equipment may be purchased for cash or it may be rented. By signing this Rental, you acknowledge that you have chosen to rent the Equipment from us for the term of this Rental, and that you have agreed to pay the specified Rental Payment and other fees described herein. We both intend to comply with applicable laws. If it is determined that the Rental Payment results in a payment greater than would be allowed by applicable law, then any excess collected by us will be applied to any outstanding balance due and owing under this Rental. In no event will we charge or receive or will you pay any amounts in excess of that allowed by applicable law. This agreement shall be governed by, construed and enforced in accordance with the laws of the State in which Renter's principal offices are located or, if this Lease is assigned by Renter, the State in which the assignee's principal offices are located, without regard to such State's choice of law considerations and all legal actions relating to this Lease shall be venue exclusively in a state or federal court located within that State, such court to be chosen at Renter or Renter's assignee's sole option. You hereby waive right to a trial by jury in any lawsuit in any way relating to this Rental.

ADDITIONAL SERVICES: To request copies of your billing or payment history or for other information or services with respect to your Rental, please contact us. You will be charged a reasonable fee for these services.

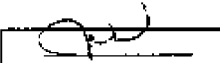
OTHER CONDITIONS: You understand and agree that

YOUR DUTY TO MAKE THE RENTAL PAYMENTS IS UNCONDITIONAL DESPITE EQUIPMENT FAILURE, DAMAGE, LOSS OR ANY OTHER PROBLEM. RENTER IS RENTING THE EQUIPMENT "AS IS," WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THIS AGREEMENT. If the Equipment does not work as represented by the manufacturer or supplier, or if the manufacturer or supplier or any other person fails to provide service or maintenance, or if the Equipment is unsatisfactory for any reason, you will make any such claim solely against the manufacturer or supplier or other person and will make no claim against us.

If any term of this Rental conflicts with any law in a state where the Rental is to be enforced, then the conflicting term shall be null and void to the extent of the conflict but this will not invalidate the rest of this Rental.

NO WARRANTIES: We are renting the Equipment to you "AS IS." WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THIS AGREEMENT. We transfer to you for the term of this Rental all warranties, if any, made by manufacturer or supplier to us. We are not liable to you for any modifications or restriction of supplier or manufacturer warranties. You agree to continue making payments to us under this Rental regardless of any claims you may have against the supplier or manufacturer. YOU WAIVE ANY RIGHTS WHICH WOULD ALLOW YOU TO: (a) cancel or repudiate the Rental; (b) reject or revoke acceptance of the Equipment; (c) grant a security interest in the Equipment; (d) accept partial delivery of the Equipment; (e) "cover" by making any purchase or Rental of substitute Equipment; and (f) seek specific performance against us.

YOU UNDERSTAND THAT ANY ASSIGNEE IS A SEPARATE AND INDEPENDENT COMPANY FROM RENTOR/MANUFACTURER AND THAT NEITHER WE NOR ANY OTHER PERSON IS THE ASSIGNEE'S AGENT. YOU AGREE THAT NO REPRESENTATION, GUARANTEE OR WARRANTY BY THE RENTOR OR ANY OTHER PERSON IS BINDING ON ANY ASSIGNEE, AND NO BREACH BY RENTOR OR ANY OTHER PERSON WILL EXCUSE YOUR OBLIGATIONS TO ANY ASSIGNEE.


Renter: Please initial & submit via facsimile.

NOV 17 2003

09-16-2003

BP 00448

CAUSE A-173174

GULF COAST AUDIO PARTNERSHIP,
ALEX YARTO D/B/A TRADEPRO
AND PARTY PROPS, INC.,

Plaintiffs

VS.

POPULAR LEASING USA, INC.,
BANCLEASE ACCEPTANCE
CORPORATION AND CIT
TECHNOLOGY SERVICES, INC.

Defendants.

IN THE DISTRICT COURT

58th JUDICIAL DISTRICT

JEFFERSON COUNTY, TEXAS

AFFIDAVIT OF JAN ROCCO

STATE OF TEXAS §
 §
COUNTY OF Harris §

BEFORE ME, the undersigned notary public, personally appeared Jan Rocco, who, having been duly sworn by me, upon oath, deposed and stated as follows:

1. "My name is Jan Rocco. I am over 18 years of age, and am legally capable and fully competent to make this affidavit. I have personal knowledge of the matters stated in this affidavit, which are true and correct.

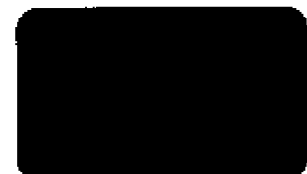
2. "I am the President of Party Props, Inc. ("Party Props"), which is one of the plaintiffs in this case. In this capacity, I have been and am involved in and manage all aspects of the day to day operations of Party Props, and have full knowledge of the negotiated and executed contracts agreements that was signed by Julie Hess, CFO on behalf of Party Props, including, without limitation, the telecommunications service agreement (the "Service Agreement") between NorVergence, Inc. ("NorVergence"), as provider, and Party Props, as customer, and the lease (the "Lease") captioned Equipment Rental Agreement between NorVergence, as original lessor, and Party Props, as lessee. A true and correct copy of the Service Agreement is attached to this affidavit as Exhibit 1 and incorporated by reference. A true and correct copy of the Lease is attached to this affidavit as Exhibit 2 and incorporated by reference. Party Props is incorporated under the laws of the State of Texas.

3. "NorVergence approached and visited Party Props at its offices and place of business in Houston, Texas, and presented NorVergence's Proposal for provision to Party Props of telecommunications services and related equipment. Party Props CFO Julie Hess communicated directly and in person at that location with representatives of NorVergence, who personally provided Ms. Hess with promotional literature from

AFFIDAVIT OF JAN ROCCO

Page 1

1108:Pleadings/AffRocco



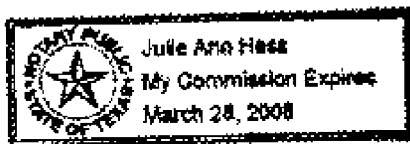
NorVergence. These representatives repeatedly informed Ms. Hess that by entering into the Service Agreement, Party Props would save a substantial amount in cost for long distance and cellular telephone service. Such representations induced Party Props to execute the Lease and the Service Agreement on behalf of Party Props, and Julie Hess executed those documents at Party Props' place of business on October 16, 2003. Based upon the listing of NorVergence's address at the top of the front page of the lease, I believed that NorVergence had its principal office and place of business in Newark, New Jersey. I had never heard of Popular Leasing USA, Inc. ("Popular Leasing") or any similarly named entity before I first learned of Popular Leasing USA, when Party Props first received an letter from Popular Leasing stating that they owned the Lease. That invoice was the first document which Party Props had received which mentioned Missouri in connection with the Lease, the Service Agreement or the subject equipment. Neither I nor any other Party Props employee had ever been informed that any lawsuits regarding the Lease must be filed or tried in Missouri. Party Props never agreed or consented to litigation in Missouri. Consequently, neither Party Props ever anticipated that Party Props would be subject to suit or required to file suit in regard to the lease in Missouri.

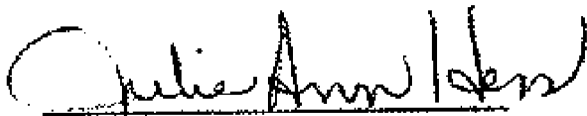
4. "I supervise an employee of Party Props who has custody of Party Props' business records, including, without limitation, true and correct copies of the lease, the Service Agreement, and business records regarding the Lease. These records were and are made at or near the time the matters thereby shown took place in the ordinary course of Party Props' regularly conducted business activity by a person with knowledge of the same. Each of the exhibits attached to this affidavit and documents referred to in this affidavit is contained among those business records. Party Props paid \$5288.30 to Popular Leasing, either in connection with the Lease, the subject equipment, or otherwise.

5. "Party Props is a small family owned company which has only 17 employees. Party Props' offices and place of business are located solely in Houston, Texas. Party Props will be caused substantial hardship if forced to litigate in Missouri in regard to the Lease (or anything else) because of the direct involvement of my assistants and I in Party Props' day to day operations. Both my assistants and I have personal knowledge of the matters recited above, and would likely be involved in any litigation regarding the lease, regardless of whether the same occurs in Missouri or in Texas. All of the witnesses to the representations and nonperformance regarding the lease, the Service Agreement, and the Equipment are located in Harris County, Texas. I have never been physically present in St. Louis County, Missouri (other than at Lambert Field Airport between connecting flights), and Party Props has never solicited or conducted any business in Missouri."


JAN ROCCO

SUBSCRIBED AND SWORN TO by Jan Rocco on December 28, 2004




Notary Public in and for
The State of Texas

My commission expires: March 28, 2008

Equipment Rental Agreement

Rental Number

Renter (For Legal Notice)		Party (For Legal Notice)	
Hammerville, NC		Party Props, Inc.	
Address		Address	
680 Broad St 3rd Floor		330 W 20th St	
City	State	County	Zip Code
Hammerville	NC	Edwards	27033
Telephone Number	Telephone Number	Federal Tax ID Number	State of Organization
977-742-7360	760-88-9418	76-044	1006

Dear Customer: We've written this Equipment Rental Agreement (the "Rental") in simple and easy-to-read language because we want you to understand its terms. Please read this Rental carefully and feel free to ask us any questions you may have about it. We use the words you and yours to mean the Renter indicated above. The we, us and our refer to the Renter indicated herein.

Rental Agreement: We agree to rent to you and you agree to rent from us the Equipment listed below (the "Equipment"). You promise to pay us the Rental Payments shown below according to the payment schedule below.

Quantity	Equipment Model & Description	Serial Number
1	Matrix 2001 (2 cards)	

Equipment to be new unless otherwise noted: ☒ Used ☐ Reconditioned ☐

Equipment Location (if different from Renter address above):

Address

City	State	County	Zip Code	Renter Contact Name	Telephone Number
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RENTAL TERM 60 Months

Transaction Terms: Rental Payment \$ 752.40 (plus applicable taxes)

Security Deposit \$ 0

We checked the first payment is due approximately 60 days after date of acceptance.

Your payments shown above may not include any applicable tax. If any taxes are due, you authorize us to pay the tax when it is due and agree to reimburse us by adding a charge to your Rental Payment. The customer is to insure or correct missing or incorrect information on the Rental; we will bill you notice of such charges. Payments will be applied first to past due balances, taxes, fees, and any other charges, and then to the current amount due.

You agree to let the terms and conditions shown above and the inside side of this Rental, that these terms and conditions are a complete and exclusive statement of our agreement and that they may be modified only by written agreement between you and us. Terms or oral promises which are not contained in this written Rental may not be legally enforceable. You also agree that the Equipment will not be used for personal, family or household purposes. You acknowledge receipt of a copy of this Rental. Your signature below is in full of Rental Payments for the entire term and not subject to set off, with holding or deduction for any reason whatsoever.

This Rental is not binding on us until you accept it by signing below. You authorize us to accept a UCC-1 financing statement or similar instrument, and deposit it as your assignment to effect and deliver such instrument, in order to show our interest in the Equipment.

THIS RENTAL MAY NOT BE CANCELLED OR TERMINATED EARLY.

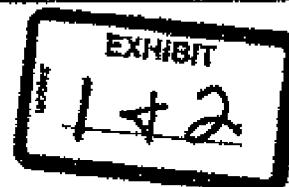
Renter: Party Props, Inc.	Renter: Party Props, Inc.
By: X <u>Julie Hess</u>	By: X <u>Julie Hess</u>
Accepted on behalf of Renter on: <u>11-11-03</u>	Name (print): <u>Julie Hess</u>
	Date/Title: <u>10/16/03 CFO</u>

You agree that a facsimile copy of this Rental bearing signatures may be treated as an original.

Guaranty: In this guaranty, you make the person(s) making the guaranty, and we, us and our, refer to the Renter indicated above. You will unconditionally, jointly and severally guarantee that the Renter will make all payments and any other charges required under this Rental and cover any other agreement now or hereafter created between the Renter and us (the "Agreement") when they are due and will indemnify all other obligations under the Agreement fully and promptly. You also agree that we may make other arrangements with the Renter and you will be responsible for those payments and other obligations. We do not have to notify you if the Renter is in default of the Rental; you will immediately pay to accordance with the default provisions of this Rental of sums due under the terms of this Rental and you will perform all other obligations of Renter under this Rental. It is not necessary for us to proceed first against the Renter before enforcing this guaranty. You will reimburse us for all the payments we make in enforcing and of our rights against the Renter or you, including attorney fees. THE SAME STATE LAW AS THE RENTAL WILL GOVERN THIS GUARANTY. YOU AGREE TO JURISDICTION AND VENUE AS STATED IN THE PARAGRAPH TITLED APPLICABLE LAW OF THE RENTAL.

Personal Guaranty:	Personal Guaranty:
By: X (sign) _____ Individually	By: X (sign) _____ Individually
Name (print): _____	Name (print): _____

NOV 11 2003



09-18-2003

(To Rocco Affidavit)

21/10/2005 17:42 7138511329

PARTY PROPS INC

PAGE 6

11/09/2003 22:39 7138077149

PARTY PROPS

PAGE 01

Delivery and Acceptance Certificate

The undersigned certifies that it has received and accepted all the Equipment described in the Equipment Rental Agreement between NorVerpax, Inc. (Renter), and the undersigned Party Props, Inc. (Renter) dated 10/18/2003. The Equipment conforms with our requirements. There are no side agreements or cancellation clauses given outside the Equipment Rental Agreement.

I have reviewed and I understand all of the terms and conditions of the Equipment Rental Agreement. I AGREE THAT THE RENTAL PAYMENT UNDER THE EQUIPMENT RENTAL AGREEMENT WILL BEGIN 30 DAYS FROM THE DATE OF THIS DELIVERY AND ACCEPTANCE CERTIFICATE AND SHALL CONTINUE THEREAFTER FOR THE FULL LENGTH OF THE STATED INITIAL TERM OF THE EQUIPMENT RENTAL AGREEMENT AND IN ACCORDANCE WITH ITS TERMS AND CONDITIONS. I was not induced to sign this by any assurances of the Renter or anyone else. I have had a reasonable opportunity to inspect the goods.

Renter: Party Props, Inc.

Date: 11-10-03

By:

Julie Hess
(Print Name)
Julie Hess
(Signature)

Title:

CEO

Serial #

SYSD284279

Equipment Rental Agreement

Rental Number

Renter (Full Legal Name) KorVergence, Inc.		Renter (Full Legal Name) Party Props, Inc.	
Address 550 Broad St 3rd Floor		Address 630 W 28th St	
City Newark	State NJ	County Essex	Zip Code 07102
Telephone Number 972-243-7500		Telephone Number 738-218 76-044 1006	

Dear Customer: We've written this Equipment Rental Agreement (the "Rental") in simple and easy-to-read language because we want you to understand its terms. Please read this Rental carefully and feel free to ask us any questions you may have about it. We use the words you and your to mean the Renter indicated above. The we, us and our refer to the Renter indicated herein.

Rental Agreement: We agree to rent to you and you agree to rent from us the Equipment listed below (the "Equipment"). You promise to pay us the Rental Payments shown below according to the payment schedule below.

Quantity	Equipment Model & Description	Serial Number
1	Matrix 2001 (2 cards)	

Equipment to be new unless otherwise noted: ☐ Used ☐ Reconditioned ☐

Equipment Location (if different from Renter address above):
Address

City	State	County	Zip Code	Renter Contact Name	Telephone Number

RENTAL TERM 60 Months

Transaction Terms: Rental Payment \$ 753.40 (plus applicable taxes)

Security Deposit \$ 0

☒ If checked the first payment is due approximately 60 days after date of acceptance.

Your payments shown above may not include any applicable tax. If any taxes are due, this agreement is to pay the tax when it is due and agree to reimburse us by making a charge to your Rental Payment. You authorize us to treat as correct billing of amounts shown on the Rental; we will send you notice of such charges. Payments will be applied first to past due balances, taxes, fees and late charges, and then to the amount shown due.

You agree to all the terms and conditions shown above and the revised rate of the Rental. All these terms and conditions are a complete and exclusive agreement of our agreement and that they may be modified only by written agreement between you and us. Terms of use and premises which are not contained in this Rental may not be legally enforceable. You also agree that the Equipment will not be used for personal, family or household purposes. You acknowledge receipt of a copy of this Rental. Your obligations to make all Rental Payments for the entire term are not subject to set-off, with holding or deduction for any reason whatsoever.

This Rental is not being on us until we accept it by signing below. You authorize us to record a UCC-1 financing statement or similar instrument, and appoint us as your attorney-in-fact to execute and deliver such instrument, in order to show the Rental in the document.

THIS RENTAL MAY NOT BE CHALLENGED OR TERMINATED EARLY.

Renter: KorVergence, Inc.

Renter: Party Props, Inc.

By: X *E. Buchanan*By: X *Julie Hess*

Accepted on behalf of Renter on: 11-11-03

Name (print): Julie Hess

Date/Title: 10/14/03 CFO

You agree that a facsimile copy of this Rental bearing signatures may be treated as an original.

Guaranty: In this guaranty, you mean the person(s) making the guaranty, and we, us and our refer to the Renter indicated above. You will unconditionally, jointly and severally guarantee that the Renter will make all payments and pay all other charges indicated under this Rental and will perform all other obligations under the agreement(s) fully and promptly. You also agree that we may make other arrangements with the Renter and you will be responsible for those payment and other obligations. You do not have to hold us if the Renter is in default. If the Renter defaults, you will immediately pay in accordance with the default provisions of this Rental all sums due under the terms of this Rental and you will perform all other obligations of Renter under the Rental. It is not necessary for us to proceed first against the Renter before enforcing this guaranty. You will reimburse us for all the expenses we incur in enforcing and all our costs against the Renter or you, including attorney fees. THE SAME STATE LAW AS THE RENTAL WILL GOVERN THIS GUARANTY. YOU AGREE TO JURISDICTION AND VENUE AS STATED IN THE PARAGRAPH TITLED APPLICABLE LAW OF THE RENTAL.

Personal Guaranty:	Personal Guaranty:
By: X (sign) _____ Individually	By: X (sign) _____ Individually
Name (print) _____	Name (print) _____

NOV 11 2003

09-16-2003

01/10/2005 17:42 7138611329

PARTY PROPS INC

PAGE 80

11/09/2003 22:39 7138022149

PARTY PROPS

PAGE 81

Delivery and Acceptance Certificate

The undersigned certifies that it has received and accepted all the Equipment described in the Equipment Rental Agreement between Norvanger, Inc. (Renter), and the undersigned Party Props, Inc. (Renter) dated 10/10/2003. The Equipment conforms with our requirements. There are no side agreements or cancellation clauses given outside the Equipment Rental Agreement.

I have reviewed and I understand all of the terms and conditions of the Equipment Rental Agreement. I AGREE THAT THE RENTAL PAYMENT UNDER THE EQUIPMENT RENTAL AGREEMENT WILL BEGIN 60 DAYS FROM THE DATE OF THIS DELIVERY AND ACCEPTANCE CERTIFICATE AND SHALL CONTINUE THEREAFTER FOR THE FULL LENGTH OF THE STATED INITIAL TERM OF THE EQUIPMENT RENTAL AGREEMENT AND IN ACCORDANCE WITH ITS TERMS AND CONDITIONS. I was not induced to sign this by any assurances of the Renter or anyone else. I have had a reasonable opportunity to inspect the goods.

Renter: Party Props, Inc.

Date: 11-10-03

By:

Julie Hess
(Print Name)
x Julie Hess
(Signature)

Title:

CFO

Serial #

SYSD284279

FILED

AUG 11 2005

CAROL ANNE FLORES, CLERK
COURT OF APPEALS
NINTH DISTRICT
Beaumont, Texas

In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-05-223 CV

IN RE POPULAR LEASING USA, INC.

Original Proceeding

MEMORANDUM OPINION

In this original proceeding, relator, Popular Leasing USA, Inc., seeks mandamus relief from the respondent's May 12, 2005, order denying relator's motion to dismiss. In the underlying class action lawsuit, the real party in interest, Party Props, Inc., and three other plaintiffs, sued relator and three other defendants under a number of theories including rescission of certain equipment rental leases, unreasonable debt collection practices, injunctive relief, and declaratory judgment. Both relator and Party Props, Inc. agree that all of the other plaintiffs and defendants have either settled their respective claims, or have agreed to transfer venue of said claims.

Party Props, Inc.'s pleadings allege, *inter alia*, that the equipment subject to the equipment rental agreement in question never worked; that relator was aware of relator's assignor's (Norvergence) fraudulent misrepresentation to Party Props, Inc. that the leased equipment would work; that in July of 2004, relator's assignor sought Chapter 11 bankruptcy protection of which relator was fully aware; and that the forum selection clause contained in the equipment rental agreement in question is unenforceable because it does not provide for a specific venue should either party wish to litigate any issue relating to the equipment rental agreement. Invoking the forum selection clause in the equipment rental agreement, relator filed its motion to dismiss for lack of jurisdiction. Respondent later issued his order denying relator's motion to dismiss.

A writ of mandamus will issue to correct a clear abuse of discretion when there is no other adequate remedy at law. *See In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753 (Tex. 2001) (orig. proceeding). The trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law. *See Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding). When the trial court's decision rests on resolution of fact issues, the party opposing the trial court's decision must establish that the court could reasonably have reached only one decision. *Id.* at 840. We find the relator has not demonstrated that the respondent abused his

discretion, nor has relator shown that it is entitled to the relief sought. Accordingly, the petition for writ of mandamus is denied.

WRIT DENIED.

PER CURIAM

Submitted on June 6, 2005
Opinion Delivered August 11, 2005

Before McKeithen, C.J., Kreger and Horton, JJ.

**COURT OF APPEALS
NINTH DISTRICT OF THE STATE OF TEXAS**
1001 Pearl, Suite 330
Beaumont, Texas 77701

Judgment entered August 11, 2006

No. 09-05-00223-CV

In Re Popular Leasing USA, Inc.

Original Proceeding

Per Curiam

The Relator, Popular Leasing USA, Inc., filed a petition for writ of mandamus in the above styled and numbered cause and the same being considered, it is the opinion of this Court that the same be and is hereby DENIED. A copy of this judgment shall be certified below for observance.

A handwritten signature in black ink, appearing to read 'CAF', followed by a long horizontal flourish line extending to the right.

Carol Anne Flores
Clerk of the Court

PARTY PROPS, INC.

Plaintiff,

VS.

POPULAR LEASING USA, INC.,

Defendant.

§
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§
§

IN THE DISTRICT COURT

58TH JUDICIAL DISTRICT

JEFFERSON COUNTY, TEXAS

AFFIDAVIT OF WILLIAM G. WAITES

STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, the undersigned notary public, personally appeared Bill Waites, who, having been duly sworn by me, upon oath, deposed, stated, and testified as follows:

1. "My name is William G. Waites. I am over 18 years of age, and am legally capable and fully competent to make this affidavit. I have personal knowledge of the matters stated in this affidavit, which are true and correct.
2. "I serve as a consultant in regard to equipment purchasing and leasing and issues regarding the characteristics, use, disposition, and the value of software, network, telecom access, computers, and other equipment which are commonly leased or financed by equipment financiers, lessors, and purchase money lenders. I have been in that and similar occupations for approximately the last 38 years. Prior to this I was at one time in the leasing, buying, and selling of new and used technology equipment business. My Curriculum Vitae is attached to this affidavit as Exhibit 1 and incorporated by reference.
3. In March of 2006, I personally examined the Norvergence Matrix box. The manufacturer is Adtran and the product is a Total Access 850. The Total Access 850 is an Integrated Access Device and can be used for both voice and data communications. The equipment was located at the place of business of Party Props, Inc. ("Plaintiff"). Based upon the Norvergence labels securely affixed to the Matrix box and based upon my review of other equipment and literature and information contained on websites regarding equipment and Matrix boxes marketed and supplied by Norvergence in 2004 and 2005, I confirmed that the Equipment was and is indeed the same equipment as that financed under a transaction memorialized in a document captioned "Equipment Rental Agreement" which names Norvergence, Inc. as the "rentor" and Plaintiff as "lessee." Literature, materials, and pages from websites that I reviewed are attached to this document and incorporated by reference.

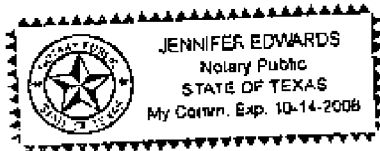
AFFIDAVIT OF BILL WAITES

Page 1

4. "These actions are the generally accepted methodology employed by persons who are or are employed by vendors, suppliers, appraisers, equipment financiers, lessors, and purchase money lenders, asset remarketers, and related businesses in determining and making valuation of network, computer, and telecommunications equipment and the remaining economic life of such equipment.
5. "I have determined and concluded that as of December of 2003, the remaining economic life of the Equipment was less than 60 months, even if Norvergence had continuously provided telephone, cellular, facsimile, internet and related telecommunications for 60 months or more. A true and correct copy of my report regarding the matters stated above is attached to this affidavit as Exhibit 2 and incorporated by reference."


William G. WAITES

SUBSCRIBED AND SWORN TO by William G. Waites on April 21, 2006.




Notary Public in and for
The State of Texas

My commission expires: Apr. 21, 2006

BHl Waites
Compupak Advanced Technology, Inc.
Fort Worth, Texas
817-738-3729
compupak1@airmail.net www.cadvtech.com

Areas of Expertise:

- Commercial transactions, interpretation of contract scope of effort and contract deliverables
- Intellectual Property analysis and interpretation
- Complex technical and business issues, business process engineering, systems integration, business process transformation
- Outsourcing and Professional Services
- Computer, internet, information technology, factory and process automation, physical processes
- Business plans and strategies, operations, product appraisals
- Program and project management, software development and implementation
- Cross industry knowledge -- manufacturing, process, logistics, distribution, aerospace, defense, financial, retail, healthcare, legal, telecommunications
- Enterprise Requirements Planning, Product/Software Development Life Cycle
- Business to business e-commerce systems and transactions analysis
- Software Development Life Cycle Methodologies, Mainframe, UNIX, client server, PC platforms

Firm/Expert: Access to a network of experienced and multi-disciplined independent consultants for engagements

Profile/Services:

- Translate technical terminology into common everyday language
- Deposition and testimony, research and investigation
- Project manage complex engagements
- TQM principles to manage engagements
- Business and physical processes review and analysis, commercial transactions analysis
- Communicate with executives, technologists, users, legal, financial, and lay people
- Business and technology strategies

Professional Experience:

- 40 individual years in business processes, commercial transactions, computers, information technology and business operations
- Court appointed expert
- Outsourcing consultant for major outsourcer and systems integrator
- Customer facing and customer career including contracting, sales, management, services, outsourcing, VAR, development, subcontracting, contracting, negotiations, and professional services
- CEO, COO, VP, Project Manager, Account and Sales Manager for hardware, software and professional services companies.
- Program Management Office and project manager
- Contract and commercial transactions authoring and interpretation
- Intellectual property research, comparisons, and interpretation
- IT Systems Integration and software development
- Product and Software Development Life Cycle methodologies
- Adjunct faculty member at UTA teaching Business Policy and Strategy, HR Management, and Labor Relations

Education:

BS Applied Mathematics, College of Engineering, Lamar University
Post graduate work in Applied Mathematics, University of Washington
MS Management Science, M.J. Neely College of Business, Texas Christian University, Post graduate work in Economics statistics
Certificate in Business Process Mapping, UT Austin
Certificates in Marketing, Legal Aspects of Contracts, UT Arlington

Geographic Limits: None

EXHIBIT 1 TO WAITES AFFIDAVIT

Introduction

William G. Waites of 6336 Juneau, Fort Worth, Texas 76116, has prepared this Report. I have 43 years in business and in the Information Technology industry. My career includes product development, field technologist, sales, management and executive. I have performed product evaluations for clients that presented the evaluations to the Superintendent of the Vancouver Stock Exchange and the U. S. Securities and Exchange Commission. I have also performed the same service for clients who were interested in providing the results to third parties. I have an MS in Management Science from TCU and a BS in Mathematics from Lamar University. I have certificates in Business Process Mapping from the University of Texas at Austin, and in Marketing and Legal Aspects of Contracts from the University of Texas at Arlington.

Objective

The objective of this report is to give my opinion of the projected market value in 2008 for the Norvergence Matrix box that was installed at Party Props in November of 2003.

Method

A narrow metal bar with the words "Norvergence" and "Matrix" was attached to the top of the enclosure box. One screw and a metal insert attached it. When the bar is removed, the name of the manufacturer and the product is shown. The manufacturer is Adtran and the product is a Total Access 850. The Total Access 850 is an Integrated Access Device and can be used for both voice and data communications. Several schematics are included in the Exhibit A attachment to this report.

An article that appears on the website of Consumer Affairs on July 26, 2005 states that the Matrix was just a standard integrated access device (IAD). This article is in the attached Exhibit A.

The Adtran 850 product is sold to the user by an Adtran reseller. The reseller in this case was Norvergence. Pages from an Agreement between Verizon and Norvergence found at web address <http://maine.gov-images.informe.org/mpac/orders/2003/2003-73agres.pdf> is in Exhibit A. Examples of Norvergence described as a reseller were printed from websites and are in Exhibit A of this report.

Reselling is a typical method of sales for this type of network product. My career includes experience in both the reseller and manufacturer industry segments. I was the vice president of a small fabrication and assembly manufacturer and systems integration technology company. IBM, one of my former employers, today uses resellers for mainframe computers.

The data for the cost analysis was obtained by visiting e-commerce websites. It is common for network products such as the Total Access 850 to be sold on the Internet. Some resellers, such as Norvergence, also use a direct sales force. Some of these resellers include value added services or products and are known as VARs (value added resellers). I would consider Norvergence to be a VAR. My consulting company and other companies for whom I have worked were VARs. I was the contract CEO for a small VAR that had government and nation-wide customers. VARs typically provide an installation and maintenance service.

The prices that I have used for this analysis are attached in Exhibit A to this report. It is typical to compare pricing on websites when making purchases of computer, network, and electronic equipment. And it is typical to develop budgets from product price data found on websites. Products such as networking devices like the Total Access 850 Integrated Access Device are advertised on the Internet.

Configuration of the Party Props Norvergence Matrix Box

- 1 Total Access 850 Chassis
- 1 Power Supply Unit (PSU) 1175006L2
- 1 T1 Router Control Unit (T1 RCU) 1200376L1
- 2 Quad FXS Access Module (Voice) 1175407L2
- 1 Echo Canceller with ADPCM (For ATM protocol) (This module's resources are now built into the 3rd Generation 1200376L1 RCU)
- 1 AC Supply/Battery Charger 1175043L3
- 4 Blank Cards 1175099L1

EXHIBIT 2 TO WAITES AFFIDAVIT

The old technology Echo Cancellor is required for the ATM protocol when the old technology RCU is included in the bundle. The Echo Cancellor is not required for the TDM protocol.

Total Access 850 System Manual Pages with modules are in Exhibit A.

Pricing

The Adtran Total Access 850 product can be found on the Adtran website. Information such as product description and specifications are on the website. Pricing is on product resellers' sites. Some reseller sites that I visited had the equipment in stock and some did not. Some had product descriptions and some did not. Those who did not have the equipment in stock and did not have product descriptions were not selected. Product descriptions were necessary for price comparison purposes. Not in stock could mean the reseller had discontinued carrying the product and the prices may not have been current.

The attached Exhibit A contains web pages printed from the web sites. Pricing was obtained for both new and used equipment. Used equipment was found on the Ebay.com auction website.

Pricing was also obtained for the Norvergence labeled product. The only available prices were on the Ebay.com website. Ebay.com is an on-line auction site for many different types of products.

The prices for a new Adtran Total Access 850 as depicted on the resellers' websites were adjusted to include only two FXS modules. An article in the May 15, 2000 issue of Cambridge Telecom Report quoted the price as \$1,995. Assuming this price does not include two FXS cards, the price with new FXS cards would increase \$292 to \$2,287. Zoomtek sells the cards for \$146 each.

The Cambridge article is copyrighted and can be found at the website:

http://www.findarticles.com/p/articles/mi_m9BFP/is_2000_May_15/ai_62086423

Adtran 850 Current Technology

The current Adtran 850 has the Echo Channeler function integrated into the third generation RCU unit. The Norvergence box does not have this model of the RCU unit. It has both the old technology RCU and the old technology Echo Cancellor units. The Echo Cancellor Technology is required for the ATM protocol. The ATM protocol is becoming the most prevalent protocol, replacing the TDM protocol that is available on the older technology RCU.

The Norvergence branded equipment that sold on the Ebay website also did not have the third generation RCU. The equipment had the legacy RCU. The older technology RCU and the older technology Echo Cancellor separate module could be the reason for the very low price of the Norvergence box.

The Adtran box that was on Ebay also had the old technology RCU and old technology Echo Cancellor modules.

Prices:

New Adtran Total Access 850 ATM Protocol Integrated Access Device

		New FXS Module (Zoomtek price)	Qty 2	Total
Dream Retail	\$ 1,853.65	\$ 141.00	\$282.00	\$ 2,135.65
NSTI	\$ 1,622.31	\$ 141.00	\$ 282.00	\$ 1,904.31
CDW	\$ 1,596.99	\$ 141.00	\$282.00	\$ 1,878.99

These units all had the current technology RCU module. There were no units found that had the old technology Norvergence configuration.

In practice, the total would be less if the unit had the FXS modules bundled with the other components of the unit. A bundled unit means all of the components are sold as one unit.

Used Equipment

Ebay.com website Auction

Norvergence Matrix	\$ 50.00
Norvergence Matrix	\$ 28.00
Unused Adtran Total Access \$50	\$ 599.00 (Buy It Now price)

Conclusion

In testimony before the Michigan Public Service Commission on March 5, 2004, Mr. Scott L. Finley testified that the Adtran 850 price of March 5, 2004 at cdw.com was \$1,569.63 and it was the same price noted by Mr. Lube, who had given testimony December 19, 2003. This can be found on page 7 of that document which is in Exhibit A of this report. This compares to the price that I found on cdw.com.

With an asking price of \$599.00 on March 10, 2006 on Ebay.com this would be a decrease in price of \$970.63 or \$35.94 per month from December, 2003 to March, 2006. For the 60 month period from November, 2003 to November, 2008 the decrease in price would be \$2,156.95. The value of a unit of equipment priced at \$1,569.63 in November, 2003 would be less than zero in November, 2008. Furthermore, the \$599.00 priced item did not sell. The seller has now posted a new price. The minimum and Buy it now prices have been reduced by \$50 to \$459 and \$549, respectively.

In a September 29, 2004 article on the consumersaffairs.com website Illinois Attorney General Lisa Madigan was quoted as saying the hardware (Norvergence matrix) is worth around \$500 and has no value unless attached to a phone carrier's network. A copy of this article is in the attached Exhibit A.

In my opinion this indicates that the Party Props' Norvergence Matrix hardware has no value since Norvergence no longer is a reseller of phone services. Even without Ms. Madigan's statement, the Norvergence Matrix hardware has no value for Party Props since Norvergence no longer can provide services for Party Props.

An article in The August 4, 2004 Leasing News quotes the price of a Norvergence Matrix piece of gear as being worth about \$600. It was leased for 5 years for \$45,000 by Meredith Wood who runs an industrial services business in West Milford. In an article in the November 19, 2004 San Antonio Business Journal "Texas Attorney General Greg Abbott has filed suit against a New Jersey-based bankrupt telecommunications reseller (Norvergence) Thursday for engaging in a fraud scheme. Abbott also demanded that 19 finance companies holding rental agreements for equipment stop attempting to collect millions of dollars from Texas small business owners who signed up for Norvergence's services, as that equipment is now worthless." The article is attached in Exhibit A.

In my opinion, the above indicates the equipment would have to be considered to have no market value in 2008. My opinion is also based on the auction prices of the two Norvergence Matrix/Adtran 850 equipment. On March 8, 2006 one sold for \$50 and on March 10, 2006 one sold for \$28. The \$28 box had the same components as the Party Props box.

Schematics



ADTRAN® Multi-Service Integrated Access Device (IAD)

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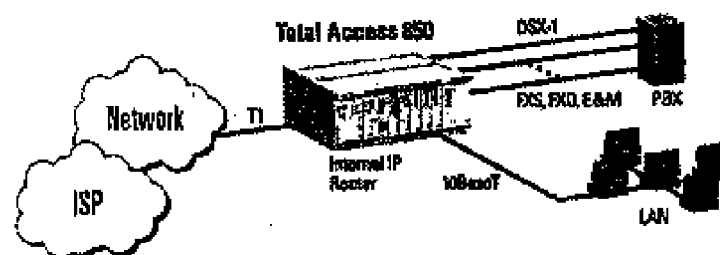
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Analog/Digital Voice and High-Speed Internet



Part of ADTRAN's Total Access System, The Total Access 850 is modular carrier-class Integrated Access Device (IAD). The Total Access 850 offers a wide variety of features and interface options for T1 TDM and packet networks such as T1 ATM and DSL. Scalable and economical, this IAD allows users to select from a wide variety of voice and data options for flexibility and ease of configuration. This platform offers an integral router, V.35, and DSX-1 interface port, and it can support up to 24 analog FXS ports by utilizing the six access module slots. With the Total Access 850 users can easily migrate from TDM to packet circuits, as network requirements change. An optional 8-hour battery backup system is available to protect uptime in case of a power outage. Additionally, all Total Access IADs provide an industry-leading 10-year warranty.

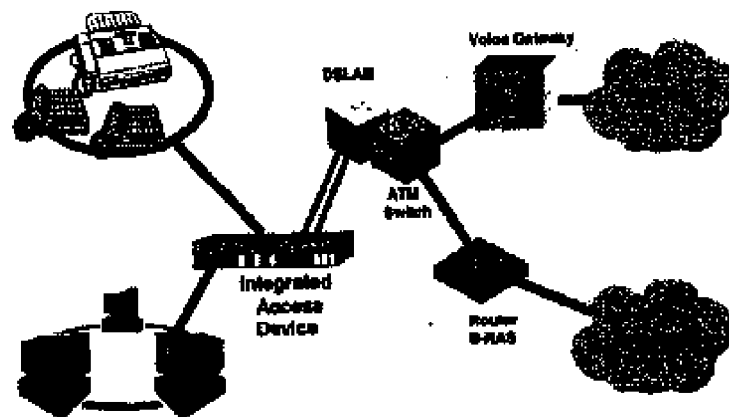
Products

Name	Description
Total Access 850 w/ T1 RCU	Modular Multi-Service Integrated Access Device with T1, DSX-1, V.35 interfaces and a built-in Router

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A local area network of computers and telephones connected to an Integrated Access Device such as an Adtran 850. The telephone voice is routed to the Public Switched Telephone Network and the data from the LAN is routed to the Internet.



New Total Access 850 Prices

Adtran 4203376L1#AC TA850 AC CHASSIS BUNDLE W/PSU ROUTER

Page 1 of 2

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Select search options, sort criteria, sort order, then hit Go!

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DIM=8.00x11.00x1.00
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Adtran 4203376L1#AC TA850 AC CHASSIS BUNDLE W/PSU ROUTER

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NSTI Part:

Manufacturer Part:

Condition:

Availability:

Serial Number:

Price:

Retail:

Description:

Additional Info:

Length: (inches)

Width: (inches)

Height: (inches)

Weight: (pounds)

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800-650 PRODUCT

IC44789

4203376L1#AC

New

3-5 Days

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\$2,222.00

TA850 AC CHASSIS BUNDLE
W/PSU ROUTER CONTROL UNIT
AC CHARGER

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ADTRAN Total Access 850 AC Chassis (T1 RCU)

Product ID
CDW Part: 571862
Mfg. Part: 420376L1RAC
UNSPSC: 43222625

Usually Ships: 1-2 Weeks

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Overview
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Main Features

- Total Access 850 AC Chassis (T1 RCU)

Cost-effective single T1/FT1 TDM, T1 ATM, or SDSL IAD

Features:
 Cost-effective single T1/FT1 TDM, T1 ATM, or SDSL IAD
 Modular chassis supports voice-only or voice and data
 Migration path to packet technologies such as ATM
 Compact size, 3.5"(h) x 8.5"(w) x 11"(d)
 Two common slots, one Power Supply Unit (PSU) slot and one System Controller slot for Bank Controller Unit (BCU) or Router Controller Unit (RCU)
 Integral FT1/DSX-1 port, IP router (10BASE-T Ethernet interface), SNMP, and V.35 Nx56/64 interface for integrated data support and Internet access
 Six access module slots plus special AB slot
 Six slots for FXS, FXO, and U-BRITE
 Supports up to 24 FXS/FXO interfaces
 Supports TR-08 operation
 50-pin amphenol connector for subscriber loop terminations
 Rugged metal chassis is NEBS Level 3 and UL 1950 compliant
 AC power option
 Optional 48 Volt, 8-hour battery backup
 Wallmount or rackmount design (19" and 23") rackmount brackets available
 10-year warranty


Product Pricing

Price: **\$1,596.99**
(\$42.92/month)

Qty:


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ADTRAN voice interface card - 4 ports


\$249.99



ADTRAN voice interface card - 4 ports


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ADTRAN Custom Extended Services Maintenance - extended service agreement

\$521.99




ADTRAN Custom Extended Services Maintenance - extended service agreement


\$709.99



ADTRAN Custom Extended Services Maintenance - extended service agreement

\$1,794.99

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02. IBM 6400IDS4800 PRINT SERVER
03. IBM 6400IS54000 ENST 10/100Mbps PRINT SRV
04. IBM 6400IS54830 COAX TWINAXIAL PRINT SRVR
05. IBM 6400IS54830 COAX TWINAXIAL PRINT SRVR
06. IBM 6400IS204830 COAX TWINAXIAL PRINT SEVER
07. IBM 6400IS54830 COAX TWINAXIAL PRINT SRVR
08. IBM FC4835 COAX 6400 TWX CARD PRINT SRVR
09. IOMEGA 160 MB ZIP DRIVE PARALLEL
10. IOMEGA 230MB EXTERNAL SCSI ZIP DRIVE

Sunday 12 March, 2006

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norvergence

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Item Title

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	esi 48-Key Feature Phone, Norvergence Matrix CCGS	3	\$28.00	\$25.00	1m
	esi 48-Key Feature Phone, Norvergence Matrix CCGS	3	\$400.00	Calculate	4d 22h 39m
	esi 48-Key Feature Phone, Norvergence Matrix CCGS	1	\$26.00	Calculate	4d 22h 52m
	esi 48-Key Feature Phone, Norvergence Matrix CCGS	4	\$51.00	Calculate	4d 22h 53m
	esi 48-Key Feature Phone, Norvergence Matrix CCGS	4	\$600.00	Calculate	5d 22h 28m
	esi 48-Key Feature Phone, Norvergence Matrix CCGS	4	\$50.00	\$22.00	5d 22h 40m



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Adtran Matrix CCS T1 Network System by Norvergence

Item number: 5875342708

Bidder or seller of this item? [Sign in](#) for your status



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Current bid: **US \$28.00**

End time: 46 secs (Mar-10-06 12:41:52 PST)

Shipping costs: **US \$25.00**
UPS Ground

Ships to: United States

Item location: Carlsbad, California United States

History: 3 bids

High bidder: **july281909** (572 ★)

You can also: [Watch this item](#)
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Meet the seller

Seller: **golden.telecom,inc** (200 ★)

Feedback: 98.7% Positive

Member: since Nov-30-98 in United States

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Score: 200 | 98.7% Positive

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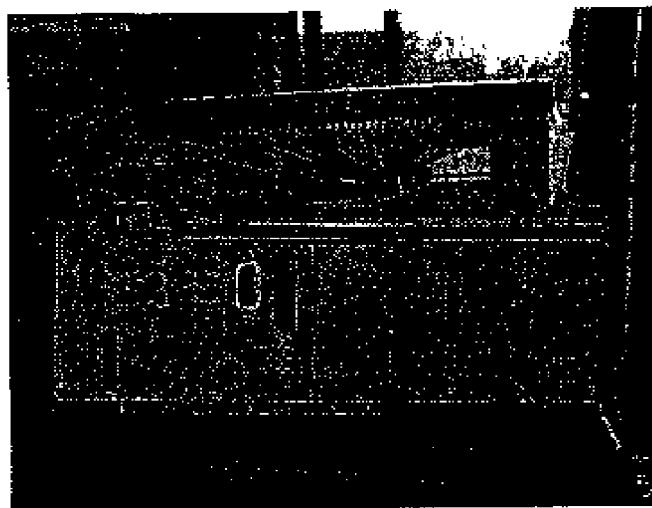
[Listing and payment details:](#) [Show](#)

Description

Item Specifics - Item Condition
Condition: New



This is a brand new Adtran Matrix CCS T1 Network System by Norvergence, includes the PSU (1175008L2) module, RCU (1200376L1) module, ECHO CANCELLER ADPCM (1203384L2) module, and 2 - FXS (1175408L2) modules, wiring and a punch down block. It was mounted to a wall but never used. Sold AS IS. Any questions? Feel free to ask, this is the same unit as the Adtran Total Access 750 / 650 models. It just has the Norvergence branding.



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Shipping, payment details and return policy

Domestic Handling Time

Will usually ship within 1 business day of receiving cleared payment.

Shipping Cost	Services Available	Service Transit Time*	Available to
US \$25.00	UPS Ground	1 to 5 business days	United States only

*Sellers are not responsible for service transit time. Transit times are provided by the carrier, exclude weekends and holidays, and may vary with package origin and destination, particularly during peak periods.

Will ship to United States.

Shipping Insurance
Not offered

Sales tax

Seller charges sales tax for items shipped to: CA (7.750%).

Seller's payment instructions

PayPal payments only, please pay mike@goldentelephones.com. Item will ship as soon as I receive completed payment through PayPal. Happy bidding!

Payment methods accepted

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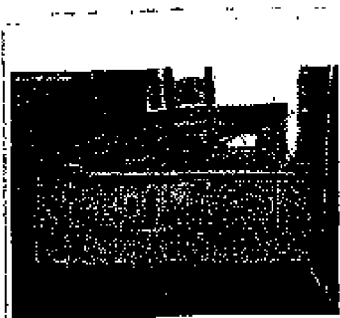
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Adtran Matrix CCS T1 Network System by Norvergence Item number: 5875342708

Bidder or seller of this item? [Sign in for your status](#)



[View larger picture](#)

Current bid: **US \$28.00** [Place Bid >](#)

End time: **Mar-10-06 12:41:52 PST (1 day 21 hours)**

Shipping costs: **US \$25.00**
UPS Ground

Ships to: **United States**

Item location: **Carlsbad, California United States**

History: **2 bids**

High bidder: **hdncorp (195 ★)**

You can also: [Watch this item](#)
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Meet the seller

golden telec
Seller: **(200 ★)** [it](#)

Feedback: **96.7% Posit**
Member: **since Nov-30**
United States

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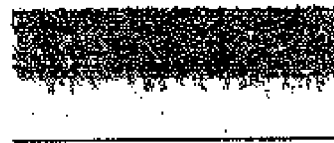
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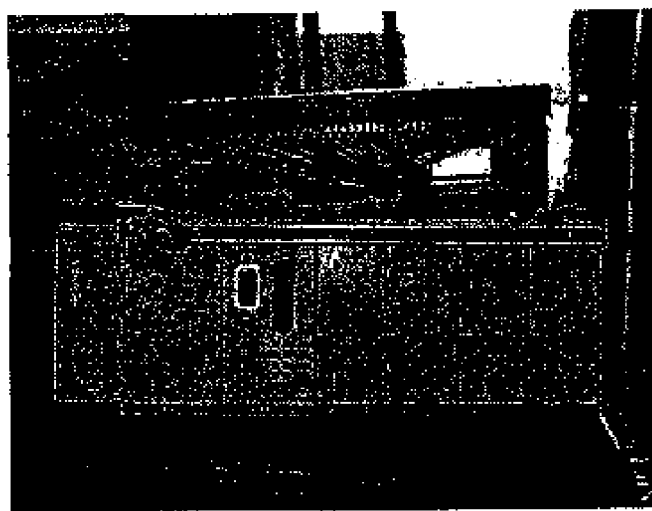
[Listing and payment details: Show](#)

Description

Item Specifics - Item Condition
Condition: **New**



This is a brand new Adtran Matrix CCS T1 Network System by Norvergence. Includes the PSU (1175008L2) module, RCU (1200376L1) module, ECHO CANCELLER ADPCM (1203384L2) module, and 2 - FXS (1175408L2) modules, wiring and a punch down block. It was mounted to a wall but never used. Sold AS IS. Any questions? Feel free to ask, this is the same unit as the Adtran Total Access 750 / 850 models, it just has the Norvergence branding.



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Shipping, payment details and return policy

Domestic Handling Time

Will usually ship within 1 business day of receiving cleared payment.

Shipping Cost

US \$25.00

Services Available

UPS Ground

Service Transit Time*

1 to 6 business days

Available to

United States only

*Sellers are not responsible for service transit time. Transit times are provided by the carrier, exclude weekend and may vary with package origin and destination, particularly during peak periods.

Will ship to United States.

Shipping Insurance

Not offered

Sales tax

Seller charges sales tax for items shipped to: CA (7.750%).

Seller's payment instructions

PayPal payments only, please pay mike@goldentelephones.com. Item will ship as soon as I receive complete through PayPal. Happy bidding!

Payment methods accepted



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Ready to bid?

Adtran Matrix CCS T1 Network System by Norvergence

Item title: Adtran Matrix CCS T1 Network System by Norvergence

Current bid: US \$28.00

Your maximum bid: US \$ (Enter US \$27.00 or more)

[Place Bid](#) You will confirm in the next step.

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Adrian Matrix CCS II Network System by Norvergence

1 \$60.00 \$30.00 1m



Adrian Matrix CCS II Network System by Norvergence

1 \$1.00 \$25.00 1d 21h 18m



9000-48 Key Phone ESL Select IVX-S Norvergence CCS

3 \$565.00 Calculate 7d 19h 44m

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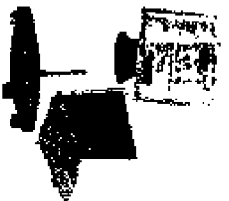
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This page was last updated: Mar-08 15:22

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Adtran Matrix CCS T1 Network System by Norvergence item number: 5874461812

Bidder or seller of this item? [Sign in](#) for your status



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Current bid: **US \$50.00** [Place Bid >](#)

End time: 21 mins 40 secs (Mar-08-06 15:25:30 PST)

Shipping costs: **US \$30.00**
US Postal Service Priority Mail®

Ships to: United States

Item location: Palm Beach Gardens, Florida United States

History: [1 bid](#)

High bidder: [m2plantsfan](#) (41 [★](#))

You can also: [Watch this item](#)
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Meet the seller

Seller: [tactub2](#) (95

Feedback: 97.0% Positi

Member: since May-06
United States

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Buy safely

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Score: 95 | 97.0% Pos
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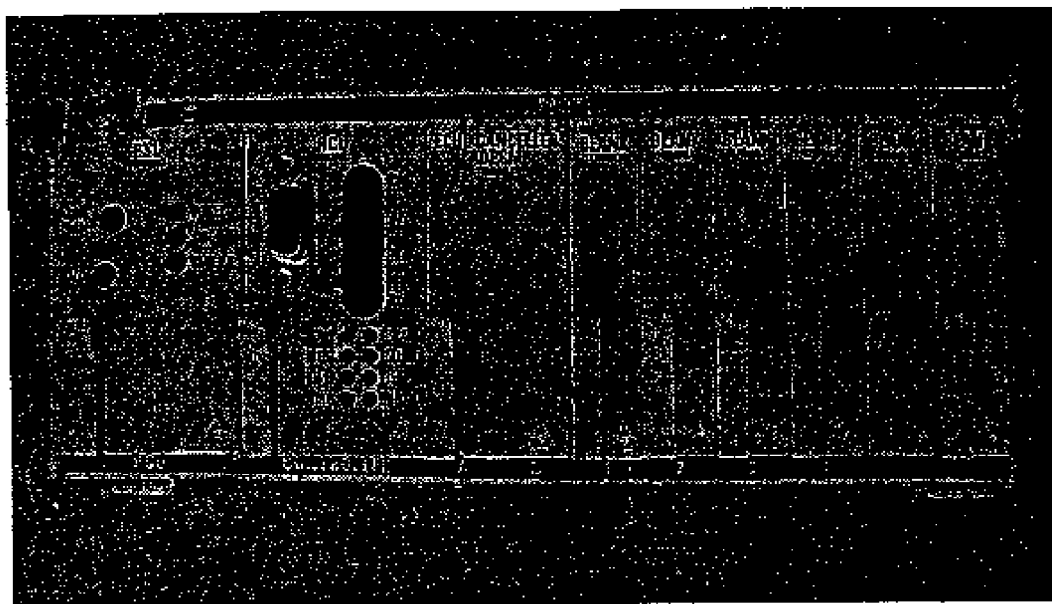
Item Specifics - Item Condition
Condition: Used

Garage Sale

Too much new stuff, have to empty out my garage

Matrix Box





Do not know much about this item, I have 2 left and will include a copy of the quick configuration guide with each. The item is heavy, that is the reason for the high cost of shipping.

the 3 modules installed on the left side of the unit are as follows

PSU #1175006L2

RCU #1200376L1

Echo Canceller ADPCM #1203384L2

The units were all powered on when I pulled them, guaranteed not DOA, ASIS.

Please ask any questions you have I will try to answer them to the best of my ability.

Buy: ADTRAN Total Access 850 w/ Power Supply (item 5878181455 end time Mar-16-06 13:05:02 PST)



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ADTRAN Total Access 850 w/ Power Supply

Item number: 5878181455

You are signed in



Current bid: US \$34.00

End time: Mar-16-06 13:05:02 PST (3 days 18 hours)

Shipping costs: US \$20.00
UPS Ground

Ships to: United States, Canada

Item location: Towaco, New Jersey United States

History: 3 bids

High bidder: stodie999 (82 ★)

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Meet the seller

Seller: [pocobon](#) (1123 ★)

Feedback: 100% Positive

Member: since Sep-28-04 in United States

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- Check the seller's reputation
Score: 1123 | 100% Positive
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Description

Item Specifics - Item Condition
Condition: Used

http://cgi.ebay.com/ADTRAN-Total-Access-850-w-Power-Supply_W00QitemZ5878181455QQcategoryZ80226QQrdZ1QQcmdZViewItem

3/12/2006

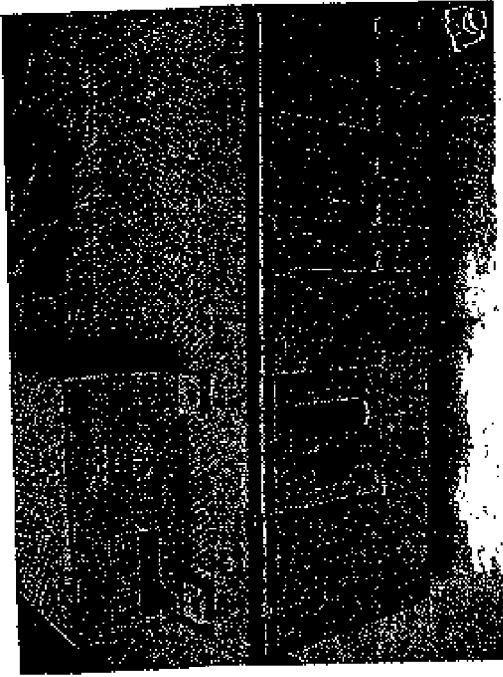
ADTRAN Total Access 850

Excellent Condition

Includes:

- 1- PSU / 1175006L2
- 1- RCU / 1200376L1
- 1- Echo Cancellor ADPCM / 1203384L2
 - 3- FXS / 1175408L2
 - 3- Blanks / 1175099L1
 - Power Supply
 - Mounting Braecket

Buy: ADTRAN Total Access 850 w/ Power Supply (item 5878181455 end time Mar-16-06 13:05:02 PST)



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Shipping, payment details and return policy

Shipping Cost	Services Available	Service Transit Time*	Available to
US \$20.00	UPS Ground	1 to 6 business days	United States only

*Sellers are not responsible for service transit time. Transit times are provided by the carrier, exclude weekends and holidays, and may vary with package origin and destination, particularly during peak periods.

Will ship to United States, Canada.

Shipping Insurance
US \$2.00 Optional

Seller's payment instructions
I only accept PayPal, Cashiers Check or Money Order. All payments should be sent within 7 days after the auction is closed. After 7 days, unpaid auction will be forfeited

http://cgi.ebay.com/ADTRAN-Total-Access-850-w-Power-Supply_W00QItemZ5878181455QcategoryZ380726QQrdZ1QQcmdZViewItem 3/12/2006

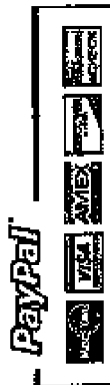
Buy: ADTRAN Total Access 850 w/ Power Supply (item 3878181455 end time Mar-10-06 13:05:02 PST)

and NEGATIVE FEEDBACK will be left. - Serious Bidders Only Please!!! The package will be shipped to you within 2 business days of receiving money (clearing of Money Order/Cashiers Check).

Payment methods accepted

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Ready to bid?

ADTRAN Total Access 850 w/ Power Supply

Item title: ADTRAN Total Access 850 w/ Power Supply

Current bid: US \$34.00

Your maximum bid: US \$ (Enter US \$35.00 or more)

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eBay: ADTRAN Total Access 850 w/ Power Supply (item 5878181455 end time Mar-16-06 13:05:02 PST)

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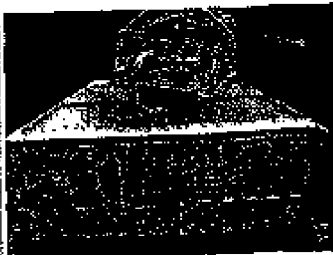
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category:

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Adtran Total Access TA-850 RCU,TDM w/ 3 FXS NEVER USED

Item number: 5877019561

Seller of this item? [Sign in](#) for your status



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Starting bid: US \$449.00

[Place Bid](#)

[Buy It Now](#) price: US \$549.00

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[Immediate payment required](#)

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End time: Mar-18-06 12:00:00 PST (2 days 15 hours)

Shipping costs: US \$30.00
UPS Ground

Ships to: United States

Item location: Meadville, Pennsylvania United States

History: [0 bids](#)

You can also: [Watch this item](#)
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Meet the seller

[bridge16106](#) (75

Seller: ★)

Feedback: 100% Positive

Member: since Jan-01-02 in United States

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Buy safely

1. Check the seller's reputation

Score: 75 | 100% Positive

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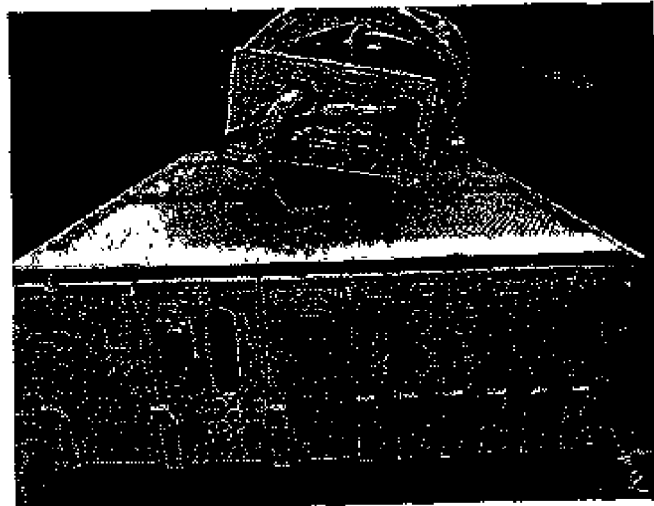
Description

[Item Specifics - Item Condition](#)

Condition: New

ADTRAN TA-850 Total Access 850 w/ T1 RCU * Cost-effective single T1/FT1 TDM, T1 ATM, or SDSL IAD * Modular chassis supports voice-only or voice and data * Migration path to packet technologies such as ATM * Compact size, 3.5"(h) x 8.5"(w) x 11"(d) * Two common slots, one Power Supply Unit (PSU) slot and one System Controller slot for Bank Controller Unit (BCU) or Router Controller Unit (RCU) * Integral FT1/DSX-1 port, IP router (10/100BaseT Ethernet interface), SNMP, and V.35 Nx56/64 interface for integrated data support and Internet access * Six access module slots plus special AB slot * Six slots for FXS, FXO, and U-BRITE * Supports up to 24 FXS/FXO interfaces * Supports TR-08 operation * 50-pin female amphenol connector for subscriber loop terminations * Rugged metal chassis

is NEBS Level 3 and UL 1950 compliant * AC or DC power options * Optional 48 Volt, 8-hour battery backup *
Wallmount or rackmount design (19" and 23") rackmount brackets available The item comes complete with 1 RCU
Card 1 PSU Card 1 Power supply 1 Echo cancellation card (This card alone retails for \$420) 3 FXS Cards 1175408L2



\$30.00

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Shipping, payment details and return policy

Shipping Cost	Services Available	Service Transit Time*	Available to
US \$30.00	UPS Ground	1 to 8 business days	United States only

*Sellers are not responsible for service transit time. Transit times are provided by the carrier, exclude weekends and holidays, and may vary with package origin and destination, particularly during peak periods.

Will ship to United States.

Shipping insurance
Not offered

Seller's return policy:
Return Policy Details:

Item sold as is.

Seller's payment instructions
Buyer pays shipping and handling. UPS ground is \$30.00 PayPal accepted as well as money order or cashiers check.

Payment methods accepted

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Ready to bid or buy?

Adtran Total Access TA-850 RCU,TDM w/ 3 FXS NEVER USED

Place a Bid

Item title: Adtran Total Access TA-850 RCU,TDM w/ 3 FXS NEVER USED

Starting bid: US \$449.00

Your maximum bid: US \$ (Enter US \$449.00 or more)

[Place Bid](#) You will confirm in the next step.

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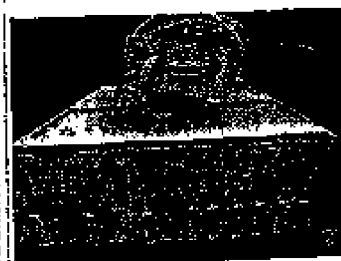
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Adtran Total Access TA-850 RCU,TDM w/ 3 FXS NEVER USED

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UPS Ground

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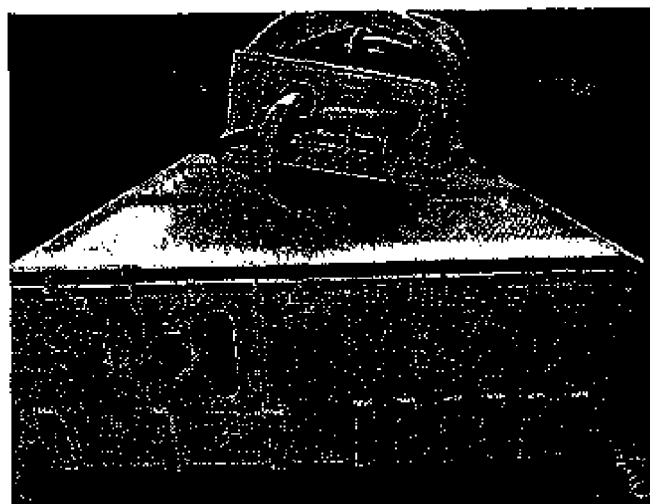
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Description

[Item Specifics - Item Condition](#)
Condition: New

ADTRAN TA-850 Total Access 850 w/ T1 RCU * Cost-effective single T1/FT1 TDM, T1 ATM, or SDSL IAD * Modular chassis supports voice-only or voice and data * Migration path to packet technologies such as ATM * Compact size, 3.5"(h) x 8.5"(w) x 11"(d) * Two common slots, one Power Supply Unit (PSU) slot and one System Controller slot for Bank Controller Unit (BCU) or Router Controller Unit (RCU) * Integral FT1/DSX-1 port, IP router (10/100BaseT Ethernet interface), SNMP, and V.35 Nx56/64 interface for integrated data support and Internet access * Six access module slots plus special AB slot * Six slots for FXS, FXO, and U-BRITE * Supports up to 24 FXS/FXO interfaces * Supports TR-08 operation * 50-pin female amphenol connector for subscriber loop terminations * Rugged metal chassis

is NEBS Level 3 and UL 1950 compliant * AC or DC power options * Optional 48 Volt, 8-hour battery backup *
Wallmount or rackmount design (19" and 23") rackmount brackets available The item comes complete with 1 RCU
Card 1 PSU Card 1 Power supply 1 Echo cancellation card (This card alone retails for \$420) 3 FXS Cards 1175408L2



0001

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Return Policy Details:

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Adtran Total Access 850 System Manual (partial)



TOTAL ACCESS 850 System Manual

1200375L1	Total Access 850 Chassis
1200373L1	T1 Bank Controller Unit (BCU)
1200373L2	T1 BCU with DSX Port
4203376L1#TDM	T1 Router Control Unit (RCU) with TDM Software
4203376L1#ATM	T1 RCU with ATM Software
1203376L1	3rd Generation T1 RCU
1200377L1	SDSL RCU
1200377L2	2nd Generation SDSL RCU
1203384L2	Echo Canceller with ADPCM
1175006L2	Power Supply Unit
1175043L3	AC Supply/Battery Charger

1. SYSTEM OVERVIEW

The Total Access 850 is an integrated access device designed for cost-effective deployment of voice and data services at the customer premises. The Total Access 850 system benefits integrated communications providers, such as CLECs, ILECs, and ISPs, who require a customer premises device that integrates voice and data functions. It provides a viable migration path from TDM to packet-based technology (see *Modules* on page 18 for details). The Total Access 850 features remote management, an integrated IP router, and special services slots. Preconfigured Total Access 850 packages are available.

The Total Access 850 is a modular device with two common slots, six access slots for FXS, FXO, Dual V.35, and UBR1TE modules, and two slots for special access modules. The FXS, FXO, Dual V.35, and UBR1TE modules are supported in the Router Control Unit (RCU); however, the Bank Controller Unit (BCU) also supports E&M, OCU DP, Single DSO DP, and Nx36/64 modules. Using local or remote inband management, carriers can turn features, functions, and access ports on and off. Easy access to modules, common modules, power supplies, and the battery back-up system simplifies maintenance procedures. Hot-swappable modules may be replaced without disrupting other units. The four-circuit-per-module design ensures that only four analog circuits are affected when replacing a module.

The Total Access 850 is a compact, NEBS-compliant cabinet suitable for the customer premises or the central office. The 2U design uses little rack space; or when wallmounted, the 8½-inch by 11-inch chassis occupies a space the size of a piece of notebook paper. Two Total Access 850 systems can be mounted side-by-side in either 19-inch or 23-inch relay racks.

2. FEATURES AND BENEFITS

The following list gives Total Access 850 features and benefits. Some features are module-dependent.

Configuration and Management

- VT100 Emulation
- SNMP Management (with RCU)
- Telnet (with RCU)
- Dial-up remote management via external analog modem
- Six levels of password protection and privileges for Telnet access (with RCU)

Software Upgradeable

- Flash memory
- TFTP download (with RCU)
- XMODEM via control port

Signalling Support

- T1/FT1 integrated access
- TDM to ATM migration (with RCU)
- Upgradeable to DSL using SDSL RCU
- TR-08 signalling support
- Analog FXS and FXO voice expansion (four per module)

Integrated Components (with RCU)

- IP router
- DSX-1 T1/PBX interface
- V.35 Nx56/64 DTE interface

Testing

- Local and remote: payload/frame, V.34 (depending on installed modules)
- Patterns: 511, QRSS, all ones, all zeros (depending on installed modules)

Performance Monitoring

- Reports: Information stored for last 24 hours in 15 minute increments
- Performance statistics per TR54016, T1.403, RFC1406
- Alarm reporting per TR54016, T1.403

3. MODULES

The Total Access 850 system offers several different system modules (including the power supply), system resource modules, and access modules.

System Modules

- Bank Controller Unit (BCU) (P/N 1200373L1)
- BCU with Fractional T1 (P/N 1200373L2)
- T1 Router Control Unit (RCU) with TDM software (P/N 4203376L1#TDM)
- T1 Router Control Unit (RCU) with ATM software (P/N 4203376L1#ATM)
- 3rd Generation T1 Router Control Unit (RCU) (P/N 1203376L1)
- SDSL RCU (P/N 1200377L1)
- 2nd Generation SDSL RCU (P/N 1200377L2)
- Power Supply Unit (P/N 1175006L2)

Resource Modules

- Echo Canceller with ADPCM (P/N 1203384L2)
- Nx56/64K Data Service Unit (DSU) (P/N 1200372L1)

Access Modules

- Quad FXS Access Module (P/N 1175408L2)
- Quad FXO Access Module (P/N 1175407L2)
- UBRITE Access Module (P/N 1180020L1)
- Dual V.35 Access Module (P/N 1180025L1)
- DSX-1 Access Module (P/N 1200385L1)

Access Modules (Requiring a BCU)

- E&M/TO Access Module (P/N 1180402L1)
- OCU DP Access Module (P/N 1180005L1)
- Single DS0 DP Access Module (P/N 1180003L1)
- Nx56/64 (V.35) Access Module (P/N 1200372L1)

Each access module is hot-swappable, with configuration restored upon replacement.



Replacing an access module with a different module type will result in configuration loss.

Total Access 850 Bank Controller Unit (BCU) (P/N 1200373L1)

The BCU is a common module plug-in unit with a built-in CSU. The BCU provides all control functions for the Total Access 850 common units and all individual access modules. A faceplate DB-9 (ADMIN) interface provides access for a VT100 terminal for screen menu provisioning, and bantam test jacks provide transmit and receive monitoring. An additional DB-9 (TEST) interface provides timing for DS0 test equipment. Faceplate LEDs show status information for the network and Fractional T1 (DSX-1 on L2 only). The unit consists of a main circuit board and daughter card and inserts directly in the controller slot on the Total Access 850 shelf. An 8-position DIP-switch is mounted on the daughter card and is used for T1 provisioning and clocking.

BCU with Fractional T1 (P/N 1200373L2)

The BCU with Fractional T1 provides all the functionality of the traditional BCU as well as a DSX-1/Fractional T1 interface for additional T1 service.

T1 RCU (P/N 4203376L1#TDM, 4203376L1#ATM and 1203376L1)

The RCU is a dual board assembly that provides the network interface for the Total Access 850 system. The RCU can provision, test, and provide status for any card in the system. A faceplate DB-9 (CRAFT) interface provides access for a VT100 terminal for screen menu provisioning, and bantam test jacks provide transmit and receive monitoring capabilities. Terminal menu access is also provided through the RJ-45 CRAFT interface located on the rear of the chassis. Faceplate LEDs show status information for the network port and Ethernet port. In addition, the RCU has an integrated router access through the 10BaseT connector on the backplane of the chassis. (3rd Generation RCUs provide a 10/100BaseT interface.) A DSX-1/Fractional T1 interface for additional T1 service is also provided.

SDSL RCU (P/N 1200377L1, 1200377L2)

The SDSL RCU is a dual board assembly that includes an SDSL network interface, Nx56/64 V.35 interface, and built-in IP router. The SDSL RCU can provision, test, and provide status for any card in the system. The faceplate has a DB-9 (CRAFT) port connection, and network, V.35, and Ethernet LEDs. An additional RJ-45 terminal menu interface is located on the rear of the chassis and is labeled CRAFT. The SDSL RCU is only used in ATM applications. It supports vendor-specific SDSL protocols, ATM, and Copper Mountain Frame Relay. Therefore, the SDSL RCU can interoperate with a variety of DSLAMs, including Lucent, Nortel, Copper Mountain, Nokia, and Alcatel. It also supports several voice gateways, including Jetstream and Broadband Loop Emulation Services (BLES) gateways. The SDSL RCU has

built-in Echo Cancellation for up to 24 voice ports. Adaptive Differential Pulse Code Modulation (ADPCM) resources are also built-in for up to 16 ports.

Power Supply Unit (P/N 1175008L2)

The Total Access 850 PSU is a common module plug-in unit designed to supply power to the system. The faceplate contains a momentary ACO pushbutton, a ring voltage Enable/Disable pushbutton, a Bank Alarm LED, Ring LED, and a power LED. All power, ground, and timing signals are pre-wired, thus eliminating additional wiring requirements.

Echo Canceller with ADPCM (P/N 1203384L2)

An Echo Canceller Module is available for use with the legacy T1 RCU (P/N 1200376L1 - ATM firmware only). Echo cancellation and ADPCM resources are built into the 3rd Generation T1 (P/N 1203376L1) and SDSL (P/N 1200 377Lx) versions of the RCU, so this module is not required when using the SDSL RCU. The Echo Canceller Module provides G168 echo cancellation for voice over ATM applications and includes Adaptive Differential Pulse Code Modulation (ADPCM). ADPCM is a speech coding method which uses fewer bits than traditional Pulse Code Modulation (PCM), allowing the user to get more analog voice calls on less bandwidth. This is a dual-slot module and must be installed in the system resource slots (A and B).



The Echo Canceller module ADPCM functionality automatically shifts ON/OFF when fax or modem calls are placed. To find out the current status of the Echo Canceller functionality, check the current status of each FXS port. The path of the current status can be found at the following path: L2 Protocol (T1 ATM-T1-ATM) > STATUS > PVC STATUS > PROTOCOL STATUS > POTS STATS > Coding Type (this will display either PCM or ADPCM).

Nx56/64K (V.35) Module (P/N 1200372L1)

This module is only available in Total Access 850 systems using a BCU. The Nx56/64k (V.35) Module activates the V.35 port on the rear of the chassis. This is a dual-slot module and must be installed in the system resource slots (A and B).

Quad FXS Access Module (P/N 1175408L2)

The Quad FXS Module provides analog voice extension for the Total Access 850 platform. Four analog voice ports are used to connect to analog phones. The Quad FXS Module supports Foreign Exchange Subscriber, Dial Pulse Terminate (DPT), and Private Line Automatic Ringdown (PLAR) and provides Ground Start/Loop Start to E&M conversion capability.

Quad FXO Access Module (P/N 1175407L2)

The Foreign Exchange Office (FXO) module interfaces to the Central Office switch and to an FXS or RPOTS card over a T1 facility. Four analog voice ports on the FXO access module provide four individual connections to the switch. The FXO supports standard Loop Start and Ground Start options as well as Dial Pulse Terminate (DPT) functionality. Up to six Quad FXO Access Modules may be installed in the Total Access 850.

OCU DP Access Module (P/N 1180005L1)

This module is only available in Total Access 850 systems using a BCU. The OCU DP module is a single port access module used to provide the interface between a DS0 time slot on the T1 and a 4-wire DDS device at the customer premises. The OCU DP supports up to 18 kft of copper for remote DSU connectivity.

U-BR1TE Access Module (P/N 1180020L1)

The UBR1TE is a module that plugs into a single access slot of the Total Access 850. It provides an ISDN U-interface and allows transport of Basic Rate 2B+D information over T1 carriers and twisted pair wiring.

E&M/TO Access Module (P/N 1180402L1)

This module is only available in Total Access 850 systems using a BCU. The E&M/TO module is a single port Ear and Mouth/Transmit Only access module. The primary application for this module is to provide PBX foreign exchange at the customer premises or tandem central office applications. This module is intended for interface with intra-building wiring. The E&M/TO module supports both 2- and 4- wire operation.

Dual V.35 Access Module (P/N 1180025L1)

The Dual V.35 Access Module is a DSU data port with two circuits that each deliver serial data over a V.35 interface. The module is designed as a dual slot module; it requires two slots in the Total Access 850 chassis. Each circuit of the Dual V.35 Access Module provides up to 24 channels of data in 56 or 64 kbps increments. Design operation is to transmit or receive high rate synchronous data from data terminal equipment (DTE) over a T1 interface. This module is currently only supported by the TDM version of the T1 RCU.

DSX-1 Access Module (P/N 1200385L1)

This module is only available in Total Access 850 systems using a T1 RCU. The DSX-1 Module installs into the Total Access 850 system to provide an additional DSX-1 interface (RJ-45) for support of multiple PBXs or other equipment with a DSX-1/FT1 interface. The module is functional in any of the six Total Access 850 module slots.

Single DS0 DP Access Module (P/N 1180003L1)

This module is only available in Total Access 850 systems using a BCU. The DS0 Dataport is a single port access module that serves as an interface to the basic DDS DS0 (64 kbps) signal to a T-carrier line. This module is used in conjunction with an ADTRAN All-Rate Office Channel Unit (OCU) dataport or Total Reach DDS dataport located at the end office to extend the DDS network to an end office which has exclusively-served voice channels.

1. EQUIPMENT DIMENSIONS

The Total Access 850 chassis is 8.5" W, 11" D, and 3.5" H and can be mounted in a 19-inch or 23-inch rack (mounting brackets included in shipment). All other equipment (modules) fit inside the base unit.

2. POWER REQUIREMENTS

Regardless of the configuration of access modules installed in the chassis, the following power requirements apply:

AC System

90/130 VAC, 60 Hz, 50 Watt Max

DC System

40/56 VDC, 50 Watt Max

3. REVIEWING THE FRONT PANEL DESIGN

Figure 1 shows the Total Access 850 front panel. Refer to *Access Module Interfaces* on page 40 for a discussion of available modules and the front panel functions of each.

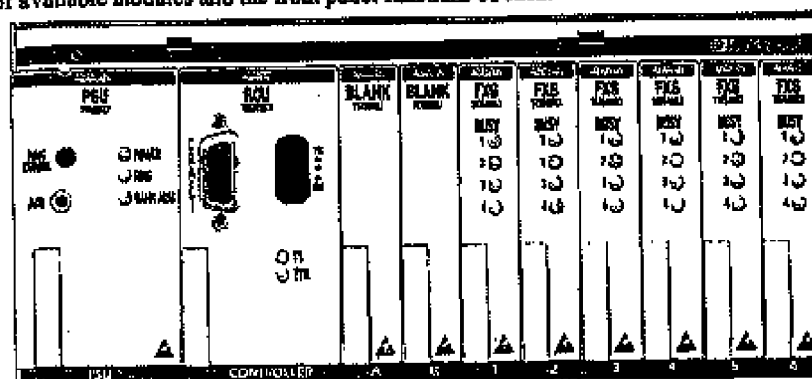


Figure 1. Total Access 850 Front Panel Layout



UL 60950/NEBS requires all Total Access 850 empty slots to be covered with blank panels (P/N 1175099L1).

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News

Illinois Sues NorVergence

November 4, 2004

Illinois is the latest state to sue **NorVergence**. Illinois Attorney General Lisa Madigan says she has received more than 200 consumer complaints from the company's small business clients. She says NorVergence left hundreds of small business owners in Illinois without telephone and Internet services while threatening collection actions.

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The Federal Trade Commission filed suit against NorVergence yesterday and states including New Jersey and Florida are also pursuing legal action.

"NorVergence preyed upon small businesses that were trying to economize on their telecommunications services," Madigan said. "Instead, they found the business equivalent of dead air when it came time to put those services to work. It's hard enough to make it as a small business without predatory service providers. We are taking every effort to see that NorVergence is held accountable."

NorVergence was forced into bankruptcy in June, 2004, leaving its customers without service but still responsible for five-year rental agreement payments to leasing companies. The total cost of those leasing agreements ranged from approximately \$12,000 to \$175,000. Under NorVergence's alleged scheme, the company would sell the full five-year contract with a small business to a leasing company and walk away with the profit.

Madigan's lawsuit charges NorVergence, Inc. and Peter Salzano, individually and as president of NorVergence, with multiple violations of the Illinois Consumer Fraud and Deceptive Business Practices Act. Allegations against NorVergence stem from the company's false representation of its product and services to customers.

According to Madigan's lawsuit, a NorVergence sales person typically offered to provide discounted telecommunications services using "voice

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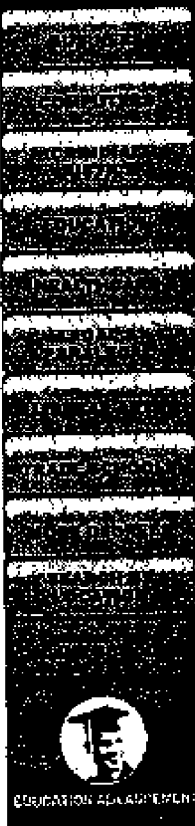
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phone calls as fast data." NorVergence included a "Matrix" box as part of the deal, claiming that this device was necessary to allow a small business to reap a 30 percent discount on its current telecommunications costs, including long distance, DSL service, and wireless phone service. NorVergence representatives allegedly claimed the "Matrix" box would achieve the savings by converting voice calls into data.

Madigan's suit alleges the "Matrix" box failed to perform as promised and is worth only about \$500, although NorVergence charged businesses between approximately \$200 to \$2,900 per month for rental of the "Matrix" box and its telecommunications services. After reaching extended service agreements with its customers, NorVergence then assigned those agreements to leasing companies to collect payments.

After NorVergence was forced into bankruptcy by its creditors, the leasing companies continued to demand payment from small businesses for telecommunication services that had already been shut off. In situations where the small businesses refused to submit monthly payments, the leasing companies have been accelerating the terms of the contract and demanding full payments of the five-year agreement.

On Monday, September 13, Madigan issued subpoenas to eight leasing companies currently attempting to collect payment from Illinois customers of NorVergence. Madigan requested information regarding their discussions with NorVergence and the manufacturers of the Matrix boxes, and asked the leasing companies to refrain from collecting from Illinois consumers.

The lawsuit asks the court to find that the NorVergence contracts are the result of fraud and, therefore, must be considered null and void. Madigan's suit also asks the court to prohibit NorVergence from future violations of Illinois' consumer protection laws. Additionally, the suit seeks civil penalties in the amount of \$50,000 per violation, restitution for consumers and payment for the cost of investigation and prosecution.

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PRESS RELEASE



www.IllinoisAttorneyGeneral.gov

For Immediate Release

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mmerz@atg.state.il.us

November 4, 2004

**MADIGAN FILES SUIT AGAINST BANKRUPT TELECOM
COMPANY THAT LEFT SMALL BUSINESSES HOUNDED BY
COLLECTION AGENCIES**

ILLINOIS IS ONE OF FIRST STATES TO SUE NORVERGENCE

Chicago – After receiving more than 200 consumer complaints from small business clients of a New Jersey-based telecommunications company, Attorney General Lisa Madigan today filed a lawsuit in Sangamon County Circuit Court against the company that left hundreds of small business owners in Illinois without telephone and internet services but threatened with collection actions.

Madigan's office has received 207 complaints against NorVergence, Inc., a telecommunications company based in Newark, New Jersey, that set up a sales office in Oakbrook Terrace. The company was forced into bankruptcy in June 2004, leaving its customers without service but still responsible for five-year rental agreement payments to leasing companies. The total cost of those leasing agreements ranged from approximately \$12,000 to \$175,000. Under NorVergence's alleged scheme, the company would sell the full five-year contract with a small business to a leasing company and walk away with the profit.

Madigan's lawsuit charges NorVergence, Inc., and Peter Salzano, individually and as president of NorVergence, with multiple violations of the Illinois Consumer Fraud and Deceptive Business Practices Act. Allegations against NorVergence stem from the company's false representation of its product and services to customers.

"NorVergence preyed upon small businesses that were trying to economize on their telecommunications services," Madigan said. "Instead, they found the business equivalent of dead air when it came time to put those services to work. It's hard enough to make it as a small business without predatory service providers. We are taking every effort to see that NorVergence is held accountable."

According to Madigan's lawsuit, a NorVergence sales person typically offered to provide discounted telecommunications services using "voice phone calls as fast data." NorVergence included a "Matrix" box as part of the deal, claiming that this device was necessary to allow a small business to reap a 30 percent discount on its current telecommunications costs, including long distance, DSL service, and wireless phone service. NorVergence representatives allegedly

claimed the "Matrix" box would achieve the savings by converting voice calls into data.

Madigan's suit alleges the "Matrix" box failed to perform as promised and is worth only about \$500, although NorVergence charged businesses between approximately \$200 to \$2,900 per month for rental of the "Matrix" box and its telecommunications services. After reaching extended service agreements with its customers, NorVergence then assigned those agreements to leasing companies to collect payments.

After NorVergence was forced into bankruptcy by its creditors, the leasing companies continued to demand payment from small businesses for telecommunication services that had already been shut off. In situations where the small businesses refused to submit monthly payments, the leasing companies have been accelerating the terms of the contract and demanding full payments of the five-year agreement.

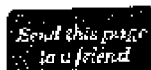
On Monday, September 13, Madigan issued subpoenas to eight leasing companies currently attempting to collect payment from Illinois customers of NorVergence. Madigan requested information regarding their discussions with NorVergence and the manufacturers of the Matrix boxes, and asked the leasing companies to refrain from collecting from Illinois consumers.

Today's lawsuit asks the court to find that the NorVergence contracts are the result of fraud and, therefore, must be considered null and void. Madigan's suit also asks the court to prohibit NorVergence from future violations of Illinois' consumer protection laws. Additionally, the suit seeks civil penalties in the amount of \$50,000 per violation, restitution for consumers and payment for the cost of investigation and prosecution.

Consumer Fraud Bureau Chief Elizabeth Blackston and Assistant Attorney General Jennifer Meyer are handling the case for Madigan's Springfield Consumer Fraud Bureau.

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NorVergence bankruptcy leads to charges of scam

(For the first time, how salesmen sold their product, and why the scheme finally caught up to the Salzano's—a second time.)

By MARTHA MCKAY STAFF WRITER
The Record, Bergen County, NJ

At the center of a massive New Jersey bankruptcy that dealt a blow to 11,000 small businesses in more than 20 states is a small box called "The Matrix."

Newark-based NorVergence, a privately held phone-service reseller, boasted that the box was packed with enough of the very latest telecommunications technology to deliver cheap, unlimited local and long-distance phone, cell service, and high-speed Internet access. In fact, the box was a gimmick. In some cases, it had no practical use at all.

"It's an unbelievable scam," said Meredith Wood, who runs an industrial services business in West Milford.

"I wish I'd thought of it," she said with a rueful laugh. "I'd be calling you from my private island."

Wood bought unlimited long-distance and cell phone service from NorVergence last year and signed a lease for a Matrix box that NorVergence never even plugged in. Now, Wood is stuck owing a five-year, \$45,000 equipment lease to U.S. Bancorp for her Matrix, a piece of gear worth about \$600.

The story of how Wood and thousands of other small-business owners were victimized began to unfold last month, when NorVergence flamed out in a Chapter 7 liquidation in U.S. Bankruptcy Court in Newark. The company, which once boasted \$200 million in annual revenues, left 1,300 employees without jobs, large phone companies such as Qwest, Sprint, and T-Mobile owed at least \$30 million, and lawyers wondering where all the money went.

Qwest has received the court's permission to shut off service to NorVergence's former customers, leaving Wood and the thousands of other business owners potentially without phone service but still owing hundreds of millions in payments to banks and finance companies who paid NorVergence millions for the leases.

Christopher Menkin, editor of Leasing News, believes the NorVergence case is "one of the biggest leasing scandals in the last 25 years."

Corporate culture Drawn in by NorVergence's deeply discounted phone service and slick, reassuring marketing materials, many small-business owners probably didn't think to delve into the company's background.

If they had, they might have turned up court records showing the man who ran NorVergence, Thomas N. Salzano, had piloted another telecommunications company that ended in bankruptcy, where creditors accused him of illegally funneling \$2.7 million of company funds into a Swiss bank after filing for Chapter 11 protection.

By all accounts, Salzano, who was NorVergence's chief managing officer and was listed as a director in a Securities and Exchange Commission filing, ran the company despite the CEO title of his brother, Peter J. Salzano. He's described by those who know him as a high-energy executive with a quirky style who rarely wore ties, instead favoring white leisure suits and colorful printed shirts.

He's got "a lot of marketing savvy" and "a lot of ego," those people said -an arrogant charmer with a creative business mind.

Neither of the Salzano brothers responded to requests for an interview.

By mid-2003, just two years after it was founded, NorVergence was buying millions of dollars worth of phone and Internet service from some of the nation's largest carriers, including Qwest, Sprint, and T-Mobile, and reselling at a deep discount to thousands of small businesses.

The company hired hundreds, packing so many workers onto two floors at 550 Broad St. in Newark that the building's air conditioning was overwhelmed and NorVergence had to rent more floors.

Salespeople, many of whom had previously worked in the telecommunications industry, were attracted by promises of hefty commissions. The sales teams followed a pitch based on a series of scripts hammered home during a two-week sales tryout in Newark.

Kirk Dennis, a top salesman in the Chicago area, recalls a boot camp-like atmosphere where memorizing the script made the difference between getting a job and getting kicked out.

The NorVergence trainers made you sweat with their intimidating behavior, said Dennis, describing how they would "catch you in a hallway and say, 'Give me your script. 'Y' Anyone who floundered was escorted out.

Of the 90 people who began with Dennis, only 30 were offered a job. Described by customers as highly polished and aggressive, NorVergence salespeople fanned out across the country as their employer rapidly opened well-appointed offices in 36 cities.

The pitch, the catch Armed with their sales pitch, and backed up by a flashy Web site, the company went after small-business owners with good credit records, most of whom did not have a telecommunications expert on staff. The

salespeople, known as screening managers, used dense, acronym-rich telecommunications jargon in their descriptions of the cheap, unlimited phone services that the "MATRIX unlimited calling solution" would deliver.

According to a sales script obtained by The Record, a screening manager would tell a prospective customer "because we're swamped with so many new requests, my job is to screen for only qualified applicants down to just the few allowed for each area."

"They let you know if they were going to accept you as a customer - that was their marketing gimmick," said Carol Marubio, owner of an Illinois roofing company that signed up.

But by far the bigger gimmick was the Matrix box. To sell phone service to their small-business customers, NorVergence, a reseller, bought it wholesale from large carriers such as Qwest and Sprint.

But when the sales team pitched the company's "solution" to customers, the Matrix box was key.

What many eager customers apparently missed was the fact that the "unlimited" phone and Internet service NorVergence sold them had no direct relation to the box, which performed a limited function in some customers' cases (it allocated bandwidth over a T1 line), and no function in others.

Many apparently believed that the box could be used by other phone providers.

Most customers didn't think NorVergence would go out of business.

One former salesman said they were told that if a customer asked what would happen if the company ran into trouble, to "just say nothing" and dismiss the possibility.

And some customers interviewed had no idea that NorVergence would sell their Matrix lease - for cash - to banks and finance companies, in much the same way a bank might sell a mortgage to a third party.

Those sales funneled millions to NorVergence, and locked its customers into long-term relationships with a bank.

"In my opinion, [NorVergence's] whole setup was designed to sell equipment leases," said Dan Baldwin, spokesman for TelecomAgent, a non-profit organization that represents sales agents in the telecommunications business, who has been looking into NorVergence's business since early last year.

As for the box, David Silverman, a NorVergence salesman based at the company's Broad Street headquarters, told the U.S. Bankruptcy Court at a recent hearing that the Matrix box was useless.

"These boxes serve no purpose; they're worthless," he told the court. Scores of

local companies and organizations - even the New Jersey Republican State Committee offices in Trenton - signed up for NorVergence service, lured by those promises of deep discounts. It was hard to turn down.

The company installed customers at the rate of 350 a week - averaging about \$6 million in weekly sales - practically up to the bankruptcy filing, said Oscar Delatorre, a former NorVergence employee who oversaw installations.

That's an estimated \$132 million in sales for the first five months of 2004 alone.

According to a former NorVergence vice president who supplied sales figures to The Record, new customers signed contracts for \$409 million worth of phone systems from January through June 4. Of that, an estimated 40 percent actually were installed, bringing the total sales closer to about \$164 million.

Last gasp The whole company was focused on marketing and sales, former employees said.

As its debts rose, NorVergence ratcheted up its sales effort, and other parts of the business began to deteriorate, they said. "Customer service and installation was an afterthought," said Jeff Carlsen, vice president of facilities engineering.

Around January, the company told employees it was looking for investors, but that effort apparently failed.

On the seven floors at 550 and 570 Broad St., the signs of disorganization were disturbing.

"There were tables stacked with piles of folders; there was no particular order to customer files," said Carlsen. "It was unbelievably unorganized."

Technical problems arose with a new 800 service the company tried to introduce. It had to pay its mounting bills to Qwest and others - nearing \$2 million a week toward the end - to cover service for its existing customer base. So it kept adding more and more new customers, selling their leases to banks, and collecting the cash.

It pushed its sales staff hard. By some estimates, NorVergence signed up as many as 4,000 customers over the last six months, without connecting their phone service.

After it fell behind in its payments to Qwest, the Colorado-based carrier shut off service for two days in mid-June. Several days later, NorVergence bounced hundreds of payroll checks, but asked its employees to keep working.

As creditors closed in, the normally feisty Tom Salzano appeared defeated, according to one person who met with him then.

On June 30, the company was forced into an involuntary Chapter 11 filing by three banks.

It laid off about 1,000 people that day, owing hundreds back pay and commissions. As the Salzaños moved to get the word out, the news spread to other floors and a few angry, now ex-employees tried to leave the building with office equipment, former employees said.

Two days later, in bankruptcy court again after a failed attempt by some banks to inject cash to prop up the operation, NorVergence converted to a Chapter 7, closing for good and liquidating assets.

The aftermath Qwest received permission from the judge to shut off service to NorVergence customers, setting off a mad scramble among customers to find new phone service.

A trustee took possession of NorVergence offices and began the process of selling any assets. (It remains to be seen if there will be anything left. So far, Qwest is the largest unsecured creditor, with at least \$15 million owed, followed by Sprint with at least \$10 million. But before they get anything, secured creditors will get paid, along with former employees who file claims.)

About two weeks ago, frustrated customers began to receive letters from banks and finance companies holding the Matrix leases that they'd better keep paying. Dozens of NorVergence customers have formed a legal co-op, hiring a lawyer to fight the banks and get them out of their leases.

There is talk of a class-action suit. Meanwhile, it's still not clear whether the banks and finance companies that bought the Matrix leases understood what they were getting. One source said it appears that some of the finance companies were not aware, for example, that the Matrix box could not be used by another phone provider in the event NorVergence shut down.

One source familiar with the group of 35 banks and finance companies said they purchased at least \$220 million worth of NorVergence customers' leases. Some banks are trying to line up new phone-service providers for NorVergence customers.

A spokeswoman for Adtran, which made the boxes and sold them to NorVergence, said her company was working with the banks to try to fix the problem.

"Transferring telecommunications services from NorVergence to a different carrier likely requires modification or replacement of equipment [the Matrix box] owned primarily by equipment leasing companies," she said.

A spokeswoman for Popular Leasing, a finance company owned by Banco Popular, said the company had no comment on the NorVergence situation. So did Wells Fargo. And the CIT Group.

Also unclear is the role Robert J. Fine played in the NorVergence debacle. Fine was NorVergence's director of bank relations, who apparently made the connections between the banks and NorVergence. He recently resigned as

president of the trade group Eastern Association of Equipment Lessors (EAEL), according to Leasing News.

Before joining NorVergence, Fine held numerous positions in the leasing industry. The EAEL did not return repeated phone calls, and Fine could not be reached for comment.

On the last day of NorVergence's existence last month, Tom Salzano did not appear in court but his brother Peter, the CEO, did. His face beaded with perspiration, Salzano left the courtroom to jeers by former employees who came to the hearing. He kept his head down and walked away.

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News

Norvergence Forfeits \$47 Million In FTC Settlement

Consumers Billed for Worthless Telecom Services

July 26, 2005

The Federal District Court in Newark, New Jersey, has entered a final default judgment against NorVergence, Inc., that will immediately result in the cancellation of 1,600 contracts with the company valued at more than \$47 million.

The judgment is the result of a November 2004 Federal Trade Commission complaint charging NorVergence with defrauding consumers through misleading claims that it would provide them with dramatic savings on their monthly telephone, cellular, and Internet bills.

The court found that consumers signed a set of applications and agreements with a total price equal to the promised monthly payments over five years. Most of the total payments were allocated to rental agreements for a "Matrix" or "Matrix Soho" device that supposedly would provide the promised costs savings.

In reality, the Matrix was just a standard integrated access device (IAD), commonly used to connect telephone equipment to a long-distance provider's lines. The Matrix Soho was essentially a firewall.

The Matrix boxes cost between \$200 and \$1,550. The total cost to the consumer was \$7,000 to \$340,000, with an average cost of \$29,291. The price of the rental agreement had nothing to do with the cost of the Matrix, which itself was an incidental part of the promised services.

NorVergence had an estimated 9,400 Matrix rental agreements totaling over \$275 million. Other than the 1,600 contracts cancelled by this judgment, NorVergence sold its rental agreements shortly after they were signed to over 40 finance companies for cash. These sold contracts

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NorVergence Forfeits \$47 Million In FTC Settlement

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are not immediately affected by the default judgment.

An unknown minority of these contracts were sold to finance companies for only a part of their typical five-year term. The default judgment makes these contracts void and unenforceable as of the end of the partial term when they are due to come back to NorVergence.

The court also found that NorVergence failed to tell consumers that it did not have a long-term commitment from any service provider for the services it was promising to provide. NorVergence also failed to tell consumers that the Matrix boxes covered by the rental agreement would be of little or no value to them if NorVergence failed to provide the promised telecommunications services.

Finally, the court found that NorVergence had furnished the finance companies who purchased its contracts with the means and instrumentalities to commit deceptive and unfair acts or practices violating the FTC Act. It provided those finance companies with rental agreements that allowed the finance companies to: 1) misrepresent that consumers owe money on the rental agreements, regardless of whether NorVergence provided the promised telecommunications services; and 2) file collection suits against consumers in courts far from where the consumers are located.

The FTC worked cooperatively on this matter with various state attorney generals' offices, which also have investigated NorVergence's business practices. More than 20 states also have reached settlements with some of the finance companies that purchased and are collecting on NorVergence rental agreements. Consumers in these states should contact their attorney general directly for further information on the state settlements.

The states include: New Jersey, New York, Florida, Massachusetts, Illinois, California, Maryland, Rhode Island, Delaware, Georgia, Connecticut, Kansas, New Hampshire, Pennsylvania, Arizona, Indiana, Ohio, Virginia, South Carolina, South Dakota, Texas, West Virginia, North Carolina, and the District of Columbia.

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
to facilitate the implementation of the Federal)
Communication Commission's Triennial Review) **Case No. U-13796**
determination in Michigan.)

SURREBUTTAL (THIRD ROUND) TESTIMONY OF
SCOTT L. FINNEY
ON BEHALF OF
AT&T COMMUNICATIONS OF MICHIGAN, INC. AND TCG DETROIT
MARCH 5, 2004

**SURREBUTTAL TESTIMONY
OF SCOTT L. FINNEY
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March 5, 2004

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION**
2 **TITLE.**

3 **A. My name is Scott Finney. My business address is 222 West Adams Street,**
4 **Chicago, Illinois 60606. I am employed by AT&T Corp. ("AT&T") as a Manager**
5 **in the Local Services and Access Management Organization.**

6 **Q. ARE YOU THE SAME SCOTT FINNEY WHO FILED TESTIMONY ON**
7 **AT&T'S BEHALF ON FEBRUARY 10, 2004?**

8
9 **A. Yes.**

10
11 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

12 **A. The purpose of my surrebuttal testimony is to respond to several statements made**
13 **in SBC witness Mr. Lube's prefiled testimony of February 10, 2004.¹ In that**
14 **testimony, Mr. Lube responded to testimony that was originally prefiled by a**
15 **witness for Sprint, which, as I noted in my own February 10, 2004 testimony,**
16 **Sprint states it will not present at the hearing in this case. The now-withdrawn**
17 **testimony of Sprint witness Mr. Gordon presented a DS0-cutover calculation,**
18 **which AT&T subsequently obtained through discovery. That calculation was**
19 **reviewed by me and this analysis was explained in my February 10, 2004**
20 **testimony. I also attached the DS0 calculation (as Confidential Exhibit ____;**
21 **Confidential Exhibit SLF-3).**
22

¹ Reply Testimony of John P. Lube on behalf of SBC Michigan, Case No. U-13796 (filed Feb. 10, 2004) ("Lube Reply").

**SURREBUTTAL TESTIMONY
OF SCOTT L. FINNEY**

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March 5, 2004

- 1 **Q. ARE YOU RESPONDING TO ALL OF MR. LUBE'S CRITIQUE OF MR.**
2 **GORDON'S TESTIMONY?**
- 3 **A. No. I am only responding to Mr. Lube's testimony critiquing the DSO crossover**
4 **calculation that Mr. Gordon was sponsoring, which is the same calculation that I**
5 **attached to my testimony. Moreover, I am only addressing two issues. First, I**
6 **respond to Mr. Lube's contention regarding the appropriate amortization period**
7 **for non-recurring charges for unbundled loops. Second, I respond to Mr. Lube's**
8 **discussion regarding the use of a "channel bank" at the customer's premises.**
- 9 **Q. PLEASE DISCUSS THE APPROPRIATE AMORTIZATION PERIOD**
10 **FOR NON-RECURRING CHARGES FOR UNBUNDLED LOOPS.**
- 11 **A. Mr. Lube states in his testimony (at page 47 of his Reply filed in February 10,**
12 **2004) that the "amortization period [for the applicable nonrecurring charge], or**
13 **average customer life, is defined mathematically as the reciprocal of the churn**
14 **rate." He goes on to claim that the 24-month amortization period found in the**
15 **Sprint calculations, which he converts to a monthly churn rate of 4.17%, is**
16 **"unrealistically high." Although Mr. Lube does not propose a specific churn rate**
17 **or amortization period for use in the Sprint calculations, he states that SBC**
18 **Michigan uses a 1% per month customer churn rate in its DSO cutoff analysis.**
- 19 **Q. DO YOU BELIEVE THE 24 MONTH AMORTIZATION PERIOD USED**
20 **IN THE SPRINT CALCULATIONS IS REASONABLE?**
- 21 **A. Yes. From a financial perspective, amortization of these costs over a two-year**
22 **time frame is not intrinsically unreasonable. It is a matter of some judgment and**
23 **is in part based upon the specific financial circumstances involved. It seems**

**SURREBUTTAL TESTIMONY
OF SCOTT L. FINNEY**

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March 5, 2004

1 likely, particularly in a highly competitive state like Michigan, that customer
2 churn may be higher than in other states where lower levels of competition are
3 being experienced. There is no obvious reason that would lead to the conclusion
4 that this amortization period is unjustified. On the other hand, Mr. Lube's
5 assumption of a 1% churn rate, which amounts to an amortization period in excess
6 of 8 years, is extreme.

7

8 Furthermore, I do not believe Mr. Lube has made a persuasive case that the
9 amortization period used in the Sprint model is unrealistic. SBC Michigan itself
10 has proposed amortization periods for the recovery of its own nonrecurring
11 charges in a similar range. For example, SBC Michigan proposed a 36 month
12 amortization period (which amounts to a churn rate of 2.7%) for an OSS-related
13 recovery charge. Even if this value were used in the Sprint model (and I am not
14 proposing this), the cross-over drops only by a single line, and the cross over
15 would be 11 rather than 12 lines. The overall effect of changing the amortization
16 period is relatively small when compared to other factors.

17

18 **Q. DO YOU HAVE ANY COMMENTS REGARDING THE SOURCES MR.**
19 **LUBE POINTS TO IN SUPPORT OF HIS LOWER CHURN VALUE?**

20 **A.**Yes, these sources should also be scrutinized carefully. Churn data are often
21 difficult to confirm and there are a variety of sources for such information. For
22 example, Mr. Lube refers to a September 2003 article in the online publication
23 FATPIPE for the proposition that CLECs have reported churn rates that range, on

SURREBUTIAL TESTIMONY
OF SCOTT L. FINNEY

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March 5, 2004

a monthly basis, from appreciably less than 1% up to 1.4%.² But even that article

notes that "the RBOCs and many of the CLECs are cautiously guarding their wireline churn rates." The range quoted by the article (and Mr. Lube) should not be relied upon in isolation of other relevant data.

Moreover, the article goes on to note:

Not all CLECs are enjoying low churn. Many are feeling the pain inflicted by the RBOCs' bundled services, aggressive win-back incentives and heavily funded marketing campaigns. In the consumer market, Z-Tel Technologies' churn typically runs around 4 percent per quarter but jumped to 7 percent in the second quarter. Choice One Communications, a CLEC that provides voice and data services to businesses in the Northeast and Midwest, reported a churn rate of 1.4 percent per month in the second quarter (down slightly from 1.6 percent monthly churn in the first quarter). *Industry players estimate average annual CLEC churn rates of 20 to 30 percent, but just who is experiencing this kind of churn? Understandably, no one is jumping up and down to claim rates this high.*

Thus, even one of the sources noted by SBC Michigan suggests that the actual industry experience ranges from 1.6% to 2.5% churn per month, but even this data may be deemed unreliable because carriers have an understandable incentive to understate their churn rates.

² Lube Reply, p. 47 & n. 54 citing to "Finding the Leaks," Kelley Krikendoll Shafer, *FATPIPE*, September 2003. (Although Mr. Lube did not give a cite for this publication, I was able to locate it on March 4, 2003 at the following URL: <http://www.fatpipeonline.com/archives/sep2003/water.asp>.) In the most recent issue of this online magazine an article reports CLECs as saying "[w]e're seeing ferocious, aggressive sales efforts by the ILECs," and that ILECs "look more like a CLEC these days." "A Chance at the Cheddar - Local service outlook for 2004," *FATPIPE*, p. 21, Internet source (<http://www.fatpipeonline.com>) (downloaded on March 4, 2004). The article also notes one CLEC's view that the competitive residential business (via UNE-P) is a "price driven, high-churn business...." *Id.*, p. 29.

**SURREBUTTAL TESTIMONY
OF SCOTT L. FINNEY**

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March 5, 2004

1 Other sources suggest, in contrast to Mr. Lube's use of a 1% monthly churn rate,
2 that churn is on the rise in the wireline market. In a report in the online magazine
3 Business Communications Review, relying on the FCC's 2003 Numbering
4 Utilization Report, the author states: "Churn rates appear to be falling in wireless
5 and growing in wireline...."³
6

7 **Q. WHAT IS YOUR CONCLUSION REGARDING THE 24-MONTH**
8 **AMORTIZATION PERIOD USED IN THE SPRINT MODEL?**

9 **A.** The information I have reviewed suggests that a 1% churn factor (which results in
10 an amortization period far greater than 24 months) is out-of-line with the current
11 industry experience. The use of the 24-month period in the Sprint model is likely
12 to be closer to the correct churn rate. Even if that figure is not precisely accurate,
13 any minor adjustment has a relatively small impact on the crossover result.
14

15 **Q. DO YOU HAVE ANY COMMENT ON MR. LUBE'S SUGGESTION THAT**
16 **SPRINT INCORRECTLY USES CHANNEL BANK EQUIPMENT**
17 **RATHER THAN AN LAD IN ITS DSO CUTOFF CALCULATION?**

18 **A.** Mr. Lube states that a "channel bank" is not the appropriate type of equipment to
19 terminate a DSI loop at the customer's premises in this analysis."⁴ He bases this

³ "To Everything, Churn, Churn, Churn," Business Communications Review, Internet Source (<http://www.bcr.com/bcrmsg/2003/08/p12.asp>) (downloaded March 4, 2004). The FCC report referred to shows several Michigan area codes with as much as 2.2% of telephone numbers in an "aging" category, meaning, conservatively, that as many as 2.2% of the telephone numbers being disconnected from a carriers' network come as a result of customer request - i.e., the churn when a customer migrates to a new carrier.

⁴ Lube Reply, at 50.

SURREBUTTAL TESTIMONY
OF SCOTT L. FINNEY

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March 5, 2004

1 conclusion on the fact that an Integrated Access Device or IAD would allow a
2 customer to obtain both voice *and data* services over their T1/DS1 line.

3
4 Mr. Lube is correct that various types of IADs are in common use (including by
5 AT&T) and they are often used to provide voice and data services to DS1
6 customers. In my view, however, Sprint's use of channel bank equipment is more
7 in line with the overall goal of the DS0/DS1 cutoff analysis, because this analysis
8 focuses on voice services only.

9
10
11 **Q. IS THERE A SIGNIFICANT COST DIFFERENCE BETWEEN CHANNEL**
12 **BANK EQUIPMENT AND AN IAD?**

13 **A.** Not with regard to the IAD mentioned by Mr. Lube in his testimony. In
14 preparation for this testimony, I visited a number of online websites that
15 advertised the AdTran Total Access 850 mentioned in Mr. Lube's testimony.⁵ I
16 also visited the cdw.com website mentioned in Mr. Lube's initial testimony (in
17 Exhibit JPL-10). The "Chassis Bundle" equipment prices quoted on March 5,
18 2004 at the cdw.com was \$1569.63 – the same price noted by Mr. Lube in his
19 December 19, 2003 testimony. This price is actually higher than the equipment

⁵ Mr. Lube discusses the Adtran 850 at page 50 of his February 10, 2004 Reply testimony. In his direct testimony, in Exhibit JPL-10, at page 4 of 7, he lists equipment prices for the AdTran 850 (and associated cards) from the site NexTag.com and cdw.com.

SURREBUTTAL TESTIMONY
OF SCOTT L. FINNEY

Page 8 of 8

March 5, 2004

1 costs found at the Channel Bank tab of the DS0 Cutoff calculations attached to
2 my rebuttal testimony.⁶

3

4 I also reviewed equipment price quotes for the AdTran 750 channel bank Chassis
5 Bundle at the cdw.com web site. The price for this equipment is slightly higher
6 than the price for the AdTran 850 IAD, perhaps as much as \$200.00. Like other
7 variables in the Sprint calculation, however, the sensitivity to such an adjustment
8 is relatively minor. But again, the equipment cost actually employed by Sprint
9 appears to be very conservatively (if not under-) priced.

10

11 **Q. WOULD THIS COST DIFFERENCE GENERATE A DRAMATIC**
12 **CHANGE IN THE DS0/DS1 CUTOFF POINT?**

13 **A.**If the higher equipment cost were used (either the AdTran 850 or the higher
14 equipment cost I located for AdTran 750), there is a negligible change in
15 crossover point – indeed, the crossover would stay at 12. It is notable, however,
16 that the crossover *increased*, which means that the original calculation remains an
17 highly conservative approach.

18

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

20

21 **A.**Yes, it does.

⁶ Mr. Lube notes in his testimony that he could not "see the detail behind" the calculations originally filed by Sprint. Lube Reply, p. 51. If he had been able to review this material, he would have been able to see that his IAD equipment costs are actually higher than what was used and resulted in the 12 line cutoff.

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Attorney General sues telecom company

San Antonio Business Journal - November 19, 2004

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Texas Attorney General Greg Abbott has filed suit against a New Jersey-based bankrupt telecommunications reseller Thursday for engaging in a fraud scheme.

According to Abbott's office, NorVergence Inc. engaged in a scheme to defraud hundreds of Texas small businesses.

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Abbott also demanded that 19 finance companies holding rental agreements for equipment stop attempting to collect millions of dollars from Texas small business owners who signed up for NorVergence's services, as that equipment is now worthless.

The attorney general has asked those finance companies to cease collection efforts, noting that NorVergence misled small businesses in order to get them to sign the agreements. He also warned those companies attempting to collect on invalid agreements could face penalties under Texas law.

"These small business owners believed they were investing in reliable discount

telecommunications services provided by NorVergence," Abbott says.

"They thought they were making sound business decisions as a way to save money and compete in the marketplace. It turns out they were scammed badly, stuck with overpriced services they used only a short time or never received at all."

NorVergence filed for Chapter 11 bankruptcy protection in New Jersey in July, which accelerated efforts by finance companies holding the debt to pressure the small businesses with five-year contracts to pay for nonexistent services, Abbott says.

The bankruptcy was converted to Chapter 7 liquidation shortly after it was filed.

The attorney general says more than 100 small business owners throughout Texas have complained that NorVergence salespeople misled them by promising to cut their telecommunications costs by 90 percent if they purchased the company's equipment.

services by clicking on a category

Accounting
Air Charter
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Automobile Financial
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Business Continuity
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Business Intelligence
Call Centers

Small business owners signed agreements to pay NorVergence hundreds of dollars per month for five years for telecommunications services that were to flow through its Matrix box, which was to integrate all telecommunications services including long distance, DSL and wireless phone service.

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AGREEMENT

by and between

NORVERGENCE, INC.

and

VERIZON NEW ENGLAND INC., D/B/A VERIZON MAINE

FOR THE STATE OF

MAINE

AGREEMENT

PREFACE

This Agreement ("Agreement") shall be deemed effective as of December 30, 2002 (the "Effective Date"), between NorVergence, Inc. ("NorVergence"), a corporation organized under the laws of the State of New Jersey, with offices at 550 Broad Street, 3rd Floor, Newark, NJ 07102 and Verizon New England Inc., d/b/a Verizon Maine ("Verizon"), a corporation organized under the laws of the State of New York with offices at 185 Franklin Street, Boston, MA 02110 (Verizon and NorVergence may be referred to hereinafter, each, individually as a "Party", and, collectively, as the "Parties").

GENERAL TERMS AND CONDITIONS

In consideration of the mutual promises contained in this Agreement, and intending to be legally bound, pursuant to Section 252 of the Act, Verizon and NorVergence hereby agree as follows:

1. The Agreement

- 1.1 This Agreement includes: (a) the Principal Document; (b) the Tariffs of each Party applicable to the Services that are offered for sale by it in the Principal Document (which Tariffs are incorporated into and made a part of this Agreement by reference); and, (c) an Order by a Party that has been accepted by the other Party.
- 1.2 Except as otherwise expressly provided in the Principal Document (including, but not limited to, the Pricing Attachment), conflicts among provisions in the Principal Document, Tariffs, and an Order by a Party that has been accepted by the other Party, shall be resolved in accordance with the following order of precedence, where the document identified in subsection "(a)" shall have the highest precedence: (a) the Principal Document; (b) the Tariffs; and, (c) an Order by a Party that has been accepted by the other Party. The fact that a provision appears in the Principal Document but not in a Tariff, or in a Tariff but not in the Principal Document, shall not be interpreted as, or deemed grounds for finding, a conflict for the purposes of this Section 1.2.
- 1.3 This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes any prior or contemporaneous agreement, understanding, or representation, on the subject matter hereof, provided, however, notwithstanding any other provision of this Agreement or otherwise, this Agreement is an amendment, extension and restatement of the Parties' prior interconnection and resale agreement(s), if any, and, as such, this Agreement is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to any prior interconnection or resale agreements and, accordingly, all monetary obligations of the Parties to one another under any prior interconnection or resale agreements shall remain in full force and effect and shall constitute monetary obligations of the Parties under this Agreement (provided, however, that nothing contained in this Agreement shall convert any claim or debt that would otherwise constitute a prepetition claim or debt in a bankruptcy case into a postpetition claim or debt). In connection with the foregoing, Verizon expressly reserves all of its rights under the Bankruptcy Code and Applicable Law to seek or oppose any relief in respect of the assumption, assumption and assignment, or rejection of any interconnection or resale agreements between Verizon and NorVergence.

- 2.1.1 The Charges for a Verizon Telecommunications Service purchased by NorVergence for resale for which Verizon is required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act shall be the Retail Price for such Service set forth in Verizon's applicable Tariffs (or, if there is no Tariff Retail Price for such Service, Verizon's Retail Price for the Service that is generally offered to Verizon's Customers), less, to the extent required by Applicable Law: (a) the applicable wholesale discount stated in Verizon's Tariffs for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act; or (b) in the absence of an applicable Verizon Tariff wholesale discount for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act, the applicable wholesale discount stated in Appendix A for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act.
- 2.1.2 The Charges for a Verizon Telecommunications Service Customer Specific Arrangement ("CSA") purchased by NorVergence for resale pursuant to Section 3.3 of the Resale Attachment for which Verizon is required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act shall be the Retail Price for the CSA, less, to the extent required by Applicable Law: (a) the applicable wholesale discount stated in Verizon's Tariffs for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act; or (b) in the absence of an applicable Verizon Tariff wholesale discount for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act, the applicable discount stated in Appendix A for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act. Notwithstanding the foregoing, in accordance with, and to the extent permitted by Applicable Law, Verizon may establish a wholesale discount for a CSA that differs from the wholesale discount that is generally applicable to Telecommunications Services provided to NorVergence for resale pursuant to Section 251(c)(4) of the Act.
- 2.1.3 Notwithstanding Sections 2.1 and 2.2 of this Attachment, in accordance with, and to the extent permitted by Applicable Law, Verizon may at any time establish a wholesale discount for a Telecommunications Service (including, but not limited to, a CSA) that differs from the wholesale discount that is generally applicable to Telecommunications Services provided to NorVergence for resale pursuant to Section 251(c)(4) of the Act.
- 2.1.4 The wholesale discount stated in Appendix A shall be automatically superseded by any new wholesale discount when such new wholesale discount is required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC, provided such new wholesale discount is not subject to a stay issued by any court of competent jurisdiction.
- 2.1.6 The wholesale discount provided for in Sections 2.1.1 through 2.1.3 of this Attachment shall not be applied to:
- 2.1.5.1 Short term promotions as defined in 47 CFR § 51.613;

APPENDIX A TO THE PRICING ATTACHMENT

VERIZON MAINE, INC.¹

I. Wholesale Discount for Resale of Verizon Retail Telecommunications Services ²	
<p>A. Resale of Verizon Retail Telecommunications Services if NorVergence provides its own operator services platform.</p> <p>Discounts only for services specified in MEPUC No. 15, Part A, Sections 5.1, 5.2 AND 5.4 and the exchange line portion of services in Part H where the NorVergence provides own operator services platform.</p>	<p>Business Services 26.74%</p> <p>Residence Services 23.03%</p>
<p>B. Resale of Verizon Retail Telecommunications Services if NorVergence uses Verizon operator services platform.</p> <p>Discounts for all services except those in Section I (A).</p>	<p>Business Services 23.76%</p> <p>Residence Services 19.80%</p>

¹ The rates and charges set forth in this Appendix A to Resale Attachment are subject to change from time-to-time as provided in this Resale Agreement. The rates and charges set forth in this Appendix A to Resale Attachment shall apply until such time as they are replaced by new rates as may be approved or allowed into effect by the Commission from time to time, subject to a stay or other order issued by any court of competent jurisdiction. At each time(s) as such new rates have been approved or allowed into effect by the Commission, the Parties shall amend this Appendix A to Resale Attachment to reflect the new approved rates.

Except for citations to generally available services and rates offered under Verizon's Tariffs, all services and rates listed in this Appendix A to Resale Attachment are available to Reseller only in connection with the purchase and resale of Verizon Retail Telecommunications Services by Reseller under this Resale Agreement. Adherence to this limitation shall be subject to reasonable audit by Verizon.

In compliance with the FCC Order approving the Merger of GTE Corporation and Bell Atlantic (CC Docket No. 98-1840), Verizon will offer limited duration promotional discounts on resold residential exchange access lines. The terms and conditions on which these promotional discounts are being made available can be found on Verizon's web site, at <http://www.vtel.com/verizon> for former GTE service areas and <http://www.bell-atl.com/wholesale/html/resources.htm> for former Bell Atlantic service areas.

² The rates set forth in Sections I through II of this Appendix A, are in addition to, and not in lieu of, any other rates set forth in this Agreement.

In addition to charges for the Telephone Company services, Reseller shall pay, or collect and remit, applicable taxes and surcharges (including, but not limited to, E911/S11, telecommunications relay service, and universal service fund, surcharges), as required by applicable law and this Agreement.

ID	Service Category	Rate Element	Rate
II. Service Establishment Charges			
	Recurring Establishment Charge*	Monthly charge per reseller during the 5 year recovery period	\$2,606.00
	Non-Recurring Establishment Charges	Per OSS transaction during 7 yr. period for recovery of development costs (included development and ongoing costs)	\$1.25
III. Other Charges			
	Service Center Maintenance Charge	Monthly charge per resold line	\$0.21
	Electronic Interface Maintenance Charge	Per transaction- After Recovery period	\$0.41
	Complex Order Charge	Per Centrex line ordered	\$16.27
Call Usage Detail			
	Record Processing	Per Record Processed	\$0.00
	Data Transmission	Per Record Transmitted	\$0.00
	Tape or Cartridge	Per Tape or Cartridge	\$0.00
D. Electronic Customer Service Record Retrieval			
	Electronic Customer Service Record Retrieval	Per Customer Record	\$0.14
E. Operator Services Platform			
	Customized Routing	Service Establishment - Per rerouting request	ICB
		Service Establishment - Per central office switch equipped	ICB
		Per Rerouted Subscriber Line - Per month	TBD
	Announcement Services	Service Establishment - Per reseller request for unbranded service (Nonrecurring Charge)	ICB
		Service Establishment - Per reseller request for branded service (Nonrecurring Charge)	ICB
		Branded Announcement - Surcharge - Per call	\$0.064471

* This Charge provides for former NYNEX region-wide access to the OSS platform.

**INTERNAL RATE OF RETURN &
LEASE SUMMARY**

LEASE NO.: 41212.01
CUSTOMER: Party Props, Inc.
SALESMAN: Carolyn Collins
REGION: 2

Vendor #1
Vendor #2
Vendor #3
Vendor #4
Vendor #5

VENDOR NAME	QUANTITY	UNIT PRICE	TOTAL PRICE
Norvergence, Inc.	31,335.52	No	
	0.00		

TOTAL EQUIPMENT COST:	\$31,335.52
SALES TAX	0.00
FREIGHT	0.00
SUB-TOTAL	31,335.52
COMMISSION:	470.03
DOC. FEE:	0.00
OTHER:	0.00
TOTAL INVESTMENT:	\$31,805.55

Fixed Pmt.	X
Deferred Pmt.	
Step Pmt.	
Other	

Stream #1
Stream #2
Stream #3
Stream #4

LEASE TERM (MONTHS)	PAID AMOUNT	RENTAL RATE	RESIDUAL
2	@ \$0.00	\$0.00	0
60	@ 753.40	62.16	0
0	@ 0.00	0.00	0
0	@ 0.00	0.00	0

BOOKED RESIDUAL AMOUNT	\$1.00	\$0.00	0
------------------------	--------	--------	---

RESIDUAL INFORMATION	SALES TAX INFORMATION
Stated/Fixed	X
Option to Buy	
True FMV	
FMV NTE	
FMV Estimated	
Other (explain)	
	LOCATION
	State - TX
	County -
	City - Harris
	Dist. - Harris
	Total Rate -

GROSS RENTALS RECEIVABLE:	\$45,204.00
PLUS BOOKED RESIDUAL:	1.00
LESS TOTAL INVESTMENT:	31,805.55
EQUALS UNEARNED INCOME	\$13,399.45

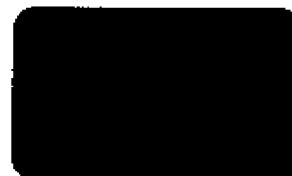
CALCULATED INTERNAL % RATE:	14.27%
PRIME RATE %:	5.00%
DIFFERENCE OVER PRIME RATE:	9.27%

IDC: \$696.54
Commission Rate: 0.00%
Commission: \$0.00
Lease Start Date: 11/20/2003

Prepared by: Erin Buchanan
Date: 11/11/2003

Bill \$75 doc fee on 1st invoice

True Lease



1	(31,805.55)
2	0.00
3	753.40
4	753.40
5	753.40
6	753.40
7	753.40
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56	753.40
57	753.40
58	753.40
59	753.40
60	753.40
61	753.40
62	753.40
63	1.00
64	0.00
65	0.00
66	0.00
67	0.00
68	0.00

BP 00342

00001

1 IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT

2 IN AND FOR LEON COUNTY, FLORIDA

3

STATE OF FLORIDA, OFFICE
4 OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS CASE NO. 2004CA002515

5

Plaintiff,

6 vs.

7 COMMERCE COMMERCIAL LEASING, LLC, COURT
SQUARE LEASING CORP., DOLPHIN CAPITAL CORP.,
8 IFC CREDIT CORP., NATIONAL CITY COMMERCIAL
CAPITAL CORP., formerly known as,
9 INFORMATION LEASING CORP., IRWIN BUSINESS
FINANCE, LIBERTY BANK LEASING, PATRIOT LEASING
10 CO., INC., POPULAR LEASING U.S.A., INC.,
PREFERRED CAPITAL LLC, STERLING NATIONAL BANK,
11 and WELLS FARGO FINANCIAL LEASING, INC.

12 Defendants.

/

13

14

DEPOSITION OF: POPULAR LEASING (DAN KINEALY)

15

TAKEN AT THE INSTANCE OF: The Plaintiff

16

DATE: January 19, 2005

17

TIME: Commenced at 9:00 a.m.

18

Concluded at 1:30 p.m.

19 LOCATION: Akerman Senterfitt
106 East College Avenue
20 Tallahassee, Florida

21 REPORTED BY: ANITA M. PEKEROL, CRR,
CP, CM. Notary Public
22 in and for the State
of Florida at Large.



23

ACCURATE STENOGRAPHY REPORTERS, INC.

24 2894-A Remington Green Lane

Tallahassee, Florida 32308

25 (850) 878-2221

00002

1

APPEARANCES:

2

3

REPRESENTING THE PLAINTIFF:

4

5

JOHN D. C. NEWTON, II, ESQUIRE
Senior Assistant Attorney General
Office of the Attorney General
The Capitol Suite PL01
Tallahassee, Florida 32399-1050
(850) 414-3600

9

10

REPRESENTING THE DEFENDANT POPULAR LEASING:

11

12

ALBERT F. TELLECHEA, ESQUIRE
Akerman Senterfitt
Citrus Center, 17th Floor
255 South Orange Avenue
Orlando, Florida 32801-3483
(407) 843-7860

16

17

REPRESENTING ALL OTHER DEFENDANTS:

18

19

MIA L. McKOWN, ESQUIRE
Akerman Senterfitt
106 East College Avenue, Suite 1200
Tallahassee, Florida 32301
(850) 224-9634

22

00003

1

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WITNESS

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13 EXHIBITS

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00005

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

2 - - -

3 The following deposition of DAN KINEALY was
4 taken on oral examination, pursuant to notice, for
5 purposes of discovery, for use as evidence, and for
6 such other uses and purposes as may be permitted by
7 the applicable and governing rules. Reading and
8 signing is not waived.

9 - - -

10 Thereupon,

11 DAN KINEALY

12 was called as a witness, having been first duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. NEWTON:

16 Q. As you know, my name is John Newton.
17 I'm with the Florida Attorney General's Office.
18 This is a deposition in the case of Attorney General
19 versus Commerce Commercial Leasing and other
20 entities, including Popular Leasing.
21 This deposition is being taken pursuant
22 to a notice of deposition of Popular Leasing. It is
23 my understanding you are here today speaking on
24 behalf of Popular Leasing; is that correct?

25 A. Yes, it is.

00006

1 (Pop Deposition Exhibit 1 marked for
2 identification.)

3 BY MR. NEWTON:

4 Q. We have identified as Exhibit Pop 1 the
5 second amended notice of deposition. Is that a
6 document you have seen before?

7 A. Yes, it is.

8 Q. What do you understand your obligation
9 is here today?

10 A. To answer questions as presented to me
11 in the matter, and to answer them as truthfully and
12 completely as I can.

13 Q. And we were discussing television
14 earlier. Let's start like they do on TV by asking
15 your name and position and work address for the
16 record, please?

17 A. My name is Dan Kinealy, K-I-N-E-A-L-Y.
18 I work for Popular Leasing, USA, Inc. That company
19 is located at 15933 Clayton Road in Baldwin,
20 Missouri, and the ZIP code is 63011. My capacity
21 with the company is vice president of risk
22 management.

23 Q. Let me get sort of a brief summary of
24 your educational experience, Mr. Kinealy. I am sort
25 of assuming you went to college?

00014

1 ourselves, in Popular Leasing, to be fairly well
2 vendor-driven. In other words, our approach to the
3 marketplace is to solicit relationships with
4 vendors, providers of products or goods, and through
5 that to obtain the access to their end user
6 customers of their product.

7 We do do some individual solicitation of
8 individual lessees, but our approach is done for the
9 sake of efficiency. Whether we enter into formal
10 documented agreements with the vendor providers
11 really just depends on the nature of the
12 relationship that we're going to have with them.

13 Q. Does Popular describe any of these
14 vendors or other people that it does business with
15 as business partners?

16 A. No. That would require a special
17 arrangement that would be a contractual arrangement
18 if we're going to get involved to that extent. We
19 do maintain our independence as a third-party, in a
20 three-party relationship.

21 Q. Does Popular Leasing ever use the phrase
22 business partner to describe people it does business
23 with?

24 A. Not in a formal sense, no.

25 MR. NEWTON: Mark this as Exhibit 2,

00015

1 please.

2 (Pop Deposition Exhibit 2 marked for
3 identification.)

4 BY MR. NEWTON:

5 Q. Mr. Kinealy, I have given you a document
6 marked Pop 2, which is a letter from Mr. Horton
7 dated October 24th to Alex Wolf and Bob Fine.

8 A. Yes.

9 Q. Mr. Horton is the president of Popular
10 Leasing, correct?

11 A. That's correct, he is.

12 Q. The last sentence of the first paragraph
13 says: "It is always beneficial to be able to meet
14 directly with our business partners."

15 A. Correct.

16 Q. What meaning does that phrase have in
17 this letter from Popular Leasing?

18 A. Well, the gentlemen that you cited the
19 letter was written to, Alex Wolf and Bob Fine, were
20 officers of NorVergence. Popular Leasing did have
21 business relationships with NorVergence. We were
22 working with them at the time this letter was
23 written.

24 Q. So they would be a business partner?

25 A. In a sense that, yes. We were doing

00016

1 business with them, and we had conducted business
2 together, and we are anticipating doing future
3 business, they would be a partner in those
4 activities.

5 Q. In contrast, are the individual
6 customers, the lessees, were they considered by
7 Popular Leasing to be business partners?

8 A. Those are considered to be customers.

9 Q. This letter refers to a meeting at which
10 you attended?

11 A. That's correct.

12 Q. In fact it speaks for you. Could you
13 tell us what the meeting was about and what
14 transpired?

15 A. We talked about various aspects of our
16 dealings with NorVergence and handling the
17 acquisition of contracts that we were buying from
18 them, contracts that they had entered into with
19 their customers.

20 They were looking for considerations
21 within the program terms, specifically with regard
22 to some of the aspects of our purchase of those
23 leases.

24 Q. How did this meeting come about?

25 A. I think it was by mutual consent, is my

00017

1 recollection. There were ongoing discussions
2 throughout the course of dealings with NorVergence.
3 There were issues that go back and forth, general
4 business issues, about flow of the business, nature
5 of the business, provisions in doing business, and
6 the sense was that it would be appropriate to have a
7 face-to-face meeting.

8 We do that pretty typically in our
9 business dealings. Various items just present
10 themselves better in face-to-face discussions than
11 they do by telephone or e-mail or in other manners
12 of communication.

13 Q. The fourth paragraph refers to a
14 concession, "...that NorVergence will be allowed to
15 make payments to Popular via check, rather than by
16 offset, to pay any of its obligations to Popular..."
17 What does "offset" refer to?

18 A. The background to that would be is that
19 under our working agreement with NorVergence, as we
20 were presented contracts for purchase, there would
21 be a period of time before the actual payments began
22 under the contracts, cash payments due.
23 If for any reason, again under the
24 provisions of our documented relationship with
25 NorVergence, that payment stream would not start to

00018

1 be made by the customer, we would reassign or
2 re-present that contract back to NorVergence. We
3 would have purchased it from them prior to that. We
4 would ask them to buy it back.

5 There were a couple of provisions that
6 were allowed to affect their reacquisition of that
7 contract. One of those was for them to present
8 another contract in the place of the one that we
9 wanted them to take back. And if we could qualify
10 that contract, we would take that contract and
11 rather than pay NorVergence, we would pay out the
12 contract we wanted them to take back. They had
13 asked if they could give us a company check, rather
14 than, among other things, substituting contracts,
15 and that's what this paragraph addresses.

16 Q. Is that reacquisition, is that something
17 also commonly called repurchase?

18 A. No, this is a little different than
19 repurchase. Repurchase generally applies to a
20 relationship where we bought a specific piece of
21 equipment. This was actually in the nature of a
22 reassignment. We were taking purchase assignments
23 of existing contracts from NorVergence, and if under
24 the terms of our agreement with them we no longer
25 wanted to hold those contracts, we would reassign

00019

1 them back to NorVergence.

2 Q. And, originally, NorVergence was to
3 replace that contract with the one that was
4 acceptable to you; is that right?

5 A. Our stipulation, as it was prior to this
6 discussion, was that they could either offer up a
7 replacement contract, they could wire transfer cash
8 money to us, their request in this particular
9 instance was to be allowed to pay by a company
10 check.

11 Q. Why was this an issue in the
12 relationship at that time?

13 A. It wasn't really an issue. I think they
14 were asking for some additional flexibility and
15 means of repayment. It was just another form of
16 reacquiring the contract that had not been addressed
17 in the original agreement, and we were willing to go
18 along with that.

19 Q. Now, the document that established the
20 relationship with NorVergence was called the Master
21 Program Agreement, correct?

22 A. The agreement that Popular Leasing had
23 with NorVergence was called the Master Program
24 Agreement.

25 Q. Can you tell me how Popular Leasing came

00025

1 the equipment.

2 Q. Do you know, has Popular Leasing ever
3 actually physically examined equipment that a vendor
4 is proposing to lease?

5 A. In terms of going out and looking at it
6 or inspecting it or seeing it before we begin
7 leasing?

8 Q. Yes, sir.

9 A. No, that's not a common practice.

10 Again, our focus is on understanding, in general,
11 the applications of the equipment. Most of what we
12 lease is fairly generic, from the standpoint that it
13 has pretty typical applications, for instance, a
14 computer for office management, either medical or
15 commercial, a piece of light construction equipment,
16 like a Bobcat or some type of similar equipment.
17 If we are aware of that being a type of
18 product or equipment that the vendor is providing,
19 if we have information either from websites or other
20 public access information about that equipment, and
21 if we have information on the company, either
22 through sources such as Secretary of State, Dunn &
23 Bradstreet, their own financial statement
24 information, if we obtain those, pretty typically
25 that's where we draw our information and knowledge

00026

1 about equipment from.
2 We don't purport an expertise or any
3 type of extended knowledge in terms of the equipment
4 itself. We allow that to be the customer's election
5 and selection as to what equipment he is obtaining.
6 Q. Did Popular Leasing view the NorVergence
7 equipment as generic equipment as the sort you
8 described?

9 A. From the standpoint that it was the type
10 of equipment that was used to assist in or
11 conducting signals for telecommunications-type
12 transmissions, we did understand it to be that. We
13 understood that there was a proprietary software
14 component that was specific to that type of
15 equipment, and from that standpoint, we understood
16 their equipment that would be subject to the
17 contracts we would be dealing in to be of that
18 nature.

19 Q. Did you understand that the equipment
20 was patented?

21 A. We understood that they used the name
22 MATRIX associated with something that they called a
23 MATRIX system to have some type of a patent or
24 copyright. We knew that they did have a proprietary
25 software.

00043

1 Mabe, M-A-B-E.

2 Q. M-A-B-E, thank you.

3 A. Correct.

4 Q. Did he end up generating some sort of
5 written report to the group?

6 A. He did produce some information. Some
7 of it written, some of it verbal. He provided
8 information concerning his findings and
9 understanding of what the company's cash position
10 and working capital needs might be. I believe he
11 did present several written scenarios about what the
12 company might be able to do, in terms of its ongoing
13 performance and immediate cash and liquidity needs.

14 Q. Does Popular have copies of the
15 documents he produced?

16 A. We probably still have those.

17 Q. Did Popular, at some point, make a
18 financial contribution to relieve some of the
19 financial obligations of NorVergence?

20 A. We made a contribution to a collective
21 amount of funds that was presented to NorVergence in
22 the form of note obligations on a temporary basis,
23 helped to finance some of the working capital,
24 short-term working capital needs of NorVergence.

25 Q. What was Popular Leasing's contribution?

00044

1 A. Approximately \$400,000.

2 Q. What was the total amount?

3 A. I can't remember specifically, but it
4 was right around two million dollars, in aggregate.

5 Q. So it is safe to say it is not normal
6 for leasing companies to contribute money to
7 vendors, even in the form of a note?

8 A. Well, our contribution, in terms of the
9 use of that word, was not a contribution to
10 NorVergence. We made a loan. That money was made
11 available under the terms of a note.

12 Q. That is not a common occurrence in your
13 business?

14 A. It is not a common occurrence for our
15 company to make working capital loans, even
16 short-term, but it is not uncommon for us to enter
17 into note-borrowing agreements with obligors.

18 Q. Why did Popular Leasing contribute money
19 to this amount that was loaned to NorVergence by the
20 group?

21 A. At that point, it appeared to be just a
22 prudent business decision and consideration. We
23 were working with contracts that represented
24 equipment that was used in a relationship that
25 NorVergence was entered into with customers that

00045

1 were also customers under the agreements. The
2 contracts that we held, at that point in time, we
3 were under the belief that there was a short-term
4 need that NorVergence had to meet, and we were
5 willing, again, from a prudent business
6 consideration, to attempt to assist, under the terms
7 of the formal note obligations with NorVergence to
8 provide their ability to meet their short-term needs
9 and continue to be able to hold up their part of the
10 relationship with their customers.

11 Q. What is the current value of the
12 NorVergence portfolio for Popular Leasing?

13 A. On a net basis, our entire portfolio is
14 approximately 24 million dollars.

15 Q. You said "net basis," what does that
16 mean?

17 A. Principal obligation, if you will.

18 Q. That's the sum of the remaining payments
19 due?

20 A. No, that is not.

21 Q. Okay.

22 A. The sum of the remaining payments due
23 would be approximately 29 million to 30 million
24 dollars.

25 Q. Does the 24 million represent money

00046

1 actually paid by Popular Leasing to NorVergence?

2 A. In approximation of that, yes. It is
3 the remaining principal balance, plus any earned
4 interest that would have been realized on those
5 balances.

6 Q. Of that 24 million, approximately what
7 percentage was in default?

8 A. Approximately 17 million dollars of it.

9 Q. Of the accounts in default, how many has
10 Popular initiated litigation?

11 A. Approximately 500 accounts.

12 Q. Is that 500 total, or 500 that remain
13 active at this point?

14 A. No. The 500 is just the number of
15 accounts out of the total accounts in that default
16 category against which litigation has been
17 initiated.

18 Q. I want to make sure. I know there have
19 been some people that have sued Popular Leasing. I
20 am just talking about ones where Popular has sued
21 someone.

22 A. Anyone who has sued us, Popular has
23 usually initiated a counter legal action, because to
24 bring suit against us, under the terms of the
25 contracts, is a default under that contract.

00092

1 and facts that we would have considered.
2 (Pop Deposition Exhibit 18 marked for
3 identification.)

4 BY MR. NEWTON:

5 Q. The document we have marked as Pop 18 is
6 entitled Vendor Program/Promotion Summary, with
7 documents 4196 through 4123. Is this the summary
8 memorandum you mentioned?

9 A. This is what Mr. Eisler produced, yes.

10 Q. The middle paragraph on page number 4918
11 states: "NorVergence has made all," with all in
12 boldface, "the changes we required in the rental
13 agreement. The Vendor Agreement covers any and all
14 areas that would allow for exposure including, but
15 not limited to, 1st payment default."
16 Why would all be in boldface type?

17 A. I have no idea why he would emphasize it
18 in boldface type.

19 Q. Is it correct to conclude from this
20 paragraph that in these discussions, Popular Leasing
21 requested changes in the rental agreement, and that
22 NorVergence changed the agreement in accordance with
23 Popular Leasing's request?

24 A. Yes.

25 Q. Turn to the next page, 4919. The

00093

1 overall title is Work Flow with headings Credit,
2 Documentation and Collections.

3 A. Okay.

4 Q. The final paragraph says: "Popular will
5 agree to work with the NorVergence Collection
6 Department to avoid defaults on any transaction.
7 NorVergence will extend themselves in joint
8 collection efforts to avoid a default that may
9 result in their equipment ending up under the
10 control of someone other than themselves. They have
11 the ability to discontinue a customers' service of
12 the product instantaneously through their networking
13 capabilities, which will greatly decrease our
14 default ratio."

15 That paragraph would not be there unless
16 the information in the paragraph was of some
17 significance to Popular Leasing, would it?

18 A. Well, an interpretation of how much
19 significance to Popular Leasing and how much
20 significance to our business development and
21 salespeople in making the presentation write-up
22 could be two different things.

23 Q. Explain that.

24 A. We had a number of people representing
25 various disciplines and positions within the company

00100

1 processes behind why we got into that relationship,
2 and I don't think it is a literal document
3 indicating the terms and conditions under which we
4 actually conducted the relationship. Those would
5 have been outlined under the Master Program
6 Agreement, as it was entered into.

7 MS. McKOWN: Off the record.

8 (Discussion off the record.)

9 (Pop Deposition Exhibit 19 marked for
10 identification.)

11 BY MR. NEWTON:

12 Q. Take a look at Pop 19, which is 4924,
13 and do take a second to go through it, because it
14 has what I think are some amendments and changes to
15 it, and I'll be asking you some questions about it.
16 It is 4924 through 4935.

17 A. All right.

18 (Brief pause while the witness reviews
19 the document.)

20 MR. NEWTON: Let's go back on the
21 record.

22 BY MR. NEWTON:

23 Q. Have you had a chance to look at Pop 19?

24 A. I have, yes.

25 Q. Credit Procedures has a provision that

00101

1 says: "NorVergence acknowledges that Popular shall
2 not conduct a Customer interview during the credit
3 approval process, which is contrary to Popular's
4 standard credit policy."

5 Why did Popular agree to deviate from
6 its standard credit policy?

7 A. We agreed to deviate on that one point,
8 primarily because of the first payment default
9 support that we had from NorVergence, that we could
10 reassign the contract.

11 Q. Popular did, however, retain the right
12 to do a thorough credit check for customers,
13 correct?

14 A. We did our own underwriting
15 qualification, that's correct.

16 Q. If, in that process, you wanted
17 additional information from the customer, how did
18 you obtain it?

19 A. We would have asked for it to be
20 provided through NorVergence.

21 Q. And NorVergence would obtain the
22 information on your behalf and relay it back?

23 A. If we wanted to do that, but our credit
24 scoring parameters were just that, they were a
25 scoring parameter. We didn't do a full-blown

00102

1 financial review and analysis. We obtained public
2 record information, Dunn & Bradstreet reports, as
3 available.
4 If there were personal guarantees
5 involved, we obtained personal credit bureau
6 reports, again, public record information. We have
7 a scoring system, a platform within Popular that we
8 use which is kind of an industry-wide way of doing
9 credit underwriting on small ticket leases, small
10 ticket meaning smaller dollar leases, under six
11 figures.
12 Generally there is nothing that we would
13 have gone back for. About the only thing that we
14 went back for during the relationship is, if an
15 application was presented to us without guarantees,
16 and we were asked if guarantees might make a
17 difference, we would oftentimes say yes, and then
18 they would obtain for us a signed release
19 authorization from a personal guarantor and allow us
20 to obtain personal credit bureau information to see
21 if we could qualify with a guarantor. So the
22 process was very simple. Sp there was very little
23 that we had to go back for, or anything at all that
24 we had to go back for.
25 Q. Popular Leasing's relationship with

00103

1 NorVergence entitle it to have NorVergence obtain
2 additional information, correct?

3 A. We would have had that ability, yes.

4 Q. To the extent that that right was
5 exercised, it was most often exercised to obtain a
6 guarantor?

7 A. That's correct.

8 Q. At page 4929, Exhibit A, why is that
9 paragraph 1.f crossed out?

10 A. The Exhibit A talks about what needed to
11 be provided to Popular before Popular would actually
12 fund the proceeds to purchase a contract, and the
13 paragraph you are referring to is with regard to
14 proof of insurance. The Equipment Rental Agreement
15 required the customer to have the equipment under it
16 insured. We simply waived the need for proof of the
17 insurance coverage to be available prior to funding.

18 Q. Why?

19 A. As an accommodation at NorVergence's
20 request. This is something that typically does get
21 provided by the customer to have that in hand and
22 available up front. It is a timing situation, it
23 isn't always available that quickly or that readily,
24 and it is something that we were willing to allow
25 additional time. It was not critical either to us

00104

1 securing our rights in the contract, and, again, we
2 didn't have an emphasis on the equipment. We would
3 have followed through with that procedure, because
4 the contract called for insurance, we would have
5 followed after the fact to get it, but it would have
6 created no jeopardy for us to go without that at the
7 time of funding to secure rights to the contract and
8 purchaser.

9 Q. Did Popular have a system for providing
10 insurance for customers who did not provide proof of
11 insurance?

12 A. Yes, we did.

13 Q. Was it a force placement or just an
14 option provided to the customer?

15 A. The insurance had to be in place. We do
16 have an outside service that we work with that will
17 provide the insurance in the absence of the
18 customer's. We do let the customer know, and we do
19 advise the customer in front, that if they are
20 unable or unwilling to provide the insurance that we
21 will have the insurance coverage put in place, and
22 they will be billed for that.

23 Q. What value is placed on equipment? How
24 is the value for the equipment determined when
25 insurance was done through your program?

00106

1 they were stated in the original draft to the Master
2 Program Agreement, and it was done, literally, just
3 to address those issues.

4 Q. This numbered paragraph 1, that gives
5 Popular the right to sign these rental agreements on
6 behalf of NorVergence, right?

7 A. That's correct.

8 Q. Why was there a need for that change?

9 A. Actually, it was an additional
10 consideration or provision within the leasing
11 industry, and even within Popular. The lessor is
12 considered to have accepted the agreement, whether
13 he countersigns the contract or not at the time that
14 he actually advances funds on behalf of that
15 contract.

16 In Popular, we prefer to countersign the
17 agreements, in any event, even though we agree with
18 the general industry approach, that if the lessor is
19 funded, there is an implicit acceptance of that
20 contract. We just like to dot the I's and cross the
21 T's, and this was in consideration of the fact that
22 we wanted the opportunity and ability to do that,
23 and since we were taking assigned contracts from
24 NorVergence that named NorVergence as the rentor,
25 because those contracts were entered into before

00126

1 MR. NEWTON: Yes.

2 (Pop Deposition Composite Exhibit 21
3 marked for identification.)

4 BY MR. NEWTON:

5 Q. Unfortunately, it is not numbered.

6 MS. McKOWN: There are no Bates stamps
7 or anything.

8 MR. TELLECHEA: Let's do what we can.

9 (Brief pause while the witness
10 reviews the document.)

11 THE WITNESS: Okay, I have looked
12 through all of those pages.

13 BY MR. NEWTON:

14 Q. Pop 21 is, I believe, and you may
15 correct me, an example of a customer file; is that a
16 fair description of the document?

17 A. It is that, and it is also a copy of a
18 litigation file, as well.

19 Q. And I'm just going to ask you about some
20 of these documents. The purpose of this is simply
21 to understand your process for reviewing a customer
22 and handling the account.

23 A. Sure.

24 Q. In the early pages is a document that
25 has a title Internal Rate of Return & Lease Summary.

00127

1 What is the purpose of this document, and how is it
2 created?

3 A. That document is created within
4 Popular's documentation department prior to an
5 authorization for funding. What it does is it
6 calculates the yield on transactions to make sure
7 that the yield is within acceptable limits for what
8 we anticipate earning on the contract.

9 Q. Total Equipment Cost, where does that
10 number come from?

11 A. Total Equipment Cost would be the charge
12 that we will be receiving for the contract. Well,
13 let me clarify it. This is a standard form within
14 Popular Leasing.

15 Q. Yes, sir.

16 A. In general, this is used with direct
17 origination leases. When we take assignments of
18 specific contracts or when we do portfolio purchases
19 and document the individual transactions within
20 acquired portfolios, we complete this form for every
21 lease we have as a method of calculating and
22 representing our yield on the contract or our
23 earnings. We don't change the terminology to fit
24 the difference in transactions between direct
25 origination leases and the other acquired business.

00128

1 Q. Is this a template? You fill in some
2 information and it calculates the rest?

3 A. Yes. So when this says Total Equipment
4 Cost, if this were a direct origination lease, this
5 would be exactly what we are paying for the
6 equipment. In the case of assigned contracts or
7 contracts associated with a portfolio acquisition,
8 it would be the amount that we are paying for the
9 purchase assignment of the contract or the portfolio
10 contracts.

11 Q. What is the Commission number?

12 A. That's an amount that would be paid to
13 one of the parties in the transaction, typically to
14 a vendor or a vendor representative.

15 Q. In this case NorVergence?

16 A. That's correct.

17 Q. What is the relevance of the sales tax
18 information there?

19 A. As the quote, unquote, owner of record
20 of equipment, either under a rental agreement or
21 under a lease contract, during the period of the
22 time that we hold that, that holder, the leasing
23 company or the rentor is required in various
24 jurisdictions to pay sales tax, either in full up
25 front on the value of the goods, or billing it

00129

1 monthly on the rentals over the stream, paying it
2 monthly.

3 Q. Did Popular do that for Florida
4 customers?

5 A. We did.

6 Q. Do you have a Florida sales tax number?

7 A. Not immediately available to me.

8 Q. You do have one?

9 A. Yes.

10 Q. Moving on down here, Gross Rentals
11 Receivable. What is that?

12 A. That is the entire amount of the
13 payments over the number of months that they will be
14 made on the contract.

15 Q. Unearned Income refers to?

16 A. Well, the contracts, whether they're
17 rental agreements or leasing agreements, are set up
18 along the concept of an installment contract, so
19 that the monthly payment includes a component of
20 both principal and interest, so the total amount due
21 under a contract, at the beginning of that contract
22 and throughout it, you have a portion of the
23 outstanding obligation that represents interest and
24 a portion that represents principal.
25 As those contracts are paid down,

00130

1 typically in the beginning of those contracts, the
2 fixed monthly rental payment goes more towards
3 paying an interest component, and a lesser amount
4 goes towards reducing the principal obligation.
5 Towards the end of the contracts, it is
6 just the opposite. More of the payment is going to
7 pay down a principal balance, and a smaller amount
8 represents the interest payment.

9 Q. How does that play into unearned income?

10 Is unearned income the interest equivalent?

11 A. Right. It is the interest component in
12 future periods that are not yet due.

13 Q. Calculated internal rate is?

14 A. That would be the same as yield. To us,
15 it would be the rate that we anticipate earning on
16 that stream of payments if they're fully collected.

17 Q. What does Prime Rate refer to?

18 A. On this particular sheet, that is an
19 artificial number. It is not the published prime
20 rate by the Federal Reserve Bank. What this
21 anticipates or approximates is either our cost of
22 funds internally or a benchmark that is required for
23 payment of internal commissions to our salespeople.
24 And what it does is, it sets the base
25 rate that you deduct from the calculated internal

00131

1 rate, and it gives you your net earnings. It takes
2 out your cost of funds and shows you what your net
3 income earnings are on a transaction, your net
4 yield, if you will.

5 Q. The difference over prime rate is?

6 A. 9.27 percent, in this particular
7 example.

8 Q. Is your yield after you account for --

9 A. Cost of funds.

10 Q. -- for actual cost of money or for --

11 A. Cost of funds and other expenses.

12 Q. -- a presumed cost?

13 A. It is a blended cost.

14 Q. A few more pages back is a document
15 entitled Lease Credit Approval Sheet.

16 A. Okay.

17 Q. Is this a standard Popular Leasing form?

18 A. Again, that is, yes.

19 Q. Tell us what the purpose of it is and
20 how it is used?

21 A. It is signed off on by someone with a
22 credit position that is able to give an approval
23 authority for the transaction that is outlined in
24 the document. This is the company's commitment that
25 we have approved the transaction, qualified a



POPULAR LEASING

Subsidiary of Banco Popular

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October 24, 2003

Alex Wolf, Chief Operating Officer
Bob Fine, Vice President
NorVergence
550 Broad Street
Newark, NJ 07102

Dear Alex and Bob,

I speak for myself and Dan Kinealy in saying that the opportunity of meeting and having dinner with both of you, Bob Wizeman and Ed Lucas this past Tuesday was appreciated. It is always beneficial to be able to meet directly with our business partners.

Given the nature of the conversation at that dinner, it seemed that it would be a good idea to summarize what came out of those discussions.

NorVergence and Popular Leasing have been and will continue to be conducting their business relationship subject to the terms of the Master Program Agreement, and the Exhibits and Amendments thereto, entered into on March 11, 2003 (the "Agreement").

The only concession that resulted from the discussion is that I agreed that NorVergence will be allowed to make payments to Popular via check, rather than by offset, to pay any of its obligations to Popular, as defined under the Agreement. In respect of that concession we would be expecting to receive NorVergence's checks within 48 hours of the invoice date for such payments.

As an assistance to you in those payments to be made in regard to the "first-payment-default" provision of the Agreement, we will be sending you notification, not less than ten (10) days in advance of the first cash payment due date of each account. We will also continue to send to you, the day following the first cash payment due date, a list of all accounts that failed to make that first cash payment, and, within thirty (30) days thereafter, an invoice for payoff of the full obligation for each of those accounts needing to be paid off pursuant to the provisions of the Agreement.

We know that you are looking forward to a lot of exciting potential opportunities, and are developing many new ideas for the growth of your company. I look forward to seeing some of the other thoughts you indicated that you would want to develop and share with us.

Sincerely,

Bruce Horton, President
Popular Leasing U.S.A., Inc.

cc: Bob Wizeman, NorVergence
Ed Lucas, NorVergence
Ken Eisler, Popular Leasing



bag P. 6
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CAUSE No. 2004-65357

STATE OF TEXAS,
Plaintiff,

v.

NORVERGENCE, INC.
Defendant.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

270th JUDICIAL DISTRICT

DEFAULT JUDGMENT AGAINST DEFENDANT NORVERGENCE, INC.

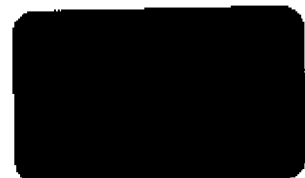
On this day came on to be heard the above-entitled and numbered cause wherein THE STATE OF TEXAS is Plaintiff and NORVERGENCE, INC. is the Defendant. The Plaintiff appeared in person by its attorney of record and announced ready for trial. The Defendant, although having been duly and legally cited to appear and answer, failed to appear and answer, and wholly made default.

Citation was served according to law and return of service was made to the clerk where it remained on file for the time required by law. The Court has read the pleadings and the papers on file, has heard and considered the testimony and evidence presented by Plaintiff, and is of the opinion that the allegations of Plaintiff's Petition have been sufficiently proven.

FINDINGS

This court, based upon the testimony and evidence presented, makes the following findings:

1. Plaintiff filed a petition in this cause pursuant to the provisions of the Texas Deceptive Trade Practices Act ("DTPA"), the allegations of which the court takes notice.
2. The Texas Attorney General is charged with, among other things, the responsibility of enforcing the DTPA on behalf of the public interest.



3. NORVERGENCE is a corporation organized under New Jersey law with its principal place of business located at 550 Broad Street, Newark, New Jersey.
4. At all times relevant to this matter, NORVERGENCE did business from its principal place of business located at 550 Broad Street, Newark, New Jersey and from various offices in the State of Texas.
5. On or about June 30, 2004, creditors of NORVERGENCE filed an involuntary bankruptcy petition in U.S. Bankruptcy Court for the District of New Jersey.
6. NORVERGENCE currently is in Chapter 7 bankruptcy in the U.S. Bankruptcy Court for the District of New Jersey (Docket 04-32079-RG).
7. A trustee, Charles Forman, has been appointed to act in the stead of NORVERGENCE. The plaintiff does not allege that the trustee is involved in any of the wrongdoing alleged to have been committed by NORVERGENCE.
8. NORVERGENCE, at all times relevant hereto, engaged in trade and commerce within the meaning of the DTPA in the State of Texas, to wit: advertising, offering for sale, selling, and providing telecommunications service and related telecommunications equipment, and charging Texas consumers for, or causing them to be charged for, the same.
9. NORVERGENCE has engaged in unfair and deceptive acts or practices in the conduct of trade and commerce, in violation of the DTPA because it materially misrepresented the nature of its telecommunications services to all Texas consumers who contracted for same.
10. The NORVERGENCE rental agreements for Matrix and Matrix Soho routers and firewalls and related equipment were part of a unified agreement under which NORVERGENCE promised to provide telecommunications services in exchange for consumers' payments.

These services have not been provided at least since a time early in the NORVERGENCE bankruptcy case and in some cases have never been provided.

11. All Equipment Rental Agreements or other contracts procured between NORVERGENCE and Texas consumers or between finance companies and Texas consumers as a result of a NORVERGENCE solicitation directed to any Texas consumer are the result of deceptive and unfair practices and fraud on the part of NORVERGENCE and, therefore, are declared void *ab initio* and are unenforceable.
12. All of the unfair and deceptive acts or practices alleged in Plaintiff's petition constitute the basis for the execution and filing of this Default Judgment.
13. Any references to the acts and practices of NORVERGENCE shall mean that such acts and practices are by and through the acts of said corporation's officers, agents, servants, employees, attorneys, and representatives; all other persons or entities directly or indirectly under their control, wholly or partially; and all other persons or entities in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise.
14. This Court has jurisdiction over the subject matter of the complaint having been filed herein and over the parties to this Default Judgment.
15. The court finds that 1,020 Texas small businesses and consumers were victims of NorVergence's fraud and deceptive acts and practices and that a civil fine and penalty should be awarded to the State of Texas for each such victim.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant, its officers, agents, servants, employees, and attorneys, and any other person in active concert or

participation with Defendant shall be permanently enjoined from engaging in the following acts or practices:

1. Engaging in any commerce in the State of Texas, including, but not limited to, the business of advertising, offering for sale, selling, and providing telecommunications service and related telecommunications equipment, and charging Texas consumers for, or causing them to be charged for, the same.
2. Assigning any NorVergence equipment rental agreement (or any part thereof) where a Texas business, consumer, person, or entity is a party thereto, to any other person, entity or finance company.
3. Enforcing, attempting to enforce, collecting or attempting to collect any monies purportedly owed under any NorVergence equipment rental agreement from any Texas consumer, business or entity.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all contracts or agreements between NorVergence and Texas consumers, businesses or persons are hereby declared void *ab initio* and unenforceable.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any consumer financing agreements owned or held in whole or part by NorVergence shall be deemed void and uncollectible by any person or entity.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any NorVergence consumer financing agreements transferred or assigned to any third party after those contracts were rejected in the Bankruptcy Case pursuant to 11 U.S.C. § 365 shall be deemed void and uncollectible by any person or entity.

IT IS ALSO ORDERED that to the extent that NorVergence has a residual, contingent, or similar right to any consumer financing agreement not currently owned or held by NorVergence, those agreements shall be deemed void and uncollectible as of the time that NorVergence's residual, contingent, or similar right matures.

IT IS ALSO ORDERED that NorVergence shall notify each consumer affected by this section that their consumer financing agreement has been deemed uncollectible and void, either immediately or in the future, as applicable.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover from Defendant NorVergence, the sum of \$ 162,000.⁰⁰ for reimbursement of attorney fees and investigative costs which were incurred on behalf of the Plaintiff and which do not constitute an antecedent debt with respect to this litigation.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover from Defendant NorVergence, the sum of \$ 10,000.⁰⁰ for civil fines and penalties and which do not constitute an antecedent debt with respect to this litigation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, to the extent not prohibited by bankruptcy law :

1. Defendant shall make payment of all amounts due herein to the Plaintiff by delivery of a cashier's check or money order to the Office of the Attorney General, Consumer Protection Division, 300 West 15th Street, 9th Floor, William Clements Building, Austin, Texas 78701. Such check or money order shall be made payable to the Office of the Attorney General.
2. All costs of court incurred in this case are taxed against Defendant.
3. Defendant shall pay pre-judgment and post-judgment interest on all monetary awards set

forth in this judgment as provided by law.

4. The State of Texas have all writs and processes as may be necessary in the enforcement and collection of this judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all relief not expressly granted herein is denied.

SIGNED this 29th day of April 2005.

F L E D
CHARLES HAMARISSE
District Clerk

APR 29 2005

By B. L. L. L. L. 10:25
Deputy


JUDGE PRESIDING



I, Charles Bacarisse, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this May 9, 2005

Certified Document Number: 12288530 Total Pages: 6

CHARLES BACARISSE, DISTRICT CLERK
HARRIS COUNTY, TEXAS