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SESSION: COMMON METHODS TO PREVENT FRAUD AND MITIGATE INVESTOR CONCERNS ABOUT TRANSACTIONS "GOING BAD" OR BANKRUPTCY

THE ROLE OF LEASING COMPANIES IN THE NORVERGENCE FRAUD

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It is almost always worthwhile to be cheated;
people's little frauds have an interest
which more than repays what they cost us.

LOGAN PEARSALL SMITH
[1865 – 1946]

Whoever has even once become
notorious by base fraud, even if he speaks the truth,
gains no belief.

PHAEDRUS
(a.k.a. Aesop)
[15 B.C.-50 A.D.]

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THE ROLE OF LEASING COMPANIES IN THE NORVERGENCE FRAUD

By Rhonda Roland Shearer

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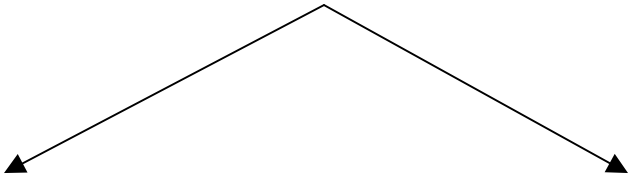
Norvergence Telecommunications Company

Start-up 2002-2003

Portfolio: $200 million volume
11,000 equipment leases sold to small businesses in 14 states
(Each lease $10,000-$340,000; for equipment that cost only $200-$1,550)
Approximately 20 Major Leasing Companies Participated



Lessee's Perspective:
Norvergence as partner with Nortel and Quest

- Offered services to AAA credit small businesses
- Required signing separate equipment and service contracts
- Provided no equipment manufacturers Information; no offer to purchase

Lessor's perspective:
Norvergence offered equipment leases

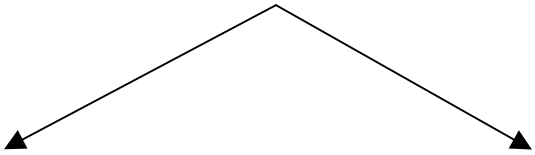
- Lessees with AAA credit
- Buzz: 18% plus rate over 60 month term
- High volume
- Received equipment invoices and spec sheets for 2 types of equipment: Matrix SOHO and Matrix T1

Norvergence
Bankrupt by Summer 2004

Outline for Equipment Leasing Assn. Comments
March 10, 2005 Meeting

SESSION: COMMON METHODS TO PREVENT FRAUD AND MITIGATE INVESTOR CONCERNS ABOUT TRANSACTIONS "GOING BAD" OR BANKRUPTCY

The Role of Leasing Companies in the Norvergence Fraud



Leasing Companies' Defense they stated in Court:

1. Leasing companies did not know the Norvergence equipment value; they were not required to know; and they had no expertise in order to know.

2. Leasing companies only concern and expertise is customer credit.

Two Areas of Exposure for Leasing Companies:

1. SEC violations
   - SEC requirement to establish rigorously determined fair value of multiple deliverables (EITF 00-21)
   - SEC charged Xerox with fraud for bundling services with equipment.

2. Insurance violations
   - False declarations of equipment values to insurers; false "insured values" used to determine premiums and profits charged to lessees.
   - Premium amounts not correlating to insured values in sample study.

FOREWORD

I intended this report, a supplement to my talk, to be used as a definitive set of publicly available documents needed for review of the Norvergence leasing case. The Table of Contents provides a context for understanding the relationships among the documents. When documents are not included in total, links are provided following the excerpts.

Unless a lessor or lessee was directly involved with Norvergence, no details have been available to the leasing community beyond snippets in the press, hearsay or rumors. My hope is that this invaluable collection of primary source materials will serve to generate other case studies and industry-wide introspection.

INTRODUCTION

Press and Online discussions mention that Norvergence equipment was leased for 10 to 100 times its value. In essence, the comments read: “Is it true?” “How could this happen?” “How could equipment worth $200 be leased for $28,000 or $75,000 ?”

Similarly unbelievable are the claims of leasing companies, found in court transcripts, that they had neither the knowledge, expertise or obligation to know the value of the Norvergence equipment before purchasing $200 million worth of leases.

I have taken several critical steps to unpack this fascinating and illogical situation. The first act was to commission a top-notch telecommunication appraiser to do a retrospective valuation of the Norvergence Matrix Boxes. The result of this appraisal is included in this report. To my knowledge, my post hoc fair market valuation (FMV) was the first comparison and residual analysis ever done. Two hundred million dollars apparently were sent to Norvergence at the inception of the Matrix Box leases, without any determination of market comparables or residual value.

In the pursuit of the truth, my second critical step was to research leasing companies claims of ignorance regarding the Matrix Box values. What might be possible motives for leasing companies to turn a blind eye to Norvergence equipment values? For answers, I pursued UCC 2a-103 and IRS codes, and SEC, FASB Statement 13 and GAAP accounting rules. I asked the authors or enforcers of these regulations, “What are the requirements for public companies for due diligence and reporting asset values when booking leases?”

After hearing the facts and circumstances in the Norvergence case, one senior accountant and expert in leasing advised me to look at the 2002 SEC Enforcement Action against Xerox. (http://64.233.161.104/search?q=cache:oYiqgcnni8J: www.sec.gov/news/headlines/xeroxsettles.htm+sec+xerox+restated+financials&hl=en)

The SEC charged Xerox with fraud due to the improper reporting of revenues. By booking services, interest and equipment under a lease without differentiation; services that should not have been recorded as income until delivery appeared at lease inception. From the perspective of the SEC, the result of Xerox artificially accelerating earnings was a false boost in present Xerox stock values, which would result in a future low that stockholders could not foresee (based on the fact that services rendered later will show no earnings as this income was booked years earlier).

Leasing companies' accountants and auditors, if not their management, would have known the Xerox case and the resulting EITF 00-21 requirements. KPMG Bulletins and Softrax, a revenue management consulting service, flagged the importance of separation of multiple deliverables and the SEC requirement for determination of fair market values with "vendor specific objective evidence." The Softrax web site states, "Understanding this new guidance (EITF 00-21) in detail will be critical for all finance and accounting professionals, as the SEC continues to rigorously enforce implementation of new revenue recognition guidelines." See links: http://64.233.161.104/search?q=cache:OwYpEakph_oJ:www.us.kpmg.com/RutUS_prod/Documents/12/June03_12.pdf+fasb+statement+13+leasing&hl=en and (http://www.softrax.com/news/press_releases/article/default.asp?release=063, respectively.

From May 2003 on, all leases must be rigorously unbundled and deliverables properly allocated using EITF 00-21 "tests." The fact of having done two leases-- one for services and one for equipment, as is done by Norvergence—offers no reprieve from this requirement. On page one, EITF 00-21 specifically cites, "In applying this Issue, separate contracts with the same entity or related parties that are entered into at or near the same time are presumed to have been negotiated as a package and should, therefore, be evaluated as a single arrangement in considering whether other are one or more units of accounting." See http://www.iasplus.com/resource/00-21_draft.pdf .

After learning about the Xerox scandal and EITF 00-21, I selected one Norvergence lease ($477. 35 x 60 Months) and had an accountant create a spread sheet for a finance lease, using my best guess of how leasing companies booked the Norvergence leases: Norvergence's inflated equipment cost ($22,655 cost), the interest rate stated on the credit approval (0.02079 rate) and the assumption of no residual value.

In order to create a comparison, I had the accountant take this same lease information and create a second spreadsheet allocating the separate income streams in compliance with EITF 00-21. The fair market value my expert determined through product and market analysis ($2,887 for two) and the same total interest amount ($5,986) were subtracted from the total Finance lease ($28,641). Using the same assumption of no residual value, the remaining amount ($19,555) was allocated as services.

Services were obviously conflated into the Norvergence Equipment lease, resulting in the absurd variation among customers leases (ranging from $10,000 to $340,000) for the identical equipment whose FMV was, approximately, either $200 for a Martix SOHO, or $1550 for the Matrix T-1. The Norvergence documents included in this report show that

this wide range of equipment lease prices for customers were calculated from the running history of phone bills that potential lessees were required to submit for the Norvergence "technical experts" in order to create a "cost saving analysis." The resulting analysis compared past monthly phone charges with future Norvergence savings. The higher the monthly phone bills in the lessees' history; the higher the Norvergence lease payment.

When properly separating the FMV of the Norvergence equipment and services, as in my previously mentioned accounting experiment, the reason for unbundling earnings immediately becomes apparent. With improper bundling, the first-year entry earnings are booked at $19,992; whereas the proper EITF 00-21 timing of revenue $4,348 indicated a significant reduction of income by $15,644 ($19,992 minus $4,348). The swing between the two scenarios is a difference of 360%, or four times, which equals the difference between $50 million and $200 million, when writ large.[1]

Since commissions and bonuses are based on sales volume, leasing companies sales and marketing people had a motive to push through the purchase Norvergence leases. Using my appraiser's valuations of the Norvergence Matrix Boxes, $17,600,000 is the most volume that 11,000 leases could generate. It was only when services were illegally conflated with the $17,600,000 equipment cost that the Norvergence deal became a $200 million "equipment lease" portfolio. Clearly, services were the bulk of the portfolio when FMV's were used to judge services and equipment.

If services were properly allocated in Norvergence leases, as in my accounting example, income dribbles in over the five-year term. Slow and gradual income, over a five-year term, exposes both the reason why a leasing company would not reasonably advance monies to vendors for future services, and why sales and marketing people would appreciate the benefit of hiding services in the books as sales. Revenues generated from $200 million in *sales of equipment* glow as immediate earnings and a quick return on cash invested; in compassion, monies *advanced to vendors for services* creates an immediate reduction of first-year earnings that can only be added gradually as income over future reporting periods.

By bundling services and equipment, sales and marketing people can have their cake and eat it too. In other words, they could create the higher and immediate volume (and higher bonuses and commissions) by conflating services and equipment with the benefit of high first-year earnings. However, the negative effect of leasing companies buying and improperly booking the Norvergence leases is analogous to the SEC claims against Xerox.

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[1] As the leases ranged from $10,000-$340,000, and the real equipment cost was either $200 or $1550, the actual percentage difference between what was leasing companies booked as 1st year income, and what they *should* have been booked, is likely much higher than 360% within the context of the entire $200 million Norvergence portfolio. (The basis for the 360% was made from one $28,641 lease that included *two* Matrix units at $3,100. Typically, Norvergence leases had only one Matrix Box at $200 or $1550. The sample lease total of $28,641 was in the lower part of the range of lease amounts [$10,000-$340,000] within the entire Norvergence lease portfolio of 11,000).

The first-year glow of booking future earnings in the Norvergence leases results in a continuing series of losses that will follow over the next four years of the five-year term. My one lease example shows that: The first year is $19,992 earnings: the next four years are losers: the second year ($2,849) ; the third year ($3,257); the fourth year ($3,705); the fifth year ($4,195). Now multiply one lease times 11,000 leases to get an idea of the over-all scale, impact and outright distortion within the 200 million dollar portfolio created by leasing companies improperly reporting services as first-year revenue.

Leasing companies that normally do not finance services, and insurance companies that typically do not insure services were, in fact, leasing and insuring services in the Norvergence leases. This departure from leasing and insurance company practices directly results from violations of SEC EITF 00-21's requirements for "objective and reliable evidence of the fair value of the undelivered item(s)."

See http://www.iasplus.com/resource/00-21_draft.pdf .

EITF 00-21, Number 16, specifically states the criteria leasing companies need to use for the determination of FMV and VSOE in their leasing:

> 16. Contractually stated prices for individual products and/or services in an arrangement with multiple deliverables should *not* be presumed to be representative of fair value. The best evidence of fair value is the price of a deliverable when it is regularly sold on a standalone basis. Fair value evidence often consists of entity-specific or vendor-specific objective evidence (VSOE) of fair value. As discussed in paragraph 10 of SOP 97-2, VSOE of fair value is limited to (a) the price charged for a deliverable when it is sold separately or (b), for a deliverable not yet being sold separately, the price established by management having the relevant authority (it must be probable that the price, once established, will not change before the separate introduction of the deliverable into the marketplace). The use of VSOE of fair value is preferable in all circumstances in which it is available. Third-party evidence of fair value (for example, prices of the vendor's or any competitor's largely interchangeable products or services) is acceptable if VSOE of fair value is not available.

Within the context of EITF 00-21, the insistence of leasing companies that they did not know the values of the Norvergence "Boxes" offers proof that these public companies committed the same type of fraudulent reporting of revenues as Xerox did. (See Court Transcript, page 114 in this Report). If they did not know the fair value of the equipment, then leasing companies obviously did not follow the proper SEC valuation and accounting procedures in EITF 00-21 stated above.

The SEC description of their case against Xerox sounds eerily similar to the Norvergence case. Like Norveregnce, Xerox's scheme centered around a "box." The SEC web site

http://www.sec.gov/news/headlines/xeroxsettles.htm states, under a headline dated April 11, 2002:

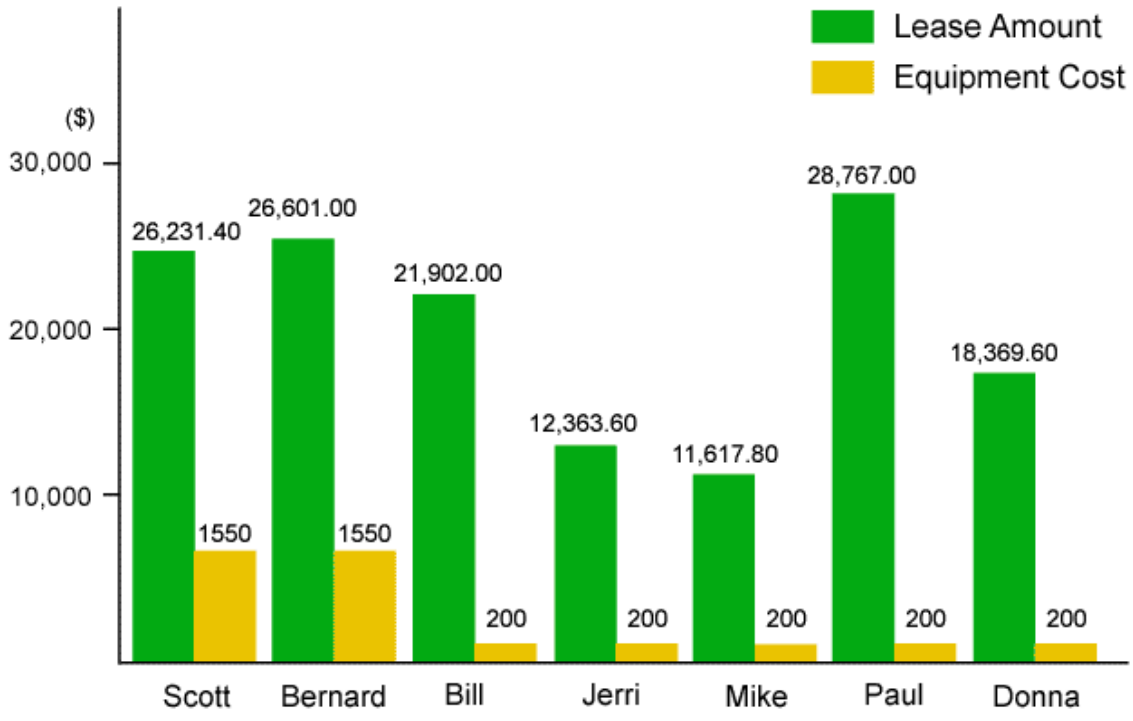
Xerox Settles SEC Enforcement Action Charging Company with Fraud, Agrees to Pay $10 Million Fine, Restate Its Financial Results and Conduct Special Review of Its Accounting Controls

> The complaint alleges that several of the accounting actions related to Xerox's leasing arrangements. Under these arrangements, the revenue stream from Xerox's customer leases typically had three components: the value of the "box," a term Xerox used to refer to the equipment; revenue that Xerox received for servicing the equipment over the life of the lease; and financing revenue that Xerox received on loans to its lessees. Under GAAP, Xerox was required to book revenue from the "box" at the beginning of the lease, but was required to book revenue from servicing and financing over the course of the entire lease. According to the complaint, Xerox relied on accounting actions to justify shifting more lease revenue to the "box," so that a greater portion of that revenue could be recognized immediately.

My third step involved analysis of the problems of fraud that results when leasing companies provide false insured values to insurance companies, and naming themselves payees for any losses of Norvergence equipment. This fraud is compounded by charging lessees insurance premiums and profits based on these false and inflated equipment valuations. Leasing companies' internal controls for compliance with the SEC accounting EITF 00-21 rules for the accurate establishment of equipment's Fair Value would have prevented these insurance violations.

Any questions or comments? Please phone 212-925-8812 or email rrs@asrlab.org. A final version of this report will be placed on the Art Science Research Laboratory web site, www.asrlab.org.

Comparison of Lease Amount and Novergence's Equipment Cost



Comparison of Finance Lease Accounting, Using One Norvergence Lease:
Bundled versus Unbundled Accounting Methods

Lease terms:	
Monthly payments	477.35
Monthly payments	60
Total lease payments	28,641

	Bundled Deliverables Scenario 1	Unbundled and EITF 00-21 Compliant Scenario 2	Profit Increase (Decrease)	Profit % Increase
Lease payment allocated to equipment	22,655	3,100		
Interest receivable	5,986	5,986		
Unearned service revenue		19,555		
Total lease payments	28,641	28,641		
Depreciable cost of equipment	22,655	22,655		
Year 1				
Gain (loss) at initiation of lease on equipment	22,655	3,100		
Interest earned	1,868	1,868		
Depreciation of equipment (straight line - 5yr)	(4,531)	(4,531)		
Service revenue earned	-	3,911		
Net income on leasing	19,992	4,348	15,644	360%
Year 2				
Gain (loss) at initiation of lease on equipment				
Interest earned	1,682	1,682		
Depreciation of equipment (straight line - 5yr)	(4,531)	(4,531)		
Service revenue earned	-	3,911		
Net income on leasing	(2,849)	1,062	(3,911)	-368%
Year 3				
Gain (loss) at initiation of lease on equipment				
Interest earned	1,274	1,274		
Depreciation of equipment (straight line - 5yr)	(4,531)	(4,531)		
Service revenue earned	-	3,911		
Net income on leasing	(3,257)	654	(3,911)	-598%
Year 4				
Gain (loss) at initiation of lease on equipment				
Interest earned	826	826		
Depreciation of equipment (straight line - 5yr)	(4,531)	(4,531)		
Service revenue earned	-	3,911		
Net income on leasing	(3,705)	206	(3,911)	-1899%
Year 5				
Gain (loss) at initiation of lease on equipment				
Interest earned	336	336		
Depreciation of equipment (straight line - 5yr)	(4,531)	(4,531)		
Service revenue earned	-	3,911		
Net income on leasing	(4,195)	(284)	(3,911)	1377%
Totals				
Gain (loss) at initiation of lease on equipment	22,655	3,100		
Interest earned	5,986	5,986		
Depreciation of equipment (straight line - 5yr)	(22,655)	(22,655)		
Service revenue earned	-	19,555		
Total income on leasing	5,986	5,986	-	0%

Appraisal Report

For

Rhonda Roland Shearer

By

DMC Consulting Group
P.O. Box 9469
Newport Beach, CA 92658

February 2005

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Appraisal Report

DMC Consulting Group (DMC) presents the following retrospective desktop summary appraisal as an *opinion of value* of high-tech network communications equipment. The equipment was leased to over 11,000 small to medium sized companies across the United States in 2003 and 2004. This appraisal will only look at 10 sample leases for two models of NorVergence Matrix Network equipment. The following is a list of the documents submitted to DMC for review by Rhonda Shearer.

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- Sample Equipment Rental Agreement Schedule of payment amount and terms
- Equipment Schedules from NorVergence
- Invoices for the NorVergence equipment.

This sample portfolio was appraised for a fair market value as of the invoice date and a forecasted fair market residual value for each year out to 60 months from the invoice date. The detail listing of the equipment appears in Exhibit 2. A summary of the sample company lease information can be found in Exhibit 1.

A retrospective appraisal means that only knowledge available as of the appraisal date, which is the invoice date of the equipment in question, can be used to determine the *opinion of value.* Knowledge of what has happened after that date did not influence the values stated in this appraisal.

Overview of Report

This appraisal report identified the assets in question and determined the fair market value on the invoice date and the forecasted an end-user fair market value 60 months from the forecasted date. Adherence to the code of ethics and the requirement and standards of Uniform Standards of Professional Appraisal Practices and the conduct of an appraiser as a member of the American Society of Appraisers is strictly followed for the creation of this report.

Purpose and Use of the Appraisal

The purpose of this appraisal is to provide a retrospective *independent valuation opinion* with regard to the end-user fair market value and forecasted fair market residual value. This will be done through the use of researching the marketplace and applying my 18 years of residual value forecasting expertise. This report should be used as an *opinion of value* as of the appraisal dates for the assets

listed. This report will be used in a presentation to the Equipment Leasing Association by Rhonda Shearer.

The end-user value is the price the user would pay to a vendor, computer broker or lessor for the equipment in an arms length contract subject to the definition of Fair Market Value (FMV) listed later in this report. This valuation does not take into account for freight and installation of this type of equipment. The End-User valuation represents on average what the user can expect to pay for like equipment in the specific timeframe requested.

Objective and Valuation Date of Appraisal

The objective is to give an *opinion of value* as of the appraisal dates in the detail listing in Exhibit 1 the Summary and Exhibit 2 the Equipment Detail.

Definition and Premise of Value

"End-User Fair Market Value " (FMV) is defined as the price that the equipment should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

For purposes of this valuation freight and installation are not included in the value of the equipment.

Description of Subject Computer Assets

The subject computer assets are listed in Exhibit 2. *Portfolio Analysis - Detail.* The Matrix 2001 and Matrix 2003 were purchased by NorVergence from Adtran, a tier 1 manufacturer of networking equipment, for sale to medium and small businesses needing expanding telephone requirements. It is

estimated that NorVergence purchased approximately 11,000 Adtran Total Access 850 units with six interface cards in each chassis (see Exhibit 4 for a description of the Adtran equipment) and leased/rented the equipment to lessees across the United States from early 2003 to mid 2004. The Matrix equipment consisted of the basic chassis and usually one to three interface voice cards along with the firmware to operate the equipment. NorVergence created their own equipment marketing and description piece and that can be reviewed in Exhibit 3 along with a sample NorVergence invoice.

There was no inspection of the assets listed. A review of the documentation mentioned earlier provided the information used for the analysis. It is assumed that:

- *The equipment was in working order and certified to perform the functions for which it was intended.*
- *The equipment was up to its current engineering level*
- *The equipment was used for normal business applications.*
- *The equipment would be available for service*

Approaches to Value

The generally accepted approaches to tangible personal property valuation include the income approach, cost approach and the market approach. The following outlines these various approaches to value.

Income Approach

The income approach considers value in relation to the present worth of anticipated future benefits derived from ownership and is usually measured through the capitalization of a specific level of income, (i.e. net income or net cash flow). The net income or net cash flow is projected over an appropriate period and is then capitalized at an appropriate capitalization or discount rate.

While the cost approach and the market approach are readily applicable in many situations of computer equipment valuations, the income approach is less frequently applied since it is usually difficult to isolate a unique income stream.

Cost Approach

The cost approach is that approach which measures value by determining the current cost of an asset and deducting for the various elements of depreciation, physical deterioration and functional and economic obsolescence. This approach is based on the proposition that the informed purchaser

would pay no more for computer equipment than the cost of producing substitute equipment with the same utility as the subject asset from the same manufacturer.

The main definitions of cost are reproduction cost and replacement cost. Reproduction cost considers the construction of an exact replica of the asset. Replacement cost considers the cost to recreate the functionality or utility of the subject asset.

The cost approach commonly measures value by estimating the current cost of a new asset, and then deducts value for various elements of depreciation, including physical deterioration and functional and external obsolescence to arrive at "depreciated cost new". This "cost" may be either reproduction or replacement cost. The logic behind this method is that an indication of value of the asset is its cost (reproduction or replacement) less a charge against various forms of obsolescence such as functional, technological and economic as well as physical deterioration if any.

Thus:	Current Cost of Replacement or Reproduction New
Less:	Physical Deterioration
Less:	Functional Obsolescence
Less:	External Obsolescence
Results in:	**Fair Market Value**

The availability and cost of the substitute asset is directly affected by shifts in the supply and demand of the utility. Utility may be measured in many ways including functionality, desirability, etc. Costs typically include the cost of all material, labor, overhead, and entrepreneurial profit (or return on the investment in the subject tangible personal property).

Market Approach

The logic behind the market approach for computer equipment is that a prudent investor can go to the marketplace and purchase an exact copy of the asset with the same features and/or functionality built by the same manufacturer. Analysis of recent sales and/or asking prices of comparative computer assets are the basis used to establish market values for current fair market value of used equipment.

In the market approach or sometimes also called the "sales comparison" approach, recent sales and offering prices of exact copies and/or similar assets are gathered to arrive at an indication of the most probable selling price of the asset being appraised. The basic procedure is to gather data, determine the features to be compared, and apply the results to the subject. Along with this data and

historical data about the same product, a depreciation curve can be established to predict a residual value for this and similar products.

The market approach is considered to be the best method to estimate the current and future value of computer assets, especially when an actual secondary market exists and there is data available to provide a good indicator of value for the asset. There is enough data available from the marketplace to provide a good basis for defining value for the assets under question.

Appropriate Method - Methodology

Of the various "Approaches to Value" available, the ***Market Approach is the appropriate method*** of valuing this portfolio of equipment.

The Income Approach considers value in relation to the present worth of future benefits of ownership. It is not usually applied to individual items of equipment since it is difficult, if not impossible, to identify individual income streams. If you assemble a group of individual machines to produce a product, in aggregate, they generate income for the business. So by using an income approach, we could value the aggregation of assets that generate this income. However, it is very difficult to gather and isolate the appropriate information needed for this type of appraisal.

The Cost Approach is based on the proposition that the informed purchaser would pay no more for a property than the cost of reproducing a substitute property from the same manufacturer with the same utility as the subject property. It considers that the maximum value of a property to a knowledgeable buyer would be the amount currently required to construct purchase a new asset of equal utility. This approach should not be used because the cost to **Reproduce** and/or to develop and re-engineer an **exact Replacement** would be more than a unit purchased in the secondary marketplace, plus the identification of the specific percentages to apply for physical, functional and economic depreciation.

Equipment Analysis Facts

To better understand the forecasting of residual values it is necessary to explain the methodology and techniques used in the analysis of used equipment market values. The terms outlined below are integral to the methodology used in the development of a depreciation curve to predict the future residual value of the portfolio of equipment.

First Ship Date: This date represents the first date the equipment was shipped by the vendor to an End-User. The actual month the first system ships starts the depreciation curve for that particular family of equipment. The date is then rounded to the nearest quarter. i.e. July 15, 2001 ship date becomes 3Q01.

About the MATRIX 200X and Adtran TA 850 Networking Switch/Router

The NorVergence MATRIX Switch/Router is a private label white box. The NorVergence equipment is an Adtran Total Access 850 Switch/Router that NorVergence affixed their own label over the Adtran equipment and then proceeded to rent this equipment to small and medium size lessees across the United States. The Adtran TA 850 is an integrated access device designed for cost-effective deployment of voice and data services at the customer's premises. The Total Access 850 benefits enterprise customers as well as integrated communications providers, such as CLECs (Competitive Local Exchange Carrier), ILECs (Incumbent Local Exchange Carrier)and ISPs (Integrated Service Providers), who require a customer premises device that integrates voice and data functions, and provides a viable migration path from TDM (Time Dependent Multiplexing) to packet-based technology, The Adtran Total Access 850 features remote management, an integrated IP (Internet Protocol) router, and special services slots.

Total Access 850 is a modular device with two common slots and eight access slots. Common cards required for operation are a power supply unit (PSU) and system control unit. Additionally various interface cards can be added to the device for solutions required by the customer to run their business. The metal chassis is small compact and requires a minimum of rack space.

NorVergence also sold a SOHO (Small Office Home Office) telecom unit that was purchased from Adtran. The unit was the Adtran 2050.

NorVergence Marketing Plan

The NorVergence lease or invoice and sample rental agreement, see Exhibit 3, rented the equipment to the lessee or renter for 60 month terms, with 120 day notice for termination and would allow the renter to purchase all of the equipment only if NorVergence wanted to grant that option to the renter. These leases or rental contracts were then assigned to various lending institutions including but not limited to CIT-Technologies Financing Services, Insight Financial, Commerce Bank, Popular Leasing, Sterling National Bank and OFC Capital.

DMC Fair Market Value Report Analysis

I have been publishing a Fair Market Value Reports since 1985 and they are currently published by Computer Economics, Inc where I am the president. While the Computer Economics Network Communications Report did not specifically track the Adtran TA 850 in 2003 and 2004, I have a library of information for used equipment from brokers/dealers and lessors around the country. I have researched the information for the value of the Adtran equipment by talking to brokers/dealers, Adtran partners and others familiar with the equipment and from the following sources to determine the *opinion of value*:

- The Processor
- Compu-Mart
- Telecom Manager
- Computer Manager

The data used by Computer Economics for the reporting of current market values for the computer industry has come from various brokers and lessors within the industry. The Computer Economics reports have been an integral part of the computer marketplace since 1985 (formerly Daley Marketing Corporation) with the first publication of the IBM Market Value Report.

The use of the computer broker information as opposed to end-user information is used to avoid reporting on hidden costs that could be included in a quote from an end-user and distort the real fair market value. Sales reports from different end-users may include different soft costs that will distort the fair market value. Because the marketplace allows one broker to sell a machine to another broker without soft costs such as free rent, systems help and/or software, this has become the basis for the fair market value reports.

Computer Economics utilizes the broker information as the basis for its reports and then adds a gross margin to arrive at an End-User FMV. The gross margin is derived from conversations with computer brokers, dealers, lessors and past experience with Computer Economics. The gross margin can vary depending on the equipment and the cost of the equipment but represents what can be expected by the sale of equipment from a broker, dealer or lessor to an end-user. This same approach to the market value reports is extended to the Residual Value Reports.

Adtran Equipment	Purchase Price – Chassis plus 6 Interface Cards	Estimated NorVergence Purchase Price – Discount 25% off List Price
Total Access 850 Part # 4203376L24	$3,491 Chassis $2,153 6 cards at $223/ea $1,338	Chassis $1,615 Cards $167/ea
2050 N/A	$345	$269

Figure 1. Determination of Value**.**

Historical Information - Residual Value Analysis

The reporting of fair market values for future residual values is very dependent on the preparation and analysis of current and past market value information. The first ship dates of equipment and the rumors and predictions of what the vendor will do in the future affect residual assumptions. Also factored into the analysis is the projected economic life of the product.

Analyzing the year-to-year market value performance is another important step in the analysis and determination of residual values. The forecaster must take into account the fair market values for the same or like equipment, factor in the rumors of upcoming announcements and the reputation of the manufacturer and service provider. In this case NorVergence has affixed its own label to the equipment and the service capabilities appear to be an unknown. Even though the equipment is manufactured by Adtran it is not know if Adtran will offer service contracts or repair service for the equipment. Therefore I am valuing the equipment as tier 2 which means that the value will be ten percentage points below that of comparable Adtran TA 850 and Adtran 2050 equipment.

Conclusions of Value - Summary

The portfolio consisted of NorVergence MATRIX 2001, MATRIX 2003 and MATRIX SOHO equipment. The following represents a summary of conclusions from Exhibit 2. See Exhibit 1 for a detailed year by year decline rate in the value of the equipment.

Lessee/Renter	Invoice Date	NorVergence Equipment	Estimated NorVergence Purchase Price from Adtran includes the basic chassis at $1,615 plus appropriate number of voice cards at $167 each (Except SOHO Unit)	Estimated End-User Fair Market Value on Invoice Date	Forecasted End-User Fair Market Value 60 Months from Invoice Date
Company A	**April 2003**	**Matrix 2001**	**$1,782 Chassis and one card**	**$1,604**	**$53**
Company B	**June 2003**	**Matrix 2001**	**$2,005 Chassis and two cards**	**$1,696**	**$58**
Company C	**July 2003**	**Matrix 2001**	**$3,564 (2)Chassis and two cards**	**$2,887**	**$107**
Company D	**August 2003**	**Matrix 2001**	**$2,228 Chassis and three cards**	**$1,650**	**$63**
Company E	**December 2003**	**Matrix 2003**	**$1,782 Chassis and one card**	**$1,604**	**$53**
Company F	**January 2004**	**Matrix 2003**	**$1,782 Chassis and one card**	**$1,550**	**$53**
Company G	**January 2004**	**Matrix 2003**	**$1,782 Chassis and one card**	**$1,550**	**$53**
Company H	**March 2004**	**Matrix 2003**	**$1,782 Chassis and one card**	**$1,443**	**$53**
Company I	**April 2004**	**Matrix 2003**	**$1,782 Chassis and one card**	**$1,390**	**$53**
Company J	**April 2004**	**Matrix 2003**	**$1,782 Chassis and one card**	**$1,390**	**$53**
Company K	**December 2003**	**Matrix SOHO**	**$345**	**$269**	**$10**

Figure 2. Summary of Conclusions – NorVergence Equipment**.**

Lessee/Renter	Invoice Date	NorVergence Invoice Amount	Estimated End-User Fair Market Value on Invoice Date	Difference in value from invoice to Fair Market Value Date
Company A	**April 2003**	**$20,118**	**$1,604**	**$18,514**
Company B	**June 2003**	**$20,749**	**$1,696**	**$19,053**
Company C	**July 2003**	**$22,655**	**$2,887**	**$19,769**
Company D	**August 2003**	**$55,914**	**$1,650**	$54,264
Company E	**December 2003**	**$10,788**	**$1,604**	**$9,185**
Company F	**January 2004**	**$10,554**	**$1,550**	**$9,003**
Company G	**January 2004**	**$10,358**	**$1,550**	**$8,808**
Company H	**March 2004**	**$5,968**	**$1,443**	**$4,525**
Company I	**April 2004**	**$20,754**	**$1,390**	**$6,109**
Company J	**April 2004**	**$20,754**	**$1,390**	**$19,364**
Company K	**December 2003**	**$13,592**	**$269**	**$13,323**

Figure 3. Financial impact – NorVergence sales price compared to estimated Fair Market Value.

The information contained in this retrospective desktop letter appraisal is to be used as a guide in formulating fair market values for the computer equipment listed. All estimates of value presented in this report are the appraisers considered opinion.

Sincerely,

_____

Peter Daley, ASA

Accredited Senior Appraiser

DMC Consulting Group
61 Wentworth
Newport Beach, CA 92660
949-737-7780

Assumptions and Limiting Conditions

I certify that, in the preparation of this report and to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal and unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Practice.

No one else has provided significant professional assistance in the preparation of this report.

This valuation report is prepared solely for the purpose stated herein and is accurate to best of my knowledge and belief. No other purpose is intended or should be inferred.

DMC renders no opinion as to the legal owner of the equipment and is not aware of any tax liens of encumbrances of the property

I understand that I may be called upon to offer expert testimony regarding this independent valuation opinion.

_____ *Date*_____

Peter Daley, ASA
Accredited Senior Appraiser
DMC Consulting Group

Exhibit 1. Summary of Lessee/Rental End-Users

NorVergence Equipment Summary

Lessee:	Matrix NorVergence Switch Equipment	Card Qty	Invoice Date	NorVergence Invoice Amount	Estimated NorVergence Purchase Price from Adtran on Invoice Date	Fair Market Value on Invoice Date	Forecasted				
							Fair Market Value after one year	Fair Market Value after two years	Fair Market Value after three years	Fair Market Value after four years	Fair Market Value after five years
Company A	2001	1	4/2/2003	$20,118	$1,782	$1,604	$713	$410	$249	$143	$53
Company B	2001	2	5/30/2003	$20,749	$1,949	$1,696	$780	$448	$273	$156	$58
Company C	2001	2	7/1/2003	$22,655	$3,564	$2,887	$1,426	$820	$499	$285	$107
Company D	2001	3	8/21/2003	$55,914	$2,116	$1,650	$846	$487	$296	$169	$63
Company E	2003	1	12/23/2003	$10,788	$1,782	$1,604	$713	$410	$249	$143	$53
Company F	2003	1	1/13/2004	$10,554	$1,782	$1,550	$713	$410	$249	$143	$53
Company G	2003	1	1/21/2004	$10,358	$1,782	$1,550	$713	$410	$249	$143	$53
Company H	2003	1	3/3/2004	$5,968	$1,782	$1,443	$713	$410	$249	$143	$53
Company I	2003	1	4/5/2004	$7,499	$1,782	$1,390	$713	$410	$249	$143	$53
Company J	2003	1	4/14/2004	$20,754	$1,782	$1,390	$713	$410	$249	$143	$53
Company K	2003 SOHO	1	12/9/2003	$13,592	$345	$269	$138	$79	$48	$28	$10

NorVergence Equipment Summary

Lessee:	Matrix NorVergence Equipment	Qty	Invoice Date	NorVergence Invoice Amount	NorVergence Purchase Price on Invoice Date	Fair Market Value on Invoice Date	Difference in value from NorVergence invoice amount	Difference in value from NorVergence FMV
Company A	2001	1	4/2/2003	$20,118	$1,782	$1,604	$18,336	$18,514
Company B	2001	2	5/30/2003	$20,749	$1,949	$1,696	$18,800	$19,053
Company C	2001	2	7/1/2003	$22,655	$3,564	$2,887	$19,091	$19,769
Company D	2001	3	8/21/2003	$55,914	$2,116	$1,650	$53,798	$54,264
Company E	2003	1	12/23/2003	$10,788	$1,782	$1,604	$9,006	$9,185
Company F	2003	1	1/13/2004	$10,554	$1,782	$1,550	$8,772	$9,003
Company G	2003	1	1/21/2004	$10,358	$1,782	$1,550	$8,576	$8,808
Company H	2003	1	3/3/2004	$5,968	$1,782	$1,443	$4,186	$4,525
Company I	2003	1	4/5/2004	$7,499	$1,782	$1,390	$5,717	$6,109
Company J	2003	1	4/14/2004	$20,754	$1,782	$1,390	$18,972	$19,364
Company K	2003 SOHO	1	12/9/2003	$13,592	$345	$269	$13,247	$13,323

Exhibit 2. Detail Portfolio Analysis

NorVergence Equipment List

Lessee: Company A

Machine Number	Description	Qty	Price
Merged Access Transport Intellignet Xchange - MATRIX Base Chassis Package			
MATRIX-2001	Integrated Voice and Data Multi-Protocol Access System, Including DS1/T-1 Interface and POTS capacity to support the port and card hardware listed below. Base chassis package includes advanced data engineering high speed internet access connectivity and Voice over IP over ATM provisioning with on-site installation and cabling.	1	
MATRIX-2001-EXP MATRIX Expansion Package			
MATRIX-2001-EXP	Card-based firmware supporting dynamic voice and data bandwidth allocation at DS1/T-1 speeds with up to 24 simultaneous voice paths over high speed data access per card.	1	
MATRIX-2001-Data/ATM Expansion Card(s)	Modular Card Voice over ATM/IP Encapsulated Signal Processing (VOISP) providing 4 simultaneous "Voice as Fast Data" connection as high speed data access per card.	1	
MATRIX-2001-VFD Embedded Firmware Operating System			
MATRIX-2001-VFD	The MATRIX-2001-VFD is an embedded firmware operating system inherent in each data/ATM expansion card. Multiple cards includede automatic data call set up and array failover. The customer is granted the Right-To-Use (RTU) the card based firmware (MATRIX-2001-VFD) and receive all future updates on the MATRIX-2001 Advanced Merged Access System for a 5 year period.	1	
MATRIX-24-TR57 Compliant Analog POTS Interfaces			
MATRIX-24	In addition to DS1/T-1 Interface, the MATRIX-2001-EXP includes 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface. TR-57 Compliant	1	
MATRIX-2001-PSU Power Supply Unit			
MATRIX-2001-PSU	The MATRIX-2001-PSU is included with each MATRIX Base Chassis Package/card. Includes: Support for Network Interface (RJ-48C) T1, ATM, AAL2(Voice), AAL5 (data and voice), IP Routing Capability and Port Management.	1	
MATRIX-2001-OQS Optimum Quality System			
MATRIX-2001-OQS	The MATRIX-2001-OQS is embedded with each MATRIX-2001 Ease Package/card. Firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	1	
MATRIX-2001-ALCAF Automatic Line Condition Adaptation Firmware			

NorVergence Equipment List

Lessee: Company A

Machine Number	Description	Qty	Price
MATRIX-2001-ALCAF	The MATRIX-2001-ALCAF is embedded with each MATRIX-2001 Base Package/card. ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality and changes in network congestion while keeping voice quality at toll quality levels.	1	
MATRIX-2001-TFIO Toll Free Inbound Option			
MATRIX-2001-TFIO	The MATRIX-2001-TFIO is an optional accessary for each MATRIX-2001 System. Firmware allows inbound Toll Free Directory Numbers to be routed over the MATRIX-2001 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality.	1	
MATRIX-2001-IPSMF IP Subscriber Management Firmware			
MATRIX-2001-IPSMF	The MATRIX-2001-IPSMF is included in each MATRIX-2001 Base Package/card. Links to Centralized Subscriber Management Services Node: Supervising access, device mentoring, authentication, and IP address management. Includes software for Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	1	
MATRIX-2001-MGMT On-Site Management Support Features			
MATRIX-2001-MGMT	The MATRIX-2001-MGMT Feature Includes: On-Site, Front or Rear panel Access, EIA-232, Physical RJ-48C or db-9 Connector, SNMP V1 Support, Full Menus Drive TELENET Access, Software Downloaded via TFTP.	1	
	Total Cost		**$20,117.85**

NorVergence Equipment List

Lessee: Company B

Machine Number	Description	Qty	Price
Merged Access Transport Intellignet Xchange - MATRIX Base Chassis Package			
MATRIX-2001	Integrated Voice and Data Multi-Protocol Access System, Including DS1/T-1 Interface and POTS capacity to support the port and card hardware listed below. Base chassis package includes advanced data engineering high speed internet access connectivity and Voice over IP over ATM provisioning with on-site installation and cabling.	1	
MATRIX-2001-EXP MATRIX Expansion Package			
MATRIX-2001-EXP	Card-based firmware supporting dynamic voice and data bandwidth allocation at DS1/T-1 speeds with up to 24 simultaneous voice paths over high speed data access per card.	2	
MATRIX-2001-Data/ATM Expansion Card(s)	Modular Card Voice over ATM/IP Encapsulated Signal Processing (VOISP) providing 4 simultaneous "Voice as Fast Data" connection as high speed data access per card.	2	
MATRIX-2001-VFD Embedded Firmware Operating System			
MATRIX-2001-VFD	The MATRIX-2001-VFD is an embedded firmware operating system inherent in each data/ATM expansion card. Multiple cards includede automatic data call set up and array failover. The customer is granted the Right-To-Use (RTU) the card based firmware (MATRIX-2001-VFD) and receive all future updates on the MATRIX-2001 Advanced Merged Access System for a 5 year period.	1	
MATRIX-24-TR57 Compliant Analog POTS Interfaces			
MATRIX-24	In addition to DS1/T-1 Interface, the MATRIX-2001-EXP includes 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface. TR-57 Compliant	1	
MATRIX-2001-PSU Power Supply Unit			
MATRIX-2001-PSU	The MATRIX-2001-PSU is included with each MATRIX Base Chassis Package/card. Includes: Support for Network Interface (RJ-48C) T1, ATM, AAL2(Voice), AAL5 (data and voice), IP Routing Capability and Port Management.	1	
MATRIX-2001-OQS Optimum Quality System			
MATRIX-2001-OQS	The MATRIX-2001-OQS is embedded with each MATRIX-2001 Ease Package/card. Firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	1	
MATRIX-2001-ALCAF Automatic Line Condition Adaptation Firmware			

NorVergence Equipment List

Lessee: Company B

Machine Number	Description	Qty	Price
MATRIX-2001-ALCAF	The MATRIX-2001-ALCAF is embedded with each MATRIX-2001 Base Package/card. ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality and changes in network congestion while keeping voice quality at toll quality levels.	1	
MATRIX-2001-TFIO Toll Free Inbound Option			
MATRIX-2001-TFIO	The MATRIX-2001-TFIO is an optional accessary for each MATRIX-2001 System. Firmware allows inbound Toll Free Directory Numbers to be routed over the MATRIX-2001 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality.	1	
MATRIX-2001-IPSMF IP Subscriber Management Firmware			
MATRIX-2001-IPSMF	The MATRIX-2001-IPSMF is included in each MATRIX-2001 Base Package/card. Links to Centralized Subscriber Management Services Node: Supervising access, device mentoring, authentication, and IP address management. Includes software for Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	1	
MATRIX-2001-MGMT On-Site Management Support Features			
MATRIX-2001-MGMT	The MATRIX-2001-MGMT Feature Includes: On-Site, Front or Rear panel Access, EIA-232, Physical RJ-48C or db-9 Connector, SNMP V1 Support, Full Menus Drive TELENET Access, Software Downloaded via TFTP.	1	
	Total Cost		**$20,749.00**

NorVergence Equipment List

Lessee: Company C

Machine Number	Description	Qty	Price
Merged Access Transport Intellignet Xchange - MATRIX Base Chassis Package			
MATRIX-2001	Integrated Voice and Data Multi-Protocol Access System, Including DS1/T-1 Interface and POTS capacity to support the port and card hardware listed below. Base chassis package includes advanced data engineering high speed internet access connectivity and Voice over IP over ATM provisioning with on-site installation and cabling.	2	
MATRIX-2001-EXP MATRIX Expansion Package			
MATRIX-2001-EXP	Card-based firmware supporting dynamic voice and data bandwidth allocation at DS1/T-1 speeds with up to 24 simultaneous voice paths over high speed data access per card.	2	
MATRIX-2001-Data/ATM Expansion Card(s)	Modular Card Voice over ATM/IP Encapsulated Signal Processing (VOISP) providing 4 simultaneous "Voice as Fast Data" connection as high speed data access per card.	2	
MATRIX-2001-VFD Embedded Firmware Operating System			
MATRIX-2001-VFD	The MATRIX-2001-VFD is an embedded firmware operating system inherent in each data/ATM expansion card. Multiple cards includede automatic data call set up and array failover. The customer is granted the Right-To-Use (RTU) the card based firmware (MATRIX-2001-VFD) and receive all future updates on the MATRIX-2001 Advanced Merged Access System for a 5 year period.	1	
MATRIX-24-TR57 Compliant Analog POTS Interfaces			
MATRIX-24	In addition to DS1/T-1 Interface, the MATRIX-2001-EXP includes 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface. TR-57 Compliant	1	
MATRIX-2001-PSU Power Supply Unit			
MATRIX-2001-PSU	The MATRIX-2001-PSU is included with each MATRIX Base Chassis Package/card. Includes: Support for Network Interface (RJ-48C) T1, ATM, AAL2(Voice), AAL5 (data and voice), IP Routing Capability and Port Management.	1	
MATRIX-2001-OQS Optimum Quality System			
MATRIX-2001-OQS	The MATRIX-2001-OQS is embedded with each MATRIX-2001 Ease Package/card. Firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	1	
MATRIX-2001-ALCAF Automatic Line Condition Adaptation Firmware			

NorVergence Equipment List

Lessee: Company C

Machine Number	Description	Qty	Price
MATRIX-2001-ALCAF	The MATRIX-2001-ALCAF is embedded with each MATRIX-2001 Base Package/card. ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality and changes in network congestion while keeping voice quality at toll quality levels.	1	
MATRIX-2001-TFIO Toll Free Inbound Option			
MATRIX-2001-TFIO	The MATRIX-2001-TFIO is an optional accessary for each MATRIX-2001 System. Firmware allows inbound Toll Free Directory Numbers to be routed over the MATRIX-2001 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality.	1	
MATRIX-2001-IPSMF IP Subscriber Management Firmware			
MATRIX-2001-IPSMF	The MATRIX-2001-IPSMF is included in each MATRIX-2001 Base Package/card. Links to Centralized Subscriber Management Services Node: Supervising access, device mentoring, authentication, and IP address management. Includes software for Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	1	
MATRIX-2001-MGMT On-Site Management Support Features			
MATRIX-2001-MGMT	The MATRIX-2001-MGMT Feature Includes: On-Site, Front or Rear panel Access, EIA-232, Physical RJ-48C or db-9 Connector, SNMP V1 Support, Full Menus Drive TELENET Access, Software Downloaded via TFTP.	1	
	Total Cost		**$22,655.43**

NorVergence Equipment List

Lessee: Company D

Machine Number	Description	Qty	Price
Merged Access Transport Intellignet Xchange - MATRIX Base Chassis Package			
MATRIX-2001	Integrated Voice and Data Multi-Protocol Access System, Including DS1/T-1 Interface and POTS capacity to support the port and card hardware listed below. Base chassis package includes advanced data engineering high speed internet access connectivity and Voice over IP over ATM provisioning with on-site installation and cabling.	1	
MATRIX-2001-EXP MATRIX Expansion Package			
MATRIX-2001-EXP	Card-based firmware supporting dynamic voice and data bandwidth allocation at DS1/T-1 speeds with up to 24 simultaneous voice paths over high speed data access per card.	3	
MATRIX-2001-Data/ATM Expansion Card(s)	Modular Card Voice over ATM/IP Encapsulated Signal Processing (VOISP) providing 4 simultaneous "Voice as Fast Data" connection as high speed data access per card.	3	
MATRIX-2001-VFD Embedded Firmware Operating System			
MATRIX-2001-VFD	The MATRIX-2001-VFD is an embedded firmware operating system inherent in each data/ATM expansion card. Multiple cards includede automatic data call set up and array failover. The customer is granted the Right-To-Use (RTU) the card based firmware (MATRIX-2001-VFD) and receive all future updates on the MATRIX-2001 Advanced Merged Access System for a 5 year period.	1	
MATRIX-24-TR57 Compliant Analog POTS Interfaces			
MATRIX-24	In addition to DS1/T-1 Interface, the MATRIX-2001-EXP includes 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface. TR-57 Compliant	1	
MATRIX-2001-PSU Power Supply Unit			
MATRIX-2001-PSU	The MATRIX-2001-PSU is included with each MATRIX Base Chassis Package/card. Includes: Support for Network Interface (RJ-48C) T1, ATM, AAL2(Voice), AAL5 (data and voice), IP Routing Capability and Port Management.	1	
MATRIX-2001-OQS Optimum Quality System			
MATRIX-2001-OQS	The MATRIX-2001-OQS is embedded with each MATRIX-2001 Ease Package/card. Firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	1	
MATRIX-2001-ALCAF Automatic Line Condition Adaptation Firmware			

NorVergence Equipment List

Lessee: Company D

Machine Number	Description	Qty	Price
MATRIX-2001-ALCAF	The MATRIX-2001-ALCAF is embedded with each MATRIX-2001 Base Package/card. ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality and changes in network congestion while keeping voice quality at toll quality levels.	1	
MATRIX-2001-TFIO Toll Free Inbound Option			
MATRIX-2001-TFIO	The MATRIX-2001-TFIO is an optional accessary for each MATRIX-2001 System. Firmware allows inbound Toll Free Directory Numbers to be routed over the MATRIX-2001 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality.	1	
MATRIX-2001-IPSMF IP Subscriber Management Firmware			
MATRIX-2001-IPSMF	The MATRIX-2001-IPSMF is included in each MATRIX-2001 Base Package/card. Links to Centralized Subscriber Management Services Node: Supervising access, device mentoring, authentication, and IP address management. Includes software for Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	1	
MATRIX-2001-MGMT On-Site Management Support Features			
MATRIX-2001-MGMT	The MATRIX-2001-MGMT Feature Includes: On-Site, Front or Rear panel Access, EIA-232, Physical RJ-48C or db-9 Connector, SNMP V1 Support, Full Menus Drive TELENET Access, Software Downloaded via TFTP.	1	
	Total Cost		**$55,914.30**

NorVergence Equipment List

Lessee: Company E

Machine Number	Description	Qty	Price
MATRIX - Merged Access Transport Redundant Intellignet eXchange Platform			
MATRIX-2003 Chassis	10 slot Chassis with Craft, LAN, Network 1, Network 2/DSX-!, V.35, Amphenol Cable, DC Power Inputs, DS1/T-1 Interface, 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface, TR-57 Compliant, Management feature includes: On-Site Front or Rear panel Access, EIA-232, Physical RJ 48C or dB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	1	
MATRIX-2003-PSU	The MATRIX-2003-Power Supply AC Power Supply - 120 VAC/2A 80Hz input, -64V/2A Output, -48V/2A Input, AC Alarm Output, 3 AMP 1175043L3#NORV.	1	
MATRIX-2003-EXP MATRIX Expansion Cards			
MATRIX-MIPSU	Supports Ring Enable, ACO, Power Transfer, Ring, Bank ALM		
MATRIX-2003-MEXP	Modular Cars(s) that enable up to 4 ports per card of Voice over ATM/IP Encapsulated Signal Processing (VAISP) of "Voice as Fast Data" connections as high speed data access per card.		
MATRIX-2003-BCP	Supports Craft, T1 Met Rx, TX Mon Rx, Pwr, T1 Test, V.35 TD, EthL1, T1 Error, V.35 RD, ETH TX/RX	Incl	
MATRIX-2003- Embedded Firmware Objects			
MATRIX-2003-8D	The MATRIX-2003-8D is an embedded object that allows 8xx toll free numbers to be provisioned within the MATRIX solution. The 8D object allos incoming 8xxx cells to terminate into the MATRIX gateway.		
MATRIX-2003-VFD	The MATRIX-2003-VFD is inherent in each data/ATM expansion card. Multiple cards include automatic data call setup and failover. The customer is granted the Right-To-Use (RTU) on all activiated ATM ports.	Incl	
MATRIX-2003-ISF	The MATRIX-2003-ISF includes: Support for Network Interface (RJ-48C) T1, ATM, AAL2(Voice), AAL6 (data & voice), IP Rounting Capability and Port Management.	Incl	
MATRIX-2003-OQS	The MATRIX-2003-OQS firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	Incl	
MATRIX-2003-ALCAF	The MATRIX-2003-ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality and changes in network congestion while keeping voice quality at toll quality levels.	Incl	

NorVergence Equipment List

Lessee: Company E

Machine Number	Description	Qty	Price
MATRIX-2003-UC	The MATRIX-2003-UC is an optional embedded object. This feature allows Unlimited Conference Call Paths to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality.	1	
MATRIX-2003-IPSMF	The MATRIX-2003-IPSMF links to Centralized Subscriber Management Services Node: Supervising access, device mentoring, authentication, and IP address management. Features Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	Incl	
	Total Cost		**$10,788.40**

NorVergence Equipment List

Lessee: Company F

Machine Number	Description	Qty	Price
MATRIX - Merged Access Transport Redundant Intellignet eXchange Platform			
MATRIX-2003 Chassis	10 slot Chassis with Craft, LAN, Network 1, Network 2/DSX-!, V.35, Amphenol Cable, DC Power Inputs, DS1/T-1 Interface, 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface, TR-57 Compliant, Management feature includes: On-Site Front or Rear panel Access, EIA-232, Physical RJ 48C or dB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	1	
MATRIX-2003-PSU	The MATRIX-2003-Power Supply AC Power Supply - 120 VAC/2A 80Hz input, -64V/2A Output, -48V/2A Input, AC Alarm Output, 3 AMP 1175043L3#NORV.	1	
MATRIX-2003-EXP MATRIX Expansion Cards			
MATRIX-MIPSU	Supports Ring Enable, ACO, Power Transfer, Ring, Bank ALM		
MATRIX-2003-MEXP	Modular Cars(s) that enable up to 4 ports per card of Voice over ATM/IP Encapsulated Signal Processing (VAISP) of "Voice as Fast Data" connections as high speed data access per card.		
MATRIX-2003-BCP	Supports Craft, T1 Met Rx, TX Mon Rx, Pwr, T1 Test, V.35 TD, EthL1, T1 Error, V.35 RD, ETH TX/RX	Incl	
MATRIX-2003- Embedded Firmware Objects			
MATRIX-2003-8D	The MATRIX-2003-8D is an embedded object that allows 8xx toll free numbers to be provisioned within the MATRIX solution. The 8D object allos incoming 8xxx cells to terminate into the MATRIX gateway.		
MATRIX-2003-VFD	The MATRIX-2003-VFD is inherent in each data/ATM expansion card. Multiple cards include automatic data call setup and failover. The customer is granted the Right-To-Use (RTU) on all activiated ATM ports.	Incl	
MATRIX-2003-ISF	The MATRIX-2003-ISF includes: Support for Network Interface (RJ-48C) T1, ATM, AAL2(Voice), AAL6 (data & voice), IP Rounting Capability and Port Management.	Incl	
MATRIX-2003-OQS	The MATRIX-2003-OQS firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	Incl	
MATRIX-2003-ALCAF	The MATRIX-2003-ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality and changes in network congestion while keeping voice quality at toll quality levels.	Incl	

NorVergence Equipment List

Lessee: Company F

MATRIX-2003-UC	The MATRIX-2003-UC is an optional embedded object. This feature allows Unlimited Conference Call Paths to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality.	1	
MATRIX-2003-IPSMF	The MATRIX-2003-IPSMF links to Centralized Subscriber Management Services Node: Supervising access, device mentoring, authentication, and IP address management. Features Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	Incl	
		Total Cost	**$10,553.67**

NorVergence Equipment List

Lessee: Company G

Machine Number	Description	Qty	Price
MATRIX - Merged Access Transport Redundant Intellignet eXchange Platform			
MATRIX-2003 Chassis	10 slot Chassis with Craft, LAN, Network 1, Network 2/DSX-!, V.35, Amphenol Cable, DC Power Inputs, DS1/T-1 Interface, 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface, TR-57 Compliant, Management feature includes: On-Site Front or Rear panel Access, EIA-232, Physical RJ 48C or dB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	1	
MATRIX-2003-PSU	The MATRIX-2003-Power Supply AC Power Supply - 120 VAC/2A 80Hz input, -64V/2A Output, -48V/2A Input, AC Alarm Output, 3 AMP 1175043L3#NORV.	1	
MATRIX-2003-EXP MATRIX Expansion Cards			
MATRIX-MIPSU	Supports Ring Enable, ACO, Power Transfer, Ring, Bank ALM		
MATRIX-2003-MEXP	Modular Cars(s) that enable up to 4 ports per card of Voice over ATM/IP Encapsulated Signal Processing (VAISP) of "Voice as Fast Data" connections as high speed data access per card.		
MATRIX-2003-BCP	Supports Craft, T1 Met Rx, TX Mon Rx, Pwr, T1 Test, V.35 TD, EthL1, T1 Error, V.35 RD, ETH TX/RX	Incl	
MATRIX-2003- Embedded Firmware Objects			
MATRIX-2003-8D	The MATRIX-2003-8D is an embedded object that allows 8xx toll free numbers to be provisioned within the MATRIX solution. The 8D object allos incoming 8xxx cells to terminate into the MATRIX gateway.		
MATRIX-2003-VFD	The MATRIX-2003-VFD is inherent in each data/ATM expansion card. Multiple cards include automatic data call setup and failover. The customer is granted the Right-To-Use (RTU) on all activiated ATM ports.	Incl	
MATRIX-2003-ISF	The MATRIX-2003-ISF includes: Support for Network Interface (RJ-48C) T1, ATM, AAL2(Voice), AAL6 (data & voice), IP Rounting Capability and Port Management.	Incl	
MATRIX-2003-OQS	The MATRIX-2003-OQS firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	Incl	
MATRIX-2003-ALCAF	The MATRIX-2003-ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality and changes in network congestion while keeping voice quality at toll quality levels.	Incl	

NorVergence Equipment List

Lessee: Company G

Machine Number	Description	Qty	Price
MATRIX-2003-UC	The MATRIX-2003-UC is an optional embedded object. This feature allows Unlimited Conference Call Paths to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality.	1	
MATRIX-2003-IPSMF	The MATRIX-2003-IPSMF links to Centralized Subscriber Management Services Node: Supervising access, device mentoring, authentication, and IP address management. Features Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	Incl	
	Total Cost		**$10,358.00**

NorVergence Equipment List

Lessee: Company H

Machine Number	Description	Qty	Price
MATRIX - Merged Access Transport Redundant Intellignet eXchange Platform			
MATRIX-2003 Chassis	10 slot Chassis with Craft, LAN, Network 1, Network 2/DSX-!, V.35, Amphenol Cable, DC Power Inputs, DS1/T-1 Interface, 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface, TR-57 Compliant, Management feature includes: On-Site Front or Rear panel Access, EIA-232, Physical RJ 48C or dB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	1	
MATRIX-2003-PSU	The MATRIX-2003-Power Supply AC Power Supply - 120 VAC/2A 80Hz input, -64V/2A Output, -48V/2A Input, AC Alarm Output, 3 AMP 1175043L3#NORV.	1	
MATRIX-2003-EXP MATRIX Expansion Cards			
MATRIX-MIPSU	Supports Ring Enable, ACO, Power Transfer, Ring, Bank ALM		
MATRIX-2003-MEXP	Modular Cars(s) that enable up to 4 ports per card of Voice over ATM/IP Encapsulated Signal Processing (VAISP) of "Voice as Fast Data" connections as high speed data access per card.		
MATRIX-2003-BCP	Supports Craft, T1 Met Rx, TX Mon Rx, Pwr, T1 Test, V.35 TD, EthL1, T1 Error, V.35 RD, ETH TX/RX	Incl	
MATRIX-2003- Embedded Firmware Objects			
MATRIX-2003-8D	The MATRIX-2003-8D is an embedded object that allows 8xx toll free numbers to be provisioned within the MATRIX solution. The 8D object allos incoming 8xxx cells to terminate into the MATRIX gateway.		
MATRIX-2003-VFD	The MATRIX-2003-VFD is inherent in each data/ATM expansion card. Multiple cards include automatic data call setup and failover. The customer is granted the Right-To-Use (RTU) on all activiated ATM ports.	Incl	
MATRIX-2003-ISF	The MATRIX-2003-ISF includes: Support for Network Interface (RJ-48C) T1, ATM, AAL2(Voice), AAL6 (data & voice), IP Rounting Capability and Port Management.	Incl	
MATRIX-2003-OQS	The MATRIX-2003-OQS firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	Incl	
MATRIX-2003-ALCAF	The MATRIX-2003-ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality and changes in network congestion while keeping voice quality at toll quality levels.	Incl	

NorVergence Equipment List

Lessee: Company H

Machine Number	Description	Qty	Price
MATRIX-2003-UC	The MATRIX-2003-UC is an optional embedded object. This feature allows Unlimited Conference Call Paths to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality.	1	
MATRIX-2003-IPSMF	The MATRIX-2003-IPSMF links to Centralized Subscriber Management Services Node: Supervising access, device mentoring, authentication, and IP address management. Features Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	Incl	
	Total Cost		**$5,968.08**

NorVergence Equipment List

Lessee: Company I

Machine Number	Description	Qty	Price
MATRIX - Merged Access Transport Redundant Intellignet eXchange Platform			
MATRIX-2003 Chassis	10 slot Chassis with Craft, LAN, Network 1, Network 2/DSX-!, V.35, Amphenol Cable, DC Power Inputs, DS1/T-1 Interface, 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface, TR-57 Compliant, Management feature includes: On-Site Front or Rear panel Access, EIA-232, Physical RJ 48C or dB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	1	
MATRIX-2003-PSU	The MATRIX-2003-Power Supply AC Power Supply - 120 VAC/2A 80Hz input, -64V/2A Output, -48V/2A Input, AC Alarm Output, 3 AMP 1175043L3#NORV.	1	
MATRIX-2003-EXP MATRIX Expansion Cards			
MATRIX-MIPSU	Supports Ring Enable, ACO, Power Transfer, Ring, Bank ALM		
MATRIX-2003-MEXP	Modular Cars(s) that enable up to 4 ports per card of Voice over ATM/IP Encapsulated Signal Processing (VAISP) of "Voice as Fast Data" connections as high speed data access per card.		
MATRIX-2003-BCP	Supports Craft, T1 Met Rx, TX Mon Rx, Pwr, T1 Test, V.35 TD, EthL1, T1 Error, V.35 RD, ETH TX/RX	Incl	
MATRIX-2003- Embedded Firmware Objects			
MATRIX-2003-8D	The MATRIX-2003-8D is an embedded object that allows 8xx toll free numbers to be provisioned within the MATRIX solution. The 8D object allos incoming 8xxx cells to terminate into the MATRIX gateway.		
MATRIX-2003-VFD	The MATRIX-2003-VFD is inherent in each data/ATM expansion card. Multiple cards include automatic data call setup and failover. The customer is granted the Right-To-Use (RTU) on all activiated ATM ports.	Incl	
MATRIX-2003-ISF	The MATRIX-2003-ISF includes: Support for Network Interface (RJ-48C) T1, ATM, AAL2(Voice), AAL6 (data & voice), IP Rounting Capability and Port Management.	Incl	
MATRIX-2003-OQS	The MATRIX-2003-OQS firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	Incl	
MATRIX-2003-ALCAF	The MATRIX-2003-ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality and changes in network congestion while keeping voice quality at toll quality levels.	Incl	

NorVergence Equipment List

Lessee: Company I

Machine Number	Description	Qty	Price
MATRIX-2003-UC	The MATRIX-2003-UC is an optional embedded object. This feature allows Unlimited Conference Call Paths to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality.	1	
MATRIX-2003-IPSMF	The MATRIX-2003-IPSMF links to Centralized Subscriber Management Services Node: Supervising access, device mentoring, authentication, and IP address management. Features Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	Incl	
	Total Cost		**$7,499.45**

NorVergence Equipment List

Lessee: Company J

Machine Number	Description	Qty	Price
MATRIX - Merged Access Transport Redundant Intellignet eXchange Platform			
MATRIX-2003 Chassis	10 slot Chassis with Craft, LAN, Network 1, Network 2/DSX-!, V.35, Amphenol Cable, DC Power Inputs, DS1/T-1 Interface, 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface, TR-57 Compliant, Management feature includes: On-Site Front or Rear panel Access, EIA-232, Physical RJ 48C or dB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	1	
MATRIX-2003-PSU	The MATRIX-2003-Power Supply AC Power Supply - 120 VAC/2A 80Hz input, -64V/2A Output, -48V/2A Input, AC Alarm Output, 3 AMP 1175043L3#NORV.	1	
MATRIX-2003-EXP MATRIX Expansion Cards			
MATRIX-MIPSU	Supports Ring Enable, ACO, Power Transfer, Ring, Bank ALM		
MATRIX-2003-MEXP	Modular Cars(s) that enable up to 4 ports per card of Voice over ATM/IP Encapsulated Signal Processing (VAISP) of "Voice as Fast Data" connections as high speed data access per card.		
MATRIX-2003-BCP	Supports Craft, T1 Met Rx, TX Mon Rx, Pwr, T1 Test, V.35 TD, EthL1, T1 Error, V.35 RD, ETH TX/RX	Incl	
MATRIX-2003- Embedded Firmware Objects			
MATRIX-2003-8D	The MATRIX-2003-8D is an embedded object that allows 8xx toll free numbers to be provisioned within the MATRIX solution. The 8D object allos incoming 8xxx cells to terminate into the MATRIX gateway.		
MATRIX-2003-VFD	The MATRIX-2003-VFD is inherent in each data/ATM expansion card. Multiple cards include automatic data call setup and failover. The customer is granted the Right-To-Use (RTU) on all activiated ATM ports.	Incl	
MATRIX-2003-ISF	The MATRIX-2003-ISF includes: Support for Network Interface (RJ-48C) T1, ATM, AAL2(Voice), AAL6 (data & voice), IP Rounting Capability and Port Management.	Incl	
MATRIX-2003-OQS	The MATRIX-2003-OQS firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	Incl	
MATRIX-2003-ALCAF	The MATRIX-2003-ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality and changes in network congestion while keeping voice quality at toll quality levels.	Incl	

NorVergence Equipment List

Lessee: Company J

Machine Number	Description	Qty	Price
MATRIX-2003-UC	The MATRIX-2003-UC is an optional embedded object. This feature allows Unlimited Conference Call Paths to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality.	1	
MATRIX-2003-IPSMF	The MATRIX-2003-IPSMF links to Centralized Subscriber Management Services Node: Supervising access, device mentoring, authentication, and IP address management. Features Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	Incl	
	Total Cost		**$20,753.98**

NorVergence Equipment List

Lessee: Company K

Machine Number	Description	Qty	Price
Merged Access Transport Intellignet Xchange - MATRIX SOHO			
	Matrix SOHO Base Package		
MATRIX-SOHO	SOHO Base Package; Integrated Data Access Box Chassis, Core Wiring, Core I/O Ports, Voice Package (up to 5 POTS lines)	1	
MATRIX-SOHO	**Firewall Throughput Speed**		
MATRIX-SOHO-FTS2	SOHO Processor2 - up to 9Mbps Throughput	1	
MATRIX-SOHO-3DES-Encryption Processor			
	3DES Endryption Option - SOHO		
MATRIX SOHO - Security Feature			
	Security Feature Option Package - SOHO		
	Stateful Packet Filtering Option - SOHO	1	
MATRIX-SOHO Power Supply Unit			
	The Matrix SOHO-PSU hardware unit is fixed into the chassis of the Matrix SOHO Base Unit		
MATRIX-SOHO-NAT	Network Address Translation Option - SOHO (Version 2.1 Static IP address Uplink)	1	
MATRIX-SOHO-ISF - Interface Support Featrues			
	Five RJ-45 10-BaseT Ethernet Fixed Port Card - SOHO		
MATRIX-SOHO-BB	**Broadband Connection Sharing Option - SOHO**	1	
MATRIX-SOHO User Licenses			
	The Matrix SOHO provides a firmware configuration for up to 10 users.		
	Total Cost		**$13,592.38**

Exhibit 3. NorVergence Marketing Descriptions and Invoices

"Drastically Reducing Your Telecommunications Costs"

[redacted]
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7500
Fax# (973)242-7514
Contact: Ed Lucas x7066
Lynn Fredricksen X129

Invoice#: 14148
Date: 4/22/03 Appt 184991

INVOICE

Item Description	Quantity	Price	
MATRIX SMB	1	$20,117.85	
Lease Calculation Fee	1.70%	$300.77	
TOTAL		$ 20,418.62	

[redacted]

Bill to CIT-Technology Financing Services, Inc.
4800 Touchton Road
Building 700 Suite 300
Jacksonville, FL 32246

All Payment Should Be Sent To: ITT Office National Bank 500 Bond Street Newark, NJ 07102 ABA Routing Number: 031201467 Account Number: 0000010202277 Account Name: Norvergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

[redacted]

NetXyence

[redacted]

[redacted]

Page 2 of [redacted]

CUSTOMER NAME: [redacted]

Order code	Product Description	QTY
	Merged Access Transport Intelligent Xchange - MATRIX Base Chassis Package	
[redacted]	Single-mode Fiber port Data Multi-Protocol Access System, including [redacted] Advanced NOS, capable to operate as a Core Backbone Intelligent Switch, Base chassis package, including, fully populated with [redacted]	1
[redacted]	**[redacted] Expansion Package**	
[redacted]	[redacted]	1
[redacted]	[redacted]	1
[redacted]	**[redacted] Network Operating System**	
[redacted]	[redacted]	1
[redacted]	**[redacted] Analog POTS Interface**	
[redacted]	[redacted]	1
[redacted]	**Power Supply Unit**	
[redacted]	[redacted]	1
[redacted]	**Layer Support Feature**	
[redacted]	[redacted]	1
[redacted]	**Optional Daisy Chain**	
[redacted]	[redacted]	1
[redacted]	**Ethernet Line-Cordless Adjustable Fingers**	
[redacted]	[redacted]	1
[redacted]	**IP Address Management Feature**	
[redacted]	[redacted]	1
[redacted]	**Service Management Support Feature**	
[redacted]	[redacted]	1

[redacted] >>>>> [redacted]

[redacted]

SCOTT

5/30/03

NorVergence

SCHEDULE A

Customer Name: [redacted]

Order code	Product Description	QTY
	Managed Access Transport Intelligent Xchange - MATRIX Base Chassis Package	
MATRIX-3001	Integrated Voice and Data Multi-Protocol Access System, including DMVC-1 interface and POTS capacity to support the port and card hardware listed below. Base chassis package includes advanced data engineering, high speed internet access connectivity and Voice-over IP over ATM processing with on-site installation and training	1
MATRIX-3001-EXP	MATRIX Expansion Package	
MATRIX-3004-EXP	Card-based intelligent expansion system voice and data bandwidth allocation at OC3/T-1 speeds with up to 24 multiplexed voice paths over high-speed connection to POTS or DMVC interface as required	1
MATRIX-3001-DataPOM (Extension Card)	Multi-Art Card Universal ATM/IP Encapsulated Signal Processing (MESP) providing 4 simultaneous "Voice on Fast Data" connections on high-speed data access per card	2
MATRIX-3001-VFD	Embedded Firmware Operating System	
MATRIX-3004-VFD	The MATRIX-3004-VFD is an embedded firmware operating system resident in each MATRIX chassis card. Module cards include automatic daily call set up and setup failure. The customer is granted the Right-To-Use (RTU) the card based firmware purchased on MATRIX-3004-VFD and making all future upgrades on the MATRIX-3001 Advanced Managed Access System for a 5 Year period	1
MATRIX-24-TRSF	Compliant Analog POTS Interfaces	
MATRIX-24	In addition to DMVC-1 modules, the MATRIX-3004-EXP includes 24 less POTS Assigned Port and Connector Cover Class A/1MP Card - For POTS Interface TIA-57 Compliant	1
MATRIX-3001-PSU	Power Supply Unit	
MATRIX-3001-PSU	The MATRIX-3001-PSU is included with each MATRIX Base Chassis Package. Redundant PSU optional. AC Power Supply - 90-130VAC, 60Hz, 60W MAX	1
MATRIX-3001-IRF	Interface Support Firmware	
MATRIX-3004-IRF	The MATRIX-3001-IRF is embedded in each MATRIX-3001 Base Chassis Package and includes Support for Network Interface (NI-1/62) T1, ATM, AAL2 (Voice), AAL5 (data & voice), IP Routing Capability and Port Management	1
MATRIX-3001-OOS	Out-of-Service Quality Monitor	
MATRIX-3001-OOS	The MATRIX-3001-OOS is embedded with each MATRIX-3001 Base Package listed. Follow-me permanently monitors and improves voice quality during all "Voice on Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques, and actively manages calls so it is for prioritized network. OOS suppresses background noise and dry dead space	1
MATRIX-3001-ALCAF	Automatic Line Condition Adaptation Firmware	
MATRIX-3001-ALCAF	The MATRIX-3001-ALCAF is embedded with each MATRIX-3001 Base Package listed. ALCAF automatically adapt transmission signals to changing line conditions, attenuation, noise, echo, voltage, subject to changes in network conditions, such as volume, differences in customer telephone set, quality, and changes in network congestion while keeping voice quality at toll-quality levels	1
MATRIX-3001-IPSMF	IP Subscriber Management Firmware	
MATRIX-3001-IPSMF	The MATRIX-3001-IPSMF is included in each MATRIX-3001 Base Package listed. Links to Customer Subscriber Management Services Node. Supervising events, device monitoring, connections, and IP address management. Includes software for Virtual Private Networking and Managed Internet Protocol. Activation and provisioning apply	1
MATRIX-3001-MSET	On-Site Management Support Feature	
MATRIX-3001-MSET	The MATRIX-3001-MSET Feature provides On-Site, Front or Rear panel Access, EIA-232 Physical RJ-45C or db9 Connector, SNMP V1 Support. Full Menu Driven "MSET" Access, Software Downloaded via "IPS"	1
	TOTAL SALE PRICE, before	$20,749.00

$ 20,749

[redacted] CIT:

"Drastically Reducing Your Telecommunications Costs"

550 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7500
Fax# (973)242-7414

Contact: Ed Lucas x7066
Lynn Fredrickson X129

Invoice#: 15169
Date: 7/1/2003 App# 204765

INVOICE

[redacted]

Item Description	*Quantity*	*Price*
Matrix 2001	2	$22,655.43

Bill to CIT-Technologies Financing Services, Inc.
4600 Touchton Road
Building 100 Suite 300
Jacksonville, FL 32246

TOTAL $22,655.43

Installation Address: [redacted]

All Payment Should Be Sent To: *First Union National Bank* 550 Broad Street Newark, NJ 07102 *Wire Routing Number:* 031201467 *Account Number:* 2000011202277 *Account Name:* NorVergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

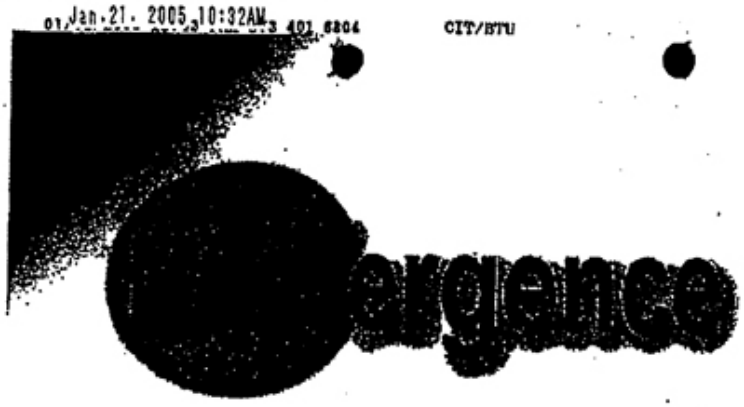
[redacted]

NorVergence

550 Broad Street, 2nd Floor
Newark, NJ 07102
(973) 242-7500

Customer Name: [redacted]

Order code	Product Description	QTY
	Merged Access Transport Intelligent Xchange - MATRIX Base Chassis Package	
MATRIX-2001	Integrated Voice and Data Multi-Protocol Access System, including DS1/T-1 interface and POTS capacity to support the port and card hardware listed below. Base chassis package includes advanced data engineering, high speed internet access connectivity and Voice over IP over ATM provisioning with on-site installation and cabling.	2
MATRIX-2001-EXP	**MATRIX Expansion Package**	
MATRIX-2001-EXP	Card-based firmware supporting dynamic voice and data bandwidth allocation at DS1/T-1 speeds with up to 24 simultaneous voice paths over high speed access with POTS or DSX1 interface as required.	2
MATRIX-2001-DataATM Expansion Card(s)	Modular Card Voice over ATM/IP Encapsulated Signal Processing (VAISP) providing 4 simultaneous "Voice as Fast Data" connections on high speed data access per card.	[redacted]
MATRIX-2001-VFD	**Embedded Firmware Operating System**	
MATRIX-2001-VFD	The MATRIX-2001-VFD is an embedded firmware operating system inherent in each dataIATM expansion card. Multiple cards include automatic data cell set up and array failover. The customer is granted the Right-To-Use (RTU) the card based firmware (MATRIX-2001-VFD) and receive all future updates on the MATRIX-2001 Advanced Merged Access System for a 5 Year period.	2
MATRIX-24-TR57	**Compliant Analog POTS Interfaces**	
MATRIX-24	In addition to DS1/T-1 interface, the MATRIX-2001-EXP includes 24 line POTS Amphenol Port and Connector Carrier Class ATM/IP Card - For POTS interface. TR-57 Compliant.	2
MATRIX-2001-PSU	**Power Supply Unit**	
MATRIX-2001-PSU	The MATRIX-2001-PSU is included with each MATRIX Base Chassis Package. Redundant PSU optional. AC Power Supply - 90-130VAC, 60Hz, 50W MAX.	2
MATRIX-2001-ISF	**Interface Support Firmware**	
MATRIX-2001-ISF	The MATRIX-2001-ISF is embedded in each MATRIX-2001 Base Chassis Package/card. Includes: Support for Network Interface(RJ-48C) T1, ATM, AAL2(Voice), AAL5 (data & voice), IP Routing Capability and Port Management.	2
MATRIX-2001-OQS	**Optimum Quality System**	
MATRIX-2001-OQS	The MATRIX-2001-OQS is embedded with each MATRIX-2001 Base Package/card. Firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques, individually addressing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	2
MATRIX-2001-ALCAF	**Automatic Line Condition Adaptation Firmware**	
MATRIX-2001-ALCAF	The MATRIX-2001-ALCAF is embedded with each MATRIX-2001 Base Package/card. ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality, and changes in network congestion while keeping voice quality at toll quality levels.	2
MATRIX-2001-TFIO	**Toll Free Inbound Option**	
MATRIX-2001-TFIO	The MATRIX-2001-TFIO is an optional accessory for each MATRIX-2001 System. Firmware allows Inbound Toll Free Directory Numbers to be routed over the MATRIX-2001 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality	[redacted]
MATRIX-2001-IPSMF	**IP Subscriber Management Firmware**	
MATRIX-2001-IPSMF	The MATRIX-2001-IPSMF is included in each MATRIX-2001 Base Package/card. Links to Centralized Subscriber Management Services Node; Supervising access, device monitoring, authentication, and IP address management. Includes software for Virtual Private Networking and Managed Internet Firewall. Activation requires fees apply.	2
MATRIX-2001-MGMT	**On-Site Management Support Features**	
MATRIX-2001-MGMT	The MATRIX-2001-MGMT Features include: On-Site, Front or Rear panel Access, EIA-232, Physical RJ-48C or DB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	2
	TOTAL SALE PRICE: >>>>>	**$22,855.43**



"Drastically Reducing Your Telecommunications Costs"

550 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7500
Fax# (973)242-8807

Invoice# 15974

Date: 8/21/2003

Contact: Bob Wiseman x171
Lynn Fredrickson x129

INVOICE

Item Description	Quality	Total Price
Matrix 2001	1	$55,914.30

Ship to: [redacted]

Bill to: Insight Financial
1935 Shermer Road Ste 300
Northbrook Illinois 60062

Net Due: $55,914.30

All Payment Should Be Sent To: First Union National Bank 550 Broad Street Newark, NJ 07102 Wire Routing Number: 031201467 Account Number: 2000012002277 Account Name: NorVergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

[redacted]

NorVergence

[redacted]
Newark, NJ 07102
(973) 242-7300

Customer Name: [redacted]

Order code	Product Description	QTY
	Merged Access Transport intelligent Xchange - MATRIX Base Chassis Package	
MATRIX-2001	Integrated Voice and Data Work-Protocol Access System, including DS1/T-1 interface and POTS capacity to support the port and card partners listed below. Base chassis package includes advanced data engineering, high speed internet access connectivity and voice over IP over ATM provisioning with on-site installation and training.	1
MATRIX-2001-EXP	**MATRIX Expansion Package**	
MATRIX-2001-EXP	Card-based firmware supporting dynamic voice and data bandwidth allocation at DS1/T-1 speeds with up to 24 simultaneous voice paths over high speed access with POTS or DSX1 interface as required.	1
MATRIX-2001-CelebTM (Expansion Card(s))	Modular Card Voice over ATM/IP Encapsulated Signal Processing (VoMSP) providing 4 simultaneous "Voice as Real Data" connections on high speed data access per card.	2
MATRIX-2001-VPD	**Embedded Firmware Operating System**	
MATRIX-2001-VPD	The MATRIX-2001-VPD is an embedded firmware operating system inherent in each GeoMTM expansion card. Multiple cards include automatic data call set up and relay failover. The customer is granted the Right-To-Use (RTU) the card based firmware (MATRIX-2001-VPD) and receive all future updates on the MATRIX-2001 Advanced Merged Access System for a 5 Year period.	1
MATRIX-24-TRS7	**Compliant Analog POTS Interfaces**	
MATRIX-24	In addition to DS1/T-1 interface, the MATRIX-2001-EXP includes 24 line POTS Amphenol Pair and Connector, Center Office ATM/IP Client - For POTS Interface, TN-57 Compliant.	1
MATRIX-2001-PSU	**Power Supply Unit**	
MATRIX-2001-PSU	The MATRIX-2001-PSU is included with each MATRIX Base Chassis Package. Redundant PSU optional. AC Power Supply - 90-130VAC, 60Hz, 80W MAX.	1
MATRIX-2001-IEF	**Interface Support Firmware**	
MATRIX-2001-IEF	The MATRIX-2001-IEF is embedded in each MATRIX-2001 Base Chassis Packageband. Includes: Support for Network Interface(RJ-48C) T1, ATM, AAL2(Voice), AAL5 (data & voice), IP Routing Capability and Port Management.	1
MATRIX-2001-CQS	**Optimum Quality System**	
MATRIX-2001-CQS	The MATRIX-2001-CQS is embedded with each MATRIX-2001 Base Packageband. Firmware continuously monitors and improves voice quality during all "Voice as Real Data" calls. Automatically chooses optimum compression and echo cancellation techniques, individually processing calls sent to the packetized network. CQS suppresses background noise and fills dead space.	1
MATRIX-2001-ALCAF	**Automatic Line Condition Adaptation Firmware**	
MATRIX-2001-ALCAF	The MATRIX-2001-ALCAF is embedded with each MATRIX-2001 Base Packageband. ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in talker voice intensity or volume, differences in customer telephone set quality, and changes in network configuration while keeping voice quality at toll quality levels.	1
MATRIX-2001-TPO	**Tel Port Inbound Option**	
MATRIX-2001-TPO	The MATRIX-2001-TPO is an optional accessory for each MATRIX-2001 System. Partners select Inbound Tel Fire Directory Numbers to be routed over the MATRIX-2001 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality	[redacted]
MATRIX-2001-IPSMF	**IP Subscriber Management Firmware**	
MATRIX-2001-IPSMF	The MATRIX-2001-IPSMF is included in each MATRIX-2001 Base Packageband. Links to CentreCom Subscriber Management Services Node: SuperMatrix access, device monitoring, authentication, and IP address management, includes software for Virtual Private Networking and Managed Internet Firewall. Additional requirements apply.	1
MATRIX-2001-MGMT	**On-Site Management Support Features**	
MATRIX-2001-MGMT	The MATRIX-2001-MGMT Features include: On-Site, Front or Rear panel Access, EIA-232, Physical RJ-45C or 45-8 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	1

"Drastically Reducing Your Telecommunications Costs"

550 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7800
Fax# (973)242-7414

Date: 12/23/03

Invoice: 19086
Approval: n/a

Contact: Ed Lucas x7086
Lynn Fredrickson X129

INVOICE

Item Description	QTY	Price
Matrix 2003	1	10,788.40

Ship To: [redacted]

Sold To: OFC Capital
678 Colonial Park Drive
Suite 200
Roswell, GA 30075

TOTAL $10,788.40

All Payment Should Be Sent To: First Union National Bank 550 Broad Street Newark, NJ 07102 Wire Routing Number: 031201467
Account Number: 2000011202277 Account Name: NorVergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

2003

Schedule A

Customer: [redacted]

MATRIX - Merged Access Transport Redundant Intelligent eXchange Platform		
Order code	Product Description	
[redacted]		
MATRIX-2003 Chassis	10 slot Chassis with Card, LAN, Network, NetworkAD/DEX-1, V.35, Amphenol Cable, DC Power Inputs, DS1/T-1 Interface 36 pin POTS Amphenol Port and Connector, Carrier Class ATM/IP Card - For POTS Interface, TR-57 Compliant, Management Features Include On-Site, Front or Rear panel Access, RS-232, Physical RJ-45C or eia-6 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	
MATRIX-2003-PSU	MATRIX-2003-Power Supply, AC Power Supply - 120 VAC/0.5A 60Hz Input, -54VDC Output, -48VDC Input, AC Alarm Relays, 8 AMP, 11 Inputs Telecom	Included
MATRIX-2003 MATRIX Expansion Cards		
[redacted]		
MATRIX-MPSU	Supports Ring Enable, ACO, Power Transfer, Ring, Back ALM	
MATRIX-2005-MEXP	Modular Chorder that enable up to 4 ports per card of Voice over ATM/IP Encapsulated Signal Processing (VoSP) of "Voice as Pure Data" connections on high speed data access per card.	
MATRIX-2003-8CF	Supports Cept, T1 Nat Rx, TX Inst Rx, Par. T1 Tran, V.35 TD, Bit LL, Tx Alarm, T1 Even, V.35 RD, 8TH TX/RX	
MATRIX-2003 Embedded Firmware Objects		
MATRIX-2003-SO	The MATRIX-2003-SO is an embedded object that allows dial tell line numbers to be provisioned within the MATRIX cabinet. The SO object allows incoming fax calls to terminate into the MATRIX gateway.	
MATRIX-2003-VFD	The MATRIX-2003-VFD is inherent in every data/TM expansion card. Multiple cards provide automatic data call out up and over-flow. The customer is granted the Right/To-Use (RTU) on all activated ATM calls.	Included
MATRIX-2003-IRF	The MATRIX-2003-IRF includes, Support for Network Interface(NI-1/NIC) T1, ATM, AAL2(Voice), AAL5 (data & video), IP Packet Classifier and Port Management.	Included
MATRIX-2003-QOS	The MATRIX-2003-QOS Ensures continuously monitors and improves voice quality during all "Voice as Pure Data" calls. Automatically chooses optimum compression and voice cancellation techniques, individually assigning calls and to the prioritized network. QOS suppresses background noise and fills dead tones.	Included
MATRIX-2003-ALCAP	The MATRIX-2003-ALCAP automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in voice noise intensity or volume, differences in customer telephone set quality, and changes in network congestion when keeping voice quality at set quality levels.	Included
MATRIX-2003-UC	The MATRIX-2003-UC is an optional component object. This feature allows Unlimited Conference Dial Rules to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with DS01 or POTS line functionality	
MATRIX-2003-IPBNF	The MATRIX-2003-IPBNF links to Centralized Subscriber Management Services Noac supporting screen, do-ion monitoring, authenticator, and IP address management. Features Virtual Private Networking and Managed Internet Firewall. Activation requirements apply.	INCLUDING
	Take the difference between the invoice and and total price of phone sets (listed below) and enter here——	
		Total Price: $14,700.00
[redacted]		
MATRIX-OCB-Base	The MATRIX Complete Calling Solution - OCB - Base Cabinet Includes Advanced Call Control Functionality with Integrated Voice/Data/Announce Machine, 2 Slot	0
MATRIX-OCB-Line	Embedded Firmware for MATRIX-OCB. One object per Extension port needed.	0
MATRIX-OCB-Trunk	Embedded Firmware for Trunk Side/POTS/T1. One object per LINE or TRUNK OR T1 port needed.	0
MATRIX-OCB-PHS	Multi Key Digital Feature Phone	0
MATRIX-OCB-ACD	Automatic Call Distribution Embedded Object Firmware (ACD)	0
	Total Price:	

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550 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7500
Fax# (973)242-7414

Date: 1/13/04

Invoice: 19688
Approval: n/a

Contact: Ed Lucas x7066
Lynn Fredrickson X129

INVOICE

Ship To: [redacted]

Item Description	QTY	Price
Matrix 2003	1	10,553.67

Sold To: Sterling National Bank
500 Seventh Avenue
New York, NY 10018-4502

TOTAL $10,553.67

All Payment Should Be Sent To: *First Union National Bank* 650 Broad Street Newark, NJ 07102 *Wire Routing Number*: 031201467 *Account Number*: 2000011202277 *Account Name*: NorVergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

2003

Vergence

650 Broad Street, 3rd floor
Newark, NJ 07102
(973) 242-7100

Schedule A

Customer: [redacted]

MATRIX - Merged Access Transport Redundant Intelligent eXchange Platform		
Order code	**Product Description**	
[redacted]		
MATRIX-2003 Chassis	10 slot Chassis with Cell, LAN, Network1, Network2/DBX-1, V.35, Amphenol Cable, DC Power Inputs, DS1/T-1 interface, 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface. TR-57 Compliant, Management features include: On-Site, Front or Rear panel Access, EIA-232, Physical RJ-45C or d3-9 Connector. SNMP V1 Support. Full Menu Drive TELNET Access. Software Downloaded via TFTP.	[redacted]
MATRIX-2003-PSU	MATRIX-2003-Power Supply AC Power Supply - 120 VAC/2A 60Hz input, -64V/2A Output, -48V/2A Input, AC Alarm Output, 5 AMP, 117/240 SHORT	Included
MATRIX-2003 MATRIX Expansion Cards		
[redacted]		
MATRIX-M/PSU	Supports Ring Enable, ACO, Power Transfer, Ring, Bank ALM	[redacted]
MATRIX-2003-MDCP	Modular Card(s) that enable up to 4 ports per card of Voice over ATM/IP Encapsulated Signal Processing (VAISP) of "Voice as Real Data" connections as high speed data access per card.	[redacted]
MATRIX-2003-SCP	Supports Cell, T1 Net Rx, TX Mon Rx, Pwr, T1 Test, V.35 TD, Eth LI, T1 Alarm, T1 Error, V.35 RD, ETH TX/RX	[redacted]
MATRIX-2003 Embedded Firmware Objects		
MATRIX-2003-8D	The MATRIX-2003-8D is an embedded object that allows 8xx toll free numbers to be provisioned within the MATRIX solution. The 8D object allows incoming 8xx calls to terminate into the MATRIX gateway.	[redacted]
MATRIX-2003-VFD	The MATRIX-2003-VFD is inherent in each data/ATM expansion card. Multiple cards include automatic data cell set up and array failover. The customer is granted the Right-To-Use (RTU) on all activated ATM ports.	Included
MATRIX-2003-ISF	The MATRIX-2003-ISF includes: Support for Network Interfaces(RJ-45C) T1, ATM, AAL2(Voice), AAL5 (data & voice), IP Routing Capability and Port Management.	Included
MATRIX-2003-OCS	The MATRIX-2003-OCS firmware continuously monitors and improves voice quality during all "Voice as Real Data" calls. Automatically chooses optimum compression and echo cancellation techniques. Individually assessing calls sent to the packetized network. OCS suppresses background noise and fills dead spaces.	Included
MATRIX-2003-ALCAF	The MATRIX-2003-ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality, and changes in network congestion while keeping voice quality at toll quality levels.	Included
MATRIX-2003-UC	The MATRIX-2003-UC is an optional embedded object. This feature allows Unlimited Conference Call Paths to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with DBX1 or POTS line functionality	[redacted]
MATRIX-2003-IPSMF	The MATRIX-2003-IPSMF links to Centralized Subscriber Management Services Node; supervising access, device monitoring, authentication, and IP address management. Features Virtual Private Networking and Managed Internet Firewall, Activation registration apply.	Included

Take the difference between the invoice cost and total price of phone sets (listed below) and enter here——

Total Price: $19,353.67

[redacted]		
MATRIX-CCS-Base	The MATRIX Complete Calling Solution - CCS - Base Cabinet Includes Advanced Call Control Complete with Integrated Voicemail/Answering Machine, 2 Slot	0
MATRIX-CCS-Line	Embedded Firmware for EXTENSIONS. One object per Extension port needed.	0
MATRIX-CCS-Trunk	Embedded Firmware for Trunk Side/POTS/T1. One object per LINE or TRUNK OR T1 port needed.	0
MATRIX-CCS-IP48	Multi Key Digital Feature Phone	0
MATRIX-CCS-ACD	Automatic Call Distribution Embedded Object Firmware (ACD)	0

Total Price:

FROM : [redacted] FAX NO. : 7034919164 Jan. 28 2005 12:59PM P6
AUG-17-2004 13:01 STERLING BANK LEASING 1 212 575 3442 P.06/08

"Drastically Reducing Your Telecommunications Costs"

850 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7500
Fax# (973)242-7414

Date: 1/21/04

Invoice: 20000
Approval: n/a

Contact: Ed Lucas x7056
Lynn Fredrickson X129

INVOICE

Ship To: [redacted]
2714 Code Way
Woodbridge, VA 22192

Item Description	QTY	Price
Matrix 2003	1	10357.99
CCS Phone Sets	5	

To: Sterling National Bank
500 Seventh Avenue
New York, NY 10018-4502

TOTAL [redacted]

All Payment Should Be Sent To: First Union A
Number: 2000011202277 Account Name: NorVergence, Inc.

, NJ 07102 Wire Routing Number: 031201467 Account

PLEASE ACH ALL PAYMENTS A.S.A.P.

FROM : [redacted] FAX NO. : 7034919164 Jan. 20 2005 01:00PM P8

AUG-17-2004 13:31 STERLING BNK LBRSING 1 212 575 3442 P.07/08

2003

STERLING NAT'L BANK

[redacted]ergence
Newark, NJ 07102
(201) 848-7560

Schedule A

Customer: [redacted]

MATRIX - Merged Access Transport Redundant Intelligent eXchange Platform

Order code	Product Description	
[redacted]		
MATRIX-2003-Chassis	10 slot Chassis with Cntl, LAN, Network1, Network2/DB24, V.35, Aggregate Cable, DC Power Inputs, DS1/T1 Interface, 24 fxs POTS Aggregate Pod and Connector, CenterClass ATM4IP Card - For POTS Interface, TR-57 Compliant, Management Supports Inclusion Cmdlts, Front or Rear panel Access, EIA-232, Physical RJ-45 or DB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	
MATRIX-2003-PSU	MATRIX-2003-Power Supply AC Power Supply - 120 VAC/24 60-Hz Input, -5V/12A Output, -48V/2A Input, AC Alarm Cutout, 3 amp, LITTELFUSE 3AG1BV	Included
MATRIX-CCC2	MATRIX Expansion Cards	
[redacted]		
MATRIX-ASTSU	Supports Ring Sizable, ACO Power Transfer Ring, Bank ALM	
MATRIX-2003-MPDP	Master Control that scales up to 4 ports per card of Voice-over ATM4IP Encapsulated Signal Processing (VASSP) at "Voice as Fast Data" connections on high speed data streams per card.	
MATRIX-2003-SCF	Supports Cntl, T1 Net Rx, DC Mac Rx, Pwr T1 Test, V.35 TD, Eth Lt, T1 Alarm, T1 Error, V.35 RD, STM TDFIX	
MATRIX-2003	Embedded Firmware Objects	
MATRIX-2003-SC	The MATRIX-2003-SC is an embedded object that allows Backup line numbers to be provisioned which the MATRIX switches. The SC object allows incoming fax calls to terminate into the MATRIX gateway.	
MATRIX-2003-VTD	The MATRIX-2003-VTD is present on each dedicated DS1 extension card. Multiple cards indicate automatic card cut out and array failover. The customer is granted the Right-To-Use (RTU) on all assigned ATM ports.	Included
MATRIX-2003-IGF	The MATRIX-2003-IGF includes Subset for network interface(RJ-48C) T1, ATM, AAL2(Voice), AAL5 layer 5, voice, IP Routing Capability and Port Management.	Included
MATRIX-2003-OGB	The MATRIX-2003-OGB enhances continuously measure and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques, individually assessing calls sent to the packetized network. OGB suppresses background noise and fills quiet spots.	Included
MATRIX-2003-ALCAF	The MATRIX-2003-ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network swaps, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality, and changes in network congestion while keeping voice quality at toll quality levels.	Included
MATRIX-2003-UC	The MATRIX-2003-UC is an optional enhancement object. This feature allows Unified Conference Call Paths to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with UEKT or POTS like functionality.	
MATRIX-2003-IPSMF	The MATRIX-2003-IPSMF links to Centralized Subscriber Management Services Nodes supporting access, session monitoring, subscription, and IP address management, Fastarna Virtual Private Networking and Managed Internet Firewall. Activation restrictions apply.	Included
	Then the difference between the invoice unit and total price of above note (listed below) and owner buy—	

		Total Price
[redacted]		
MATRIX-CCS-Bare	The MATRIX Complete Calling Solution – CCS - Base Cabinet, Includes Advanced Call Control Functionality with Integrated Voice/Mail/Answering Machine, 2 Slot	
MATRIX-CCS-Lite	Embedded Firmware for EXTENSIONS. One object per Extension port needed.	
MATRIX-CCS-TrpX	Embedded Firmware for Trunk Side/POTS/T1. One object per LINE or TRUNK OR T1 port needed.	
MATRIX-CCS-PHS	Mail Key Digital Feature Phone	6
MATRIX-CCS-ACD	Automatic Call Distributor Embedded Object Firmware (ACD)	0
		Total Price:

2003

OFC

Here value of 2003 is 5,966.00

Find on 2003 invoice

What is disclosure in that rate?

"Drastically Reducing Your Telecommunications Costs"

550 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7500
Fax# (973)242-7414

Date: 3/3/04

Invoice: 21742
Approval: n/a

Contact: Ed Lucas x7086
Lynn Fredrickson X129

INVOICE

Ship To: [redacted]

Item Description	QTY	Price
Matrix 2003	1	5,966.08
CCS Phone Sets	9	13,500.00
FL Doc Stamp Fee		-95.64
TOTAL		$19,372.42

Sold To: OFC Capital
670 Colonial Park Drive
Suite 200
Roswell, GA 30075

All Payment Should Be Sent To: Wachovia 550 Broad Street Newark, NJ 07102 Wire Routing Number: 031201467 Account Number: 2000011202277 Account Name: NorVergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

(2003)

[redacted]

Schedule A

Customer: [redacted]

MATRIX - Merged Access Transport Redundant Intelligent eXchange Platform

Order code	Product Description	
[redacted]		
MATRIX-2003 Chassis	10 slot Chassis with Cell, LAN, Network, Hubcard/DSX-1, V.35, Amphenol Cable, DC Power Inputs, DS1/T1 Interface, 84 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - Per POTS Interface. TR-57 Compliant, Management features include: On-site, Front, or Rear panel Access, EIA-232, Physical RJ-45C or dB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	[redacted]
MATRIX-2003-PSU	MATRIX-2003-Power Supply, AC Power Supply - 120 VAC/2A, 60Hz Input, -54V/2A Output, -48V/2A Input, AC Alarm Output, 8 AMP, 117/234VAC/50-60V	Included
MATRIX-2003	MATRIX Expansion Cards	
[redacted]		
MATRIX-MPSU	Supports Ring Enable, AGC, Power Transfer, Ring, Bank, ALM	[redacted]
MATRIX-2003-MECP	Modular Card(s) that enable up to 4 ports per card of Voice over ATM/IP Encapsulated Signal Processing (VOSP) of "Voice or Real Data" connections on high speed data access per card.	
MATRIX-2003-SCP	Supports Card, T1 Net Rx, DX Mnt Rx, Pwr, T1 Port, V.35 TD, Clk LI, T1 Alarm, T1 Error, V.35 RD, ETH TX/RX	
MATRIX-2003	Embedded Firmware Objects	
MATRIX-2003-SD	The MATRIX-2003-SD is an embedded object that allows Switch line numbers to be provisioned within the MATRIX switch. The SD object allows incoming line calls to terminate into the MATRIX gateway.	[redacted]
MATRIX-2003-VFO	The MATRIX-2003-VFO is present in each dedicATM expansion card. Multiple cards include automat a data set up and configuration. The customer granted the Right-To-Use (RTU) on all activated ATM ports.	Included
MATRIX-2003-ISF	The MATRIX-2003-ISP includes: Support for Network Interface(RJ-48C) T1, ATM, AAL2(Voice), AAL5 (data & voice), IP Routing, Operability and Port Management.	Included
MATRIX-2003-OOS	The MATRIX-2003-OOS firmware continuously monitors and improves voice quality during all "Voice as Real Data" calls. Automatically chooses optimum compression and voice cancellation techniques, individually processing calls sent to the packetized network. DQS suppresses background noise and idle speech pauses.	Included
MATRIX-2003-ALCAP	The MATRIX-2003-ALCAP automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality, and changes in network congestion while keeping voice quality at toll quality levels.	Included
MATRIX-2003-IVD	The MATRIX-2003-IVD is an optional embedded object. This feature allows Unlimited Continuous Call Paths to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with DSO or POTS line functionality	[redacted]
MATRIX-2003-IPSF	The MATRIX-2003-IPSMF link to Distributed Subscriber Management Services. Model supporting access, device monitoring, authentication, and IP address management, Features Virtual Private Networking and Managed Stateful Firewall, Activation requirements apply.	Included

Take the difference between the invoice unit total price of phone sets (listed below) and enter here.

Total Price: [redacted]

[redacted]		
MATRIX-OOS-Base	The MATRIX Complete Calling Solution - OOS - Base Optional Includes Advanced Call Control Functionality with Integrated Voicemail supporting Mailbox, 2 Way	1
MATRIX-OOS-Line	Embedded Firmware for EXTENSIONS. One object per Extension port needed.	9
MATRIX-OOS-Trunk	Embedded Firmware for Trunk Side(POTS/T1. One object per LINE or TRUNK OR T1 port needed.	0
MATRIX-OOS-PnS	Multi Key Digital Feature Phone	9
MATRIX-OOS-ACD	Automatic Call Distribution Embedded Object Firmware (ACD)	0

Total Price: [redacted]

2003

"Drastically Reducing Your Telecommunications Costs"

550 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7500
Fax# (973)242-7414

Date: 4/5/04

Invoice: 23215
Approval: 045371.01

Contact: Ed Lucas x7066
Lynn Fredrickson X128

INVOICE

Ship To: [redacted]

Item Description	QTY	Price
Matrix 2003	1	7,499.45
CCS Phone Sets	3	4,500.00
Lease Calculation Fee	1.50%	179.99
	TOTAL	$12,179.44

Sold To: Popular Leasing
16280 Westwood Business Park Drive
Ellisville, MO 63021

All Payment Should Be Sent To: Wachovia 550 Broad Street Newark, NJ 07102 *Wire Routing Number:* 031201467 *Account Number:* 2000011202277 *Account Name:* NorVergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

APR 7 2004

APR 6 2004

2003

ergence
Newark, NJ 07102
(973) 242-7600

Schedule A

Customer: [redacted]

MATRIX - Merged Access Transport Redundant Intelligent eXchange Platform

Order code	Product Description	
[redacted]		
MATRIX-2003 Chassis	10 slot Chassis with Cont, LAN, Network1, Network2DSX-1, V.35, Amphenol Cable, DC Power inputs, DS1/T-1 interface, 24 line POTS Amphenol Pos and Connector. Carrier Class ATM/IP Card - For POTS Interface. TR-57 Compliant. Management features include: On-Site, Front or Rear panel Access. EIA-232, Physical RJ-45C or dB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	[redacted]
MATRIX-2003-PSU	MATRIX-2003-Power Supply AC Power Supply - 120 VAC/2A 60Hz Input, -48V/2A Output, -48V/2A Input, AC Alarm Output, 3 AMP, 11795-EN_MEMORY	Included
MATRIX-3003 MATRIX Expansion Cards		
[redacted]		
MATREX-MPSU	Supports Ring Enable, ACO, Power Transfer, Ring, Bank ALM	[redacted]
MATRIX-2003-MEXP	Modular Card(s) that enable up to 4 pairs per card of Voice over ATM/IP Encapsulated Signal Processing (VAISP) of "Voice as Fast Data" connections as high speed data access per card.	
MATRIX-2003-SCP	Supports Cnst, T1 Mis Rx, TX Mon Rx, Perf. T1 Test, V.35 TD, Eth U, T1 Alarm, T1 Error, V.35 RD, ETH 10GRX	
MATRIX-2003 Embedded Firmware Objects		
MATRIX-2003-SO	The MATRIX-2003-SO is an embedded object that allows 8xx toll free numbers to be provisioned within the MATRIX solution. The SO object allows incoming 8xx calls to terminate into the MATRIX gateway.	[redacted]
MATRIX-2003-VFD	The MATRIX-2003-VFD is inherent in each date/ATM expansion card. Multiple cards include automatic data call up and carry failover. The customer is granted the Right-To-Use (RTU) on all activated ATM ports.	Included
MATRIX-2003-ISF	The MATRIX-2003-ISF includes: Support for Network Interface(RJ-48C) T1, ATM, AAL2(Voice), AAL5 (data & voice), IP Routing Capability and Port Management.	Included
MATRIX-2003-OOS	The MATRIX-2003-OOS firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques. Individually assessing calls sent to the packetized network. OOS suppresses background noise and 6x dead space.	Included
MATRIX-2003-ALCAF	The MATRIX-2003-ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, effects to changes in callers voice intensity or volume, differences in customer telephone set quality, and changes in network congestion while keeping voice quality at toll quality levels.	Included
MATRIX-2003-UC	The MATRIX-2003-UC is an optional embedded object. This feature allows Unlimited Conference Call Paths to be established and routed over the MATRIX-2003 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality	[redacted]
MATRIX-2003-IPSMF	The MATRIX-2003-IPSMF links to Centralized Subscriber Management Services Node; supervising access, device monitoring, authentication, and IP address management. Features Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	Included
	Take the difference between line invoice cost and total price of phone sets (listed below) and enter here——	

Total Price: $7,499.45

[redacted]

MATRIX-OCB-Base	The MATRIX Complete Calling Solution - OCB - Base Cabinet includes Advanced Call Control Firmware with Integrated Voicemail/Answering Machine. 2 Slot	1
MATRIX-OCB-Line	Embedded Firmware for EXTENSIONS. One object per Extension port needed.	3
MATRIX-OCB-Trunk	Embedded Firmware for Trunk Side/POTS/T1. One object per LINE or TRUNK OR T1 port needed.	3
MATRIX-OCS-P48	Multi Key Digital Feature Phone	2
MATRIX-OCS-ACD	Automatic Call Distribution Embedded Object Firmware (ACD)	0

Total Price: $4,966.80

APR - 6 2004

"Drastically Reducing Your Telecommunications Costs"

550 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7800
Fax# (973)242-7414

Date: 4/14/04

Invoice: 23823
Approval: N/A

Contact: Ed Lucas x7088
Lyan Fredrickson X129

INVOICE

Item Description	QTY	Price
Matrix 2003	1	20,753.98

Ship To: [redacted]

Sold To: OFC Capital
575 Colonial Park Drive
Suite 200
Roswell, GA 30075

actron matrix

TOTAL $20,753.98

All Payment Should Be Sent To: Wachovia 550 Broad Street Newark, NJ 07102 Wire Routing Number: 031201467 Account Number: 2000011202277 Account Name: NorVergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

2003

[redacted]

[redacted]

Schedule A

Customer: [redacted]

MATRIX - Merged Access Transport Redundant Intelligent eXchange Platform

Order code	Product Description	
[redacted]		
MATRIX-8003 Chassis	10 slot Chassis with Quad, Latch, Network, Network/DOCSIS/1, V.35, Anchored Cable, DC Power Input, DS1/T1 Interface, 24 Ext POTS Amphenol Port and Connector, Cooler Class A/3dBP Quad - Per POTS Interface, SNMP Compliant, Management Features Included (Up-Site, Front or Rear-panel Access, EIA-232, Physical RJ-45C or dB-9 Connector, SNMP V1 Supported, Full Menu Data TELNET Access, Software Downloaded via TFTP.	[redacted]
MATRIX-8003-PSU	MATRIX-8003 Power Supply AC Power Supply - 120 VAC/60A Series Input, -5/+12A Output, -48/60A Input, AC Alarm Output, 3 AMP, 117/240 VAC/60Hz	Included
MATRIX-8003	MATRIX Expansion Chassis	
[redacted]		
MATRIX-MPSU	Supports Ring Enable, ACO, Power Transfer, Ring, Bank ALM	
MATRIX-8003-MDCP	Modular Control that enables up to 4 ports per card of 'Voice over ATM/IP Encapsulated Digital Processing (VADP) of "Voice as Real Data" connections on high speed data access per card.	
MATRIX-8003-SCP	Supports Quad, T1 Net Int, TX Net Int, Port, T1 Test, V.54 TD, Rm LU, T1 Alarm, T1 Error, V.35 RD, XTH Timing	
MATRIX-8003	Embedded Firmware Objects	
MATRIX-8003-EO	The MATRIX-8003-EO is an embedded object that allows the toll free numbers to be provisioned within the MATRIX solution. The EO object allows incoming dial calls to terminate into the MATRIX gateway.	[redacted]
MATRIX-8003-VTC	The MATRIX-8003-VTC is inherent in each data/RTM expansion card. Multiple cards include internal data call set up and away balance. The customer is granted the Alpha/Fax Use (ICU) on all activated ATM ports.	Included
MATRIX-8003-IAF	The MATRIX-8003-IAF includes: Support for Network Interface(DU-960) T1, ATM, AAL2/VoiceAAL5 (Class A voice), IP Device Capability and Port Management.	Included
MATRIX-8003-OQS	The MATRIX-8003-OQS measures continuously Numbers and improves voice quality during all "Voice as Real Data" calls. Automatically chooses optimum compression and echo cancellation techniques. Individually processing calls sent to the predefined network. OQS suppresses background noise and fax/ dead space.	Included
MATRIX-8003-ALDAF	The MATRIX-8003-ALDAF automatically adapts transmission signals to changing line conditions. Differences in line lengths, network delays, adjusts to changes in silicon voice linearity or volume, differences in customer telephone set quality, and changes in network congestion while keeping voice quality at toll quality level.	Included
MATRIX-8003-UO	The MATRIX-8003-UO is an optional embedded object. This feature allows Unlimited Dial/Access Dial Paths to be terminated and routed over the MATRIX-8003 Voice Ports. This feature is designed to interface with DID/T1 or POTS line functionality	[redacted]
MATRIX-8003-IP/SNP	The MATRIX-8003-IP/SNP Ship is Centralized Subscriber Management Services Node; supporting access, device monitoring, authentication, and IP address management. Features Virtual Private Networking and Managed Internet Protocol. Activation requirements apply.	Included
	Take the difference between the invoice cost and total price of phone sets (listed below) and enter here	

[redacted]		Total Prices	$20,253.84
MATRIX-CCS-Base	The MATRIX Computer Calling Solution - CCS - Base Object, Includes Advanced Call Control Functionality with Integrated Voice/Data/Computer Interface, 10 Slot		0
MATRIX-CCS-Line	Embedded Firmware for EXTENSION. One object per Extension port needed.		0
MATRIX-CCS-Trunk	Embedded Firmware for Trunk Side/POTS/T1. One object per LINE or TRUNK OR T1 port needed.		0
MATRIX-CCS-PKS	Multi Key Digital Feature Phone		0
MATRIX-CCS-ACD	Automatic Call Distribution Embedded Object Firmware (ACD)		0
		Total Price:	

[redacted]

NorVergence

"Drastically Reducing Your Telecommunications Costs"

550 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7500
Fax# (973)242-7414

Date: 12/8/03

Invoice: 18482
Approval: n/a

Contact: Ed Lucas x7066
Lynn Fredrickson X129

INVOICE

Ship To: [redacted]

Item	Description	QTY	Price
Matrix	SOHO	1	13,592.38

Sold To: Commerce Bank
655 Business Center Drive
Suite 250
Horsham, PA 19044

TOTAL $13,592.38

Payment Should Be Sent To: *First Union National Bank* 550 Broad Street Newark, NJ 07102 *Wire Routing Number:* 031201467 *Account number:* 2030011202277 *Account Name:* NorVergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

950 Broad Street, 3rd Floor
Newark, NJ 07102
(973) 242-7500

SOHO Product Line

CUSTOMER NAME: [redacted]

DBA: [redacted]

Order code	Product Description	QTY
Merged Access Transport Intelligent Xchange - Matrix SOHO		
	MATRIX SOHO Base Package	
Matrix SOHO	SOHO Base Package: Integrated Data Access Box Chassis, Core Wiring, Core I/O ports, Voice Package (up to 5 POTS lines)	1
Matrix SOHO	Firewall Throughput Speed	
Matrix SOHO-FTS2	SOHO Processor2 - Up to 9Mbps Throughput	1
Matrix SOHO -3DES-Encryption Processor		
	3DES Encryption Option - SOHO	
Matrix SOHO - Security Features		
	Security Feature Option Package - SOHO	
	Stateful Packet Filtering Option - SOHO	1
Matrix SOHO-PSU Power Supply Unit		
	*The Matrix SOHO-PSU hardware unit is fixed into the chassis of the MATRIX SOHO Base Unit.	
Matrix SOHO-NAT	Network Address Translation Option - SOHO [Version 2.1 - Static IP address Uplink]	1
Matrix SOHO-ISF Interface Support Features		
	Five RJ-45 10-BaseT Ethernet Fixed Port Card - SOHO	
Matrix SOHO-BB	Broadband Connection Sharing Option - SOHO	1
Matrix SOHO User Licenses		
	The Matrix SOHO provides a firmware configuration for Up to 10 Users.	

Total Sale Price $13,592.38

Equipment Rental (continued)

NT/TERM OF RENTAL: You agree to pay us the amount specified in this Rental as the Rental ment (plus any applicable taxes) when each payment is due. Your acceptance of the Equipment be conclusively and irrevocably established upon the receipt by us of your confirmation (verbal or ten) of such acceptance. However, if you have not provided us with confirmation of acceptance or vided us with written notice of non-acceptance of the Equipment, in either case, within 10 days r delivery of the Equipment, you will be deemed to have inspected and irrevocably accepted the ipment and to have authorized us to pay for the Equipment. The term of this Rental begins on a s designated by us after receipt of all required documentation and acceptance by us ommencement Date") and continues for the number of months designated as "Rental Term" on face of this Rental. The Rental Payments are payable in advance periodically as stated in or on schedule to this Rental. You agree to pay an interim Rental Payment in the amount of one-6th (1/30th) of the Rental payment for each day from and including the Effective Date ("which ll be the date the Equipment is installed") until the day preceding the Commencement Date.

YMENT: You authorize us to change the Rental Payment by not more than 15% due to changes he Equipment configuration, which may occur prior to our acceptance of this Rental. Restrictive lorsements on checks you send to us will not reduce your obligations to us. Whenever any ntal Payment or other payment is not made when due, you agree to pay us, within one 10th, a late charge of the greater of ten percent (10%) of the payment or $20.00 for each ayed payment for our internal operating expenses arising as a result of each delayed yment, but only to the extent permitted by law.

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

E, MAINTENANCE AND INSTALLATION: You are responsible for protecting the Equipment from mage except for ordinary wear and tear and from any other kind of loss while you have the uipment. If the Equipment is damaged or lost, you agree to continue to pay rent. You will not ve the Equipment from the Equipment location without our advance written consent. You will give reasonable access to the Equipment location so that we can check the Equipment's existence, ndition and proper maintenance. You will use the Equipment in the manner for which it was anded, as required by all applicable manuals and instructions and keep it eligible for any nufacturer's certification and/or standard, full service maintenance contract. At your own cost and pense, you will keep the Equipment in good repair, condition and working order, ordinary wear and r excepted. All replacement parts and repairs will become our property. You will not make any rmanent alterations to the Equipment.

DELIVERY OF EQUIPMENT; RENEWAL: You shall provide us with written notice, by certified il, sent not less than 120 days nor more than 180 days prior to the expiration of the Rental Term or y renewal Rental Term of your intention either to exercise any option to purchase all but not less an all of the Equipment (if we grant you such an option) or cancel the Rental and return the uipment to us at the end of the Rental Term. If you elect to return the Equipment to us at the piration of the original or any renewal term of the Rental, you agree to return the Equipment in cordance with the paragraph titled Return of Equipment. If we have not received written notice m you of your intention to purchase or return the Equipment, the Rental will automatically renew for ceeding one-year periods commencing at the expiration of the original Rental Term. If this Rental renewed, the first renewal payment will be due the first day after the original Rental Term expired. y security deposit held by us shall continue to be held to secure your performance for the renewal riod.

SS; DAMAGE; INSURANCE: You are responsible for and accept the risk of loss or damage to e Equipment. You agree to keep the Equipment insured against all risks of loss in an amount at ast equal to the replacement cost until this Rental is paid in full and will list us as loss payee. You ll also carry public liability insurance with respect to the Equipment and the use thereof and name as additional insured. You will give us written proof of this insurance before this Rental Term gins. You agree to promptly notify us in writing of any loss or destruction or damage to the uipment and you will, at our option, (a) repair the Equipment to good condition and working order,) replace the Equipment with like Equipment in good repair, condition and working order, ceptable to us and transfer clear title to such replacement Equipment to us, such Equipment shall subject to the Lease and be deemed the Equipment, or (c) pay to us the present value of the total all unpaid Rental Payments for the full Rental term plus the estimated Fair Market Value of the uipment at the end of the originally scheduled Rental term, all discounted at six percent (6%) per ar whereupon the Lease shall terminate. All proceeds of insurance received by us as a result of

REMEDIES: If a Default occurs, we may do one or more of the following: (a) cancel or terminate this Rental or any or 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 titled 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, are 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 rights 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 restore any amount so applied. If you are not in default, any security deposit will be returned to you within 90 days after the end of the original or renewal Rental Term (or as otherwise required by applicable law), or at your direction 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 aboard any carrier(s) we may designate in the continental United States. The Equipment must be properly packed for shipment in accordance with the manufacturer's recommendations or specifications, freight prepaid and insured, maintained in accordance with the paragraph titled Use Maintenance and Installation, and in "average Saleable Condition". "Average Saleable Condition" means that all of the Equipment is immediately available for use by a third party buyer, user or Rentor, other than yourself, without the need for any repair or refurbishment. All Equipment must be free of markings. You will pay us for any missing or defective parts or accessories, including manuals and licenses. 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 your 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 Rentor's principal offices are located or, if this Lease is assigned by Rentor, 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 Rentor or Rentor'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:

om you of your intention to purchase or return the Equipment, the Rental will automatically renew for succeeding 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 will list us as loss payee. You will also carry public liability insurance with respect to the Equipment and the use thereof and name 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 transfer clear title to such replacement Equipment to us, such Equipment shall be subject to the Lease and be deemed the Equipment, or (c) pay to us the present value of the total of all unpaid Rental Payments 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 Lease 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 obligations. 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 DUE 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/or 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 billed by us. You agree to pay us any estimated taxes when we request payment. You agree that if 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 titled Payment) on such payments if applicable with the next payment. You agree to pay us a monthly fee up to one hundred and fifty thousandths of one percent (.150%) 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 purpose 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 dissolve or are dissolved, 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, does not perform its obligations under the guaranty, or becomes subject to one of the events listed above.

for the term of this Rental, and that you have agreed to pay all fees described herein. We both intend to comply with applicable laws. If it is determined that your 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 Rentor's principal offices are located or, if this Lease is assigned by Rentor, 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 Rentor or Rentor'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 rescission 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 if submitting via facsimile.

[redacted] Renter Contact Name Telephone Number

Transaction Terms: Rental Payment $ 230.00 (plus applicable taxes) RENTAL TERM 60 Months Security Deposit $ _____

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 invent 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 it may only 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 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 our interest in the Equipment.

THIS RENTAL MAY NOT BE CANCELLED OR TERMINATED EARLY

Renter: NorVergence, Inc. Renter: [redacted]

By: X [signature] By: X [signature]

Accepted on behalf of Renter: FRANK DAUDIER Name (print) [redacted]

VP/ATTORNEY IN FACT Title:

Date: 6/20/03

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

Guaranty. In this guaranty, you means 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(s)") 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 those 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 any 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 _____, Individually By: X _____, Individually

Name (print) Name (print)

NorVergence, Inc. (Renter)

Equipment Rental Agreement

Rental Number _____

Renter (Full Legal Name)				Renter [illegible]
Novergence, Inc				[redacted]
Address				Address
500 Broad St 3rd Floor				[redacted]
City	State	County	Zip Code	City [redacted] Zip Code
Newark	NJ	Essex	07102	
Telephone Number				Telephone Number [redacted] Federal Tax ID Number [redacted] State of Organization
973 - 242 -7500				

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 (1 CARD)	

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

Equipment Location (if different from Renter address above)

Address [redacted]

City [redacted] State [redacted] County [redacted] Zip Code [redacted] Renter Contact Name [redacted] Telephone Number [redacted]

Transaction Terms: Rental Payment $ 230.00 (plus applicable taxes) RENTAL TERM 60 Months Security Deposit $ _____

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, [illegible]

Exhibit 4. Adtran Marketing Descriptions

ADTRAN The Network Access Company Search: GO ASST

Home Products Solutions Service/Support Training Where to Buy Partners Cont

Products > ... > Total Access 850 > Total Access 850 VoATM Package w/16 FXS

Featured Solutions

- Co-Location with Derived Voice and Data Over ATM Networks
- Cost-Effective Integrated Service Delivery Over T1 or ATM Networks
- Diverse DSL
- T1 / T3 Voice and Data DACS
- Transition of Voice and Data from TDM to ATM Networks

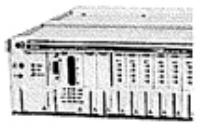
Services

- ACES (ADTRAN Custom Extended Services)

Resources

- Course Description
- Data Sheet
- FAQ
- Firmware
- Images
- Manual
- Visio Objects

Total Access 850 w/ T1 ATM RCU



- Cost-effective single T1/FT1 TDM, T1 ATM, or SDSL IAD
- Modular chassis supports voice-only or voice and data
- VoATM support
- 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 IP router (10/100BaseT Ethernet interface), SNMP, and V.35 Nx56/64 interface for integrated data support
- Six access module slots plus special AB slot
- Six slots for FXS, FXO, and U-BR1TE
- Supports up to 24 FXS/FXO interfaces
- 50-pin female amphenol connector for subsciber 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
- 10-year warranty

Name	Part Number	CLEI	De
Total Access 850 VoATM Package w/16 FXS	4203376L16#ATM		Mo Mul ser Int Acc De wit ATI int anc bui Rou
Total Access 850 VoATM Package w/24 FXS & ADPCM	4203376L24#ATM		

Modules, Software and Accessories

- Total Access 850 Access Modules (RCU)
- Total Access 850 Accessories
- Total Access 850 Chassis and Commons

Exhibit 5. Curriculum Vita for Peter Daley

Peter Daley
61 Wentworth
Newport Beach, CA 92660

EDUCATION:

Bachelor of Science, Business Administration
Cal State Northridge - 1965
Masters of Business Administration
Pepperdine University -1991
Accredited Senior Appraiser
American Society of Appraisers -1999

BUSINESS:

IBM Corporation, Marketing Representative. Marketed mid-range computer systems and peripherals in the Southern California area. Received Regional Managers Award and two District Managers Awards for competitive wins. Qualified for three hundred percent clubs.

Itel Corporation, Marketing Representative. Re-marketed the IBM System/360 portfolio to customers in Southern California, Hawaii, Colorado and Arizona. Qualified for three hundred percent clubs.

Saddleback Marketing Corporation, President. Brokered and leased used IBM equipment to customers in the western United States. Sales volume varied between $3 and $5 million per year.

1980-2001 - Daley Marketing Corporation. President. From 1980 to summer of 1985, brokered and leased IBM equipment in the Western United States. In 1981 began to market an IBM Computer Price List and in June of 1985 sold existing leasing business and created the market value and residual value publications that are sold worldwide today.

1994-Present - DMC Consulting Group. President. From 1994 to present Mr. Daley has been writing computer appraisals and reports for Fortune 500 customers. He received his Accredited Senior Appraisal certificate in April 1999 from the American Society of Appraisers.

2001-Present – Computer Economics. President. Mr. Daley acquired CEI on January 1, 2001. CEI is an IT Consulting company that deals with economics of running and managing an Information Technology department. It publishes FMV and Residual Values for the computer equipment as well as salary and demographic information.

Appraiser Qualifications

PETER DALEY, Accredited Senior Appraiser

Professional Overview
Mr. Daley is an ASA (Accredited Senior Appraiser) for the discipline of Machinery and Equipment with a specialty in High-Tech for the valuation of computer equipment.

Mr. Daley has been in the computer business since 1965, first with IBM as a computer broker/lessor and then with Daley Marketing Corporation (DMC), a firm he founded in July 1980 to publish reports about computer equipment, including "Market Value Reports" and "Residual Value Reports." In January 2001 Mr. Daley acquired Computer Economics, (CEI), and recently merged DMC into CEI. CEI is an independent research organization founded in 1979 devoted to helping IT executives control and manage IT costs. CEI has on on-line subscription based IT consulting web site and advisory service as well as a number of monthly and quarterly print newsletters. Today, the combination of CEI and DMCs published and online reports and services cover all segments of the secondary computer markets. These reports are used extensively by Fortune 500 companies in the preparation of IT budgets. Mr. Daley directs the company's research and the publication of its reports. Additionally, Mr. Daley remains president of DMC Consulting Group, a separate company that specializes in writing Appraisals, Portfolio Analysis and Property Tax Valuation from Fair Market Value (FMV) to Residual Value (RV) valuations.

Mr. Daley has developed a database of “Fair Market Value” equipment values from 1989 to the present, utilizing a variety of reports and publications along with the DMC Market Value Reports. This database has been successfully used in the valuation of computer equipment in the settlement of a number of Virginia tax cases. He has also previously testified in California, Minnesota, Michigan, New York and the Virginia Courts as an expert in the field of valuation of computer equipment.

Lectures/Seminars/Presentations

Equipment Leasing Associations Management Conference - Residual Value Forecasting, Tuscon, AZ, February 1997.

American Society of Appraisers Machinery Conference - Determining Fair Market Values and Residual Value Forecasting, Chicago, IL, October 2001.

Panelist at the fall **Comdex** - Orderly Disposition of Computer Assets. Las Vegas, November 2001.

American Society of Appraiser's International Conference – Residual Value Forecasting for the Computer Industry, San Diego, CA, August 2002.

Equipment Leasing Associations Management Conference – Fair Market Value's Scottsdale, AZ, March 2004.

AFCOM Spring Conference – Lease Negotiations April 2004

Published Articles

Computer Economics IT Advisory Web Site - Planning IT Equipment Acquisitions – Overview – October 2003

Computer Economics IT Advisory Web Site – Lease Negotiations – March 2004

Mr. Daley has testified in District, Federal and Tax Courts in the following cases:

Andantech, LLC v. Commissioner of IRS
No. 15532-98, 4277-00, 6348-00
U.S. Tax Court
October 2000
St. Paul, MN

Nicole Rose v. Commissioner of IRS
No. 1967-00
U.S. Tax Court
December 2000
New York, NY

Central Funding Inc v. CompuServe Interactive Services, Inc.
Case No. 01CVH05-4019
May 10, 2002
Columbus, Ohio

CMA Consolidated, Inc and Subsidiaries, Inc. v. Commissioner of IRS
No. 12746-01
U.S. Tax Court
October 2002
San Francisco, CA

CTC Communications, v CCA Financial LLC.
Case No. 02-12873
Bankruptcy Court
January 2003, March 2003
Wilmington. DL

Long Term Capital Holding v United States
Case No. 3:01CV1290
U.S. District Court
June 2003
New Haven, CT

Cable & Wireless USA of Virginia v Commonwealth of Virginia State Corporation Commission
Case No PST-2002-00045
Tax Court
October 2003
Richmond, VA

Mr. Daley has been deposed in the following cases:

Fogler v. Motorola; Adv 94-939
ComNet Technologies, Inc. 93-113243-PHx-GBN
U.S. Bankruptcy Court, District of Arizona
Phoenix, AZ.
February 3, 1998

Central Funding Inc v. CompuServe Interactive Services, Inc.
Case No. 01VH05-4019
Santa Ana, CA
April 23, 2002

Magnetek v. United States
Case No. 3-00-0925
Los Angeles, CA
July 16, 2002

Long Term Capital Holdings v United States
Case No. 3:01CV1290
Santa Ana, CA
February 19, 2003

Background

The **mission statement** of Computer Economics is: to be the **recognized leader** in capturing **today's information** and to disseminate that information in a **quality and timely service** to companies around the world; to provide pertinent and timely information that benefits companies to make business decisions that allow them to obtain the greatest amount of profit from each transaction; and to use the **latest technology to publish** and transmit information to our customers in a timely manner.

Market values are obtained from brokerage and leasing companies across the United States. The information is compiled and these values then become an integral part of the Market Value Reports published monthly.

Computer Economics publishes four different **Residual Value reports** that cover everything from Hubs, Routers, PC's, to midrange and mainframe products. These reports cover the future value of over 1,000 pieces of equipment. Besides the normal reports, Computer Economics does independent residual forecasting for a number of clients.

The Computer Economics **Computer Price List** reports on the description, feature code, and purchase and maintenance prices of current machines marketed by IBM. This report supplements the market value reports and keeps the broker/dealer up to date with IBM list prices.

The Computer Economics reports are distributed in hard copy and over the Internet. Computer Economics subscription list consists of some of the largest end-users, broker/dealers and lessors in the world. Computer Economics also markets its' products in 15 countries around the world.

Peter Daley is a member of the ASA (American Society of Appraisers).

Computer Economics, Inc.

Partial Customer List

BankAmerica Leasing & Capital
Boeing Computer Services
Charles Schwab & Company
Commonwealth Capital Corp
Dreamworks Interactive
Earnst & Young
EMC Corporation
FLC Partnership
Fleet Credit Corporation
Forsythe Solutions Group
G.E. Capital Corporation
Gartner Group
GTE Service Corporation
Hewlett Packard Financial Services
IBM Corporation
Internal Revenue Service
Leasing Technologies Int'l
Meridian Leasing Corporation
PWC Coopers
Pacific Gas & Electric
Sanwa Business Credit Corporation
United Computer Capital
Wisconsin Gas

DMC Publications History

The following is a breakdown of reports conceived and marketed by Daley Marketing Corporation and now part of Computer Economics:

PRODUCT	STARTED	DESCRIPTION
Manufacturer's Price Lists		
IBM Computer Price Lists Non-IBM Price List	1981 1990-1998	Mfr's List Price, Maintenance Prices Amdahl, Hitachi Data Systems, EMC, Storagetek List Prices
Market Value Reports - Broker and End-User Reports		
IBM/PCM Market Value Report Monthly and Weekly reports	1985	Market Values for Amdahl, IBM, EMC, HDS, Memorex, STK . From Mainframes to Midrange to I/O Equipment
DEC Market Value Report	1991	Market Values for DEC I/O Equipment, VAX, MicroVAX
Workstation/PC Market Value	1992	Market Values for DEC, HP, IBM, SGI, SUN, Compaq etc.
Network Communications	1995	Market Values for over 25 mfrs. Bridges, Hubs, Routers, Switches
Residual Value Reports		
Mainframe/Midrange Report	1987	Mainframe Residuals for Amdahl, HDS, HP, IBM and Stratus
Disk/Tape/Miscellaneous I/O Report	1987	Residual Values on DASD, printers, controllers and tape Subsystems for Amdahl, EMC, HDS, IBM, HP & StorageTek.
Workstation & PC Report	1994	Residual Values for DEC, HP, IBM, SGI, SUN, Compaq etc.
Network Communications Report	1995	Residual Values on Bridges, Hubs, Routers, Switches, etc.
Miscellaneous Publications Computer Dealer Information Guide	1992	Directory of Brokers/Dealers, Lessors, Maintenance, Refurb companies in North America

The above subscriber products are available either hard copy, on-line or email.

CIT TECHNOLOGY FINANCING SV INC

07/16/03

TURBO, INC
62 GREENE ST # 3
NEW YORK NY 10012-4346

Re: QUOTE N0. ILF-0032251-00 / LEASE N0. 9010007954000
TW PERIPHERALS

Lease or Conditional Service Contract Number: 9010007954000

Thank you for choosing CIT TECHNOLOGY FINANCING SV INC for your new Lease or Conditional Service Contract (CSC). We appreciate your business and want our mutual relationship to be satisfactory to you during the term of this Lease or CSC, as well as for any future transactions. As you know, one of the terms of our Lease or CSC Agreement requires that you maintain insurance against loss, damage, destruction and theft for the replacement value of the leased equipment, naming us as loss payee. You can satisfy this requirement by obtaining your own insurance or by taking advantage of the coverage which CIT TECHNOLOGY FINANCING SV INC has arranged for the equipment under its own insurance policy. You can exercise either of the options described below.

NOTE: If you have already submitted evidence of existing coverage for your original Lease or CSC, and at a later date amended your contract to include additional equipment/schedules, you must resubmit evidence of other coverage.

Option 1 - Insure Equipment Under Our Property Insurance Policy

Since many customers prefer not to obtain their own coverage on the leased equipment, CIT TECHNOLOGY FINANCING SV INC has procured its own coverage which satisfies the property insurance requirement contained in your Lease or CSC. Protecting the equipment under the policy of CIT TECHNOLOGY FINANCING SV INC is easy. There is nothing for you to do. Unless you decide to obtain your own policy, the equipment is covered under the policy we have in effect as of the date you accept the insurance by remitting payment as described below. In addition to fire, theft, and other causes of loss normally covered under a commercial property policy, this policy also covers power surge, employee theft, and flood. In addition, this policy has no deductible for losses that exceed $100 (losses under $100 will not be covered). Enclosed is a brochure that provides additional information about the insurance coverage under the policy of CIT TECHNOLOGY FINANCING SV INC.

If you elect this option by not acquiring your own insurance policy, we'll add $32.84 , which includes the insurance reimbursement and other related charges, to each of your monthly invoices. The insurance reimbursement charge is included on your monthly invoice as a separate line item. YOUR EQUIPMENT WILL NOT BE COVERED UNLESS PAYMENT REIMBURSING THE LESSOR FOR THE COST OF THIS INSURANCE IS RECEIVED.

Option 2 - Use Your Own Insurance Carrier

If you wish to use your own property insurance on the leased equipment, simply have your agent or broker submit your proof of insurance to our leased equipment insurance representative. Your agent or broker must reference your property insurance for the equipment includes (1) CIT TECHNOLOGY FINANCING SV INC, as the "loss payee," (2) an insured value of $22,655 , (3) "special form" coverage that includes theft, and (4) coverage effective as of 07/01/03 .

Your agent or broker can fax or mail the evidence of insurance to:

Fax Number: (305) 256-7113

Mailing Address: CIT TECHNOLOGY FINANCING SV INC
c/o ABIC - Specialty Services, 5th Floor
P.O. Box 979220
Miami, FL 33197-9220

Please include your quote and Lease or Conditional Service Contract number on all correspondence to the insurance representative.

We appreciate your assistance in assuring that the equipment is properly insured. Again, thank you for choosing CIT TECHNOLOGY FINANCING SV INC.

If you or your agent or broker have any questions relating to insurance, our insurance representative can be reached at 1-888-873-1917.

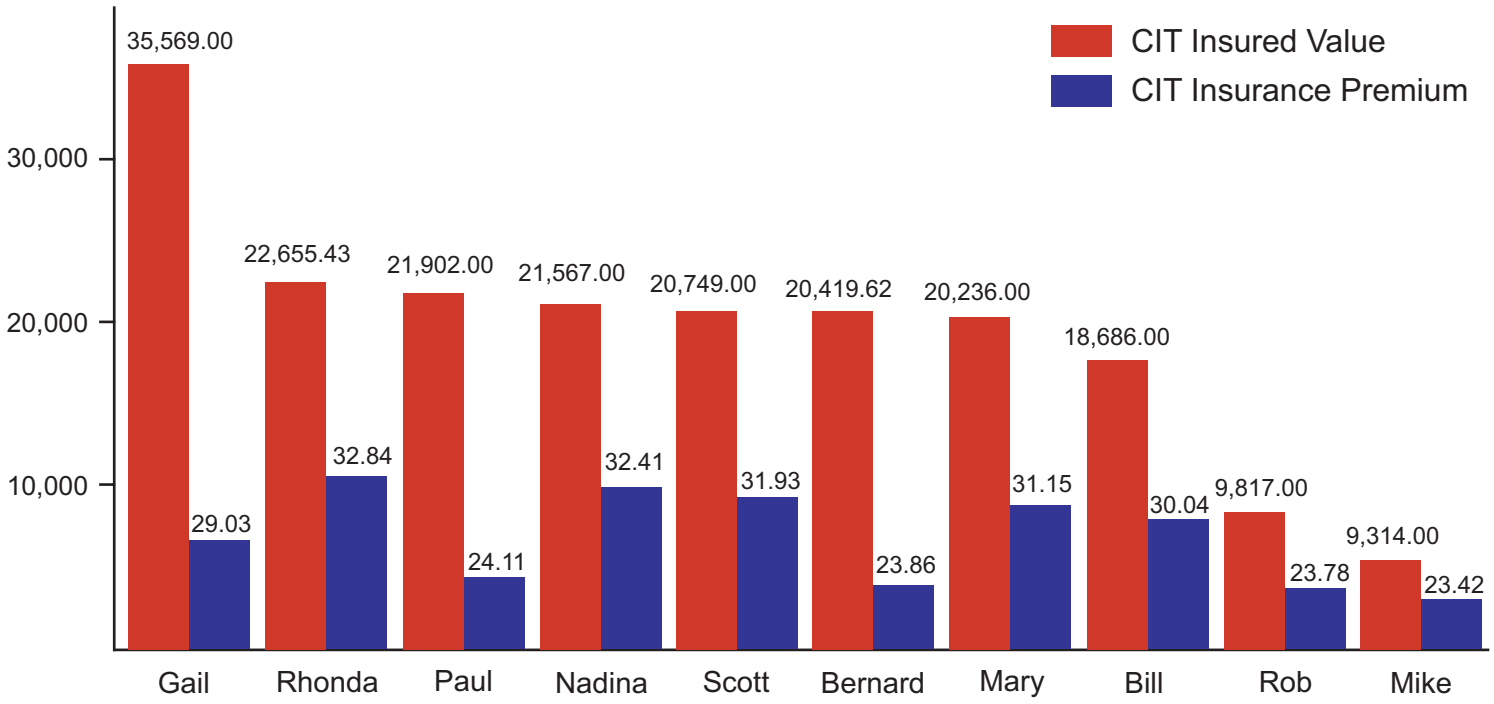
Sincerely,

CIT TECHNOLOGY FINANCING SV INC

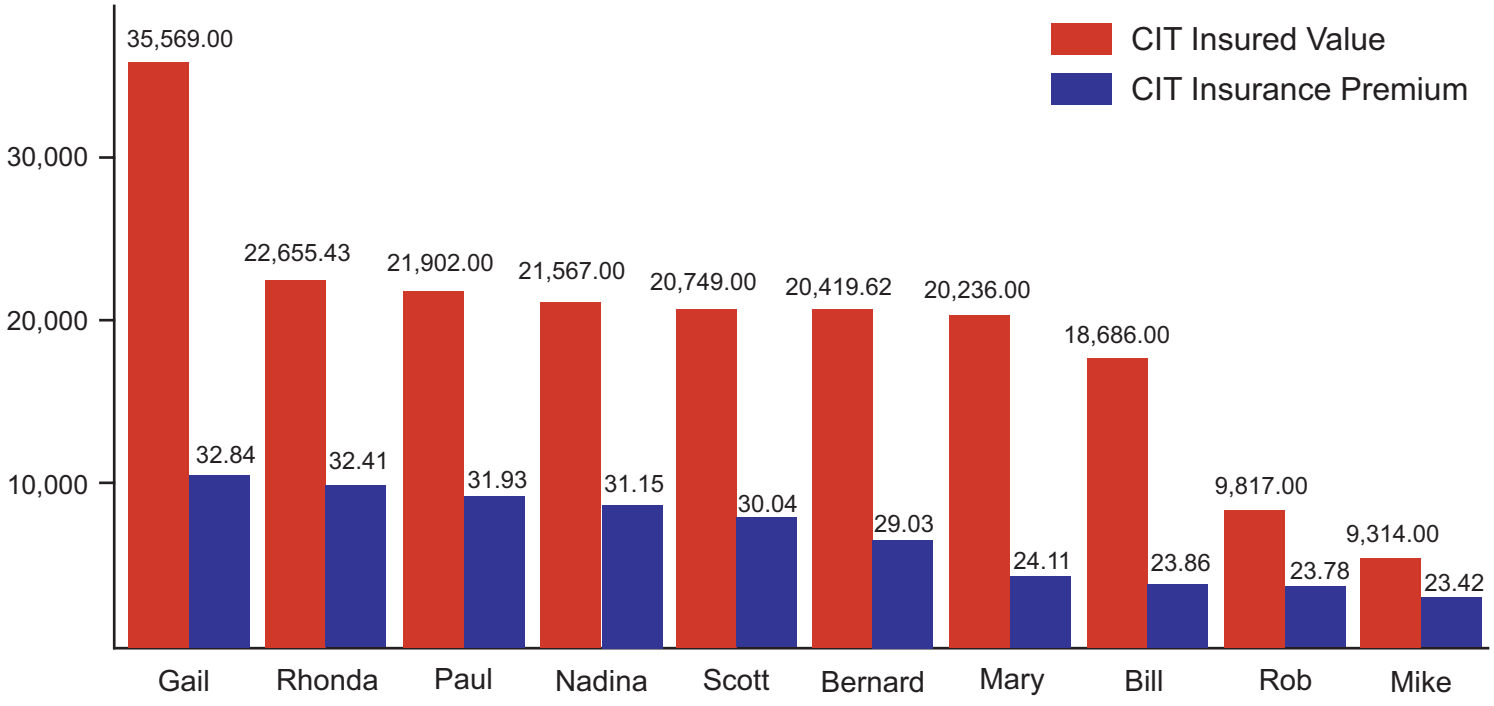
Enclosure

CIT's stated "Insured Valued"
Do not Correlate with Premium Charge
in 10 Randomly Sampled Leases

ACTUAL (Highest Insured Amounts Do Not Correlate to Highest Premiums)



EXPECTATION (Highest Insured Amounts Should Correlate to Highest Premiums)



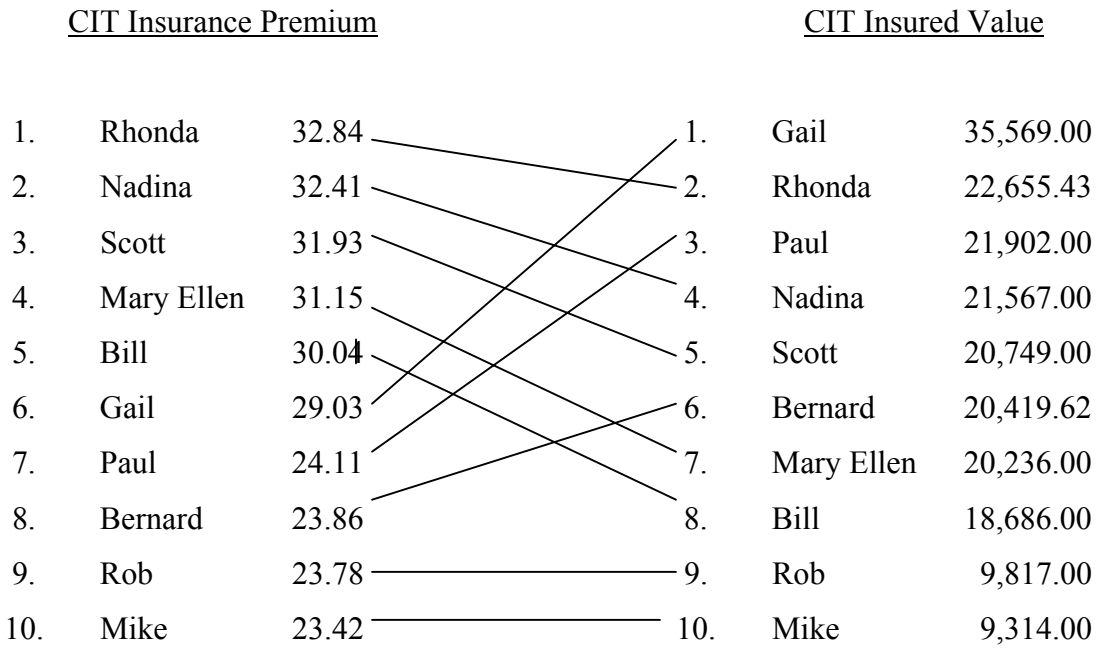
Violations of Insurance Regulations

Systematically Comparing CIT's Insurance Premiums with their Assignment of "Insured Values" Reveals Disturbing Inconsistencies

With an examination of many CIT leases, a bizarre and disturbing pattern emerges. Premiums that CIT charged to its Norvergence lessee customers for the same Matrix equipment were random and uncorrelated to the "insured values" that CIT named to its insurer.

I have taken 10 CIT customers and ranked their premiums and "insured value" 1-10, with 1 the highest amount and 10 the lowest. The highest insured values should have the highest premiums and the lowest insured values the lowest premiums. As this chart illustrates, there is little correlation between the two.

When Compared, Ten CIT Customer's Premiums and the "Insured Value" Basis, have little correlation:



Look at the chart above. Mary Ellen pays CIT a **$31.15** premium for the "insured value" they gave her, **$20,236**. She pays a whopping **$7.29** more than Bernard, who pays only **$23.86,** for the "insured value" of **$20,419.62.** Not only is Mary Ellen's premium **$7.29** higher than Bernard's, but the basis for her insurance premium, **$20,236,** is **$146.62** *less* than Bernard's **$20,419.62.**

The following Comparison Chart of 8 different CIT's Norvergence leases highlight some of these troubling contradictions. These 8 were not hand-selected but the first 8 CIT leases cases that I become aware of by random:

CIT: Comparison Chart of Eight Different CIT's Norvergence Leases

Scott	Mike	Bill	Rhonda	Jerri	Bernard	Paul	Donna
1 Matrix (2 cards)	1 Matrix SOHO	1 Matrix SOHO	2 Matrix (2 cards)	1 Matrix SOHO	1 Matrix (1 card)	1 Matrix SOHO	1 Matrix SOHO
26,231.40 Total lease	11,617.80 Total lease	23,623.20 Total lease	28,641.00 Total lease	12,363.60 Total lease	26,601.00 Total lease	28,767.00 Total lease	18,369.60 Total lease
3533.12 Retail list	400.00 Retail list	400.00 Retail list	6152.00 [2machines] Retail list	400.00 Retail list	3330.12 Retail list	400.00 Retail list	400.00 Retail list
1550.00 Wholesale	200.00 Wholesale	200.00 Wholesale	3100.00 [2machines] Wholesale	200.00 Wholesale	1550.00 Wholesale	200.00 Wholesale	200.00 Wholesale
31.93 Insurance premium	23.42 Insurance premium	30.04 Insurance premium	32.84 [2machines] Insurance premium	17.00 Insurance premium	23.86 Insurance premium	24.11 Insurance premium	27.23 Insurance premium
20,749.00 CIT's stated "insured value"	9,314.00 CIT's stated "insured value"	18,686.00 CIT's stated "insured value	22,655.43 [2machines] CIT's stated "insured value"	NA CIT';s stated "insured value"	20,419.62 CIT's stated "insured value"	21,902.00 CIT's stated "insured value"	NA Cit's stated "insured value"

The Matrix Puzzle

Let's start with the Matrix T1. In our chart we have 3 cases: Scott has one Matrix with 2 cards; I (Rhonda) have two Matrix with 2 cards; and Bernard has one Matrix with 1 card. Logic allows us to assume that two boxes would be worth more than one. We'd also assume that 2 cards would be worth more than 1 card. (This is why the joke 1st prize is 1 week in Philadelphia; and 2nd prize is 2 weeks in Philadelphia works—it's logically unexpected and you immediately get the point. In this hierarchy, more is worse, not better.) However, instead of the two Matrix with 2 cards being the most valuable of the three, in CIT's topsy-turvy accounting world, the two are the *least* valuable. Just look at the chart. Using a simple correlation analysis technique, I numbered the total lease amount numbers and the insurance premiums CIT charged in three cases of Matrix 2001 model in a 1-3 hierarchy. For example, the top or highest lease total is ranked 1 and the bottom or lowest is 3. Again, logically one would expect a correlation – the highest lease amount per Matrix would correlate with the highest insurance premium.

Illogically, Bernard's one Matrix 2001 with only 1 card, that we would predict as the least expensive, with the lowest premium, is ranked 1 with the highest lease total with the lowest premium. My total lease of **$28,641** for 2 Matrix with 2 cards, has the highest premium at **$32.84** but Scott's box at **$26,123.40** has a premium of **$31.93**.

The Matrix SOHO Mystery

Among the 8 CIT lease cases in the chart are two product types: the Matrix and the Matrix SOHO. As discussed above, **the SOHO retailed for $400 (wholesale $200)** and **the Matrix listed for 3, 301.12** with no card, and approximately $223 list price is added for each card (the **wholesale cost, $1,550**, was not increased by additional cards according to Adtran).

With this said, one would predict that the lease totals for the Matrix 2001, 2003, SB models would be significantly higher than for the Matrix SOHO models; and yet the highest total lease of all 8 is a Matrix SOHO. The total lease amount for the *same* Matrix SOHO equipment ranges from **$11,617** to **$28,767**. I circled the five Matrix SOHO and labeled the total lease amount in a 1 to 5 hierarchy, representing 1 as the top amount and 5 the bottom. I also circled the five insurance premiums for the Matrix SOHO as 1 to 5, also representing the highest amount as 1 and the lowest 5. The next chart rather dramatically demonstrates the fundamental lack of correlation between total cost and insurance premiums in all five instances of the Matrix SOHO equipment. The number 1 and top lease total is correlated with the number 1 and largest insurance amount with a line, and so forth through number 5.

The Comparison Chart below shows no correlation between the cost of leased equipment and the insurance premiums among the five cases of the Matrix SOHO. Again, the prediction would be that highest premium through the lowest (1-5) would correlate to the highest lease amount to the lowest (1-5). The lines would be vertical between the lease value and the insurance premium if the 1 to 5 hierarchical order correlated.

CIT: The Comparison Chart shows no correlation between the cost of leased equipment and the insurance premiums among the five cases of the Matrix SOHO

Scott	Mike	Bill	Rhonda	Jerri	Bernard	Paul	Donna
1 Matrix (2 cards)	1 Matrix SOHO	1 Matrix SOHO	2 Matrix (2 cards)	1 Matrix SOHO	1 Matrix (1 card)	1 Matrix SOHO	1 Matrix SOHO
26,231.40 Total lease	11,617.80 **5** Total lease	23,623.20 **2** Total lease	28,641.00 Total Lease	12,363.60 **4** Total lease	26,601.00 Total lease	28,767.00 **1** Total lease	18,369.60 **3** Total lease
3533.12 Retail list	400.00 Retail list	400.00 Retail list	6152.00 [2machines] Retail list	400.00 Retail list	3330.12 Retail list	400.00 Retail list	400.00 Retail list
1550.00 Wholesale	200.00 Wholesale	200.00 Wholesale	3100.00 [2machines] Wholesale	200.00 Wholesale	1550.00 Wholesale	200.00 Wholesale	200.00 Wholesale
31.93 Insurance premium	23.42 **4** Insurance premium	30.04 **1** Insurance premium	32.84 [2machines] Insurance premium	17.00 **5** Insurance premium	23.86 Insurance premium	24.11 **3** Insurance premium	27.23 **2** Insurance premium
20,749.00 CIT's stated "insured value"	9,314.00 CIT's stated "insured value"	18,686.00 CIT's stated "insured value	22,655.43 [2machines] CIT's stated "insured value"	NA CIT';s stated "insured value"	20,419.62 CIT's stated "insured value"	21,902.00 CIT's stated "insured value"	NA Cit's stated "insured value"

The History of CIT' Solicitation of Insurance to former Norvergence Customers

With the assignment of Norvergence leases to CIT days or weeks after Norvergence leases were signed, CIT was the first of the two leaseholders to enforce the insurance clause in the rental agreement. CIT Technology Financing SV INC sent all the lessees an insurance letter. They wrote, "**As you know one of the terms of our lease or CSC agreement requires that you maintain insurance…for the replacement value of the leased equipment, naming us as loss-payee."**

CIT next offered a selection of either one of "two options" for lessees to fulfill their requirement. They wrote, "You can satisfy this requirement by obtaining your own insurance or by taking advantage of the coverage which CIT Technology Financing SV INC has arranged for the equipment under its own insurance policy."

Option 1- Insure Equipment Under Our Property Insurance Policy

Since many customers prefer not to obtain their own policy on the leased equipment, CIT Technology Financing SV INC has procured its own coverage on the leased equipment which satisfies the property insurance requirement contained in your lease. Protecting the equipment and the policy of CIT Technology Financing SV INC is easy. Unless you decide to obtain your own insurance policy, there is nothing for you to do, the equipment is covered under the policy we have in effect as of the date you accept the insurance by remitting payment as described below...If you elect this option by not acquiring your own insurance policy, we'll add **_X_ , which includes the insurance reimbursement and other related charges, to each of your monthly invoices. This reinbursement charge is included on your monthly invoice as a separate line item.**

Option 2- Use Your Own Insurance Carrier

If you wish to use your own property insurance on the leased equipment, simply have your agent or broker submit your proof of insurance to our leased insurance representative. Your agent or broker must reference your property insurance for the equipment includes (sic) ***(1) CIT Technology Financing SV INC as "loss payee" (2) an insured value of _X_ …We appreciate your assistance in assuring that the equipment is properly insured.***

What the Norvergence Lease Contract States About Insurance

The insurance letter, as quoted above, notably refers to the "property insurance requirement contained in your lease." The text in the Norvergence lease is as follows:

> **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 will list us as loss payee**. You will also carry public liability insurance with respect to the Equipment and the use thereof and name 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 transfer clear title to such replacement Equipment to us, such Equipment shall be subject to the Lease and deemed the equipment, or (c) **pay to us the present value of the total of all unpaid rental payments 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 Lease 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 obligations**. **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 DUE 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.**

The CIT's Insurance Letter Referred to the Premium as a Reimbursement

> The following is the rate charged CIT according to their insurer, Assurant:
>
> The premium for the first $2,500 is $154. The remainder cost per hundred is 0.86. This will give you the annual premium. Divide the annual premium by 12 to get the monthly premium. Multiply by months in term (59) and divide by # of billing cycles (60) to get premium amount.

I had Dr. Barry Cipra, a mathematician, and a well known math reporter for *Science* Magazine, do the calculations for me. The resulting numbers made no sense. First we used the number of the full lease, $28,641. However, **the total lease amount would have to be $30,416.30, not $28,641 using the insure rate formula to come up with my monthly premium of $32.84.**

Next we tried CIT's "insured value" number that I was suppose to give to my carrier. No good again. **The monthly premium for $22, 655 would be $27.28, not the $32.84 that I was paying.** We then used the "inventory amount." Forget this as well. **The premium for $8,960 replacement coverage would be, using the formula, $17.46.**

How did CIT get the $32.84?

A letter from Assurant offered a clue. Her last sentence was disturbing. "Any additional amounts charged by CIT Technology Financing SV Inc. ("CIT") in connection with the insurance coverage offered through CIT should be discussed directly with CIT."

Extra Charges? The insurance letter sent by CIT used the words "reimbursement" twice regarding the $32.84 premium. ***Their statement that this premium was a "separate line item" also supported the apparently obvious interpretation that this was not a sale of insurance with profits to them if you took their insurance offer***. The only additional wording they used once with "insurance reimbursement" and "reimbursement charge" was "and other related charges." See wording below from CIT's insurance letter:

> If you elect this option by not acquiring your own insurance policy, we'll add **_$32.84_ , which includes the insurance reimbursement and other related charges, to each of your monthly invoices. This reimbursement charge is included on your monthly invoice as a separate line item.**

I still do not have an answer from CIT as to an itemized account of what the extra charges are in my $32.84 premium. A CIT competitor, Preferred Capital, reveals the application of extra charges in their insurance letter to Norvergence lessees. They write, "Should you use program to protect the leased equipment, we will bill you a monthly insurance charge of X, which includes all premiums, charges, fees, and profit to us for providing this service." When I selected CIT's Option 1, I dutifully paid their request for a premium up until the time of the Norvergence bankruptcy. It was afterwards that I had the revelation that the resale value of the Matrix box in the marketplace was $100 on Ebay. I was deceived by CIT's appraisal of the equipment's "insured value," and was commensurately overcharged for premiums.

I had no idea I was paying profits and fees in my premium. Logically, that I am over-paying is a fact, since the total lease value would need to be $30, 416.30 as a basis for my $32.84 premium and my lease total is only $28,641.

In the Norvergence contract, the clause on insurance states, with original emphasis:

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 DUE 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.

I indeed did "not give them proof of physical damage insurance" as stated in above paragraph. The reason why I did not was because I chose CIT's Option 1, as demonstrated by having paid for their insurance. Does this point of fact—that I did not send in a proof of insurance because I was taking *their* insurance-- allow for what sounds like a resulting penalty of "fees," "profit," and "increased credit risk" and "internal overhead costs" for negligence? The insurance letter says "Unless you decide to obtain your own insurance policy, there is nothing for you to do." Will this contract and not the letter paragraph, be the justification for CIT's hidden charges in my premiums and those of many others? Since there is profit instead of just a pass-through, is CIT licensed to sell insurance in this form?

CIT lists "customer's insurance coverages" as one of their operations subjected to regulatory authorities for which they are accountable in their 2003 Annual Report:

CIT's 2003 Annual Report and SEC Filing (page 6) [emphasis in bold and underlined mine]:

Regulation

Our operations are subject, in certain instances, to supervision and regulation by state, federal and various foreign governmental authorities and may be subject to various laws and judicial and administrative decisions imposing various requirements and restrictions, which, among other things, (i) regulate credit granting activities, including establishing licensing requirements, if any, in various jurisdictions, (ii) establish maximum interest rates, finance charges and other charges, (iii) **regulate customers' insurance coverages**, (iv) require disclosures to customers, (v) govern secured transactions, (vi) set collection, foreclosure, repossession and claims handling procedures and other trade practices, (vii) prohibit discrimination in the extension of credit and administration of loans and (viii) regulate the use and reporting of information related to a borrower's credit experience and other data collection....

Excerpt Followed By Entire Settlement Document:

In the Matter of:

TCF LEASING, INC. d/b/a TCF Express Leasing,

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE /DISCONTINUANCE

This Assurance of Voluntary Compliance /Discontinuance ("Assurance") is entered into

by the Attorneys General of the States of Arizona, California, Colorado, Florida, Georgia,[1] Louisiana, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, and Texas,("States"), acting pursuant to their respective consumer protection statutes and TCF Leasing, Inc., d/b/a TCF Express Leasing ("TCF"). As used herein,[2] TCF shall refer to TCF Leasing, Inc. and its successors and assigns, and any wholly owned subsidiaries, which hold Equipment Rental Agreements for customers of the former **NorVergence** which were taken by assignment.

Relevant Excerpt

Even after the termination of telecommunications service to the customers, and while the customers were required to pay higher costs for alternative telecommunications services provided by other carriers which had no use for the Matrix and Soho boxes, most of the leasing companies, improperly continued to enforce the Equipment Rental Agreements as against the customers. Respondent TCF, however, did not attempt to enforce the Equipment Rental Agreements following the filing of the NorVergence bankruptcy, and TCF ceased billing customers.

I. STATES' POSITION

1.

The statements contained in this "States Position" Section represent the position of the States only with respect to the business practices of **NORVERGENCE**, Inc. and **NORVERGENCE** CAPITAL LLC, including the assignment and procurement of certain Equipment Rental Agreements to and for several leasing companies, including respondent TCF Express Leasing, and TCF does not admit the truth of any of the statements contained in this "States' Position" Section.

2.

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

3.

NorVergence Capital LLC is a limited liability corporation and a subsidiary of **NorVergence**, Inc., with offices at 550 Broad Street, Newark, New Jersey 07102. **NorVergence** Capital LLC is a debtor, along with **NorVergence**, Inc. in the bankruptcy proceeding, Docket 04-
32079-RG. Prior to the bankruptcy, **NorVergence** Capital LLC, together with **NorVergence**, Inc.,
was engaged in the business of offering for sale and reselling telecommunications service, together with the provision of certain telecommunications equipment, to small businesses and not-for-profit organizations in the States. **NorVergence**, Inc. and **NorVergence** Capital LLC are hereinafter collectively referred to as "**NorVergence**."

4.

Respondent TCF Leasing, Inc., d/b/a TCF Express Leasing ("TCF") is
a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located at 11100 Wayzata Blvd., Suite 801, Minnetonka, MN 55305. TCF is one of the leasing companies which held Equipment Rental Agreements with **NorVergence** customers in the States and elsewhere. TCF obtained its **NorVergence** Equipment Rental Agreements by assignment from **NorVergence**. It has a total of forty-two Equipment Rental Agreements from customers in fifteen states.

5.

TCF holds Equipment Rental Agreements from customers in the states of Arizona, California, Colorado, Connecticut, Florida, Georgia, Louisiana, Maryland, Michigan, Missouri, New Jersey, New York, Pennsylvania, Rhode Island, and Texas. The aggregate rental payments due on TCF's **NorVergence** leases is $1,453,074. TCF has collected a total of $10,973.36 on these Agreements prior to the **NorVergence** bankruptcy. Unlike other leasing companies, TCF did not attempt to enforce the **NorVergence** Equipment Rental Agreements subsequent to the **NorVergence** bankruptcy.

NorVergence's Fraudulent Business Scheme

6.

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

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reduced prices compared to the prices charged by the customers' then current service providers.

7.

NorVergence represented that customers would receive over a five year period, dramatic savings of 20-60% on telecommunications services and unlimited free minutes. **NorVergence** claimed to be offering these services through its purported alliances with Nortel Networks and Qwest Communications. **NorVergence** further represented that its highly beneficial service offering was made possible by a purportedly proprietary, technologically innovative, and carrier neutral "black box" called, the "Matrix Solution," that would be installed on the customer's premises. In fact, the "Matrix Solution" did not eliminate per minute charges or make cost savings possible.

8.

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

9.

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

10.

Through deceptive and high pressure sales tactics and outright trickery, **NorVergence** salespeople signed customers up, putting the bulk (*i.e.*, at least 80%) of the service agreement into an equipment finance lease, designated "Equipment Rental Agreement," purportedly for the Matrix box. The rental payments due on the Equipment Rental Agreements varied from approximately $200 to $5,700 per month (or $12,000 to over $340,000 over a 60 month lease),

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while the actual price of the Matrix was not greater than $1,500. Customers were not provided the option to purchase the box.

11.

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

and hardware, while the customers' "qualifications" were being investigated.

12.

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

13.
Under the circumstances, the Equipment Rental Agreements are **unconscionable** in that they contain terms that are unreasonably and unfairly harsh and one-sided in favor of **NorVergence** and the leasing companies. In fact, included in the fine print of the Equipment Rental Agreements are provisions that purported to:
a.
remove any obligations by assignees of **NorVergence** to the customers;
b.
require that all legal actions relating to the agreement be brought in a forum distant from the customer's place of business, in many cases where the leasing company that would take a assignment was located, unknown at the time the customer signed the contract ("floating jurisdiction clauses");

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c.
characterize the vast majority of the total fees agreed to by the customer as payments for the Matrix box which grossly exceeded its actual price and value;
d.
characterize the Equipment Rental Agreement as a finance lease under Article 2A of the Uniform Commercial Code in a fraudulent and **unconscionable** attempt to gain the protections of
equipment finance leases. In fact, the Agreement was for an integrated telecommunications service offering, although the service component was not documented in the Agreements. Moreover, the equipment purportedly financed under the Agreement was not first offered for sale to the customers or offered in a buy-out to the customer at the end of the Agreement's five-year term;
e.
suggest that the customers were given information about the comparative costs of purchasing and renting the Matrix box that enabled them to make a reasoned decision to rent rather than purchase (*i.e.*, "You understand that the Equipment may be purchased for cash or it may be rented."), when, in fact, the customers had no opportunity to purchase the Matrix, and were not provided any information about the costs of the box; and
f.
waive all the customer's defenses to demands for payment, even if the promised services were not provided ("hell or high water clauses").
14.
Soon after the customers signed the Equipment Rental agreements, **NorVergence** assigned the agreements to one of the leasing companies. In some cases, as with respondent, the **NorVergence** salesperson had the customer sign an Equipment Rental Agreement directly with the leasing company as "owner."
15.
The leasing companies paid **NorVergence** the full-five year Equipment Rental Agreement value less a "lease factor" such that **NorVergence** received approximately 75-85% of the value of

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the Equipment Rental Agreements up front.
16.
The **NorVergence** business plan was a "Ponzi" scheme. **NorVergence** deceived small, unsophisticated businesses into signing sham equipment finance leases with **unconscionable** terms, and obtained up front payments from the assignment or procurement of those sham leases. **NorVergence** then used these payments to purchase the telecommunications services it resold to its customers. Yet even with those monies, the **NorVergence** business plan was doomed to fail before **NorVergence** could fulfill the five year term it promised to provide service to the customers because (a) **NorVergence** was selling unlimited local, long distance, high speed Internet and wireless service for a fixed monthly price, while it was actually liable to Qwest, T-Mobile, and other carriers on a per minute toll basis; (b) the cost of providing the unlimited service **NorVergence** was selling far exceeded the small payments that customers were required to make directly to **NorVergence** for their telecommunications service, together with the monies **NorVergence** received from the leasing companies; and (c) **NorVergence** had promised the customers long-term (*i.e.*, five year) service, but had no long-term contracts in place to provide that service.
17.
Less than three years after **NorVergence** put its scheme into effect, **NorVergence** failed to pay its obligations to its carriers and suppliers, triggering the filing of an involuntary Chapter 11 bankruptcy proceeding against it. Service to the customers was turned off on or about July 15, 2004.
18.
Although **NorVergence** had represented to its customers that its Matrix box could be used with any carrier of their choice, after the termination of telecommunications service, the customers could not find carriers who would use the Matrix box to provide service to them. In

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fact, the customers were required to pay significantly more for their telecommunications services despite their having the Matrix box which **NorVergence** had touted as a cost savings solution.
19.
Even after the termination of telecommunications service to the customers, and while the customers were required to pay higher costs for alternative telecommunications services provided
by other carriers which had no use for the Matrix and Soho boxes, most of the leasing companies,
improperly continued to enforce the Equipment Rental Agreements as against the customers. Respondent TCF, however, did not attempt to enforce the Equipment Rental Agreements following the filing of the **NorVergence** bankruptcy, and TCF ceased billing customers.
20.
The practices which **NorVergence** engaged in as set forth in paragraphs 6 through 19 are fraudulent under the laws of the States as set forth in footnote 2, and the Equipment Rental Agreements **NorVergence** entered into with its customers are **unconscionable** under the laws of the States as set forth in footnote 2 and the Uniform Commercial Code ("UCC") 2-302. Accordingly, the Equipment Rental Agreements should be rescinded as of the date that telecommunications services to **NorVergence**'s customers was terminated.

II. TCF'S POSITION

1.

The statements contained in this "TCF's Position" Section represent the position of TCF only, and the States do not admit the truth of any of the statements contained in this "TCF's Position" Section.

2.

Without an admission as to the State's position on the enforceability of the Equipment Rental Agreements, TCF desires to resolve this investigation by forgiving 100% of any monies owed on the Equipment Rental Agreements since July 15, 2004.

3.

TCF affirmatively alleges that it has at all times acted lawfully with respect to its

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NorVergence Equipment Rental Agreements. TCF supports the goals of the State Attorneys General in relieving the customers and any guarantors from any obligations under the **NorVergence** Equipment Rental Agreements.

III. GENERAL AGREEMENTS

1.

The parties have agreed to resolve the issues raised during the States' inquiry by entering into this Assurance. TCF is entering into this Assurance solely for the purpose of settlement and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, or of any other matter of fact or law, or of any liability or wrongdoing, all of which TCF expressly denies.

2.

Each State agrees that such State shall not proceed with or institute any civil action or proceeding based upon the above-cited consumer protection statutes against TCF or its parents, and all of its subsidiaries and affiliates, past and present, and their past and present representatives, successors, administrators, employees, shareholders, officers, directors, boards of directors, attorneys, agents, servants, and assigns, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys' fees or costs, for any conduct or practice prior to the Effective Date of this Assurance which relates to the subject matter of this Assurance. Notwithstanding the foregoing, a State may institute an action or proceeding to enforce the terms and provisions of this Assurance.

3.

This Assurance may be entitled an "Assurance of Voluntary Compliance" or an "Assurance of Discontinuance" as provided by applicable State law.

4.

As to each customer and guarantor listed on the chart annexed hereto as Exhibit A

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which elects to participate in the settlement terms agreed to herein (hereinafter, "participating customer"), TCF agrees to forgive 100% of the remaining outstanding balance due on the participating customers' obligations to TCF under the Equipment Rental Agreements and refund any rental payments or other amounts which have been paid to TCF since the filing of the

NorVergence bankruptcy on June 30, 2004.
5.
In the event that it is subsequently determined that additional customers in the same or additional states have **NorVergence** Rental Agreements with TCF, TCF shall make the same offer available to such customers on the same terms.
6.
Within thirty (30) calendar days of the Effective Date of this Assurance, TCF shall mail a letter in the form annexed hereto as Exhibit B to each customer listed on Exhibit A. Such letter shall inform the customers and guarantors of the opportunity to participate in the settlement described herein. As to four customers who have agreed to an independent settlement with TCF after July 15, 2004, within five (5) calendar days of the Effective Date of this Assurance, TCF will issue refunds to those customers of any amounts paid.
7.
As a condition to TCF's agreement to forgive 100% of the customers' outstanding obligations under the Equipment Rental Agreements, the participating customers will be required to sign a Settlement and Mutual Releases in the form annexed hereto as Exhibit B.
8.
Within ninety (90) days of the Effective Date of this Assurance, TCF shall submit an affidavit to the Attorney General of each State, subscribed to by an officer of the corporation, attesting that it sent the letters to the customers and guarantors of that Attorney General's State listed in Exhibit A in accordance with the terms of paragraph 5 of this Assurance.

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9.
This Assurance shall be governed by the laws of the respective States. Nothing in this Assurance shall be deemed to permit or authorize any violation of the laws of any state or otherwise be construed to relieve TCF of any duty to comply with the applicable laws, rules and regulations of any state, nor shall anything herein be deemed to constitute permission to engage in any acts or practices prohibited by such laws, rules or regulations.
10.
Nothing in this Assurance shall be construed to authorize or require any action by TCF in violation of applicable federal, state or other laws. TCF agrees that this Assurance constitutes a legally enforceable obligation of TCF in accordance with its terms.
11. This Assurance does not constitute an approval by the States of any of TCF's programs or practices and TCF shall not make any Representation to the contrary.
12.
This Assurance may be executed in counterparts.
13.
The "Effective Date" of this Assurance shall be December 23, 2004
14.
Nothing in this Assurance shall be construed as a waiver of any private rights of any person, consumer or customer except to the extent such person, consumer or customer executes a Settlement and Mutual Releases in the form annexed hereto as Exhibit C.
15. This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to

this Assurance must be in writing and signed by duly authorized representatives of all the parties hereto.

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16.

The undersigned representative for each party certifies that he/she is fully authorized by the party he/she represents to enter into the terms and conditions of this Assurance and to legally bind the party he/she represents to the Assurance.

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FOR THE STATES
TERRY GODDARD
Attorney General
State of Arizona
NOREEN R. MATTS
Assistant Attorney General
BILL LOCKYER
Attorney General
State of California
HOWARD WAYNE
Deputy Attorney General
KEN SALAZAR
Attorney General
State of Colorado
GARTH C. LUCERO
Assistant Attorney General
CHARLIE CRIST
Attorney General
State of Florida
LORI S. ROWE
Assistant Deputy Attorney General
JOSEPH B. DOYLE
Administrator
Governor’s Office of Consumer Affairs
State of Georgia
ANNE S. INFINGER
Director, Legal Division
CHARLES C. FOTI, JR.
Attorney General
State of Louisiana
KRISTI M. GARCIA
Assistant Attorney General
J. JOSEPH CURRAN, JR.
Attorney General
State of Maryland
WILLIAM D. GRUHN
Assistant Attorney General
THOMAS F. REILLY
Attorney General
Commonwealth of Massachusetts

KARLEN J. REED
Assistant Attorney General
MICHAEL A. COX
Attorney General
State of Michigan
KATHY FITZGERALD
Assistant Attorney General
PETER C. HARVEY
Attorney General
State of New Jersey
JEFFREY KOZIAR
Deputy Attorney General
ELIOT SPITZER
Attorney General
State of New York
JOY FEIGENBAUM
Assistant Attorney General
ROY COOPER
Attorney General
State of North Carolina
KEVIN ANDERSON
Assistant Attorney General
GERALD J. PAPPERT
Attorney General
Commonwealth of Pennsylvania
E. BARRY CREANY
Senior Deputy Attorney General
PATRICK C. LYNCH
Attorney General
State of Rhode Island
EDMUND F. MURRAY, JR.
Special Assistant Attorney General
GREG ABBOTT
Attorney General
State of Texas
LEELA R. FIRESIDE
Assistant Attorney General

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FOR TCF LEASING D/B/A TCF EXPRESS LEASING

We the undersigned, who have the authority to consent and sign on behalf of the parties in this matter, hereby consent to the form and contents of the foregoing Assurance and to its entry:

Signed this _____ date of December, 2004

TCF LEASING, D/B/A TCF EXPRESS LEASING

By: _____

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FOR THE STATE OF NEW YORK

IN THE MATTER OF:
TCF LEASING, INC. D/B/A TCF EXPRESS LEASING,
RESPONDENT.
Dated: December , 2004
ELIOT SPITZER
Attorney General of the State of New York

_____

JOY FEIGENBAUM
Assistant Attorney General
Bureau of Consumer Frauds and Protection
120 Broadway
New York, NY 10271

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EXHIBIT A
[CHART]

Exhibit B
NOTICE TO BUSINESSES AND NOT-FOR-PROFIT ORGANIZATIONS THAT ENTERED INTO AN EQUIPMENT RENTAL AGREEMENT WITH TCF [DIRECTLY OR] BY ASSIGNMENT FROM NORVERGENCE, INC., AND TO ANY GUARANTORS
[Date]
Dear [name of Lessee and/or Guarantor]:
You are receiving this notice because the records of TCF Leasing, Inc., d/b/a TCF Express Leasing ("TCF") reflect that [Lessee] entered into an Equipment Rental Agreement (referred to herein as the "Rental Agreement") with TCF, [either directly or] by
assignment from NorVergence, Inc. ("NorVergence") in connection with its prior service from NorVergence, Inc. Pursuant to an agreement with the Attorneys General of the States of New York,_____ (the "Attorneys General"), TCF is offering you the opportunity to participate in a Settlement Program in which you will be forgiven 100% of the outstanding balance on the Rental Agreement, no part of which has been collected since the filing of the NorVergence bankruptcy on June 30, 2004, and settle any and all disputes between you and TCF arising from the Rental Agreement.
The Settlement Program Offered By TCF:
If you elect to participate in this Settlement Program, TCF will (a) forgive one hundred percent (100%) of the remaining balance due under [Lessee's] Rental Agreement, no part of which has been collected since the filing of the **NorVergence** bankruptcy on June 30, 2004. In exchange for the benefits provided above, you must agree to release TCF from any claims concerning your Rental Agreement, as described more fully below.
To inform TCF of your acceptance of this Settlement Program, **you must complete, sign and return to TCF, by [date 60 days from the date of the mailing of this notice] the enclosed document entitled "Settlement and Mutual Releases."** In that document, you must fully release TCF from, and agree not to sue TCF for any and all claims (including any claims as a member or representative of a putative class action) that you have or may have had

against TCF based upon [Lessee's] Rental Agreement. If you are currently involved in any litigation with TCF over [Lessee's] Rental Agreement and you wish to participate in the Settlement Program, you and TCF will mutually dismiss that action with prejudice. TCF, in turn, will fully release you from, and agree not to sue you for or to dismiss you from any and all claims
that it has or may have had against you based upon [Lessee's] Rental Agreement. Both you and TCF will retain all rights under law to enforce the "Settlement and Mutual Releases."
TCF has agreed to this Settlement Program for the purpose of avoiding the expense and inconvenience of litigation and it is not an admission on the part of TCF that it engaged in any form of unlawful conduct or business practices. Indeed, TCF expressly denies that it engaged in any such unlawful conduct or business practices and expressly denies that it is liable to any person or entity in connection with the rental of **NorVergence** telecommunications equipment.

If You Decide Not To Participate In The Settlement Program:
You are not obligated to participate in the Settlement Program agreed to by TCF and the Attorney General, and you have the right to consult with an attorney of your choosing before you decide whether to participate in the Settlement Program. Nothing in the settlement between TCF and the Attorneys General prevents you from pursuing any right or remedy at law which you may
have against TCF, except to the extent that you elect to participate in this settlement and execute a
Settlement and Mutual Release.
What You Would Be Agreeing To Pay If You Enroll In The Settlement Program:
TCF has the following information about the Rental Agreement and the amount you would be forgiven under the Settlement Program :
Balance remaining to be forgiven:_____
Please call [phone number] if you have any questions regarding this Settlement Program or your Rental Agreement account.
Yours truly,
TCF Leasing, Inc., d/b/a TCF Express Leasing

Exhibit C
SETTLEMENT AND MUTUAL RELEASES
between
[LESSEE AND ANY GUARANTOR] and **TCF LEASING, INC., d/b/a TCF EXPRESS LEASING**
I, _____, on behalf of the entity named above (the "Lessee") and/or as personal guarantor (together, the "Lessee and/or Guarantor"), elect to take advantage of the Settlement Program agreed to by the Attorneys General of the States of _____ and TCF Leasing, Inc. d/b/a/ TCF Express Leasing ("TCF") to resolve Lessee's Rental Agreement with TCF (the "Rental Agreement") at a substantial discount and to settle any and all disputes between Lessee and/or Guarantor and TCF arising from the Rental Agreement. With this Settlement and Mutual Releases I am: (1) enrolling in the Settlement Program; and (2) entering into a mutual release of claims with TCF and related parties.

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

1. **Enrolling In The Settlement Program**

I understand that, upon Lessee's and/or Guarantor's acceptance of this Settlement Program, TCF will forgive 100% of the outstanding balance due under the Equipment Rental Agreement, no
part of which has been collected since the filing of the **NorVergence** bankruptcy on June 30, 2004.

I also understand that TCF's records reflect the following information about Lessee's Rental Agreement account:

Balance remaining which will be forgiven _____

2. Release Of Claims

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

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

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

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

The signatory for the Lessee below represents that he or she is duly authorized to enter into this Settlement Agreement and Mutual Releases on behalf of the Lessee.
This Settlement and Mutual Releases shall be deemed accepted upon your return to TCF of an executed copy of this agreement.
IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned has caused this Settlement and Mutual Releases to be executed this ____ day of _____,
2004.
Dated:_____
[NAME OF LESSEE]
By:_____
[Name]
[Title]
[Address]
By:_____
[Name], as Guarantor
TCF Leasing, Inc., d/b/a TCF Express Leasing
By:_____
FILL OUT COMPLETELY AND SEND TWO SIGNED ORIGINALS TO TCF AT: PLEASE KEEP A COPY FOR YOUR RECORDS. A FULLY EXECUTED DOCUMENT WILL BE SENT TO LESSEE AND ANY GUARANTOR.

Source of Document

http://64.233.161.104/search?q=cache:4QUOMzq1pPQJ:www.oag.state.ny.us/telecommunications/filings/TCF_Assurance.pdf+unconscionable+norvergence&hl=en

Excerpts from
CIT SEC Filing 2004/2005

Three Specific Disclosures Regarding CIT'S Norvergence Legal Fight:

1. CIT Group annual 10-K filing (filed 3/7/05)

EXCERPTS: (Text repeated on page 10 and page 92)

NorVergence Related Litigation

On September 9, 2004, Exquisite Caterers v. Popular Leasing et al. ("Exquisite Caterers"), a putative national class action, was filed against 13 financial institutions, including CIT, who had acquired equipment leases ("NorVergence Leases") from NorVergence, Inc., a reseller of telecommunications and Internet services to businesses. The Exquisite Caterers lawsuit is now pending in the Superior Court of New Jersey, Monmouth County. Exquisite Caterers based its complaint on allegations that NorVergence misrepresented the capabilities of the equipment leased to its customers and overcharged for the equipment. The complaint asserts that the NorVergence Leases are unenforceable and seeks rescission, punitive damages, treble damages and attorneys' fees. In addition, putative class action suits in Florida, Illinois, New York, and Texas and several individual suits, all based upon the same core allegations and seeking the same relief, have been filed by NorVergence customers against CIT and other financial institutions.

On July 14, 2004, the U.S. Bankruptcy Court ordered the liquidation for NorVergence under Chapter 7 of the Bankruptcy Code. Thereafter, the Attorneys General of Florida, New Jersey, New York, Illinois, Massachusetts and Texas commenced investigations of NorVergence and the financial institutions, including CIT, which purchased NorVergence Leases. CIT entered into settlement negotiations with those Attorney Generals and with Attorneys General from several other states, including Pennsylvania and Massachusetts. In December 2004, CIT reached separate settlements with the New York and the New Jersey Attorneys General. Under those settlements, lessees in those states will have an opportunity to resolve all claims by and against CIT by paying a percentage of the remaining balance on their lease. Negotiations with other Attorneys General are continuing. CIT has also been asked by the Federal Trade Commission to produce documents for transactions related to NorVergence. In addition, on February 15, 2005, CIT was served with a subpoena seeking the production of

documents in a grand jury proceeding being conducted by the U.S. Attorney for the Southern District of New York in connection with an investigation of transactions related to NorVergence. CIT is in the process of complying with these information requests.

2. Transcript from CIT Year-Ending Earnings Conference Call

Moderator: Valerie Gerard
January 19, 2005
11:00 am CIT
http://www.cit.com/NR/rdonlyres/ezrl6gzlfqmxros2whvm5jsqcg2by44fndsyixxlxgo7df3fsu7qxsizaliqpegazy3fl5jsn7qh3nfid2wlnti5fzg/TranscriptQ4unedited.pdf#Page=8

page 8

Jeffrey Peek:
In the quarter profitability declined somewhat due to the charge-offs related to the NorVergence situation.

pages 33-34

Stephen Schulz: Okay great and then there was just one last housekeeping item. You had mentioned in the press release the charge-offs related to NorVergence, what was the actual number and dollar number on those charge-offs and then how much exposure do you guys have as of the end of the fourth quarter?

Joseph Leone: The numbers in the aggregate - our charge-offs that weve taken are about $15 million between the two quarters, 10 or 11 in the third quarter and 4 or 5 this quarter. And then the remaining exposure that we have any concerns for are covered through and carved out in our loss reserve.

3. Previous 3rd Quarter CIT SEC Filing

Specialty Finance
* The increase in charge-offs for Specialty Finance - Commercial was due largely to **charge-offs taken with respect to leases to customers of NorVergence**, Inc., a bankrupt vendor currently subject to regulatory investigations. At September 30, 2004, **after taking into account charge-offs and loan loss reserves, the remaining outstandings of NorVergence customers is approximately $6.0 million**. (emphasis mine)

Excerpts: with Full Transcript Following

The most salient quotations are below. (However, the whole transcript is attached if you want to see the context). All 3 quotations are from the attached transcript regarding:

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CASE NO. 04-4467 (SRC)
November 1, 2004, 402 E. State Street, Trenton, New Jersey
B E F O R E: HONORABLE STANLEY R. CHESLER, USDJ

I. Quotation #1

Starting on Transcript **page 55.**..

Mr. Melodia, CIT Attorney [...]

17 To hear them describe it, it's unconscionable, per

18 se unconscionable. There should be a per se ruling
19 invalidating it all. But courts time and time again have

20 upheld the appropriateness of exactly this arrangement and,21 in fact, it's been enshrined in the UCC and it's been

22 enshrined in the cases that have upheld hell-or-high-water
23 clauses, and the reason for that, your Honor, is the

24 function of leasing companies in our economy is to make it
25 possible for businesses to obtain the use of these goods

Page 56

1 without having to buy them.

2 What the leasing companies bring to the table is

3 not expertise in the product. The value that they add to

4 these deals is capital and the willingness to take the risk

5 that the customer will be unable to pay. To play that role,

6 the expertise that leasing companies develop is in assessing

7 credit worthiness and it's not an exact science and there are

8 plenty of times that we get it wrong and we have to take

9 losses.

II. Quotation # 2

Page 69...

Mr. Glickman, Delage Landen Attorney....

24 The other argument they make, your Honor, in terms

25 of why we can't be holders in due course is that the pricing

Page 70

1 was supposedly disproportionate to the value of the boxes.

2 Even assuming that that were true, that doesn't mean that

3 there was a fraud here.

4 Even if we knew that different prices were being

5 charged for the boxes, even if we knew that they were having

6 a substantial markup of the boxes, that doesn't mean we were

7 on notice of their fraud.

8 They said the fraud is these boxes don't work. It

9 doesn't mean that we knew that these boxes don't have

10 anti-slamming technology, which they claim in one of their

11 affidavits was one of the misrepresentations, and it doesn't

12 mean that we knew of the alleged misrepresentation that they

13 also cite that NorVergence lied when it said that other

14 telecommunications carriers would continue to service if

15 NorVergence went bankrupt.

16 How are we supposed to know any of that stuff even

17 if we knew this about the pricing? Nor is there any

18 evidence that we did know about the pricing. They say it's

19 obvious. Anybody could have figured it out if they went to

20 the web, they say.

21 Well, if that's really true, your Honor, why didn't

22 they figure it out. Why didn't George Jon, the technology

23 company, figure it out?

24 Now, they put in an affidavit from an asserted

25 former NorVergence employee, David Rodriguez, you know, he.....

III. Quotation #3

Page 71....

Glickman continues...

9 Look at their own papers, your Honor, if you want

10 to know how supposedly obvious this fraud was. Let's go

11 back to Mr. Bellin again. Mr. Bellin says, I have over 20

12 years of experience in the telecom business and I have a

13 certification from the unit's manufacturer, Adtran, and I

14 conclude that this thing was radically overpriced and how

15 did I do it, how did I reach my conclusion?

16 I put the box through a test to determine whether

there was proprietary software, hardware or a special configuration that might warrant the price. We're expected to do that? We're expected to have 20 years experience like Mr. Bellin and to conduct Mr. Bellin's tests? So much for the idea that anybody could figure this out. They also attach a page in their reply papers from Adtran's web site discussing various models but there's no prices there and, in fact, if you look at Adtran's web site,

they say that what they gave NorVergence was a special different model. They say Adtran manufactured a special OEM version, integrated access device for NorVergence, also known as their Matrix unit, so, it wasn't a question of simply going to the Adtran site and saying, oh, yes, now I know what the price is for these units.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CASE NO. 04-4467 (SRC)

EXQUISITE CATERERS, LLC, et al., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

POPULAR LEASING USA., INC., et al., and DOE CORPS 1-40,

Defendants.

MOTIONS

November 1, 2004
402 E. State Street
Trenton, New Jersey

B E F O R E: HONORABLE STANLEY R. CHESLER, USDJ

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above-entitled proceedings.

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Official Court Reporter

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THE COURT: Well, I guess we better have appearances by counsel. We'll start off with plaintiffs.

MR. GRAIFMAN: Gary Graifman, Kantrowitz, Goldhamer & Graifman, co-counsel for plaintiffs.

MR. GREEN: Michael Green, Law Office of Michael Scott Green, co-counsel for plaintiffs.

MR. GLICKMAN: Good afternoon, your Honor. Alan Glickman, Schulte, Roth & Zabel, counsel for DeLage.

THE COURT: Let me stop you for a second, Mr. Glickman. Are you going to be doing the main argument?

MR. GLICKMAN: We tried to divide it up, your Honor, so, I will be doing a substantial portion of it but there will be others as well.

MR. MELODIA: Mark Melodia from Reed Smith in Princeton representing CIT Technology Financing Services, Inc.

MS. BETTINO. Good afternoon, your Honor. Diane Bettino from the law firm of Reed Smith, also on behalf of CIT.

MR. LEVY: Your Honor, my name is Robert Levy from the law firm of Scarinci & Hollenbeck, representing the

defendant Interchange Capital.

MR. SIEGEL: Andrew Siegel, Peretore & Peretore, representing Lackland Bank.

MR. HART: Bruce Hart, Hogan & Hartson, Wells Fargo

Financial Leasing.

MR. CURTIN: Tom Curtin, Graham, Curtin & Sheridan, also for Wells Fargo.

MR. COONER: Good afternoon, your Honor. David Cooner from McCarter & English for defendant DeLage Landen.

MR. LaSALLE: Good afternoon, your Honor. Frank LaSalle from Schulte, Roth & Zabel, DeLage Landen Financial Services.

MS. ROPER: Good afternoon. Mary Catherine Roper, from Drinker, Biddle & Reath. We represent ABB Financial and also General Electric Capital Corporation. I brought with me David Antczak and Alex Haldeman, also from Drinker, Biddle.

MR. MANNING: Francis Manning, Stradley, Ronon,

Stevens & Young, for Court Square Leasing, along with Pam Conover, Whiteford, Taylor & Preston.

MR. KARLIN: Good afternoon, your Honor. Steven Karlin, Platzer, Swergold, Karlin, for defendant IFC Credit Corp.

MR. DUBE: Good afternoon, your Honor. Michael Dube from the law firm of Sherman, Silverstein, Kohl, Rose & Podolsky for the co-defendant First Lease, Incorporated.

MR. VAN OORT: Your Honor, Aaron Van Oort from Faegre & Benson. We represent Lyon Financial Services, which does business as U.S. Bancorp Business Equipment

Finance Group.

MR. DEEB: Good afternoon, your Honor. Peter Deeb, Frey, Petrakis, Deeb, Blum, Briggs & Mitts. I'm here today on behalf of Popular Leasing, Studebaker Worthington, Sterling Bank, Liberty Bank, Dolphin Capital, ILC, Alpha Financial doing business as OFC Capital, Preferred Capital, Celtic Bank, Crown Bank Leasing, Commerce Commercial

Leasing, and Irwin Business Finance.

Your Honor, I have also Christine McGuigan from the firm with me today.

MR. SCHWARTZ: Good afternoon, your Honor. Frank Schwartz of the firm of Flamm, Boroff & Bacine, representing Patriot Commercial Lease.

MR. WEISENBECK: Good afternoon, your Honor. Thomas Weisenbeck from Bressler, Amery & Ross, representing BB&T Leasing Corporation.

MR. CAPASSO: Good afternoon, your Honor. I'm Armando Capasso, Ballard, Spahr, Andrews & Ingersoll, representing TCF Leasing.

MR. PERLMUTTER: Randy Perlmutter, Kantrowitz, Goldhamer & Graifman, also here, co-counsel for the plaintiffs.

THE COURT: Is that it? All right. I'm sorry, yes.

MR. RABINOWITZ: I'm Deputy Attorney General Joshua

Rabinowitz, representing the Attorney General of the State of New Jersey. We submitted an application.

THE COURT: I have your amicus brief. Now, it's a little bit weird because your motion to appear amicus is returnable December 1st.

MR. RABINOWITZ: Sixth actually.

THE COURT: The sixth. On the other hand, I presume somebody would like me to decide whether or not a preliminary -- a TRO should be issued a little bit earlier than that but, at any rate, look, I mean, I have read the brief, all right, and if there are any issues which defendants see in that which they think requires some further submissions, I'll be glad to hear from them with regard to it. Okay.

At this point let me hear from plaintiffs.

MR. GRAIFMAN: Good afternoon, your Honor. This case arises out of one of the largest frauds ever perpetrated on small businesses throughout this country involving the mechanism of equipment leasing.

The equipment involved in this case is the Matrix box, which was sold by NorVergence. This was a high-tech-looking box which was supposed to channel phone calls to the method that was the most cost effective and the

least expensive. However, as we now know, it didn't do that or anything else. It was essentially an ordinary telephone

router that was made by a company called Adtran, which sold it as two models, one for $400 and one for $1200. Matrix -- I'm sorry -- NorVergence simply took the Matrix name and slapped it onto the Adtran product.

With claims of substantial savings and using slick promotional material and with the aid of equipment lease financing, NorVergence was able to sell this equipment for on average 30- to $40,000 and sometimes as high as $250,000 for the so-called Matrix box.

THE COURT: Okay. Mr. -- is it Greisman or Graifman?

MR. GRAIFMAN: Graifman.

THE COURT: Mr. Graifman. Okay. Mr. Graifman, now, there was an equipment lease which was executed, which at least on its face purported to simply cover lease payments on the Matrix box or whatever it is.

Now, there was a separate service agreement that was routinely executed in connection --

MR. GRAIFMAN: Separate service agreement.

THE COURT: -- which called for separate payments to be made under the service agreement.

MR. GRAIFMAN: I'm not so sure about that, your Honor. I think everything was bundled into one lease payment as far as my understanding is and was all -- and all in price in which there was a lease amount.

THE COURT: Okay. So that the service agreement did not contain a service fee.

MR. GRAIFMAN: Well, it may have contained -- I'm not sure. It may have contained some servicing. Mr. Green, who is my co-counsel --

MR. GREEN: If I might, your Honor, there were payments to NorVergence for services. In addition, it was a separate payment for the equipment lease.

THE COURT: Okay. That's what I --

MR. GREEN: Our contention is that the service --

THE COURT: I understand what your contention is but, first of all, I'm trying to get some idea of what the paperwork is here and, apparently, then there is one set of paper which in fact constitutes at least on its face an equipment lease and another document which on its face purports to be a service agreement and calls for payments under the service agreement. That is correct, Mr. Green?

MR. GREEN: Correct.

THE COURT: Okay. Go ahead.

MR. GRAIFMAN: Now, in this case, these defendants did not take assignment of these leases after they were signed and simply become a new party in the transaction or they did not -- they did not obtain and purchase leases from NorVergence itself.

What happened here is that these defendants and

NorVergence arranged in advance that the defendants, the leasing companies, would run the finance operation side of

NorVergence's operations. Essentially what happened is you had in form a lease with a NorVergence name on it but in substance and in practice, in fact, it was the leasing companies who were involved in the integral aspects of the actual lease finance.

For example, when a customer signed a credit application or a lease application, that lease application would go to the lease finance company, and if your Honor had looked at any of those master agreements between NorVergence and the leasing companies of which we've submitted about three, I believe three of them so far, you would see that it says right in there that NorVergence from time to time shall submit credit applications of customers to the leasing company for review and approval.

So, they get the credit application, they review it, they approve it. They run the credit history on the client. They are the ones who approve the credit and approve the actual lease. It's only then --

THE COURT: So that argument -- so those facts at least arguably lead to a conclusion that this does not constitute a finance lease under the UCC.

MR. GRAIFMAN: Correct. Not a finance and also not a holder in due course.

THE COURT: Okay. Now, all these leases have provisions in them which are popularly referred to in the industry as hell-or-high-water clauses which, apart from the UCC, purport essentially to give these leases the same functional qualities of negotiable commercial paper. Correct?

MR. GRAIFMAN: That's what it purports to, subject to the UCC provision on hell-or-high-water clauses, which if your Honor wants, I can --

THE COURT: Yes.

MR. GRAIFMAN: -- expand on. Well, this gets us a little into the holder-in-due-course aspect of what I was going to present but essentially what happened, in New Jersey there is a provision 9-403, and under 9-403 it says that these hell-or-high-water clauses, that is the clause that says that the defenses or claims cannot be asserted against the assignee, require that the assignee be a holder in due course because that clause says that the clause is

operative, the contractual clause is operative if the assignee takes full value, takes in good faith, has no notice or knowledge of defenses.

THE COURT: Which is the same even if it was a UCC finance clause. If you weren't the holder in due course, you'd still be subject to the defenses that the purchaser would have against the assignor. Right?

MR. GRAIFMAN: Right, correct. The statute --

THE COURT: To get protection, you have to be a holder in due course.

MR. GRAIFMAN: Absolutely. In addition to that, that same section says that, nonetheless, any assignee still subject to the defenses that a holder in due course would be, and that would be the provision 9-403(c), and basically that takes us back to the so-called what we call real defenses, that is, the defense that could be assertable against someone, whether they're a holder in due course or not, and in this case, as your Honor I'm sure has seen in

our papers, we are arguing that the violations of the CFA here which we claim have existed make these contracts illegal and unenforceable.

The CFA, of course, says that any act, practice or employment by any person of an unconscionable commercial practice, fraud, fraudulent pretense, etc., is unlawful. The fact that the CFA makes these contracts, makes a contract that's obtained by fraud, false pretenses or knowing concealment unlawful makes these illegal under that provision.

THE COURT: Now, let me see if I understand. The Attorney General's Office has also submitted a submission on this. Do I understand your argument to be that if I put into a commercial contract a venue clause, a forum selection

clause and a choice of law clause which are subsequently deemed to be unconscionable, that not only are they unenforceable but the entire contract is unenforceable?

MR. GRAIFMAN: No, no, I'm not saying that within

the context of this argument. What I'm saying is it's really a two-step process in that analysis. One step is, is the contract illegal and unenforceable, period. If it is, then they can't enforce any provision of the contract and we get back to your basic choice of law provision under the federal law which would be to look to New Jersey, which would be a governmental interest analysis.

However, if you look within -- the second step would be, okay, the contract itself is not or at this time I'm not prepared to say that the contract -- if your Honor says you're not prepared to say that the contract is in itself unenforceable based on the CFA, the Consumer Fraud Act, you look to the clause. We are saying that alternatively and, nonetheless, if you look at this forum selection clause, it really has two parts to it.

Part one, the applicable law will be the law of the rentor, with an "o-r" at the end, meaning NorVergence, and everybody who signs the contract presumably was aware or has knowledge, has information available that they could know that NorVergence is a New Jersey company which would make the law New Jersey.

The second part of that clause said, however, if we assign this contract to somebody, to another company, the law of the -- the principal place of business of the assignee will be the law that will control.

Now, that clause we contend is unconscionable and does not meet the standard in New Jersey under the Copelco case which is that two parts. You have to show that the consumer at the time they signed it had knowledge or notice of what jurisdiction they were going to be going in and it's a requirement of reasonableness, and under the Copelco case, the court found that this rather similar language to the one in Copelco did not meet either of those two branches, and the reason was when you sign the contract, you don't know that it's going to be assigned. You don't know where the assignee is going to be located. You assume that you're dealing with a set of laws in New Jersey and suddenly now you're in Missouri and you're being sued in a place in Missouri when you had no idea the contract was even assigned or, if you did, you didn't know what jurisdiction it was going to be. It's a clear notice violation with respect to

that type of jurisdictional clause.

THE COURT: On the other hand, the district court in Danka Funding upheld such a clause.

MR. GRAIFMAN: Well, in Danka Funding, first of all, that case was decided before Copelco and I think the

Danka Funding court was looking at the New Jersey law in the absence of Copelco. Had it had Copelco to rely on, I doubt the court would have come up with the same conclusion that it did. I mean, Copelco was decided after Danka.

The second thing, in reading the decision, I see the court noted three or four times that the defendants in that case were a New Jersey -- I'm sorry -- were a, I believe it was Atlanta or Georgia law firm and should have known better, and I think that they were influenced on a practical level by the fact that they were dealing in that specific case with a law firm who had signed the contract. I'm just reading into the decision a little, I know, but --

THE COURT: But wouldn't that argue at least in

terms of how that court viewed the issue that unconscionability of a clause ends up being determined not on a blanket basis but, in fact, based upon the specific facts of the case, the sophistication of the parties, the relative bargaining power of the parties in that particular situation and so on?

MR. GRAIFMAN: Well, I think in Danka, I think there was some of that involved, but Danka was a single plaintiff, and in Copelco that didn't take place.

In Copelco it was clear that the court looked at the clause and said this type of clause does not meet the notice or the reasonable requirements. I don't believe that

the Danka court used that two-prong test. If it did, it certainly didn't apply it in the same way as Copelco.

I think this Court sitting and looking at the case that we have in front of us should take this clause and if you take the circumstances as to what was sold here and what kind of fraud was perpetrated, I think that the

circumstances of the case certainly demonstrate that there was no notice and that this was not reasonable to apply this clause to 11,000 people who were going to now be sued in jurisdictions that are far and away from where they are in the most part.

THE COURT: Well, one problem which strikes me is this. I have no idea whether or not this clause will be applied with regard to 11,000 people. In short, when I look at the papers in front of me, there seems to be this assumption that the only jurisdiction which has an enlightened view of the rights of purchasers, the lessees and equipment contract and so on, would be New Jersey and that, for example, Florida, where apparently any number of the lessees are located, would not be protected in Florida.

It might very well be, for example, that the Florida view, including choice of law and unconscionability analysis, might be much more favorable than New Jersey's view.

MR. GRAIFMAN: I don't think, if I may, your Honor,

I don't think we're necessarily -- although I think New Jersey does have a rather enlightened view, I must say, but I don't think that New Jersey is the only place.

I think the question really here is that you have these small businesses being sued and we've submitted to your Honor the docket sheets to show that this is, in fact, the case, sued in places that are rather far away from where they are located, which is a very onerous and oppressive type of litigation tactic that was designed to prevent them from being able to pursue a remedy legitimately in the locale where they either originally agreed, which would be New Jersey --

THE COURT: Well, of course, I mean, let's get to some of the more fundamental issues here then. Let's assume arguendo and, first of all, that what NorVergence did was one of the most egregious consumer frauds that ever occurred. I'm assuming it because, quite frankly, all I've got is, you know, your submissions. They are certainly not voluminous.

There appear to be some service managers or sales managers who submitted some affidavits, but it's rather clear that, you know, what happened here is going to be

something much more developed in terms of what NorVergence did. But I've got these folks out there and they've been suing. You keep on giving me docket sheets. They've

submitted case law for the proposition that with regard to the people who have been sued, there's nothing that this Court can do, that the Anti-Injunction Act bars me from enjoining those lawsuits.

MR. GRAIFMAN: I think the Anti-Injunction statute does bar or we're certainly willing to concede for the purposes of this argument that this Court could not or would not enjoin another court from proceeding. However, what it can do is enjoin these defendants from pursuing the enforcement of this contract which we claim, and we believe we made a fair showing of, is unenforceable, and if that includes suing somebody, then this Court can certainly enjoin them from so doing.

THE COURT: And where they have started suit, what can the Court do?

MR. GRAIFMAN: Where they've started suit, I believe that this Court can enjoin them from continuing without necessarily enjoining another court. If another court decides to say, well, I'm going to go ahead regardless of what Judge Chesler says, then I agree that this Court can't do anything.

THE COURT: Have you checked their authority? Did you check Atlanta Coastline Railroad Company vs. The Board of Locomotive Engineers, 398 U.S. 281 at 287, 90 Supreme Court 1739?

MR. GRAIFMAN: Well, we're aware of their claim, yes.

THE COURT: Have you checked the case?

MR. GRAIFMAN: Yes. Well, Mr. Green, in fact, dealt with the anti-injunction portion. If you want, he can deal with the specifics of the case.

THE COURT: Mr. Green, can I enjoin a party who is a party in an existing lawsuit in state court from

proceeding with that lawsuit?

MR. GRAIFMAN: Again, your Honor, we are not necessarily saying you can enjoin them from proceeding in the lawsuit. What we are saying is you can enjoin them from enforcement of the contract. Okay.

THE COURT: Once they've started a lawsuit?

MR. GRAIFMAN: Well, I think what would happen is the defendant would have to go into court in Texas or Missouri and say they've been enjoined from starting a lawsuit. This Court can now enjoin them from continuing in this lawsuit until the action in New Jersey has been resolved. It may be a two-step process.

THE COURT: Mr. Green --

MR. GREEN: I would agree with my co-counsel but, your Honor, again, it all comes down to whether or not they can enforce the contract.

THE COURT: Look, the Anti-Injunction Act has been

definitively interpreted by the U.S. Supreme Court as not

only barring a court from enjoining another court, but it cannot be done indirectly by enjoining the parties to an existing lawsuit from proceeding with that lawsuit, and the case which I just cited stands for that proposition in the Third Circuit.

The Third Circuit in In Re Diet Drugs reported at 282 F. 3d. 220, Third Circuit 2002, at, let's see, looks like page 233, cited right back to it. For lawsuits which have been filed, there is nothing which --

MR. GRAIFMAN: We've said that in our reply papers, that we do not ask this Court to enjoin the lawsuits --

THE COURT: Or the parties --

MR. GRAIFMAN: Well --

THE COURT: -- in those lawsuits.

MR. GRAIFMAN: You can certainly enjoin them from enforcing the contracts. Now, whether --

THE COURT: If they are in a lawsuit?

MR. GRAIFMAN: Well, first of all, not all of these have been commenced.

THE COURT: But I'm talking about the ones which are in lawsuits.

MR. GRAIFMAN: Well, I mean, if those need to be excluded, then, I mean, certainly the extent of your Honor's

power to enjoin them from commencing -- well, from enforcing

the contract in any manner, which means threatening a lawsuit, can be --

THE COURT: Where there is a suit which has already been initiated, the law is clear. This Court simply does not have the power to enjoin the parties from proceeding with that lawsuit, nor enjoin the court from proceeding with that lawsuit, nor do anything to stay that lawsuit unless it is to protect the jurisdiction of this Court or to effectuate its judgments, and those are the only two exceptions to the Anti-Injunction Act which have been recognized by the U.S. Supreme Court.

MR. GRAIFMAN: Right. And which is, again, why we in our reply papers backed away from any suggestion that we were asking this Court to enjoin the lawsuits themselves.

THE COURT: But you told me you wanted me to enjoin the parties.

MR. GRAIFMAN: Well, you can certainly enjoin the

parties who have not yet started suit. Now, obviously, when the defendants found out we were going to bring this action, they rushed out and they started a substantial number of the lawsuits, as your Honor can see. However, not everybody has been sued. There are some people who have been ordered to prevent themselves from being sued, have either tried to make some payments under protest or have done whatever they can to try to delay being sued legitimately, so, certainly

you have a body of consumers out there.

Now that we've kind of removed those who are currently being sued, there's a large body of consumers out there who have not yet been sued who certainly can benefit from the exercise of this Court's injunctive powers if, in fact, in this case we prove that we're entitled to injunctive relief under the three-prong test.

THE COURT: Now, by the way, part of your suit is predicated upon the FTC Holder rule.

MR. GRAIFMAN: Well, our original complaint was --

there was a claim under the FTC Holder rule on the basis of the fact that some of the class members and plaintiffs or almost all the class members and plaintiffs have signed personal guarantees and were personally liable.

However, I will tell your Honor at this point in time, and I think you could see from our reply papers, the primary focus of our suit is the CFA because we don't believe that the FTC Holder rule will apply to the plaintiffs at this stage. However, the Federal Unfair Trade Practices Act may apply through the CFA to the plaintiffs in this case, but we're not arguing --

THE COURT: Have you dismissed your FTC Holder claims?

MR. GRAIFMAN: We haven't dismissed them yet, nor has the time for the defendants to move come, and we may

work that out with them prior to that time. But right now our claim, our primary claim on likelihood of success would be the consumer fraud claims, the Consumer Fraud Act claims,

not the FTC Holder rule claims because even -- notwithstanding the fact that we're dealing with consumers that are being personally sued, we had a problem with the way that consumer is described under the FTC Holder rule.

You don't have that problem under the Consumer Fraud Act because consumer clearly under the Consumer Fraud Act includes businesses and certainly would include small businesses that are involved in this case, so, we contend that and we've asserted in our papers that the activity that we're alleging in this case on the part of NorVergence would be a violation of the Consumer Fraud Act and that, therefore, we would, with respect to the success -- likelihood of success on the merits, certainly be entitled to prevail on that claim with respect to NorVergence.

Now, the next question that obviously leaps from that is, well, do these people stand in the shoes of NorVergence or are they holders in due course? If they're holders in due course, then obviously, they can claim, unless we can show it's one of the real defenses, they can claim that they're immune from a consumer fraud claim.

Now, we contend that on the facts of this case they are not holders in due course. As I said, to be holders in

due course, they need to show that they acquired the paper for value without notice or knowledge of a defense and in good faith, and we contend that they cannot show good faith and they cannot show that they took it without notice or knowledge because in this case they were involved, as I mentioned, in the actual leasing process, in approving the leases and in many cases they even signed the NorVergence agreement on behalf of NorVergence.

What was existing here was what is known as a private label agreement; that is, that NorVergence's name was on the lease agreement but, in fact, all of the processing and all of the operation of it, including review of the application, approval of the application, running the consumer's credit, was all done by the leasing company. They were too integrally involved to become holders in due course here.

Under the General Investment vs. Angelini case and the Westfield Investments case, which we have cited to your Honor, the defendants here have so much of an involvement

here that they could not have possibly been on -- without notice of the fact that there was substantial irregularities here. We've also cited to your Honor --

THE COURT: What I'm wondering about is, if you have a piece of evidence with regard to defendant A, a piece of evidence with regard to defendant B, how many defendants

do I have in this case?

MR. GRAIFMAN: 26.

THE COURT: You're asking me to enjoin every single one of them. All right. Now, they aren't a class. They are a bunch of individual defendants. Have you submitted evidence to me with regard to every single one of them which is sufficient to show, even if it's albeit circumstantially, that none of them will be able to have holder-in-due-course status?

You start off with the fact that they paid value. That much appears to be true. Correct?

MR. GRAIFMAN: We're not arguing the value.

THE COURT: Okay. In short, what appears to be is they bought these leases at discount, which is what equipment leasing companies do. Right?

MR. GRAIFMAN: Right. But in this case they were actually involved in the process from day one.

THE COURT: Okay. But they're not involved, at least in terms of the evidence in front of me, in NorVergence's alleged scam.

MR. GRAIFMAN: Not the sales part.

THE COURT: At least not as far as the evidence which has been demonstrated to me. Correct?

MR. GRAIFMAN: Correct.

THE COURT: They don't have salesmen with scripts

out there. There's no evidence that they knew about the salesmen with scripts. They don't know -- and there's no evidence that they knew about the service managers who, you know, who feel that they are in fact defrauding people. So, what is it that they are, if they've given to value, **what do**

I have with regard to all of them with regard to each which shows they took with notice and not in good faith?

MR. GRAIFMAN: Before I explain the facts, I'd like to just quote from the Angelini court, which is one of the cases that we cite and in which the court stated, One who takes a negotiable instrument is required to inquire about possible defenses when it has knowledge of circumstances such that the **party's failure to inquire reveals a deliberate attempt to evade knowledge because of a fear that investigation would disclose a defense arising from the transaction, which in simple legal jargon would be if I put my head in the sand, what I don't know won't hurt me principle, essentially is what they're saying.**

THE COURT: Or arguably in more legalistic terms, **that inquiry notice is sufficient.**

MR. GRAIFMAN: Correct.

THE COURT: Perhaps.

MR. GRAIFMAN: Certain level of inquiry notice is sufficient. And we've also submitted, by the way, an affidavit of an expert in the leasing field who's a

certified leasing professional, Kenneth Goodman, who has stated where a leasing company, a license finance company is taking the same leases on the same equipment for hundreds and thousands of leases, **there is a duty of due diligence and that these leasing companies have failed to do even a modicum of due diligence relating to this.**

Now, getting back to the factual side as to what they would have known had they done even a modicum of due diligence, they would have known that the Matrix equipment which was sold to customers for tens of thousand of dollars was really an Adtran routing box that sold for 450.

If they had just looked at the equipment, they would have known that the leases for the same equipment from lease to lease varied radically in price or with these leases, that there was just a wide fluctuation of the price. If they only looked at the leases, they would have known that there was a high rate of default.

THE COURT: Let me stop you there, and I haven't taken a close look. All right. Do the leases tell that the paper that's assigned to these leasing companies show the number of units that have been --

MR. GRAIFMAN: Well, we have one right here, for example. This one is for one Matrix Soho box for $374, which, by the way, is signed by NorVergence. It was signed by Erin Buchanan, who happens to also be the person that

sends a letter on Popular Leasing letterhead, which means that Popular Leasing in this instance was actually signing the NorVergence leases, and we have a number of these signed by Miss Buchanan.

Here's another Matrix Soho, the same unit, for a $190, and basically had the same unit for varying prices. These are monthly -- this is a monthly price, so, when you add it up, it's a substantial difference between $190 and $374 over the rental term of, I believe it's 60 months.

So, you're talking about -- I mean, that's a good graphic example of the same piece of equipment signed by the person, same person from NorVergence -- I mean, I'm sorry -- from Popular Leasing. She's looking at hundreds of leases, thousands of leases maybe and she or Popular Leasing doesn't

even consider the fact that why are these so varying in price.

That would put them on notice that there was substantial irregularities going on and then if they went to the next step and looked at what is this equipment that they're charging different prices, they'd find out that it's actually a $450 telephone router.

THE COURT: Let me ask you this question, though. If I am actually Popular Leasing, **why do I look at that?**

MR. GRAIFMAN: Why do you look at --

THE COURT: Yes. Why did I look at the prices?

MR. GRAIFMAN: Well, you're signing the lease on behalf of NorVergence. Why wouldn't you?

THE COURT: This lady, obviously -- let's put it this way. Popular Leasing in this particular circumstance may very well have a problem being a holder in due course since their employee seems to have signed the lease. But let's take a situation in which the leasing company's

employee has not signed the lease. Why does the leasing company look at that?

MR. GRAIFMAN: Well, because I think that the law as I related in Angelini and as stated in Westfield and our expert has stated, says that when they're taking the tens or hundreds or thousands of the same lease and the same lease on the same lease agreement, they are required to do some due diligence.

THE COURT: **And what was his authority for that?**

MR. GRAIFMAN: Well, I just cited substantial authority.

THE COURT: No, no. Your expert's opinion that this is -- that they are supposed to do that.

MR. GRAIFMAN: Well, his opinion, I believe, is based -- my understanding is that to be a certified leasing professional, you have to go through a certain test and there are certain code of conduct and code of ethics that is --

THE COURT: But what I'm wondering about, you know, in short, if I'm a leasing company, one of the things which would be normal, I would expect, is that I've written the collateral off the moment it was delivered to the customer, that, in fact, what is involved here is the underwriting process of the creditworthiness of the lessee because, at least the way I understand this industry is, the collateral not infrequently is worth about two cents on the dollar the moment it's turned over to the customer.

MR. GRAIFMAN: Well, I mean, certainly the fact that they were in the process from the inception, they were not simply taking assignment of leases that had been signed up by NorVergence but they were in the process of actually facilitating this financing process for NorVergence requires a higher standard than merely somebody who just comes into the picture after the fact and takes assignment of a hundred or two hundred leases, because they are involved in the process of checking the applications.

I mean, they're getting paid a lot of money in return theoretically for a large numbers of leases. It's beholden on them to make sure that the process is okay. That's what the Angelini court says and that's what the Westfield court says. I mean, in Westfield the language is

very similar.

THE COURT: You know something, let me cut to at

least what I see as the most vexing problem in your application apart from the Anti-Injunction Act, irreparable harm. In short, your argument to me is that the proposed class in this case suffers irreparable harm by being sued and having to defend the lawsuit.

MR. GRAIFMAN: That's part of it.

THE COURT: You know something --

MR. GRAIFMAN: That's part of it, not being sued generically but being sued in a foreign jurisdiction hundreds of miles away where they either cannot defend properly or they have to pay substantial amount in terms of the fact that there's long distance involved.

The other thing that's involved in that, though, is ruination of credit which these companies are small companies. They rely on their credit. They spent -- most of them worked have very hard to build up their credit. I

mean, you get a no-pay, your credit is ruined. You get a lawsuit, your credit is ruined. I mean, that's irreparable harm that can't be refunded to them in the form of money.

THE COURT: Why can't it? I mean, there's the Fair Credit Reporting Act. There are all sorts of other remedies available to the consumers and businesses, aren't there?

MR. GRAIFMAN: Well, I mean, there may be reporting act requirements but, nonetheless, if they can still follow -- I mean, here you would have -- you could

conceivably have a no-pay on a lease that doesn't work and was acquired by fraud which is subject to the CFA and you could still have a credit mark done legitimately vis-a-vis a credit reporting company.

Yes, you can put in your response to it and that would also be noted on the record.

THE COURT: Looking through your papers, I haven't seen any case cited which stands for the proposition that someone being sued and defending that, having the ability to

defend that lawsuit somewhere constitutes irreparable harm.

Now, is there authority for that proposition?

MR. GRAIFMAN: Well, I think there are certainly cases that have held that ruination of credit would constitute irreparable harm and I know certainly there are cases that found that even where there's potential monetary damages but there's a likelihood of no recovery, that injunction would issue.

THE COURT: What case is that?

MR. GRAIFMAN: Well, I mean, in the Compton case I think your Honor found that there was no likelihood that the money could be recovered even though the plaintiff I think was seeking $750,000. If the money were gone, they couldn't recover it and, therefore, sometimes even a case where they're seeking monetary damages could constitute irreparable harm.

THE COURT: Mr. Graifman, my opinion in the Compton Press case relied upon the Third Circuit's decision in

Hoxworth v. Blinder, Robinson & Company, 903 F.2d 186, Third Circuit 1990, which stood for the proposition that the prospect of an unsatisfied money judgment can under appropriate circumstances constitute irreparable injury for the purposes of granting a preliminary injunction.

MR. GRAIFMAN: Correct. So, even --

THE COURT: Mr. Graifman, in 1999 the United States Supreme Court at Grupo Mexicano de DeSarrollo vs. Alliance Bond Fund, 527 U.S. 308 ruled that an injunction may not be issued by a district court in order to secure funds to ensure payment of an action at law for money damages. So, while my decision was remarkably brilliant in 1990, it's less brilliant in 2004 in light of the Supreme Court's decision.

MR. GRAIFMAN: Well, I'm citing it by analogy to show, I mean, because we don't have that exact situation here, obviously, but what I was showing was that even under circumstances where there may be money -- that money may be the remedy, sometimes the remedy is still out of reach.

I don't have a case to cite off the top of my head as we're standing here to the proposition that the fact that you may be sued in a foreign jurisdiction would constitute irreparable harm. I think it's a proposition that stands to

reason that money damages is not a remedy for that. If, in fact, you are wrongfully sued under this contract because the contract itself is fraudulently obtained and they are not a holder in due course, the question is should they be enjoined from suing somebody in a foreign jurisdiction before they started suing and the potential ruin of credit that goes along with that.

THE COURT: Let me pose a hypothetical to you. Forget about the fact that the genesis of this is an allegedly rather large scale fraud. Instead, there aren't these thousands of victims. Instead, there's you and you got conned by these folks over at NorVergence. Your law firm dealt with this wonderful salesman who said that, buy my black box or lease it and you're going to be able to get cell phone prices reduced and your DSL reduced and your telephone reduced.

So, you did it and you signed this thing up and it had a floating forum selection clause and a floating choice

of law clause, and you had the opportunity to read it. It was a busy day for you. You had some other lawsuits which you had to pursue. You signed it and, lo and behold, NorVergence went belly up and then you got a dunning letter from a leasing company out in Waukegan, Illinois, forget all the other people here, just you and that leasing company and the fact that you've been scammed by NorVergence.

Have you got a suit for injunctive relief in New Jersey barring that leasing company from seeking to collect and seeking to litigate whether or not they are a holder in due course or otherwise are entitled to collect on your lease out in Waukegan, Illinois?

MR. GRAIFMAN: The answer --

THE COURT: That's the core issue here, isn't it?

MR. GRAIFMAN: Well, with respect to the forum selection clause, it is the core issue. And I think with respect to the forum selection clause, I think the answer is that clause, what we would do and what we are doing is

stating that that clause itself is unconscionable under New Jersey law, it's unreasonable under New Jersey law and it lacks the notice that is required because, I mean, in that situation, I don't know that the lease is going to be assigned. I don't know that it's going to be assigned to somebody else. The law that I've agreed to is the law of the --

THE COURT: What I want to know quite simply is this. Where it's just you, NorVergence and the leasing company and they're seeking to sue you in Waukegan, Illinois, what makes your case any different from any other case where somebody seeks to initiate suit on a claim which is anywhere from shaky to nonexistent?

In short, if you've got those defenses and, you

know something, I'm taking a look here, hey, it may very well be that those defenses are going to be maintainable, but there's a wonderful circuit court out in Illinois delighted to hear your arguments, delighted to hear argument

that, you know something, under their policies these provisions are unconscionable, your motion to dismiss for lack of in personam jurisdiction is granted, your motion to dismiss for lack of venue is granted.

I just spent the morning hearing motions to dismiss for lack of in personam jurisdiction and improper venue. What makes this case any different from any other case where a defendant party would make that application and those good judges in other parts of the country would decide whether or not in your case it was right or wrong, and they might go along with Danka Funding or they might go along with the New Jersey Appellate Division?

MR. GRAIFMAN: I think what your Honor is saying is that these attempts to strike the forum selection clause or to prevent it from being done there should be done in the locale where the suit by the leasing company is taking place, is what you're saying.

THE COURT: What I'm suggesting to you is, and one fundamental concern for me is, where what they propose to do has defenses which are perfectly capable of being heard in the various jurisdictions where they might bring it, why do

I get the opportunity to decide all of those issues on a preemptive strike where, when I look at each individual case, it's no different from thousands of other cases which are decided effectively by other courts in the country and they decide choice of law issues and they decide whether or not a forum selection clause or a choice of law provision deeply offends the public policy of that state.

MR. GRAIFMAN: I think the answer to your Honor's question is three-fold. First of all, we have to remember we're dealing here with a forum selection clause that is two parts, as I said at the beginning.

The first part says that the jurisdiction will be in the location of the rentor, which means that that's New Jersey. The applicable law provision and the jurisdictional clause places these cases in New Jersey by its own terms with regard to the first clause.

THE COURT: Isn't that unconscionable as could be for a lessor in Waukegan, Illinois?

MR. GRAIFMAN: No.

THE COURT: In fact, that forum selection clause

would require -- I'm sorry -- a lessee in Waukegan, Illinois would have to be dragged into New Jersey.

MR. GRAIFMAN: But he knows about that when he signs the contract. That's the difference. The difference is that when you sign the contract, you know you're signing

it with a rentor who's in New Jersey and that New Jersey law is going to apply to your contract. That's the difference.

THE COURT: So, let me ask you this. What about those lessees who, in fact, may end up being sued in their home states, is the clause unconscionable as to them and are the choice of law provisions unconscionable as to them?

MR. GRAIFMAN: Arguably the same analysis would apply in the sense that there are two clauses to this contract which are the forum selection clause that says that the case will be brought in the jurisdiction of the rentor, which the signer knows is New Jersey, and the second part of the clause, which is where he doesn't know.

Now, as a matter of convenience, would it be more

convenient for them? It may be more convenient, it may not be more convenient depending on the law of that jurisdiction.

THE COURT: Tell me what's the irreparable harm that occurs to a lessee who finds that he or she is being sued in his or her home state under that state's law, what is the irreparable harm of asserting whatever defenses to that lawsuit may exist in that particular forum?

MR. GRAIFMAN: Well, there may be irreparable harm in a certain sense but what would result would be whether they should be sued -- what we're claiming is that there should be an injunction preventing the defendants from

enforcing the contract and starting any other suits at this point.

I mean, putting the Anti-Injunction statute aside because of the fact that --

THE COURT: I put the Anti-Injunction statute aside. What I'm asking is what is the irreparable harm of

--remember, all you --

MR. GRAIFMAN: I think.

THE COURT: -- all you ask is relief pendente lite. All right. I don't make any final decision here. The only issue is whether I put a halt to all sorts of activity throughout the country.

You're seeking to demonstrate to me that there is irreparable harm for a class of plaintiffs against a large group of defendants here and my question is with an uncertified class, what is the irreparable harm to each member of that proposed class.

MR. GRAIFMAN: Well, I guess the question, I mean, as to the class itself, my response to that is that there's potential for what could be termed legal chaos where we would have thousands of suits related to the same lease agreement with the same forum selection clause and the same issues being litigated in courts in different parts of the country before different judges, maybe even different results in the same courthouses, rather than that one

contract which has the issues that we contend are going to be -- can you determined on a class-wide basis determined here where the clause indicates -- the first part of the forum selection clause indicates it should be determined.

So, the answer being that the damage is on a class-wide basis -- irreparable harm, rather, is on a class-wide basis. I don't think we need to get into the analysis and demonstrate that every single class member has some sort of unique set of irreparable harm that relates to the forum selection clause if it would be unconscionable due to -- based on the issues of notice and reasonableness to enforce that clause under Copelco.

THE COURT: But the only -- look, what you are seeking to do is enjoin them from making any efforts to enforce their contract. The irreparable harm, the only irreparable harm that you can point to at this stage of the proceeding has to be the irreparable harm which would stem from them, in fact, being able to proceed with what would otherwise be normal lawful methods of, in fact, seeking to enforce the rights which they contend they have, which they may not have.

MR. GRAIFMAN: Which we contend they don't have

because if they can't show holder-in-due-course status, we get back to whether NorVergence could enforce this contract and if this were NorVergence sitting on the other side of

the table, I think your Honor perhaps would have a different view of whether they can enforce the contract.

Our position simply is that they stand in the shoes of NorVergence and if NorVergence should not be allowed to, then these 26 leasing companies that facilitated NorVergence in selling these leases should not be allowed to.

THE COURT: Okay.

MR. GRAIFMAN: That's essentially our point on that.

THE COURT: Fine. All right. Let me hear from defendants.

MR. GLICKMAN: Good afternoon, your Honor. It's hard to resist not addressing what you see over here because what you heard is a complete misconstruction of how the holder-in-due-course rule and how the UCC interact as has

been determined by this Court and I'm going to get to that in a minute. But before we get to the substance of what our positions are today, let me just take a second to talk about how we tried to organize ourselves to present an efficient presentation to you today.

As the Court knows, there's a number of defendants here and for purposes of opposing the motion, to avoid repetition as we did in the brief, defense counsel sought to pull together all the arguments that we have in common. We did that in our briefing and we're going to do that today.

That doesn't mean that we agree that the defendants can be treated in the same monolithic way that the plaintiffs have sought to do and, in fact, as your Honor knows from our papers, one of the arguments that we have in common is that they failed to address individually all of our positions, and there's numerous other legal deficiencies that we'll discuss.

Your Honor knows what the standards are for the

grant of a preliminary injunction and your Honor also knows that it is an extraordinary remedy and these plaintiffs have not come close.

There are four factors that they have to establish: Likelihood of imminent irreparable harm, likelihood of success on the merits, harm to the non-movant if the injunction is issued, and the public interest. And the Supreme Court has made clear that they have to show by a clear showing the burden of persuasion on all four of those factors.

I will deal with the issue of likelihood of success on the merits and at that time I'll also talk about the procedural issue of the Attorney General's papers, but we're going to begin today with Mr. Melodia addressing the issue of irreparable harm and certain related issues, so, if I could turn the podium over to him.

MR. MELODIA: Good afternoon, your Honor. Mark

Melodia from Reed Smith. I represent CIT, but I've been

designated to speak on behalf of all the defendants, although anybody is free to stand up if they need to and supplement what I'm saying on irreparable harm and related issues.

I guess given the extensive colloquy between you Mr. Graifman, your Honor, I won't go into the basics at all but I would like to cite a few more cases and cite some more authority for some of the propositions that the Court is making.

First of all, the Adams case I think is really the definitive case we ought to be looking at in the Third Circuit, a 2000 case out of the Third Circuit, when it comes to defining the standard for irreparable harm, and there most importantly in a multiple plaintiff situation and a multiple defendant situation such as this, we have a direction from the Third Circuit that there needs to be specific and personal showings of irreparable harm, and that's exactly what the colloquy between your Honor and plaintiff's counsel drew out is lacking, entirely lacking here.

I was quite surprised today to hear that this is not all about the lawsuits. I saw the original complaint, I saw the original application, the briefing. I fully

expected and must admit prepared to discuss the lawsuits as

the sole source of irreparable harm. Apparently, that's not the case, but what we didn't hear was a substitute. If it isn't the lawsuit, then what is it?

All Mr. Graifman fell back on, your Honor, was ruination of credit and your Honor suggested that there -- I guess asked the question was there any authority for the idea that the mere defense of a lawsuit is sufficient to cause irreparable harm, even defending a lawsuit in a foreign jurisdiction. Mr. Graifman couldn't offer anything.

I'd like to offer a few cases going the other direction, that is, some cases suggesting that being forced to defend a lawsuit even in a foreign jurisdiction is not without more irreparable harm.

EEOC vs. Rath, 787 F.2d, 318, that's an Eighth Circuit case.

THE COURT: You cited that case in your brief.

MR. MELODIA: I believe so. And another district

court case following that. Those cases say that being sued is not enough. So, what about ruination of credit? There are circumstances, your Honor, under which ruination of credit could be sufficient and there's case law on that, too. We cited that in the brief. The Dover Steel case is one such case discussing what it takes on a plaintiff-by-plaintiff basis to meet the Adams test to show ruination of credit as a basis for irreparable harm.

In Dover Steel there was testimony, there were tax returns, there were financial statements on behalf of each plaintiff showing that risk.

What we have here and which defendants have not had an opportunity to respond to are the seemingly voluminous exhibits presented on reply brief by the plaintiff, but when those exhibits are dug into a bit, it becomes clear that none of them support a finding of irreparable harm based on lawsuits, ruination of credit or any other theory, your Honor.

Instead, what we have are so-called expert affidavits from consultants, unsworn statements from some people about issues related to technology or standards, nothing related to the irreparable harm that would be visited on these lessees if an injunction doesn't issue, and then we do hear from about a dozen of the lessees but what lessees? The lessees in this case? The lessees that are named in this case? No. We hear from one of them. Out of the dozen, there are two affidavits from lessees named in this case.

One is a boilerplate statement that the Exquisite Caterers Company believes that the things that are said in the amended complaint are true, and the other is a statement by James Lombardo of Lombardo Electric, Inc., which doesn't discuss anything related to irreparable harm at all. He

speaks about his origination problems and his lease problems with NorVergence.

The other lessees also similarly talk about perhaps

the threat of a lawsuit or even an actual lawsuit, but what do they talk about? Some of them say I went and got a lawyer and I'm defending that lawsuit.

My personal favorite is the fellow from Illinois, Exhibit 6, the affidavit of Kenneth Allen, who actually filed his own lawsuit. When did he file his own lawsuit? From the looks of the papers attached, it appears he filed his lawsuit in May of '03, so, who has the first filed lawsuit here?

In fact, a lot of the suits filed by the defendants that were made so much of in the brief by the plaintiffs and are now seemingly abandoned in light of the Anti-Injunction Act, a lot of those cases were filed prior to Mr. Graifman's case in August and that's obvious again on the affidavits and on the printouts, the docket sheets that are submitted supposedly in support of this application.

What else do we have in these exhibits that defendants haven't yet responded to? Not much. We have a very interesting affidavit from a lawyer in Pennsylvania, who represents 24 of the lessees that are in litigation right now apparently with one of the leasing companies; again, one of the 26 leasing companies that are named here.

In all, I think there are four, I may be wrong by one or two, but I think there are four leasing companies that we have documentation of having brought suit here at all.

The other 22, the record before your Honor is silent and, yet, you're being asked to enter a national injunction.

The lawyer from Pennsylvania is actually defending that case, pretty much in line with what your Honor suggested in your hypothetical might be the appropriate thing to do. The lawyer in that case has filed preliminary objections, POs as they're called in Pennsylvania, on the basis of jurisdiction, the floating jurisdiction clause and the other bases that Mr. Graifman is seeking to in a preemptive way have this Court determine instead of allowing the court in Pennsylvania.

I don't know what the motivation of the lawyer here in Pennsylvania is for agreeing to let Mr. Green and Graifman go ahead and, you know, he says I'll voluntarily stay my case and let you fellows go ahead. I don't know

what arrangement they have, but I do know it's not their decision. It's not plaintiffs' lawyers to get together and decide whether the state court in Pennsylvania or the federal court can determine these issues.

In fact, the relief they seek violates federal law. It violates the Anti-Injunction Act. It sounds like we now

all agree on that.

The only other case I would cite to supplement the record is the General Motors vs. Pick-Up Truck Fuel Tank Products case, Third Circuit in 1998, 134 F.3d, 133. That case specifically made the point I think your Honor was making which is, quote, "An order directed at the parties and their representatives but not the court itself", state court, "does not remove it from the scope of the Anti-Injunction Act."

Clearly based on both the 1970 Supreme Court case, this case out of the Third Circuit, and then as your Honor cited the Diet Drug case in 2002 out of the Third Circuit,

it doesn't matter. It can't do indirectly what they are not allowed under federal law to do directly.

So, they throw at us the First Filed rule. You didn't hear much about that now.

The First Filed rule clearly only applies between federal courts, not between a state and a federal court. That's a non-starter. So, we talked about the Class, the Class, capital "C" Class. The moving brief, when this used to be about lawsuits, said upon information and belief -- this is plaintiff's moving brief -- there are approximately 11,000 small businesses from around the country facing this dilemma, the suits. They face the defense of legal action in foreign jurisdictions, ruination of credit and, quote,

perhaps the loss of their livelihoods, businesses.

Clearly in the absence of a preliminary injunction prohibiting the enforcement of these lease agreements, plaintiffs and the Class will suffer irreparable harm.

There is no Class. There's no motion for a Class.

This is at best a mass action but a mass action unsupported by any evidence from each of these plaintiffs.

THE COURT: Now, the Anti-Injunction Act does not bar the Court from enjoining the parties from filing future lawsuits.

MR. MELODIA: That's true, your Honor.

THE COURT: It only bars the Court from enjoining pending lawsuits or enjoining the parties in pending lawsuits from proceeding.

MR. MELODIA: Correct, your Honor. If there were a showing of irreparable harm and all the other things they haven't proved, but your Honor is right. Theoretically the Anti-Injunction Act does allow a court to step in and proceed to stop the parties from filing future suits if there were truly irreparable harm, so, let's go to that.

There is none. There are at best legal theories unproved, selected documents unsubstantiated, untestified to, untested as to selected defendants, and money damages can solve all of it. There's no allegation that money damages are not sufficient.

I said the ruination of credit could rise in certain cases to be enough but the Dover Steel case and the Adams case make it clear what is required. We are not close to that point in this case and on this application, and let's not forget this is the second bite at the apple. We've already been in state court, and this case has been going on for two months. This is the best we still have.

And the affidavits that were submitted, your Honor, with the reply brief, the dates are rather interesting on those affidavits. Even though supposedly we weren't sandbagged on the brief, in fact, they're all dated, the affidavits that are not related to the Florida AG action are all dated after we filed our opposition, four days, five days after.

Clearly they went out, got affidavits to try to meet the arguments we raised and, yet, they still don't touch irreparable harm other than a glancing touch on the lawsuit issue, which under the Anti-Injunction Act is gone.

There is a -- back to your Honor's preemptive strike hypothetical about going to the state, go to the jurisdiction where these issues can be heard, that, while

I'd be happy to give your Honor all the credit, the Supreme Court has said the same thing as well.

In 1924, in the State of Georgia vs. City of Chattanooga, 264 U.S. 472, the Supreme Court made that

point. It said that no injunction will issue if it can be presented -- if the defenses -- I'm sorry -- and the objections in the legal action can be presented in the other jurisdiction, that the court should not enjoin another proceeding if the issues can be heard and developed there. Just a corollary, if you will, to the Anti-Injunction Act.

On the uncertified class issue, I would cite to one other case, the Ameron vs. U.S. Army Corps of Engineers case, Third Circuit 1986. Again, if the class is uncertified, then we have to have harm as to each member. We've had no showing of that here. If your Honor has nothing else, that's all.

THE COURT: Thank you.

MR. MELODIA: Thank you.

THE COURT: Just give me one moment. Please give me the cite of that Supreme Court case you just referred to again.

MR. MELODIA: Sure. It's 264 U.S. 472.

THE COURT: 254 U.S. --

MR. MELODIA: 264 U.S. 472.

THE COURT: Thank you. I'm sorry. Please go ahead.

MR. GLICKMAN: Likelihood of success on the merits, your Honor. Look at the reply papers. What you hear is, news bulletin. We suddenly have new information. Private

label leases were entered into and that totally changes the analysis under holder in due course.

First, the NorVergence bankruptcy was back in June of this year. They initially filed their complaint in August. They filed this motion for the first time in state court in September. Then they filed it again in this court. It has been months since this got started and for the first

time we see on reply that there's a new theory, the Close Connection theory that vitiates holder-in-due-course status, and we have a brief that's filed on reply that has supposed expert affidavits for the first time, exceeds the 15-page limit, not appropriate.

But your Honor need not reject the brief, although we would argue it is rejectable because those arguments carry no weight.

This Court has expressly rejected the so-called Close Connection Doctrine in the AT&T case that we cite in our brief. It's AT&T Credit Corp. vs. Transglobal Telecom Alliance, 966 F. Supp, 299. In that case we were dealing with a telecommunications lease, just like this case, and that case, by the way, was affirmed by the Third Circuit, 261 F.3d, 490 in 2001.

We had a telecommunications lease from AT&T and guess who was leasing it, AT&T Credit Corp. It was affiliated with the vendor. They say affiliation means no

holder-in-due-course status. This Court says no. Under the UCC, it doesn't matter. You just look at whether it's a finance lease. The Close Connection Doctrine applies in consumer cases. **It doesn't apply to a commercial lease that meets the requirements of a finance lease. So, all of this new theory is utter nonsense. The Close Connection Doctrine is inapplicable here.**

Before I get into the UCC and a little bit more about the holder-in-due-course doctrine, I want to talk about the underlying blood and guts behind all these doctrines that you're hearing. This is not the first time in the history of the known universe that a court's been presented with the issue that they're raising today. Can a leasing company require continued payments from a customer regardless of problems with whatever the goods are that were leased.

To hear them describe it, it's unconscionable, per se unconscionable. There should be a per se ruling invalidating it all. But courts time and time again have upheld the appropriateness of exactly this arrangement and, in fact, it's been enshrined in the UCC and it's been enshrined in the cases that have upheld hell-or-high-water clauses, and the reason for that, your Honor, is the

function of leasing companies in our economy is to make it possible for businesses to obtain the use of these goods

without having to buy them.

What the leasing companies bring to the table is not expertise in the product. The value that they add to these deals is capital and the willingness to take the risk that the customer will be unable to pay. To play that role, the expertise that leasing companies develop is in assessing creditworthiness and it's not an exact science and there are plenty of times that we get it wrong and we have to take losses.

THE COURT: Let me stop you for a second now. The usual UCC finance lease, as I understand it, is I go to a vendor of computer equipment. I say I like that one, that one and that one. I pick them out, I decide that I want them and, actually, I really have a choice which is I could try to get a chattel mortgage loan or I can get a finance lease.

I go for a finance lease perhaps because of the tax advantages or whatever. Okay. Fine. I go to a finance company, the ABC Finance Company. I'm referred there by somebody, maybe a good friend. It may even be the seller of the equipment.

MR. GLICKMAN: Or an affiliate, as in the AT&T case.

THE COURT: Now, as I understand it, routinely, for example, the ABC Finance Company not infrequently, by the

way, has no money at all. Frequently the ABC Leasing Company is, in fact, the functional equivalent of a brokerage company except for one thing. They've got a line of credit from somewhere or other. So, they prepare all this wonderful documentation for me which I sign, which is immediately assigned to their funding source with the hell-or-high-water clause and then, lo and behold, my computer doesn't work and I'm mad as could be and, you know something, I throw it out but I keep on getting bills from

your assignee or from the ABC Leasing Company's assignee.

Now, functionally that's no different from my leasing a car and finding out that it's not a good car. Where I see them arguing is there is this difference which is you folks, indeed, your leasing companies are signing the leases although your assignees, your people on some occasions, I guess with Popular at least, I assume that's from Banco Popular, yes, from Banco Popular, apparently they're signing the lease before it even gets assigned to them.

Does that create an issue about holder-in-due-course status?

MR. GLICKMAN: I don't think so, your Honor, for a couple of reasons. First of all, let's talk about the evidentiary reason that your Honor mentioned. This is a motion for preliminary injunction. They have to meet the

standards.

What have they shown you? Three leases, four

leases? There's no basis to assume that in the case of every named plaintiff this was the arrangement. There's no basis to assume that that was the arrangement with all the defendants.

But in any event, it doesn't matter because what the UCC looks at is the lease in the hands of the leasing company, and it asks the questions that are enumerated in the test under UCC 2A. Did the leasing company make the goods? No. Is this a lease for goods? **You just heard that services were part of a separate contract.** The answer is yes. Did the leasing company acquire the goods in connection with the lease? Yes.

Now, they say, well, you assigned it to yourself. You signed it on behalf of the vendor. You were involved from the beginning, they say, and you were involved in checking the credit of these people from the beginning.

Again, assuming arguendo, which they haven't established, that that applied to all the leasing companies, so what? The leasing companies can be involved from the beginning in the financing. That's understood and it's accepted.

What the leasing companies don't get involved in is

parties in this triangular relationship that have the responsibility to pay in the event of a problem with the goods aren't here, and I'm talking now about the vendor.

NorVergence is in bankruptcy. This system works perfectly well most of the time, most days, but now we have a bankruptcy. NorVergence is not at the table, so, they're trying to find a way to break through well-established law, your Honor.

Let me talk a little bit about this issue that's very important in terms of differentiating among the parties. First we have to differentiate among the plaintiffs, and your Honor raised a very interesting point during the argument of my adversary which is, don't courts have to look at the issue of sophistication on a case-by-case basis.

If you notice, their argument with respect to holder in due course constantly emphasizes the lack of sophistication among all of these parties. Well, that's something if it is relevant that has to be determined on a case-by-case basis.

Now, if you take a look at what their specific plaintiffs say, you can go to the web sites of some of these plaintiffs and you'll find that they're in the technology business. George Jon is one of them. It's in the computer Internet business. And you will find other companies among

the plaintiffs, if you do an investigation, all you have to do is go to their web site, you'll find that they say we know technology. So, if you're going to get into the issue of sophistication, that has to be taken on a case-by-case basis.

Take plaintiff Rainier Corp. Go to www.Rainierco.com. They're information technology marketing specialists. We truly understand technology.

How about George Jon, www.georgejon.com. With over ten years experience in information technology, we have the skills, knowledge and expertise to assist you in choosing the right equipment, setting up your network, sharing your files and printers with coworkers and even getting you

connected to the Internet.

Or plaintiffs like Digital Information Technologies or Chernoff Systems Solutions or maybe, your Honor, a plaintiff like Furniss & Quinn, PC, which Martindale-Hubbell will tell you is a law firm just like the law firm, your Honor, in the Danka case. And you heard today that, according to the other side, the Danka case didn't look into the specific issues about whether the law firm in that case was sophisticated.

Well, let's read from the decision. The court is also unmoved by defendant's averments that it signed the agreement on a take-it-or-leave-it basis implying an unequal

bargaining position. Defendant is a law firm. The signatory to the lease on behalf of the defendant was a vice president and partner of the firm who had been employed by defendant for over 23 years. As such, the defendant must be considered to have entered into exactly the type of arm's length negotiation by experienced and sophisticated

businessmen that favors upholding such clauses. The analysis is done on a case-by-case basis, not in a preemptive litigation like this one.

Now, let me talk for a moment about the issue of applicable law and, your Honor, it goes without saying, I mentioned the differentiation of the plaintiffs. If you're making a holder-in-due-course argument and you're trying to argue lack of good faith, that is obviously an issue that has to be taken up case-by-case for every defendant in the room. Your Honor made that point. They have not done that differentiation.

Let's talk about the applicable law here. They repeatedly rely on New Jersey law. They cite New Jersey statutes. They misconstrue New Jersey law. But even if they didn't, it doesn't matter because it's not the applicable law across the board no matter what happens here, which is another reason that you can't litigate a case like this in the preemptive way that they have.

There's two possibilities, Judge, about what can

happen in terms of applicable law. Possibility number one, the so-called forum selection clause, which is also the choice of law clause, gets upheld.

Let's say that happens. And, by the way, all the law they cite with respect to that clause when they attack it is forum selection law. It's not choice of law clause law. That law is different. It's well-established that choice of law clauses are honored, so, we have the choice of law that's in there and it doesn't say New Jersey law. It says the law of the assignee. If that choice of law clause is upheld, you'd be looking at the law of every defendant in this room.

But suppose it's not. Suppose they establish that the clause is invalid. Then where do we go? Well, federal court sitting in New Jersey looks at New Jersey's choice of law rule. New Jersey, as they say correctly, has an interests test where you look at what are the applicable interests here.

Now, they offer no evidence that application of New Jersey interests test would take you anywhere except for the plaintiffs' jurisdictions which is, again, a multitude of states. We have cited to your Honor customer class actions

that it held precisely that, that the states that have the greatest interest here, okay, unless there's a clause that provides for the law, the states that have the greatest

interest are the plaintiff states, not New Jersey law, the plaintiff states.

They signed their agreements in their place of residence, presumably their businesses. That's where the NorVergence salesmen allegedly made their misrepresentations in their sales calls. That's where the equipment was allegedly flashing or not flashing or installed or not installed.

NorVergence, yes, it's headquartered here. It had offices all over the country and if you read some of the papers that they submitted from the Florida action, which they simply dump wholesale into this case, but you read those papers, there were local sales calls that were made, so, don't tell us that NorVergence is headquartered in New Jersey. The contacts, so far as we can see from this scanty

and limited record, were done on a local basis. The New Jersey portion of that choice of law clause only applied if NorVergence was the lessor. It is not the lessor, so, it does not apply. So, you can't wholesale apply New Jersey law the way they say you can.

Now, for the same reason, your Honor, the New Jersey statutes are inappropriate to be invoking in their complaint.

Let me talk for a moment about the forum selection clause. Okay. First of all, the issue is some day, not

here, but some day whether that clause is enforceable. There's no question about that. Your Honor appropriately pointed out that it makes no sense for your Honor to be considering that question, but that's the issue.

They have not cited a single case to show that even if it is deemed to be unenforceable, that it's unconscionable. There's never been a case that's held that. There's never been a case that said that the inclusion of a

clause like that in a contract renders a contract unconscionable under the New Jersey Consumer Fraud statute or anybody else's consumer fraud statute. It's irrelevant to this determination but, by the way, it is enforceable.

You look at, in this case, state law in terms of assessing whether it's enforceable or not and that's going to take you again to different states. Now, there's some authority for the proposition that maybe federal law applies to this issue. The Third Circuit has issued some statements on that, but it doesn't matter. If you look at the Danka case, we heard the Danka case distinguished because it was decided before Copelco.

Well, the fact of the matter is the Danka case was seeking to interpret New Jersey law and federal law and it is not bound -- no federal court is bound by an intermediate appellate court of the state. That does not determine what the law of the state is.

Now, had they cited you -- remember, we just talked

about the fact that New Jersey law is not applicable. Copelco is a New Jersey case. You're going to have to apply potentially either federal law, which Danka speaks to, they're not going to win under that, or you have to apply the law as I just indicated of each of the states of the plaintiffs.

Have they talked to you about that law? All they say is, well, you know, under conflict of laws you don't get to choosing your state law unless there's an actual conflict and you use the substantive law of the forum state unless there's a conflict, but they have the burden of persuasion here on this motion. That's what the Supreme Court has said.

Have they come forward and have they shown you what the law is of the potentially applicable states here? We have ten states other than New Jersey that are applicable. Have they done an analysis? They submitted one case on the issue of the enforceability of these clauses and it's Copelco. There's a lot of other cases cited in their brief, Judge, but they're not on a clause like this.

There's only one other case besides Danka that's cited in the briefs on the clause that's just like this and it's a Minnesota case, I won't go over it now. You'll find

it in the brief. We cited it. It goes our way.

UCC 2A, your Honor. Let's understand the legal framework here because they said it wrong. If this lease is an UCC 2A finance lease, holder in due course does not apply.

The UCC 2A, if its terms are met, there's no need to go into a holder-in-due-course analysis because what UCC 2A says is that anything with respect to the goods is irrelevant. The commitment becomes irrevocable upon the receipt of the goods, period.

You can't say, oh, well, you know, the vendor lied to me. I was fraudulently induced about the goods. They lied about the goods. The goods don't matter if, as a matter of law under UCC 2A, this is a finance lease.

Now, so why do we even talk about holder in due course in our brief? Because we have an alternative argument. The alternative argument is that if UCC 2A doesn't apply by its terms, then we have a contractual basis

for hell or high water. We have two contractual bases for hell or high water, as a matter of fact.

One contractual basis is that the lease says -- now when I say the lease, by the way, they put in one lease. Again, we have no evidence here that that's the same lease that applies for everybody in this room, but let's just assume for purposes arguendo that it's the same lease.

What that lease says is if this lease is a lease

under UCC 2A, then you agree that it's a finance lease.

Now, what does it take to be a lease under UCC 2A? That's specified in UCC 2A, and there's been no argument by the plaintiffs that this is not a lease. So, contractually we have a basis to apply UCC 2A. Even if it doesn't apply itself, contractually we have a basis to do it by virtue of the language in the contract.

We need holder in due course to take advantage of that language and that's true and I'll come to that, but it's in there clear as a bell and, in fact, the comments

that we've cited in our brief to the UCC say that parties by agreement can arrange for the UCC to be applicable, so, that's the first contractual basis that we have.

The second contractual hell-or-high-water basis that we have is the actual language of the lease that you read over and over and over again that says in black and white problems with the goods do not absolve the lessee of its responsibility to pay.

So, let's just understand the conceptual framework here. You don't get to holder in due course if you find that UCC 2A applies on its terms, and it does for the reasons that I mentioned. We're dealing with goods**. They just acknowledged that there was a separate contract for services. The lessor was not involved in the goods themselves and on and on.** We've given the analysis in our

brief and their reply brief has no response whatsoever. Excuse me. That's not true. They submitted the affidavit of a so-called expert, Mr. Goodman, who says this is not a

UCC 2A lease. Well, of course that's inappropriate testimony. It's a legal conclusion. That affidavit wasn't even sworn to. If you take a look at it, the notary didn't sign it and there's no appropriate language that makes it an enforceable declaration under federal law, so, that's not going to help them, and they offer no legal argument for that.

Let me go now to holder in due course. Okay. Now, let's assume we don't make it under the UCC 2A and now we're dealing with the contractual language that says UCC 2A applies or we're dealing with the issue of the hell-or-high-water language that's specifically in the lease.

How do they argue that we are not holders in due course? Well, you know how they first argued it, Judge. First it was the FTC Holder rule. You can't be a holder in due course. Well, that's gone. They said we put that in our original complaint. Well, they put it in their amended complaint, too. And they put it in their moving papers, too. It's all over their papers and it's gone, and if you want to know why at the last minute, your Honor, they submitted this new theory of close connection in their reply papers, that's the answer, because the FTC Holder rule

collapsed on them so they tried to come up with this argument, which doesn't do them any more good than the Holder rule did.

Now, how do they say that we are not holders in due course? What are their arguments? Well, they say we were on notice. How do they say we're on notice? Customer complaints is one thing. They say you must have received customer complaints, but the only complaints that they described, specific complaints that they described on this motion are supposed letters sent by their affiant, Barry Bellin, Exhibit 8. Okay.

One of those letters was supposedly sent to NorVergence and cc'd to one of the leasing companies, my client, in November of 2003. They attached the letter.

You go down to the bottom and there's no cc. Mr. Bellin says he sent another letter to the same leasing company but no date is given for that letter and the letter is not attached. Mr. Bellin lastly says he sent two letters to two other leasing companies. When did he send them? In

April and June of 2004, just before the NorVergence bankruptcy. There's been no critical showing, your Honor, as they must show, that any alleged knowledge on the part of the defendants was had at the time the lease was assigned. **The other argument they make, your Honor, in terms of why we can't be holders in due course is that the pricing**

was supposedly disproportionate to the value of the boxes. Even assuming that that were true, that doesn't mean that there was a fraud here. Even if we knew that different prices were being charged for the boxes, even if we knew that they were having a substantial markup of the boxes, that doesn't mean we were on notice of their fraud.

They said the fraud is these boxes don't work. It doesn't mean that we knew that these boxes don't have anti-slamming technology, which they claim in one of their affidavits was one of the misrepresentations, and it doesn't mean that we knew of the alleged misrepresentation that they

also cite that NorVergence lied when it said that other telecommunications carriers would continue to service if NorVergence went bankrupt.

How are we supposed to know any of that stuff even if we knew this about the pricing? Nor is there any evidence that we did know about the pricing. They say it's obvious. Anybody could have figured it out if they went to the web, they say.

Well, if that's really true, your Honor, why didn't they figure it out. Why didn't George Jon, the technology company, figure it out?

Now, they put in an affidavit from an asserted former NorVergence employee, David Rodriguez, you know, he

said I blew the cover on NorVergence in an Internet announcement that I made. Well, that so-called Internet announcement was made on September 28th of last year, which was late in the day, and he did it by asserting that he was Satchel Paige.

Well, that doesn't really give a lot of credibility to somebody reading it and it's hardly putting everybody in the world on notice of this supposed fraud.

Look at their own papers, your Honor, if you want to know how supposedly obvious this fraud was. Let's go back to Mr. Bellin again. Mr. Bellin says, I have over 20 years of experience in the telecom business and I have a certification from the unit's manufacturer, Adtran, and I conclude that this thing was radically overpriced and how did I do it, how did I reach my conclusion?

I put the box through a test to determine whether there was proprietary software, hardware or a special configuration that might warrant the price.

We're expected to do that? We're expected to have 20 years experience like Mr. Bellin and to conduct Mr. Bellin's tests? So much for the idea that anybody could figure this out.

They also attach a page in their reply papers from Adtran's web site discussing various models but there's no prices there and, in fact, if you look at Adtran's web site,

they say that what they gave NorVergence was a special different model. They say Adtran manufactured a special OEM version, integrated access device for NorVergence, also known as their Matrix unit, so, it wasn't a question of simply going to the Adtran site and saying, oh, yes, now I know what the price is for these units.

If you look at some of the statements that they also include from three NorVergence employees asserting that NorVergence committed fraud, none of them says, your Honor, that any of the leasing companies knew of the alleged fraudulent practices. Look at Mr. Weebles' affidavits. He submits two of them, Exhibit 9. Look at Mr. Zurkin's. Exhibit 10. Look at Mr. Harmon, Exhibit 12. Nobody says that the leasing companies knew. And you know what's interesting about those affidavits? Those affidavits like, by the way, Mr. Rodriguez, Satchel Paige, those affidavits all say that even NorVergence's salespeople didn't know about the fraud. It was unknown to them. It's so obvious that the very people who were working at NorVergence didn't know.

Let me just talk for another minute about their

supposed leasing expert, Mr. Kenneth Goodman, and his unsworn affidavit that's supposed to be a basis for getting a preliminary injunction against 26 defendants. He says he's an expert about leasing industry practices. There's

not one syllable, though, Judge, in there about his qualifications.

He complains, well, you know, I wish I knew the serial numbers. Well, if he looked at the certificates that were attached to the papers that the plaintiffs submitted, at least those certificates have the serial numbers.

He says a cursory review would have established that these Matrix boxes were worth only a small fraction of the stated selling price. Is he a qualified expert on boxes as well? He says he's an expert in the leasing industry, doesn't tell us about that, but he certainly doesn't tell us how somebody is supposed to know this and on and on, giving legal judgments and so forth. That is not a basis for this injunction.

Now, let me talk about their new theory again of close connection. There's a close connection, they say, because this was signed on behalf of the leasing companies -- signed on behalf of NorVergence, which is simply a matter of convenience.

They say, you know, there's a Close Connection Doctrine that says I don't even have to show bad faith under holder in due course, they say. Close connection, that's per se.

There's several problems with this argument aside from the fact that they haven't shown that all the

defendants have private label leases. There's no evidence. If you assume that they were all private label, you assume that defense were involved in drafting them, it doesn't mean that they knew, as I say, of the underlying fraud.

Now, let's talk about the case law on close connection. They cite a bunch of cases from New Jersey on the Close Connection Doctrine. First of all, as I told you

before, that's not the applicable law here. You have to look at the law of each plaintiff's state.

Well, other states have a different view of the Close Connection Doctrine than New Jersey does. For example, Pennsylvania. Pennsylvania doesn't recognize the Close Connection Doctrine. Banker's Trust Co. vs. Crawford, 781 F. 2d 39, Third Circuit 1986, interpreting Pennsylvania law.

Michigan does not recognize the Close Connection Doctrine, Cessna Finance Corp. vs. Warmus, 407 NW 2d 66, Michigan Court of Appeals 1987. Iowa does not recognize the Close Connection Doctrine, Citicorp of North America, Inc. vs. Lifestyle Communications Corp., 836 F. Supp 644. New York. Parties are from all these states with the possible exception of one of them. New York doesn't recognize it. A.I. Trade Finance, Inc. vs. Laminaciones de Lesaca, 41 F. 3d, Second Circuit 1984.

Other states have expressly limited the doctrine

only to consumer situations. That's not this case. That's why they're dropping the FTC Holder rule. They know this isn't a consumer case. Illinois limits it that way. Christinson vs. Venturi. My client's plaintiff is from Illinois. I have a special thing for Illinois. Illinois limited only to consumers, Christinson vs. Venturi Construction Company, 440 NE 2d 226.

Tennessee does the same thing. International Harvester Credit Corp. vs. Hill. Other states are silent on the issue.

Now, they cite some cases that are not from New Jersey. They cite a case from Nevada. Well, Nevada, that case applied to promissory notes, not a lease, and there's no one from Nevada here. There's no plaintiff from Nevada. There's no defendant from Nevada.

They cite a case in California. That was a consumer case. They cite a case in Florida. That was also a consumer case, and courts have subsequently held that Florida would not apply the doctrine in a commercial finance lease transaction.

Equico Lessors, Inc. Vs. Ramadan, 493 So.2d 516. Siemens Credit Corp. vs. Newlands, 905 F.Supp. 757. That's the Northern District of California interpreting Florida

law. Even in New Jersey this doctrine would not apply.

The only cases they cite, your Honor, apply it in

the consumer context. That applies to the Unico v. Owen case involving record albums. It applies to the Westfield case involving food plan and freezer. They also cite the Ramapo Bank case from this state, which is not even a holder-in-due-course case.

Perhaps most importantly, your Honor, every case that they cite preceded the promulgation of UCC 2A, every one of them. UCC 2A was promulgated in 1987 by the committee. It was then passed during the course of the '90s by the various states. New Jersey enacted it for transactions that are on or after January 10, 1995.

All their cases are pre-UCC 2A, and I'll come back to where I started, your Honor is probably grateful, to the AT&T case that said, no, given UCC 2A, I don't care if they're affiliates. We will judge whether this is a financed lease on the terms of the UCC, not on the basis of

affiliation.

What they said was AT&T merely provided the vehicle necessary for Transglobal, that was the lessee, to finance the equipment. AT&T Credit performed no other function, and with all of this signing on behalf of NorVergence, whatever they want to say, they haven't pointed to anything that showed that we had another function here besides financing this transaction, and the Siemens Credit case that I cited from the Northern District of California also noted the

inappropriateness of the Close Connection Doctrine when you have the UCC applicable.

I won't dwell on the proceedings that they described, the supposed Attorney General proceedings that are going on. Those proceedings will take their course, your Honor. The Florida Attorney General has filed an action. Those proceedings will take their course. But you don't take the papers that were filed in that case, dump them into a reply brief and say, well, there's our evidence.

We'll deal with that in Florida.

The other two cases that they've cited that settled, those are settlements. Those are not determinations of law.

The last two prongs of the test, harm to the defendants and policy, I basically covered the issues but your Honor knows the longer you wait in this business, and that's why things are specifically designated 60 days, 90 days, 120 days, the longer you wait, the harder it is to collect, and that's all they're trying to do is delay that.

Issues of policy. Your Honor, this case, it's no secret by looking around the room potentially would have, if you decided it on the preemptive basis they want you to decide it, would have major implications for the industry.

You've got to turn square corners when you're asking for that kind of relief and they have not come close.

THE COURT: Thank you. Mr. Graifman.

MR. GRAIFMAN: Thank you, your Honor. With respect

to my adversary's last argument on likelihood of success on the merits and the holder-in-due-course argument, although he mentioned that he believes that these are finance leases, he interjects in that the fact that, in fact, any holder of such a lease is still subject to the holder-in-due-course requirement.

Now, he's raised the issue of his Close Connection Doctrine.

THE COURT: No, he's not argued that. He's argued that that's a second string to his bow. In short, he's argued that if for some reason there was a finding that this was not covered by the UCC, then that would still be a contractual hell-or-high-water clause which would require a determination that they were not holders in due course.

MR. GRAIFMAN: Right. Which is the exact mirror image of the argument that I made when I started out, which was that either they have to show that they're holders in due course or if they rely on the contractual clause under UCC 9-403B, that statute says that, a clause which states that a defense cannot be asserted against an assignee is valid if the assignee takes good for value in good faith and without any knowledge of a defense, which is essentially a holder-in-due-course standard. So, under 9-403B, the clause

still has to meet the requirement of a holder in due course by statute, so, there's no way to get around that in New Jersey or any other state that has adopted 9-403.

So, it still brings you full circle around to the fact that they need to show that they were holders in due course.

With regard to the fact that they were not holders in due course, again, my adversary suggests that they're not under an obligation to look at the substantial irregularities within the context of these leases that they themselves were financing, but not only financing, they were involved in the administration and operation of the approval of these leases as well, and that is our point.

I don't care whether you call it the Close Connection Doctrine or the lack of good faith or the presence of knowledge of a substantial irregularity which requires notice under the cases, you still have to find that that close of a relationship and their integral involvement

with the application requires that they not be deemed to be holders in due course or, again, if you're going to look at the hell-or-high-water clause, that it doesn't meet the standard in New Jersey that's required under 9-403.

And with regard to the contention that this is only in a consumer context, well, under the Consumer Fraud Act, the businesses involved here are consumers and the language

in Westfield Investment would apply, I would suggest, to these defendants as well as a defendant in a pure freezer case, and there the court said if it had chosen carelessly, meaning the finance company, or has notice the employment of doubtful business ethics, the financing company should not be allowed to hide behind the holder-in-due-course cloak and thumb its nose at the consumer public. The choice which a finance company exercises should not be a choice devoid of responsibility for its selection.

There is another public policy that's at stake here and that policy is whether a lease finance company which is,

in fact, integrally involved in the operation of the financing part of the business such as NorVergence, should not bear the obligation to do some due diligence as the courts require. If they had in this case, if they had done the due diligence, if they had found that this was a scam, they wouldn't be here and we wouldn't be here.

They would have been -- they're in the situation that's the best place to determine whether this is, in fact, a fraud and a scam, whether the equipment that they're financing is, in fact, a loser, which we contend is the case here.

With regard to the issue of whether this, in fact, is a finance lease, the language that requires it to be a finance lease states that the lessor is not the selector,

manufacturer or supplier of the goods. In this case, NorVergence, at the time the lease was signed, was the lessor and, in fact, this could not qualify as a finance lease under those circumstances.

Finally, with regard to the merits of this case, the defendants have not addressed the fact that they're still subject to the real defenses whether they are holders of a hell-or-high-water lease and subject to the real defenses whether they're holders in due course. One of those real defenses is illegality of the contract which nullifies -- which would nullify the obligation of the obligor. That's under Section 3-305 A1 of the UCC.

If, in fact, it's subject to illegality, which we contend it is because it is a violation of the Consumer Fraud Act, then, in fact, the holder-in-due-course status is destroyed on both the contractual claim and on the hell-or-high-water contract claim, so, we would contend that under this case, the language of the UCC demonstrates that they cannot show that they are holders in due course which, by the way, is the burden of the defendants to show that they are entitled to that status, not the plaintiffs normally in a case to show that they are not, although I realize that we have the burden on a motion for injunction to demonstrate likelihood of success.

With regard to the balance of equities, I mean,

here you have the 26 leasing companies. They've got billions of dollars in assets. These losses are spread among 26 leasing companies as opposed to, in the case of the plaintiffs and the class, where you have small businesses involved here. Some of these leasing companies have already agreed to a moratorium, I understand, with regard to lawsuits. That would be CIT, I believe, BDT, and Court Square Leasing. They've agreed with, in the context of either the Florida Attorney General or the New Jersey Attorney General, not to pursue lawsuits, I believe. The Attorney General, I believe, has a representative who can clarify that, but clearly the equities balance in favor of the plaintiffs and the punitive class in this case.

With respect to an injunction, there is case law that demonstrates that a punitive class can obtain injunctive relief, and we have those cites for your Honor if -- in fact, Mr. Green is prepared to address that, if your Honor wants to hear that.

MR. GREEN: Your Honor, defendants relied on Adams and Yolton vs. El Paso Tennessee Pipeline Company, 318 F.

Supp 2d, 455 distinguishes Adams and granted a preliminary injunction for punitive class and, in fact, there is a line of cases that actually granted preliminary injunctions for punitive classes.

I also would say that there's an argument here as

to irreparable harm with Yolton as well and Yolton, the class was required to contribute $501 per month to maintain any of their health benefits and they were going to lose their health care if they couldn't pay that and the judge held that the class could not afford to pay based on reviewing affidavits from 34 people.

In Adams there were only three people that the court was able to cite could not afford to pay for their health benefits, and I would argue, your Honor, that it's analogous in this situation in that Yolton, there was a lost opportunity. If they couldn't pay, they lost the opportunity to have health benefits. In this instance, the businesses, if they can't pay for the additional new

services plus the cost of the lease as well, they'll lose the opportunity for perhaps future business or business today and, in addition, if they have to pay for lawsuits in foreign jurisdictions, again, they could lose future opportunities.

THE COURT: Thank you. All right. As the parties know, the party seeking the temporary restraining order is required to show substantial likelihood that the movant will eventually prevail on the merits, that the movant will suffer irreparable injury unless the injunction issues, that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party,

and that the temporary restraining order if issued would not be averse to the public interest.

In this case the Court is satisfied that there has been an insufficient demonstration of irreparable harm. The Court need not go into all the other grounds for denying a temporary restraining order where it concludes that that

requirement has not been met.

The Court frankly is not prepared to start parsing through the arcane choice of law issues which might prevail on the underlying issue of likelihood of success. What is clear to the Court is that, one, under the Anti-Injunction Act, this Court is without power to issue an injunction to a state court which prohibits that state court or prohibits a party to a pending lawsuit from proceeding with that state lawsuit unless the requirements of the Anti-Injunction Act are met.

There is no contention here that an injunction should issue to preserve this Court's jurisdiction or to enforce its orders and, absent that, the Court has no power to enjoin state court actions which are currently pending.

Moreover, as counsel for defendant properly indicated, the First Filed Rule has no application in a situation in which state court lawsuits are pending. It only applies with regard to parallel pending federal lawsuits.

Secondly, it is apparent to the Court that the key relief which plaintiff seeks and the key cause, irreparable harm, that it alleges would occur if the injunction were not to issue is that the plaintiff class in this lawsuit would have to proceed to defend lawsuits and other efforts by the defendants in this case to enforce the leases which are the subject of this lawsuit.

As the Court indicated earlier, it saw a conceptual problem with that. Individuals throughout the country are on a daily basis required to defend lawsuits. It is, for better or for worse, one of the fundamental tenets of our American system of justice that anybody is allowed to sue anybody for any reason anywhere and, unfortunately, I have to sometimes scratch my head about the results of that particular rule of law, but it is indeed at the core of our system.

But, of course, defendants in lawsuits have the right to defend. In this case I was asking plaintiff's counsel what would happen if he were one of the unfortunate folks who had purchased a NorVergence product or leased it. Being a sophisticated lawyer, what would be the irreparable harm. He would have to defend it and depending on the

wisdom or lack of wisdom of some other judge somewhere, he might win and he might lose. He might even be able to counterclaim under Consumer Fraud statutes and might or

might not be successful.

Indeed, the New Jersey Consumer Fraud statute, if I recall correctly, has a treble damages provision, does it not?

MR. GRAIFMAN: For intentional --

THE COURT: And it also has a provision for an award of attorney's fees to the prevailing party who brings a lawsuit under the Consumer Fraud Act in New Jersey. I have no idea whether or not that statute as argued by plaintiff might be applicable in defending lawsuits throughout the country.

What I do have a problem with is concluding on a mass basis that some 11,000 alleged members of this class will all or virtually all suffer irreparable harm if forced to defend the lawsuits that the various defendants in this

case might bring in various jurisdictions.

This Court is, in fact, confident that if appropriate, courts throughout the country will conclude that forum selection clauses which are arguably products of a contract of adhesion, if found to be so and if found to indeed be an egregious violation of the defendants' rights, will be voided.

What's apparent to this Court is that forum selection clause, at least to the extent it has been litigated in the District of New Jersey, has been the

subject of conflicting decisions; Copelco on one hand, Danka Funding on the other. But what is clear is that there is nothing before this Court which demonstrates at all that the plaintiffs in this lawsuit and punitive defendants in lawsuits brought by these leasing companies will suffer irreparable harm if they, in fact, are subject to that litigation.

As counsel for defendant pointed out, Adams vs.

Freedom Forge Corporation, 204 F.3d, 475, Third Circuit 2000 held, "In short, in the absence of a foundation from which one could infer that all or virtually all members of a group are irreparably harmed, we do not believe that a court can enter a mass preliminary injunction".

This Court is bound by the Third Circuit's decisions in this area. There has been no effort to demonstrate that all or virtually all members of the plaintiff group would be irreparably harmed.

This Court has been told in a conclusory form that the plaintiff class consists of small business people. Small business people vary from small business people to people who aren't such small business people. This Court has no information at all about the economic strength and viability of the various members of this plaintiff class and, yet, the irreparable harm that is being urged upon this Court is to make a determination that those class members,

that virtually all of those class members would be subject

to irreparable harm because the economic straits in which they find themselves would make it impossible for them to viably and effectively defend themselves in the jurisdictions which defendants might bring suit. There is simply no basis for the Court to reach that conclusion.

Indeed, what is suggested to the Court from the submissions that have been made before it is that, indeed, there appears to be a likelihood that the members of this plaintiff group and defendants in that imputative collections actions may very well band together for consolidated defenses with counsel representing groups of them so as to make it economically viable for them to, in fact, assert the defenses which may be appropriate in those lawsuits and, indeed, potentially assert various types of consumer counterclaims and, if successful, collect on them.

During oral argument the Court asked counsel whether or not there are any cases which stand for the proposition that merely having to defend a lawsuit constitutes irreparable harm. Counsel for the defendant cited to EEOC vs. Rath Packing Company, 787 F.2d, 318, Eighth Circuit 1986, which, while in the context of a bankruptcy case, suggested indeed a stay of proceedings would not implicitly be authorized simply because of

litigation expenses which might be incurred absent such a

stay.

It appears that other cases have reached a similar conclusion. In Travis vs. Pennyrile Rural Electric Cooperative, 399 F.2d 726, Sixth Circuit Court of Appeals 1968, the court noted, "An injunction against threatened legal action will not issue if the party will have an adequate opportunity to fully present his defenses and objections in the legal action he seeks to enjoin."

Frankly, that strikes the Court as making eminent sense. The Court has not been presented with any authority to the contrary proposition. Indeed, there is not one case which has been cited to the Court which holds that the threat of litigation and litigation costs, even in an inconvenient forum, constitute an adequate basis for the issuance of an injunction.

The Court further notes that, of course, it may very well be the case that many members of this class will,

in fact, be sued in convenient forums and in jurisdictions which, indeed, the defense of those lawsuits will not be an imposition. There has been no effort to demonstrate the extent to which such an imposition would indeed occur.

In short, this Court is not satisfied that the harm which plaintiffs seek to rely upon is indeed irreparable and under those circumstances the Court is compelled to deny the application for a temporary restraining order.

Now, there are a couple of issues which I do want to deal with while I have you folks here. First, this case was removed from the Superior Court of the State of New Jersey largely on the basis of the fact that plaintiffs asserted a claim based upon the FTC Holder Rule.

It appears to the Court that plaintiffs have functionally abandoned that claim. This Court quite frankly is prepared to issue an order to show cause why that cause of action should not be dismissed for failure to state a claim upon which relief can be granted.

Now, that presents other interesting issues. The removal papers suggest that alternate bases for removal are, one, that some state causes of action rely upon a federal standard to establish liability. If the holder claim results in being dismissed, this Court, quite frankly, is going to be very interested in whether or not a state law cause of action which references a federal standard in some manner or other arises under federal law and is, in fact, a basis for arising under jurisdiction.

The second potential basis for federal jurisdiction that's asserted in the removal petition, although not developed, is the potential that this Court could exercise jurisdiction under the federal bankruptcy laws as related to a pending bankruptcy. If I recall correctly, there was a tangential reference to that in the removal papers.

MR. GLICKMAN: Yes, your Honor.

THE COURT: If that is, in fact, going to be a basis for the defendants to, in fact, assert continuing

federal jurisdiction, the Court will be very interested also in understanding why both discretionary and/or mandatory abstention under the Bankruptcy Act would not apply and warrant the remand of the case to Superior Court of the State of New Jersey since that would be apparently or at least potentially the only basis for federal subject matter jurisdiction.

Now, to a certain degree I'm getting a blank stare from some of the attorneys on the defense side which shows that they have not been blessed with the removal provisions of federal bankruptcy statute but, in short, at this point, just so the parties are indeed on notice, it would appear to the Court that if the federal holder claims end up being dismissed either voluntarily or pursuant to the Court issuing an order to show cause, that this Court would be issuing an order to show cause requiring defendants to demonstrate why continued subject matter jurisdiction should be exercised and whether or not this matter should be remanded to the Superior Court of the State of New Jersey, which I can assure you has judges who would be delighted to hear the case.

Anything further, counsel? Thank you very much.

MR. GLICKMAN: Thank you, your Honor.

(Whereupon the proceedings are adjourned.)

Qwest Business Partner Program

NorVergence™

Solutions by NORTEL NETWORKS™

550 Broad St., 3rd Floor, Newark, NJ 07102

FAX

Lead # 267833

TO: Katherine Muslija FROM: Lisa Romain

FAX: 973-242-7414 EFAX: 646-210-2598

PHONE: PHONE: 646-210-3598

RE: TURBO – Financials PAGES: 8 DATE: 5/14/03

X URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

Kathy,
Please find attached 2 years of financials for Turbo, Inc. , contract submitted 5/9/03.
Please update Len Tobias regarding the STARS scoring for this account.

Thanks,

L Romain

Deal Package Preparation Checklist Coversheet

Matrix T1 Box:

- [x] Credit Application
- [x] Two No Risk Rental Agreements (2 Pages, 1st page signed/2nd initialed)
- [x] Non-Binding Matrix T1 Hardware & Services Application
- [x] Facilities Information Form/Marketing Worksheet (Make Sure FAN# is included)
- [x] Savings Proposal
- [x] Matrix T1 Bill Analysis Worksheet
- [x] Qwest Letter of Authorization (LOA)
- [x] Line Optimization Diagram
- [x] Accurate Bill Receipt and Proposal Request
- [x] National Conversion Assistance Program
- [x] Required Pre-credit/Financial Paperwork
- [ ] Bills
- [x] Other: 2 years Tax Returns

Customer: TURBO, INC

Screening Manager: ROMAN

MVP: CALCAGNO

AVP: _____

RVP: _____

Inside Sales: _____

Matrix Monthly Value: #477.35

Deal Value: #21,897

Matrix SOHO Box:

- [ ] Credit Application
- [ ] Two No Risk Equipment Rental Agreement (2 Pages, 1st page signed, 2nd initialed)
- [ ] Non-Binding Matrix SOHO Hardware & Services Application
- [ ] Qwest Letter of Authorization (LOA) Facilities Information Form/Marketing Worksheet (Make Sure FAN # is included)
- [ ] Savings Proposal
- [ ] Matrix SOHO Bill Analysis Worksheet
- [ ] Accurate Bill Receipt and Proposal Request
- [ ] National Conversion Assistance Program
- [ ] Required Pre-Credit/Financial Paperwork
- [ ] Bills
- [ ] Other: _____

Comments:

2 BOXES

Important:

All forms should be filled out completely. Also, all forms must be the most recent versions. Deals will not be processed without all required forms attached and filled out correctly.

Solutions by NORTEL NETWORKS™ NorVergence™ Qwest Business Partner Program

MATRIX T1

Letter of Long Distance Agency (LOA) To Switch Your Long Distance Service to Qwest

NORVERGENCE INFORMATION

Facilities Application # 15196	Order Date: 5/7/03	Screening Manager Name: ROMAN
Company Name: TURBO, INC	Fax Number: 212-925-0459	Main Phone Number: 212-925-8812
Contact Name: RHONDA SHEARER	Title: PRESIDENT	
Service Address: 302 SPRING ST, 3rd fl	City: NY	State: NY Zip Code: 10013

The undersigned customer wishes to switch its current long distance service to Qwest Communications Corporation ("Qwest"). Qwest is hereby designated to act as the undersigned customer's agent for the purpose of: (1) notifying customer's local telephone company of the selection of Qwest as its primary interexchange carrier ("PIC"), and (2) ordering, in connection with Qwest's provision of service, changes in and/or maintenance on specific telecommunications service including, without limitation, adding to or rearranging such telecommunications service(s). The undersigned customer's selection of Qwest will apply only to the telephone number(s) listed below. The undersigned customer hereby designates Qwest as its primary interexchange carrier for the following long distance services

(Customer MUST initial the service type): → (X) JR InterLATA (including international and intrastate) and intraLATA services

Unless otherwise expressly agreed to in writing, Qwest shall have no obligations or responsibility to arrange for termination or removal of telecommunications services provided by long distance providers. The undersigned customer shall remain responsible for terminating and removing any such unwanted services and circuits provided by other long distance providers.I understand that my local exchange carrier (LEC) may charge a fee of approximately $5.00 per line to change long distance carriers. I represent that I have the authority to change communications carriers for each of the numbers identified below and that I am at least eighteen (18) years old. I understand that I may designate only one primary interexchange carrier for any one telephone number for state-to-state (interLATA), intrastate, and international usage; and that I may designate only one primary interexchange carrier for any one telephone number for intraLATA usage (where applicable). With these understandings, I select Qwest to provide the communications service types indicated above for each of the telephone numbers listed below.

(X) Signature Required	PRESIDENT Title	5/7/03 Date

Telephone Number(s) To Change Your Preferred InterExchange Carrier to Qwest	*What is the BTN For Each of These Numbers?*
212-925-0459	212-925-8812
212-741-4778	212-741-4778

3

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NorVergence™

Solutions by NORTEL NETWORKS™

CARRIER NEUTRAL UNLIMITED CELLULAR
Consideration for National Conversion Assistance Program

I understand that due to controlled allocation of Unlimited Calling Services, we may have to change ____1____ cellular phone number(s) and equipment or our provider. If this is necessary, we would like to be considered for the National Conversion Assistance Program.

This letter serves as a request only. It is my understanding that the National Conversion Assistance Program provides companies with financial support to cover the operational costs associated with a conversion including but not limited to:

1. **Maintaining your existing Cellular Provider Service up to 30 days.**

2. **Provide financial assistance for:**
   - **Business Cards**
   - **Letterhead**
   - **Stationery**
   - **Notification to existing contacts**
   - **Other Costs and Expenses associated with a smooth transition to new numbers**

In order to be considered for the National Conversion Assistance Program, I am also submitting Non-Binding Hardware and Services Applications. I understand that my application serves as a reservation only until engineering's approval is issued and mutual consent is given, allowing both parties to perform their due diligence.

Current Cellular Set-Up:	# of Phones:
? AT&T	_____
? Sprint	_____
? Nextel	_____
? Verizon	_____
? T-Mobile	1
? Cingular	_____
? Other_____	_____

Total Quantity of Phones: 1

(X) _____
Applicant Signature

RHONDA SHEARER
Print Name

PRESIDENT
Title

LISA ROMAN
NorVergence Screening Manager

Solutions by Nortel Networks

NorVergence

Solutions by Nortel Networks

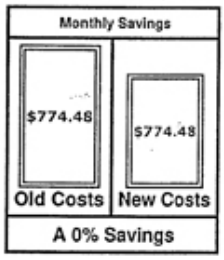
Proposal & Savings Guarantee

Current Costs	
Total Domestic Outbound Charges	$118.50
Local Phone Charges	$338.03
Other Connectivity Costs	$0.00
International Costs	$18.95
Internet Access	$299.00
Old Total Costs	**$774.48**

New Costs	
Wireless & Circuit Facility	$73.99
Remaining Local Phone Charges	$215.55
Reduced International Costs	$7.58
Matrix System Rental Payment	$477.35
New Total Costs	**$774.48**

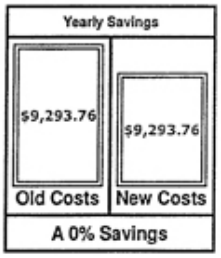
Customer Monthly Savings $0.00

Savings Percentage 0%



Customer Yearly Savings $0.00

Savings Percentage 0%



NorVergence Pricing & Savings Guarantee: Subject to mutual Due Diligence & Acceptance by Engineering, the savings numbers represented in the Proposal above are based on actual bills and represent your current telecommunications expenditures. This proposal can only be generated once and is not subject to change.

Both parties hereto agree that during month 12 of this agreement, and during every month 12 anniversary thereafter, the customer can review competitive pricing offers from other providers for identical services. If two or more written quotes are received from alternate providers for the same services that are 10% less than the above costs NorVergence will reduce the customer's monthly payout to equal the lowest confirmed quote for the balance of the term. Finally, all savings represented in the customer proposal attached hereto and confirmed by receipt of your first savings check are hereby guaranteed for the term.

Applicant Initial (X) [illegible]

NorVergence Screening Manager - Print Name LISA ROMAN

Signature [signature]

Date 5/7/03

NorVergen

Credit Application

NOTICE: If your application for business credit is denied, you have the right to a written statement of the specific reasons for denial. To obtain the statement, please contact the "Credit Department", 550 Broad St, 3rd Floor, Newark, NJ, 07102 or call 1-800-714-6573 within 60 days from the date you are notified of our decision. We will send you a written statement of reas for the denial within 30 days of receiving your request for the statement. The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the b race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives f any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance this law concerning the creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Customer (Full Legal Name)	Phone Number	Fax Number
TURBO INC	212-925-8812	212-925-0459

Address	City	State	County	Zip Code
62 GREENE ST, 3FL	NY	NY		1001

Equipment Location (if different from above) Address	City	State	County	Zip Code
302/304/306 SPRING ST FL GROUND	NY	NY		10013

Corporation	Partnership	Sole Proprietorship	Other (List Type)	Federal Tax ID Number	In Business Since
☒	☐	☐	☐	[redacted]	

Norvergence Equipment Description	Equipment Cost	Payment Amount (Before Taxes)	Term	Contact Person	Phone Number	Security Deposit
MATRIX	$	477.35	60	BOB WEITZMAN	973-241-1500	-0-

Bank References

U.S. TRUST

Bank Name (Type of Account)	Account Number				
U.S. TRUST - TF TURBO	[redacted]	/ [redacted]			

Address	City	State	County	Zip Code
114 W. 47TH STR	NEW YORK	NY		1006

City/Loan Officer	Phone Number	Type of Account
Andrew Schwartz		CHECKING BUS. RESERVE

Trade References (omit credit card accounts)

Address	Account #			
37 Glenbrook Rd	350 5TH AVE., SUITE 703			

STAMFORD	CT	NEW YORK	NY	10

Phone Number	Contact		Phone Number	Contact
FAX: 203 977-8314	DIANE E. MARTIN, CPA	WHITE PLAINS	212-564-1250	
Phone 203-327-0151				

Personal Data (Principals or Officers)

Name (last)	First	(MI)
SHEARER	RHONDA	R.

Home Address	City	State	County	Zip Code	Social Security Number
62 Greene St	NY	NJ	NY MANHATTAN	10012	[redacted]

Personal Data (Principals or Officers)

Name (last)	First	(MI)

Home Address	City	State	County	Zip Code	Social Security Number

Authorization to Release Information

The undersigned authorizes and instructs any person, consumer reporting agency or banking institution to compile and furnish the Renter's assigns with any information it may have in response to an inquiry from the Renter. Undersigned further states that all of the above statem are true and complete and are made to the Renter to obtain a contract.

Date	Renter
5/7/03	[signature]

Solutions by NORTEL NETWORKS™

NorVergence

Solutions by NORTEL NETWORKS

MATRIX™ T1 Non-Binding Services Application

THIS IS A NON-BINDING APPLICATION TO RESERVE "VOICE AS UNLIMITED DATA", HIGH SPEED T-1 ACCESS FACILITIES AND CELLULAR HANDSETSSUBJECT TO THE TERMS BELOW, FINAL CREDIT AND ENGINEERING APPROVAL

This Services Application is non-binding until you are approved for the "Voice as Unlimited Data" services herein and all parties agree to move forward. Access Facilities will then be connected and installation confirmed.

Site Information

Applicant Company Name:	Address:	Voice as Unlimited Data Multi-Access Request:
TURBO	62 GREENE ST, 3FL NYC 10012	T-1 X Cellular X Fraud Protection Feature
Contact: Rhonda Shearer	Phone #: 212-925-8812	Order Date: 5/7/03
Floor(s)/ Closet(s) name: WALL IN TELCO ROOM	Department(s):	Screener's Rating *(for office use only)*: / Screening Mgr: ROMAN

If approved and mutual consent is given the following services will be performed:

- **NorVergence will coordinate Carrier Neutral provisioning of your High Speed "Voice as Unlimited Data" Access Facilities.**
- **NorVergence will arrange for delivery of "Voice as Unlimited Data" High Speed T-1 Circuitry through your Local Service Provider to your premise.**
- **NorVergence will program and provide Cellular "Voice as Unlimited Data" handsets (as applicable) for toll free and surcharge free Cellular calling.**
- **NorVergence will connect your outbound lines to Unlimited Domestic Toll Free Calling without per Minute Charges, Fees, or Surcharges.**
- **NorVergence will have Fraud Protection Technology ("FPT") activated on all MATRIX™ Landlines and Cellular phones Removing Toll Fraud and Hacker Liability.**
- **NorVergence will provide one additional Unlimited Domestic Calling Outbound line(above those listed below) subject to your PBX Capacity***
- **NorVergence will coordinate the National Conversion Assistance Program to provide for a smooth transition to new Cellular numbers, if applicable.**

If approved and mutual consent is given, Applicant agrees to:

- Authorize NorVergence to submit this Application for Credit and Engineering Acceptance.
- Save and Hold NorVergence Harmless if Credit or Engineering Approval is Not Granted for the Solution.
- Purchase the access services on the terms below and allow Local Service Provider installation.

If approved and mutual consent is given, NorVergence agrees to: VC/S

- Coordinate & Enable Carrier Neutral "Voice as Unlimited Data", T-1, Internet Access, for $ 58 /per month for a 60 month term.
- Coordinate & Enable Unlimited Cellular Access for $ 35.99 /per month on a 60 month term for 1 Cellular Handsets(if applicable)
- Coordinate & Enable Free Unlimited Domestic U.S. Calling for 4 Outbound lines* attached to your Phone System
- Coordinate & Enable one new State of the Art Tri-Mode Cellular Handset per Cellular access number every 12 Months as requested by customer.

✓ **Carrier Neutral Unlimited Cellular Service:**

1 **(Qty.) Phone sets/Phone Numbers**

✓ **National Conversion Assistance Program Request Attached**

WARRANTY & ADDITIONAL GUARANTEES of SERVICE: As long as Customer remains in good credit standing, this Agreement authorizes the Service Provider Carrier to guarantee pricing, service assurance and circuit continuity on all T-1s installed & Cellular phones programmed. Additionally, throughout the term, customers may request a change in Cellular Providers, subject to availability at the time of their request. In order to guarantee the customer savings outlined in your proposal, customer agrees that NorVergence may enhance or modify underlying carriers and hardware at any time during the term at NorVergence cost. All International & Directory Assistance calls are billed separately. Cell phones DO NOT include direct dialed International Calling capability. *For comprehensive Terms and Conditions included herein by reference, please visit our web site at www.NorVergence.com.

Applicant Authorization

The parties noted below, as duly authorized representatives of their respective companies, hereby approve the above services to be provided and purchased on the terms herein subject to customer written confirmation of installation. This application is further conditioned upon Credit Approval, Engineering Review, and final consent of all parties to move forward.

Name (please print)		*Signature*	*Date*
Applicant: RHONDA SHEARER	Applicant Title: PRESIDENT		5/7/03

NorVergence Authorization

Name (please print)		*Signature*	*Date*
Employee: LISA ROMAN	Employee Title: SCREENING MGR		5/7/03

NBSA 11-7-02 VI

7

Solutions by NORTEL NETWORKS

NorVergence

Solutions by NORTEL NETWORKS

MATRIX™ T1 Non-Binding Hardware Application

THIS IS A NON-BINDING APPLICATION TO RESERVE "VOICE AS UNLIMITED DATA" HIGH SPEED T-1 ACCESS HARDWARE ON THE TERMS BELOW UNTIL FINAL CREDIT AND ENGINEERING APPROVAL

This Reservation is effective, when accompanied by an Authorized Credit Application and an Equipment Rental Agreement. The Equipment Rental Agreement is non-binding until your application is approved for the MATRIX™ Hardware Solution, the system is mounted in your phone closet, and a "Delivery and Acceptance Receipt" is submitted. If approval is granted, and all parties agree to move forward, we will fulfill our Immediate Savings Guarantee to you by issuing a monthly payment for the cost reduction amount in your Proposal while waiting for the Phone System Vendor to connect all access facilities.

Site Information

Applicant Company Name:	Address:	MATRIX™ Features:
TURBO, INC	62 greene St, 3Fl NYC 10012	X T-1 X Fraud Protection Technology
Contact: RHONDA SHEARER	Phone #: 212-925-8812	Order Date: 5/7/03
Floor(s)/ Closet(s) name: WALL IN TELCO AREA	Department(s):	Screener's Rating *(for office use only)*: / Screening Mgr: ROMAN

If approved and mutual consent is given, NorVergence will perform the following work:

- NorVergence will provide and mount the quoted MATRIX™ Equipment Hardware "Voice as Unlimited Data" High Speed Access Solution.
- NorVergence will install the MATRIX™ Solution at each location and have your PBX vendor connect thereto at NorVergence cost.

If approved and mutual consent is given Applicant agrees to:

- Allow access for the MATRIX™ device(s) to be mounted in the phone closet
- Provide Power and a Router with the NAT Feature to utilize the Internet Access capabilities of the MATRIX™.
- Rent the Matrix™ T1 Solution on the Terms & Conditions of the Equipment Rental Agreement

If approved and mutual consent is given, NorVergence agrees to:

- Submit for Approval an Equipment Rental Agreement for 2 (qty) MATRIX™ Hardware Solution(s) @ $477.35 mos., 60 month term rental.
  (Including Card Capacity for 4 outbound lines, with high speed internet access and Fraud Protection Technology).

FIVE YEAR WARRANTY & ADDITIONAL TERMS & CONDITIONS: The Manufacturer warrants that hardware supplied under this order shall be free from defects in materials and workmanship and will conform to applicable specifications and drawings. The Manufacturer's liability herein, whether based upon breach of warranty or contract or negligence in manufacture, shall be limited to replacement or repair at the Manufacturer's election of all such defective or nonconforming items, provided that this warranty shall apply only where Customer has given manufacturer written notice of such defect s or nonconformity within the warranty period. For comprehensive Equipment Terms and Conditions included by this reference, please visit our web site at www.NorVergence.com.

Applicant Authorization

The parties noted below, as duly authorized representatives of their respective companies, hereby approve the above hardware to be provided on the terms above subject to written customer confirmation of MATRIX™ Solution mounting and receipt of any savings checks due. This application is further conditioned upon Credit Approval, Engineering Review and final consent of all parties to move forward.

Name (please print)		*Signature*	*Date*
Applicant: RHONDA SHEARER	Applicant Title: PRESIDENT	(X)	5/7/03

NorVergence Authorization

Name (please print)		*Signature*	*Date*
Employee: LISA ROMAN	Employee Title: SCREENING MGR		5/7/03

NBHA 12-18-02 VI

CREDIT APPLICATION - #204765

Close

Application Number:	Customer Number:	status
204765	47157	Approved

Name: Turbo, Inc

In Business Since:

Street Address: 62 GREENE ST THIRD FLOOR

External Ref:

City/State/Zip: NEW YORK NY 10012

Phone No.: (212) 925-8812

Contact/Title: /

- ☐ Corporation
- ☐ Federal
- ☐ LLC
- ☐ Municipal
- ☐ Non-Profit
- ☐ Partnership
- ☐ Proprietorship
- ☐ SLG

Equipment Location *(if different from above)*

Principal/Partner/Guarantor Social Security No.

Home Street Address

City/State/Zip Phone No.

EQUIPMENT INFORMATION

Supplier Name/ID	Contact
NORVERGENCE - NYC /NOR001.1	

Program Type:	Lease Term:	Rate Factor
Rental Stream	60	0.02079
	$ at close:	Cost of Equipment
	$0.00	$21,896.78

Equipment Description (Manufacturer, Model)	Add'l Avail. Credit Line	Transaction Total
1. matrix smb	$120.39	$21,896.78
	Cred. Line Exp. Dt.	Monthly Payment
	8/17/2003	$455.23

The additional available credit line as shown above is not and cannot be construed as a guaranteed available balance of a credit line. Additionally, all CIT credit lines are subject to change without notice. To verify if there is sufficient credit available on a specific transaction, please call and confirm availability with your CIT origination team specialist.

NO TAP $22,655.43
2001
1 CARD

Equipment Rental Agreement

Rental Number _____

Renter (Full Legal Name)				Renter (Full Legal Name)			
Norvergence, Inc				Turbo, INC.			
Address				Address			
600 Broad St 3rd Floor				62 Greene St, 3Floor			
City	State	County	Zip Code	City	State	County	Zip Code
Newark	NJ	Essex	07102	NewYork	NY		10012
Telephone Number				Telephone Number	Federal Tax ID Number		State of Organization
973 - 242 -7500				212 925-8812	[redacted]		

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 (1 CARD)	

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

Equipment Location (if different from Renter address above)

Address					
302 Spring Street, Ground Floor					
City	State	County	Zip Code	Renter Contact Name	Telephone Number
New York	NY		10013		

Transaction Terms: Rental Payment $ 230.00 (plus applicable taxes) RENTAL TERM 60 Months Security Deposit $ _____

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. [illegible]

302 Spring Street, Ground Floor

City: New York | State: N.Y. | County: | Zip Code: 10013 | Renter Contact Name: | Telephone Number:

Transaction Terms: Rental Payment $ 230.00 (plus applicable taxes) RENTAL TERM 60 Months Security Deposit $ _____

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 show 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 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 our interest in the Equipment.

THIS RENTAL MAY NOT BE CANCELLED OR TERMINATED EARLY

Renter: NorVergence

By: X _____

Accepted on behalf of FRANK DAUDIER
VP/ATTORNEY IN FACT

Renter: Turbo, Inc.

By: X _____

Name (print) Rhonda Shearer

Title: President

Date: 6/30/03

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

Guaranty. In this guaranty, you means 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(s)") 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 those 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 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

By: X _____, Individually

Name (print)

Personal Guaranty:

By: X _____, Individually

Name (print)

NorVergence, Inc. (Renter)

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) when 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 provided 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 inspected 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 "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 interim 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 change 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. Restrictive endorsements on checks you send to us will not reduce your obligations 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 $20.00 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 without our advance written consent. You will give us reasonable access to the Equipment location so that we can check the Equipment's existence, 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 eligible 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 either to exercise any option to purchase all but not less than all of the Equipment (if we 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 paragraph titled **Return of Equipment.** If we have not received written notice from you of your intention to purchase or return the Equipment, the Rental will automatically renew for succeeding 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 will list us as loss payee. You will also carry public liability insurance with respect to the Equipment and the use thereof and name 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 transfer clear title to such replacement Equipment to us, such Equipment shall be subject to the Lease and be deemed the Equipment, or (c) pay to us the present value of the total of all unpaid Rental Payments 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 Lease 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 obligations. IF YOU DO NOT GIVE US PROOF OF PHYSICAL

REMEDIES: If a Default occurs, we may do one or more of the following: (a) cancel or terminate this Rental or any or 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 titled 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, are 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 rights 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 restore any amount so applied. If you are not in default, any security deposit will be returned to you within 90 days after the end of the original or renewal Rental Term (or as otherwise required by applicable law), or at your direction 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 aboard any carrier(s) we may designate in the continental United States. The Equipment must be properly packed for shipment in accordance with the manufacturer's recommendations or specifications, freight prepaid and insured, maintained in accordance with the paragraph titled Use Maintenance and Installation, and in "average Saleable Condition". "Average Saleable 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 missing or defective parts or accessories, including manuals and licenses. 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 your 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 Rentor's principal offices are located or, if this Lease is assigned by Rentor, 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 Rentor or Rentor'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

accordance with the paragraph titled Return of Equipment. If we have not received notice from you of your intention to purchase or return the Equipment, the Rental will automatically renew for succeeding 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 will list us as loss payee. You will also carry public liability insurance with respect to the Equipment and the use thereof and name 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 transfer clear title to such replacement Equipment to us, such Equipment shall be subject to the Lease and be deemed the Equipment, or (c) pay to us the present value of the total of all unpaid Rental Payments 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 Lease 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 obligations. 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 DUE 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/or 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 billed by us. You agree to pay us any estimated taxes when we request payment. You agree that if 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 titled **Payment**) on such payments if applicable with the next payment. You agree to pay us a monthly fee up to one hundred and fifty thousandths of one percent (.150%) 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 purpose 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 dissolve or are dissolved, 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, does not perform its obligations under the guaranty, or becomes subject to one of the events listed above.

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 your 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 Rentor's principal offices are located or, if this Lease is assigned by Rentor, 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 Rentor or Rentor'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", WTHOUT 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 rescission 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 if submitting via facsimile.

NORVERGENCE™
Drastically Reducing Technology Costs

Rhonda Shearer
Turbo Inc
62 Greene St APT 3
New York, NY 10012-4346

Paid 4/28/04 T# 6987

Invoice Number:	NORV2004-039290
Invoice Date:	04/15/2004
Account Number:	102248
Billing Cycle:	04/15/2004 - 05/14/2004

Item	Qty	Price	Total
Previous Balance			
Past Due		90.96	90.96
Payments			
Payment received on 04/01/2004 - Thank you		(90.96)	(90.96)
Current Charges			
High Speed Multi-Protocol Unlimited Access Facilities	1	73.99	73.99
International "Voice as Unlimited Data" TM Connections Including Broadband Internet Access, Free Unlimited Domestic Voice as Data Connections		31.14	**FREE**
Free Cellular Access			**FREE**
*Federal Universal Service Fee/Surcharges		11.88	11.88
Taxes/Surcharges		9.54	9.54
		Total Current Charges:	126.55

Drastically Reducing Telecommunications Costs

* This is an FCC mandated fee to all interstate/international providers to subsidize services for libraries, schools, and rural communities, and must be charged by all providers.

CIT

CIT TECHNOLOGY FIN SERV, INC
Attn: Customer Service
P.O. Box 550599
Jacksonville, Florida 32255-0599

PAGE	1 of 1
INVOICE NO.	5531413
INVOICE DATE	06/11/2004
CONTRACT NO.	901-0007954-000
DUE DATE	07/01/2004

View your account online at

Quality Digital Solutions
Where your answers are a click away.

www.QDSontheweb.com

Contract Number Asset Description	Description of charge(s)		Amount Due	Sales Tax	Total Due
901-0007954-000 MATRIX SMB	PAYMENT DUE INSURANCE	07/01/2004 07/01/2004	477.35 32.84	41.17 0.00	551.36
	INVOICE TOTAL		510.19	41.17	551.36

Paid
6/24/04
Ck# 7040

INQUIRIES
www.QDSontheweb.com
For Customer Service inquiries, please call 1-888-204-0799
For Insurance Inquiries, please call 888-873-1917

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NorVergence

550 Broad Street, 3rd Fl.
Newark, NJ 07102
Phone: 973.242.7500
Fax: 973.242.7414

FAX CIT

To:	CIT Team	**From:**	E. Lucas/L. Fredrickson
Fax:	800-234-7969	**Phone:**	973.242.7500
Phone:	800-234-3570	**Date:**	7-1-03
Re:		**Total Pages (incl. cover):**	8

☑ Signed Rental Application ☐ Requested Audited Financials ☒ Invoice
☒ Signed D&A ☐ Other _____
$22,055.43

Below are businesses included in this fax. Please check box if customer's "verbal acknowledgement" has been obtained by you and fax this form back to 973.242.7414.

☐ 1. TURBO, INC
☐ 2. RHONDA SHEARER
☐ 3. 917 412-4905 (CELL)
☐ 4. 212 925-8812 (PHONE)
☐ 5. _____
☐ 6. _____

RHONDA

CIT:

"Drastically Reducing Your Telecommunications Costs"

550 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7500
Fax# (973)242-7414

Invoice#: 15169

Date: 7/1/2003

App# 204765

Contact: Ed Lucas x7066
Lynn Fredrickson X129

INVOICE

Turbo, Inc
62 Greene Street, 3rd Floor
New York, NY 10012

Item Description	*Quantity*	*Price*
Matrix 2001	2	$22,655.43

Bill to CIT-Technologies Financing Services, Inc.
4600 Touchton Road
Building 100 Suite 300
Jacksonville, FL 32246

TOTAL $22,655.43

Installation Address: 302 Spring Street, Ground Floor
New York, NY 10013

All Payment Should Be Sent To: *First Union National Bank* 550 Broad Street Newark, NJ 07102 *Wire Routing Number:* 031201467 *Account Number:* 2000011202277 *Account Name:* NorVergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

15

NDA

NorVergence™

550 Broad Street, 3rd Floor
Newark, NJ 07102
(973) 242-7500

Customer Name: Turbo, Inc

Order code	Product Description	QTY
	Merged Access Transport Intelligent Xchange - MATRIX Base Chassis Package	
MATRIX-2001	Integrated Voice and Data Multi-Protocol Access System, including DS1/T-1 interface and POTS capacity to support the port and card hardware listed below. Base chassis package includes advanced data engineering, high speed internet access connectivity and Voice over IP over ATM provisioning with on-site installation and cabling.	2
MATRIX-2001-EXP MATRIX Expansion Package		
MATRIX-2001-EXP	Card-based firmware supporting dynamic voice and data bandwidth allocation at DS1/T-1 speeds with up to 24 simultaneous voice paths over high speed access with POTS or DSX1 interface as required.	2
MATRIX-2001-Data/ATM Expansion Card(s)	Modular Card Voice over ATM/IP Encapsulated Signal Processing (VAISP) providing 4 simultaneous "Voice as Fast Data" connections as high speed data access per card.	2
MATRIX-2001-VFD Embedded Firmware Operating System		
MATRIX-2001-VFD	The MATRIX-2001-VFD is an embedded firmware operating system inherent in each data/ATM expansion card. Multiple cards include automatic data call set up and array failover. The customer is granted the Right-To-Use (RTU) the card based firmware (MATRIX-2001-VFD) and receive all future updates on the MATRIX-2001 Advanced Merged Access System for a 5 Year period.	2
MATRIX-24-TR57 Compliant Analog POTS Interfaces		
MATRIX-24	In addition to DS1/T-1 interface, the MATRIX-2001-EXP includes 24 line POTS Amphenol Port and Connector. Carrier Class ATM/IP Card - For POTS Interface. TR-57 Compliant.	2
MATRIX-2001-PSU Power Supply Unit		
MATRIX-2001-PSU	The MATRIX-2001-PSU is included with each MATRIX Base Chassis Package. Redundant PSU optional. AC Power Supply - 90-130VAC, 60Hz, 50W MAX.	2
MATRIX-2001-ISF Interface Support Firmware		
MATRIX-2001-ISF	The MATRIX-2001-ISF is embedded in each MATRIX-2001 Base Chassis Package/card. Includes: Support for Network Interface(RJ-48C) T1, ATM, AAL2(Voice), AAL5 (data & voice), IP Routing Capability and Port Management.	2
MATRIX-2001-OQS Optimum Quality System		
MATRIX-2001-OQS	The MATRIX-2001-OQS is embedded with each MATRIX-2001 Base Package/card. Firmware continuously monitors and improves voice quality during all "Voice as Fast Data" calls. Automatically chooses optimum compression and echo cancellation techniques, individually assessing calls sent to the packetized network. OQS suppresses background noise and fills dead space.	2
MATRIX-2001-ALCAF Automatic Line Condition Adaptation Firmware		

MATRIX-2001-VFD Embedded Firmware Operating System		
MATRIX-2001-VFD	The MATRIX-2001-VFD is an embedded firmware operating system inherent in each data/ATM expansion card. Multiple cards include automatic data call set up and array failover. The customer is granted the Right-To-Use (RTU) the card based firmware (MATRIX-2001-VFD) and receive all future updates on the MATRIX-2001 Advanced Merged Access System for a 5 Year period.	2
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MATRIX-2001-ALCAF Automatic Line Condition Adaptation Firmware		
MATRIX-2001-ALCAF	The MATRIX-2001-ALCAF is embedded with each MATRIX-2001 Base Package/card. ALCAF automatically adapts transmission signals to changing line conditions, differences in line lengths, network delays, adjusts to changes in callers voice intensity or volume, differences in customer telephone set quality, and changes in network congestion while keeping voice quality at toll quality levels.	2
MATRIX-2001-TFIO Toll Free Inbound Option		
MATRIX-2001-TFIO	The MATRIX-2001-TFIO is an optional accessory for each MATRIX-2001 System. Firmware allows Inbound Toll Free Directory Numbers to be routed over the MATRIX-2001 Voice Ports. This interface is designed to interface with DSX1 or POTS line functionality	2
MATRIX-2001-IPSMF IP Subscriber Management Firmware		
MATRIX-2001-IPSMF	The MATRIX-2001-IPSMF is included in each MATRIX-2001 Base Package/card. Links to Centralized Subscriber Management Services Node: Supervising access, device monitoring, authentication, and IP address management. Includes software for Virtual Private Networking and Managed Internet Firewall. Activation required/fees apply.	2
MATRIX-2001-MGMT On-Site Management Support Features		
MATRIX-2001-MGMT	The MATRIX-2001-MGMT Features include: On-Site, Front or Rear panel Access, EIA-232, Physical RJ-48C or dB-9 Connector, SNMP V1 Support, Full Menu Drive TELNET Access, Software Downloaded via TFTP.	2
	TOTAL SALE PRICE: >>>>>	**$22,655.43**

Delivery and Acceptance Certificate

The undersigned certifies that it has received and accepted all the Equipment described in the Equipment Rental Agreement between NorVergence, Inc. (Rentor), and the undersigned Turbo, Inc (Renter) dated 05-07-03. 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 Rentor or anyone else. I have had a reasonable opportunity to inspect the goods.

Renter: Turbo, Inc

Date: 6/16/03

By: Rhonda Roland Shearer
(Print Name)

x Rhonda R. Shearer
(Signature)

Title: owner, president

Serial # BOX (1) — 0182392 (VOICE)

BOX (2) — 0182876 (DATA)

IV. CONCLUSION

Moral of this story ? You cannot declare a "pig in a poke's" value to the SEC and then insure it without taking it out of the bag.

This paper began with a quote on the title page from the ancient author of Aesop's fables. Therefore, I felt it fitting to end this report with a moral that uses the origins story behind the expression " *a pig in a poke*." Here is one explanation, found on the Internet sourced from. The Dictionary of Phrase and Fable. 1898, E. Cobham, Brewer, 1810–1897. [1]

> **A PIG IN A POKE:**
> A blind bargain. The French say *Acheter chat en poche.* The reference is to a common trick in days gone by of substituting a cat for a sucking-pig, and trying to palm it off on greenhorns. If anyone heedlessly bought the article without examination he bought a "cat" for a "pig;" but if he opened the sack he "let the cat out of the bag," and the trick was disclosed. The French *chat en poche* refers to the fact, while our proverb regards the trick. Pocket is diminutive of poke.

Leasing Companies, by analogy, are experts in "pigs' (in this case, known equipment at correct price) and their valuations. They appraise pigs and lease them everyday. Their daily procedure, when vendors try to sell pigs to them to be leased, is to check the marketplace to make sure the pig in which they are investing money is, well, not a cat (a falsely valued piece of equipment).

It's one thing to buy or lease a pig in a poke as a private company (poke or bag defined for this analogy as a hidden or unknown valuation). It's quite another when you are a public company with a fiduciary responsibilities, which includes buying and reporting pigs at their "fair market" asset value as defined in the FASB guidelines and SEC requirements.

To declare a valuation of a pig in a poke to insurance companies, when it is really a cat and you have not bothered to open the bag (checked the marketplace), and worse yet, charge renters inflated premiums that are pig-sized instead of cat sized, is fraud. Hence, the CIT and leasing industry lesson here is: You can not declare a "pig in a poke's" asset value to the SEC, insure it, and charge premiums, without out taking it out of the bag—it's fraud!

The cat is now out of bag.

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[1] http://www.bartleby.com/81/13246.html