

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

NOV 10 2007

WILLIAM W. ELLIOTT
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave., N.W.,
Washington, DC 20580,

Petitioner,

v.

IFC CREDIT CORPORATION,
8700 Waukegan Rd., Suite 100,
Morton Grove, IL 60053,

Respondent.

No. 05C 64

MAGISTRATE JUDGE

**PETITION OF THE FEDERAL TRADE COMMISSION
FOR AN ORDER TO ENFORCE CIVIL INVESTIGATIVE DEMAND**

Petitioner, the Federal Trade Commission ("FTC" or "Commission"), by its designated attorneys and pursuant to Section 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 57b-1, petitions this Court for an order requiring respondent IFC Credit Corporation ("IFC") to produce documents and information in accordance with a Commission civil investigative demand ("CID") issued to IFC on August 8, 2005. In support of this petition, the Commission states as follows:

1. The Commission is an independent administrative agency of the United States government, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.

2. Section 20 of the FTC Act, 15 U.S.C. § 57b-1, authorizes the Commission to require

by CID the production of documentary material or other information relating to any Commission investigation to determine whether any person may have engaged in any unfair or deceptive acts or practices in or affecting commerce in any place in the United States. Section 20(e), 15 U.S.C. § 57b-1(e), authorizes the Commission to bring this action for enforcement of its CID.

3. Respondent is located in and transacts business in this judicial district. Respondent is engaged in and its business affects “commerce” as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. This Court has jurisdiction over respondent and the authority to enforce the Commission's CID pursuant to Sections 20(e) and (h) of the FTC Act, 15 U.S.C. §§ 57b-1(e) and (h), which provide that:

(e) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section . . . the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section. All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

* * * *

(h) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. . . . Any disobedience of any final order entered under this section by any court shall be punished as contempt of court.

5. The Declaration Under Penalty of Perjury of Randall H. Brook , which verifies the allegations of this Petition, is attached hereto as Petition Exhibit (“Pet. Exh.”) 1.

6. In September 2004, the Commission's staff sent a letter to respondent requesting the production of documents and information in connection with the Commission's investigation of NorVergence and various companies that have been involved with NorVergence in the sale or financing of NorVergence products or services. In addition to seeking information about possible law violations by NorVergence, the investigation sought to determine whether collection activities against consumers for alleged debts based on the NorVergence rental agreements, by NorVergence assignees like IFC, might violate the FTC Act. Pet. Exh. 1 at ¶ 4. IFC provided only a partial response to the Commission's request for documents and information, but promised produce additional responsive material after completing a privilege review. *Id.* at ¶ 5. IFC, however, never produced this additional responsive material.

7. In February 2005, the Commission's staff sent a letter to IFC's counsel, asking for information on the status of IFC's production of documents responsive to the Commission's September 2004 request. The letter also identified several additional categories of information that the Commission required from IFC in connection with its investigation. The Commission received no reply to this letter. *Id.* at ¶ 6.

8. On March 22, 2005, the Commission issued a Resolution Directing Use of Compulsory Process in Non-Public Investigation of the Acts and Practices of Unnamed Persons or Entities in Connection with the Offering, Sale, or Financing of Telecommunications Services and Products by NorVergence, Inc. (FTC File No. 0523010). Pet. Exh. 2. The Resolution authorized the use of compulsory process to determine whether such entities have engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1), in direct or indirect connection with the offering, sale, or

financing of telecommunications services and products by NorVergence. *Id.*

9. In late June 2005, the Commission's staff contacted IFC's counsel by telephone and left a voice mail message asking when the Commission would receive the additional information responsive to the Commission's requests. In response, IFC's attorney left a voice mail message, in which he stated that IFC had sent the Commission a CD-ROM in January 2005, containing additional responses to the Commission's September 2004 letter. IFC's attorney also stated that most of the supplemental information the Commission had requested in its February 2005 letter could be found in a deposition of an IFC official taken in private litigation, which he would send to the Commission. On June 28, 2005, the Commission's staff informed IFC's attorney, by voice mail message and letter, that the Commission had never received the CD-ROM supposedly sent in January 2005. The Commission's letter also contained a revised supplemental request for documents and information, replacing the one sent in February 2005. The Commission did not receive any reply to its letter. Nor did the Commission receive any of the materials that IFC's attorney referenced in his June 2005 voice mail message. Pet. Exh. 1 at ¶ 8.

10. In light of IFC's continued failure to provide requested documents and information, and in furtherance of the Commission's investigation concerning potential violations of the FTC Act by NorVergence assignees, on August 8, 2005, the Commission issued an administrative CID to IFC, directed to its president and CEO, Rudolph D. Trebels. Pet. Exh. 3. The CID had a return date of August 31, 2005. IFC did not respond to the CID. Pet. Exh. 1 at ¶ 10.

11. On September 19, 2005, the Commission's staff sent a letter to IFC's counsel notifying him that if IFC failed to respond to the CID by the end of the week, staff would forward the matter to the FTC's Office of the General Counsel with a recommendation that it seek

judicial enforcement of the CID. Pet. Exh. 4. IFC did not respond. Pet. Exh. 1 at ¶ 11.

12. As a result of IFC's refusal to comply with the Commission's CID, the Commission's investigation of IFC's practices of has been severely impeded. *Id.* at ¶ 12.

13. It is in the public interest that the Commission's investigation no longer be delayed by respondents' refusal to comply with the CID.

WHEREFORE, the Commission invokes the aid of this Court and prays:


1. For immediate issuance of an order directing IFC to show cause why it should not be required to comply with the CID;
2. For a prompt determination of this matter and an order requiring IFC to comply in full with the CID; and
3. For such other relief as the Court deems just and proper.

Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel

JOHN F. DALY
Deputy General Counsel for Litigation

Local Counsel:


TODD M. KOSSOW, IL Bar. No. 6196193
Attorney
Federal Trade Commission
55 E. Monroe Street, Suite 1860
Chicago, IL 60603
(312) 960-5616
(312) 960-5600 (fax)


MICHELE ARINGTON
Attorney
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
(202) 326-3157
(202) 326-2477 (fax)

Dated: November 9, 2005

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

_____)
FEDERAL TRADE COMMISSION,)
600 Pennsylvania Ave., N.W.,)
Washington, DC 20580,)
)
Petitioner,)
)
v.) No. _____)
)
IFC CREDIT CORPORATION,)
8700 Waukegan Rd., Suite 100,)
Morton Grove, IL 60053,)
)
Respondent.)
_____)

DECLARATION UNDER PENALTY OF PERJURY OF RANDALL H. BROOK

Pursuant to 28 U.S.C. § 1746, Randall H. Brook declares as follows:

1. I am a Senior Attorney employed by the Federal Trade Commission (“FTC” or “Commission”), in its Northwest Regional Office, Seattle, Washington. I am assigned to the FTC’s Non-Public Investigation of the Acts and Practices of Unnamed Persons or Entities in Connection with the Offering, Sale, or Financing of Telecommunications Services and Products by NorVergence, Inc. (FTC File No. 0523010).

2. I am authorized to execute a declaration verifying the contents of the Commission’s Petition for an Order to Enforce Civil Investigative Demand (“CID”). I have read the Petition and exhibits thereto (hereinafter referred to as “Pet. Exh. __”), and verify that Pet. Exh. 2 through Pet. Exh. 4 (this declaration is Pet. Exh. 1) are true and correct copies of original documents contained in the official files of the FTC.

3. IFC Credit Corporation (“IFC”) is a finance company that purchased, and is an

assignee of, telecommunications equipment rental contracts sold to consumers by NorVergence, Inc. ("NorVergence"), a company that was investigated and later sued by the Commission for unfair or deceptive trade practices.

4. On September 2, 2004, I sent a letter addressed to the "President or CEO" of IFC requesting the production of documents and information in connection with the Commission's investigation of NorVergence and various companies that have been involved with NorVergence in the sale or financing of NorVergence products or services. The letter explained that the purpose of the Commission's investigation was to determine whether NorVergence had violated Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, in connection with the selling or financing of telecommunications products or services or the use of certain provisions in NorVergence rental agreements. The letter also explained that a further purpose of the investigation was to determine whether collection activities for alleged debts based on those rental agreements, by NorVergence assignees like IFC, might violate the FTC Act.

5. IFC provided a partial response to the Commission's September 2, 2004 request for documents and information. In a letter dated October 8, 2004, IFC's attorney Vincent Borst indicated that IFC would produce additional responsive material after completing a privilege review.

6. In November 2004, the Commission initiated an action against NorVergence in federal district court, alleging that the company had defrauded consumers through false and misleading claims that it would provide them with substantial long-term savings on telecommunication services, in violation of Section 5 of the FTC Act. As detailed in the complaint, NorVergence claimed that part of the savings would be generated by a "Matrix" black box that it would install

on customers' premises; but, in reality, the black boxes were nothing more than standard telephone routers, which NorVergence rented to customers for inflated prices. The complaint also alleged that NorVergence unlawfully provided others with the means and instrumentalities for the commission of deceptive and unfair acts or practices by furnishing third-party finance companies with rental agreements from consumers that allowed the finance companies: (a) to misrepresent that consumers owe money on the rental agreements regardless of whether NorVergence provided the promised telecommunication services, and (b) file collection suits against consumers in distant forums, which made it difficult for customers to dispute the monthly rental fees. This action ultimately ended in a default judgment against NorVergence in July 2005.

6. On February 22, 2005, I wrote to Mr. Borst, asking for information on the status of IFC's production of documents in response to the Commission's September 2, 2004 letter. I also identified several additional categories of information that the Commission required from IFC in connection with its investigation. I received no reply to this letter.

7. On March 22, 2005, the Commission issued a Resolution Directing Use of Compulsory Process in Non-Public Investigation of the Acts and Practices of Unnamed Persons or Entities in Connection with the Offering, Sale, or Financing of Telecommunications Services and Products by NorVergence, Inc. (FTC File No. 0523010). The Resolution authorized the use of compulsory process to determine whether such entities have engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1), in direct or indirect connection with the offering, sale, or financing of telecommunications services and products by NorVergence. A copy of the Resolution is attached

as Pet. Exh. 2.

8. In late June 2005, I called Mr. Borst to ask when we would receive the additional information responsive to the Commission's requests. In response, Mr. Borst left me a phone message stating that, in January 2005, IFC sent the Commission a CD-ROM containing additional information responsive to the Commission's September 2, 2004 letter. He also stated that most of the supplemental information the Commission had requested in the February 22, 2005 letter could be found in a deposition of an IFC official, John Estok, taken in private litigation, and that he would send me a copy of that deposition. On June 28, 2005, I replied to Mr. Borst's phone message with one of my own, confirmed with a letter sent that day, informing him that the Commission had never received the additional information that Mr. Borst said was sent in January 2005. That letter also contained a revised supplemental request, replacing the one sent on February 22, 2005. The Commission did not receive any reply to this letter. Nor did the Commission receive any of the materials that Mr. Borst referenced in his June 2005 phone message.

9. As a consequence, on August 8, 2005, the Commission issued an administrative CID to IFC, directed to its president and CEO, Rudolph D. Trebels. A copy of the CID is attached hereto as Pet. Exh. 3. The CID seeks documents and information about potential overcharges to consumers in connection with the NorVergence telecommunications equipment rental agreements. Specifically, the CID seeks information about attempts by IFC, as an assignee of those rental agreements, to collect from consumers charges for insurance premiums and local property and use taxes. This information is important because it relates to payments by consumers that may have been induced by deceptive practices. The CID also seeks information

about IFC's accounting practices for the rental agreements. In addition, the CID seeks copies of testimony given by IFC employees in any litigation involving the telecommunications products and services sold by NorVergence. As indicated above, IFC's attorney previously informed the Commission that at least one such deposition exists, containing information directly relevant to many of the CID specifications as they appeared in the Commission's February 2005 letter to IFC requesting documents and information.

10. The CID had a response date of August 31, 2005. The FTC received no communication from Mr. Borst or any other representative of IFC after service of the CID. On September 19, 2005, my office sent a letter to Mr. Borst notifying him that if IFC failed to respond to the CID by the end of the week, we would forward the matter to the FTC's Office of the General Counsel with a recommendation that it seek judicial enforcement of the CID. A copy of the letter is attached as Pet. Exh. 4.

11. As of the date of this declaration, my office has received no further communication from Mr. Borst or any other representative of IFC.

12. Without the materials and information demanded by the CID, the FTC is unable to conclude its investigation of IFC's potential violations of the FTC Act or to determine whether an enforcement action is appropriate or necessary.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed in Seattle, Washington, on November 7, 2005.


RANDALL H. BROOK

EXHIBIT 2

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS
IN NON-PUBLIC INVESTIGATION OF THE ACTS AND PRACTICES
OF UNNAMED PERSONS OR ENTITIES IN CONNECTION WITH
THE OFFERING, SALE, OR FINANCING OF TELECOMMUNICATIONS
SERVICES AND PRODUCTS BY NORVERGENCE, INC.**

File No. 0523010

Nature and Scope of Investigation:


To determine whether unnamed persons or entities have engaged or are engaging in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), in direct or indirect connection with the offering, sale, or financing of telecommunications services and products by NorVergence, Inc. The investigation is also to determine whether it would be in the public interest for the Commission to seek redress for injury to consumers or others.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed three years from the date of issuance of this resolution. The expiration of this three-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the three-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the three-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50 and 57b-1, and FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.


C. Landis Plummer
Acting Secretary

Issued: March 22, 2005

EXHIBIT 3



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

IFC Credit Corporation
8700 Waukegan Road, Suite 100
Morton Grove, IL 60053
Attn: Rudolph D. Trebels, President and CEO

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

August 30, 2005 by 5:00 p.m.

3. SUBJECT OF INVESTIGATION

See attached Resolution No. 0523010

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Charles Harwood/Nadine Samter
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, WA 98174 (206) 220-6350

5. COMMISSION COUNSEL

Randy Brook and Nadine Samter
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, WA 98174 (206) 220-6350

DATE ISSUED

8/8/05

COMMISSIONER'S SIGNATURE

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

Form of Certificate of Compliance*

I/We do certify that all of the documents required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this has not been submitted, the objection to its submission and the reasons for the objection have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS
IN NON-PUBLIC INVESTIGATION OF THE ACTS AND PRACTICES
OF UNNAMED PERSONS OR ENTITIES IN CONNECTION WITH
THE OFFERING, SALE, OR FINANCING OF TELECOMMUNICATIONS
SERVICES AND PRODUCTS BY NORVERGENCE, INC.**

File No. 0523010

Nature and Scope of Investigation:

To determine whether unnamed persons or entities have engaged or are engaging in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), in direct or indirect connection with the offering, sale, or financing of telecommunications services and products by NorVergence, Inc. The investigation is also to determine whether it would be in the public interest for the Commission to seek redress for injury to consumers or others.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed three years from the date of issuance of this resolution. The expiration of this three-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the three-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the three-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50 and 57b-1, and FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.



C. Landis Plummer
Acting Secretary

Issued: March 22, 2005

CIVIL INVESTIGATIVE DEMAND
SCHEDULE FOR PRODUCTION OF DOCUMENTARY
MATERIALS AND RESPONSES TO INTERROGATORIES

I. DEFINITIONS

As used in this Civil Investigative Demand ("CID"), the words and phrases below shall have the following meanings:

1. "CID" means this Civil Investigative Demand, including the Schedule for Production of Documentary Materials and for Responses to Interrogatories and the attached "Resolution Directing Use of Compulsory Process in a Nonpublic Investigation of the Acts and Practices of Unnamed Persons or Entities in Connection with the Offering, Sale, or Financing of Telecommunications Services and Products by NorVergence, Inc."
2. "The Company" or "IFC" shall mean **IFC Credit Corporation**, its predecessors, parent, divisions, subsidiaries (whether wholly or partially owned), unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including any claims processors or adjusters responsible for insurance claims or contracts for insurance for NorVergence Products.
3. "NorVergence Product" means any telecommunications product or service sold or rented by NorVergence, Inc., including, but not limited to, Matrix and Matrix Soho products and telecommunications services.
4. "Person" shall mean any natural person, corporate entity, partnership, association, joint venture, government entity, proprietorship, organization, group of natural persons, or other association separately identifiable, whether or not the association has a separate legal existence in its own right.
5. "Consumer" shall mean any person obligated under a NorVergence rental agreement or other financing arrangement for NorVergence products or services.
6. "Purchase" of a NorVergence Product shall include buying, leasing, renting, or otherwise obtaining by contractual arrangement a NorVergence Product.
7. "Communication" shall mean any transmission or receipt of facts, information, opinions or thought, whether conveyed in writing, orally, electronically, or by any other means, including written memorializations of oral communications.
8. "Document" shall mean the complete original and any non-identical copy (whether

different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minutes, code book, and computer materials (including print-outs, cards, files stored on magnetic tapes, hard drives, diskettes and such software, passwords, codes or instructions as are required to transform such computer materials into easily understandable form).

9. "Identify" or "the identity of" shall be construed to require identification of (a) natural persons by name, title, present business affiliation, present business address and telephone number, or, if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, identities of any natural persons (including but not limited to officers, directors and managers), and contact person.

10. "Referring to" or "relating to" shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

11. "Each" shall be construed to include "every" and "every" shall be construed to include "each."

12. "And," as well as "or," shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in the Schedule for Production of Documentary Materials all documents that otherwise might be construed to be outside its scope.

13. "Any" shall be construed to include "all" and "all" shall be construed to include "any."

14. "Relevant time period" shall be from the date of the Company's initial dealings with NorVergence until the date of full and complete compliance with this CID.

15. "You" and "yours" is the person or entity to whom this CID is issued.

II. DIRECTIONS

1. **Confidentiality:** This CID relates to an official, nonpublic, law enforcement investigation currently being conducted by the Federal Trade Commission. The Commission requests that you not disclose the existence of this CID other than to persons

directly involved in responding to it until you have been notified that the investigation has been completed. Premature disclosure could impede the Commission's investigation and interfere with the Commission's enforcement of the law.

2. Certification: A responsible corporate officer or manager of the Company shall certify that the documents produced or identified in response to this CID are complete and accurate and that the documents represent all documents responsive to this CID.

3. Scope of Search: Documents covered by this CID are those in the possession or under the actual or constructive custody or control of the Company, including but not limited to documents in the possession, custody, or control of its attorneys, accountants, directors, officers, and employees, whether or not such documents were received from or disseminated to any person or entity.

4. Modifications of Specifications: If you believe that the scope of either the required search or any specification can be narrowed consistent with the Commission's need for documents, you are encouraged to discuss such possible modifications of this request, including any modifications of definitions and instructions, with Nadine Samter at (206) 220-4479 or Randy Brook at (206) 220-4487. All such modifications must be agreed to in writing by the Commission's staff.

5. Document Production: The Company shall produce the documentary material by making all responsive documents available for inspection and copying by the Commission's staff at the Company's principal place of business. Alternatively, the Company may elect to mail, by certified mail return receipt requested, all responsive documents to Nadine Samter, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington 98174. Notice of your intention to use this method of compliance shall be given by mail or telephone to Nadine Samter at (206) 220-4479 or Randy Brook at (206) 220-4487, at least five (5) days prior to production.

6. Document Identification: Documents that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission. In addition, number by page all documents in your submission and indicate the total number of documents in your submission.

7. Production of Copies: Unless otherwise stated, legible photocopies may be submitted in lieu of original documents, provided that the originals are retained in their current state. Further, copies of original documents may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy that would not be applicable had the original been submitted should it be necessary to introduce such copy into

evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request.

A complete copy of each document should be submitted even though only a portion of the document is within the terms of the specification. The document shall not be edited, cut, or redacted (except as provided in direction II.11, below) and shall include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments and all other documents referred to in the document or attachments.

8. Submission of documents in lieu of Interrogatory responses: Previously existing documents that contain the information requested in any written Interrogatory may be submitted as an answer to the Interrogatory. In lieu of identifying documents as requested in any Interrogatory, you may, at your option, submit true copies of the documents responsive to the Interrogatory.

9. Information Identification: Each specification and subspecification of the CID shall be answered separately and fully in writing under oath. All information submitted shall be clearly and precisely identified as to the specification(s) or subspecification(s) to which it is responsive.

10. Missing Information: If any document is undated, state the date on which it was prepared. If any document does not identify its author(s) or recipient(s), state the name of the author(s) or recipient(s). If such information is unknown to you, identify the person(s) from whose files the document was retrieved.

11. Claims of Privilege: Pursuant to 16 C.F.R. § 2.8A(a), if any document or information called for by this CID is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this CID. In addition, you must submit, together with the claim, a schedule of the documents or information withheld stating individually as to each item (a) the type, specific subject matter, and date of the item; (b) the names, addresses, positions, and organizations of all authors and recipients of the item; and (c) the specific grounds for claiming that the item is privileged. If only some portion of any responsive document is claimed to be privileged, all non-privileged portions of the document must be submitted. A petition to limit or quash this CID shall not be filed solely for the purpose of asserting a claim of privilege. 16 C.F.R. § 2.8A(b).

12. Petitions to Limit or Quash: Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation.

13. Document Retention: You shall retain the originals of all documentary materials responsive to the specifications of this CID. The Commission may require the submission of

additional documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for destruction of such original documents, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. § 1505.

III. SPECIFICATIONS

Demand is made for the following documents and information:

1. Identify all persons who are or have been responsible for formulating, directing, controlling, or supervising Company procedures and practices related to obtaining insurance coverage on any NorVergence Product, or requiring any consumer to obtain insurance coverage on any NorVergence Product, and provide the following information or documents sufficient to identify and/or show:
 - a. Name and title; and
 - b. If such person is no longer employed by the Company, name, last known address, telephone number, position(s) held at the Company, date of termination, and reason for termination.

2. Identify all persons who are or have been responsible for formulating, directing, controlling, or supervising Company procedures and practices related to the processing of any insurance claim for any NorVergence Product, and provide the following information or documents sufficient to identify and/or show:
 - a. Name and title; and
 - b. If such person is no longer employed by the Company, name, last known address, telephone number, position(s) held at the Company, date of termination, and reason for termination.

3. Identify all persons who are or have been responsible for formulating, directing, controlling, or supervising Company procedures and practices related to collection from consumers, or payments to local or state taxing authorities, of property or use taxes on any NorVergence Product, or requiring any consumer to show proof of payment of those taxes, and provide information or documents sufficient to identify and/or show:
 - a. Name and title; and
 - b. If such person is no longer employed by the Company, name, last known address, telephone number, position(s) held at the Company, date of termination, and reason for termination.

4. Identify all persons who are or have been responsible for formulating, directing, controlling, or supervising Company procedures and practices related to compliance with Financial Accounting Standards Board (FASB) Statement 13 and any related GAAP or EITF policies or procedures for lease accounting, and provide information or documents sufficient to identify and/or show:
 - a. Name and title; and
 - b. If such person is no longer employed by the Company, name, last known address, telephone number, position(s) held at the Company, date of termination, and reason for termination.
5. Describe all Company policies and procedures for submitting insurance claims on any NorVergence Product.
6. Provide each different insurance policy, contract, agreement, memorandum of understanding, or other document entered into between the Company and any insurance company relating to any NorVergence Product.
7. Provide all statements of premium rates regarding insurance obtained by the Company for any NorVergence Product.
8. Describe the methods that the Company used for calculating, appraising, or estimating the value or replacement cost of any NorVergence Product.
9. Provide all documents relating to any communications and correspondence between the Company and any insurance company relating to the methods used for calculating, appraising, or estimating the value or replacement cost of any NorVergence Product.
10. Provide all documents that discuss or describe the Company policies or procedures for compliance with Financial Accounting Standards Board (FASB) Statement 13 and any related GAAP or EITF policies or procedures for lease or rental agreement accounting.
11. Describe how the Company has complied with FASB Statement No. 13 with regard to any NorVergence Product.
12. Describe any insurance policy limitation or exclusion that would limit or has limited the amount paid or that would be paid on any insurance claim for an amount less than the full insured value for any NorVergence Product.
13. Identify every NorVergence Product for which the Company obtained insurance or collected property or use taxes, and provide the following information for each such product (this information may be provided as a database of information in Microsoft Excel format as the Company previously provided in the file "FTC Spreadsheet.xls"):

- a. IFC lease number and Customer ID number;
- b. Description of NorVergence Product(s) financed;
- c. Business name, address, and phone number of the consumer;
- d. The asset value carried on the Company's books for the NorVergence Product(s) financed;
- e. The residual value carried on the Company's books for the NorVergence Product(s) financed;
- f. Estimated fair market value at the end of the lease for the NorVergence Product(s) financed, as calculated for tax purposes;
- g. Name of the insurance company, policy number, and the date the policy became effective and was terminated (if applicable);
- h. The value of the insured NorVergence Product used to determine insurance coverage for that product;
- i. The insurance coverage amount for the insured NorVergence Product, if different from the value of the insured NorVergence Product;
- j. The insurance premium amount billed to the consumer on a monthly basis for the insured NorVergence Product, and the amounts the consumer actually paid to the Company;
- k. Any fees or charges in addition to the premium amounts billed to the consumer on a monthly basis for the insured NorVergence Product, and the amounts the consumer actually paid to the Company;
- l. The insurance premium amount the Company paid to the insurance company for the insured NorVergence product;
- m. Limits, if any, on the insurance coverage or the maximum claim or payout;
- n. The property or use tax amount billed to the consumer on a monthly basis, and the amounts the consumer actually paid to the Company;
- o. The amount of sales tax on the property or use tax billed to the consumer on a monthly basis, and the amounts the consumer actually paid to the Company;
- p. Any fees or charges other than the property, use, and sales tax amounts billed to the consumer on a monthly basis, and the amounts the consumer actually paid to the Company.

14. Identify all accounts or insurance policies involving an insurance claim that was made on any insured NorVergence Product and, for each claim, provide the following information (this information may be provided as a database of information in Microsoft Excel format as the Company previously provided in the file "FTC Spreadsheet.xls"):

- a. IFC lease number and Customer ID number;
- b. Business name, address, and phone number of consumer;
- c. Name of the insurance company, policy number, and the date the policy was put into effect and terminated (if applicable);
- d. The method that the Company used to arrive at a value for the insured NorVergence Product when it or its consumer made a claim, including whether

the value was computed or assessed using standard values such as fair market value, inventory value, or replacement value;

- e. The name of the Company employee(s) who handled the claims process; and
- f. The amount of the claim paid or denied by the insurance company.

15. Provide copies of all transcripts of depositions or testimony of company employees or officials taken in any litigation or administrative proceedings involving any NorVergence Product.

EXHIBIT 4



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
NORTHWEST REGION

915 Second Ave., Ste. 2896
Seattle, Washington 98174
(206) 220-6350
FAX: (206) 220-6366

Nadine Samter
Attorney
Direct Dial: (206) 220-4479
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September 19, 2005

VIA FEDERAL EXPRESS
AND FACSIMILE

Mr. Vincent T. Borst
Askounis & Borst, P.C.
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phone: (312) 861-7100
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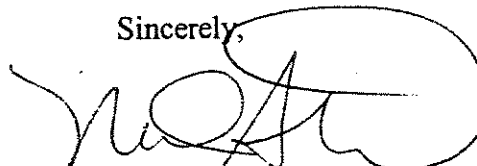
Re: IFC
FTC File No. 0523010
Your file No. 1223.10722

Dear Mr. Borst:

The Federal Trade Commission ("FTC") issued a civil investigation demand ("CID") to your client that had a response date of August 31, 2005. To date, we have not received a response or the requested documents from your client. If your client does not provide the requested responses and documents no later than close of business on Friday, September 23, 2005, we will refer the matter to the FTC's Office of the General Counsel with a recommendation to file an action in federal district court to compel your client's compliance with the CID.

If you have any questions, please contact Randy Brook at (206) 220-4487 or Robert Schroeder at (206) 220-4477.

Sincerely,



Nadine Samter

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

NOV 10 2007

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave., N.W.,
Washington, DC 20580,

Petitioner,

v.

IFC CREDIT CORPORATION,
8700 Waukegan Rd., Suite 100,
Morton Grove, IL 60053,

Respondent.

MICHAEL W. DODDINS
CLERK, U.S. DISTRICT COURT

No. 05C 6

WISSE BUCKLO

MAGISTRATE JUDGE

**MEMORANDUM IN SUPPORT OF PETITION OF THE FEDERAL TRADE
COMMISSION FOR AN ORDER TO ENFORCE CIVIL INVESTIGATIVE DEMAND**

The Federal Trade Commission ("FTC" or "Commission") petitions this Court, pursuant to Section 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 57b-1, for an order requiring respondent IFC Credit Corporation ("IFC") to produce documents and information in accordance with a Commission civil investigative demand ("CID").¹ The CID was issued to IFC on August 8, 2005, in the course of a law enforcement investigation being conducted by the Commission's Northwest Region office. The CID seeks information necessary to determine whether IFC has engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

¹ Commission CIDs are a type of administrative subpoena. *See General Finance Co. v. FTC*, 700 F.2d 366, 367 (7th Cir. 1983).

JURISDICTION

The Commission is an independent administrative agency of the United States organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.

Section 20 of the FTC Act, 15 U.S.C. § 57b-1, authorizes the Commission to require by civil investigative demand the production of documents or other information relating to any Commission law enforcement investigation. Sections 20(e) and 20(h) authorize the Commission to bring this enforcement action.² Section 20(e) provides that the Commission may petition for

² Section 20 provides, in relevant part:

(c) Whenever the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), the Commission may, before the institution of any proceedings under this subchapter, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to file written reports or answers to questions, to give oral testimony concerning documentary material or other information, or to furnish any combination of such material, answers, or testimony.

* * * *

(e) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section . . . the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section. All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

* * * *

(h) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry

enforcement of its CIDs in any judicial district in which the respondent resides, is found, or transacts business, and authorizes service of process in any district. Section 20(h) gives district courts jurisdiction to hear and determine petitions for enforcement and to order compliance with the Commission's CIDs. In this case, venue and personal jurisdiction are proper under Section 20(e) because IFC is located in and transacts business in this judicial district.

Proceedings to enforce administrative compulsory process are properly filed as summary proceedings pursuant to Rule 81(a)(3) of the Federal Rules of Civil Procedure. They are properly instituted by a petition and order to show cause (rather than by complaint and summons) and are summary in nature; discovery or evidentiary hearings may be granted only upon a showing of exceptional circumstances. *See, e.g., EEOC v. United Airlines, Inc.*, 287 F.3d 643, 649 (7th Cir. 2002); *EEOC v. Tempel Steel Co.*, 814 F.2d 482, 485 (7th Cir. 1987); *EEOC v. Bay Shipbuilding Corp.*, 668 F.2d 304, 308-11 (7th Cir. 1981); *FTC v. MacArthur*, 532 F.2d 1135, 1141-42 (7th Cir. 1976).³

STATEMENT OF FACTS

IFC is a finance company that purchased, and is an assignee of, telecommunications equipment rental contracts sold to consumers by NorVergence, Inc. ("NorVergence"). Petition Exhibit ("Pet. Exh.) 1 at ¶ 3. The Commission sued NorVergence in November 2004, alleging

into effect the provisions of this section. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of such court.

³ *See also United States v. American Target Advertising, Inc.*, 257 F.3d 348, 353, 355 (4th Cir. 2001); *United States v. Markwood*, 48 F.3d a 969, 981-82 (6th Cir. 1995); *SEC v. Knopfler*, 658 F.2d 25, 26 (2nd Cir. 1981); *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368, 1388 (D.C. Cir. 1980).

that the company had defrauded consumers through false and misleading claims that it would provide them with substantial long-term savings on telecommunication services, in violation of Section 5 of the FTC Act. *Id.* at ¶ 6. As detailed in the complaint, NorVergence claimed that part of the purported savings would be generated by a "Matrix" black box that it would install on customers' premises; but, in reality, the black boxes were nothing more than standard telephone routers, which NorVergence rented to customers for inflated prices. The complaint alleged, *inter alia*, that NorVergence unlawfully provided others with the means and instrumentalities for the commission of deceptive and unfair acts or practices by furnishing third-party finance companies with rental agreements from consumers that allowed the finance companies: (a) to misrepresent that consumers owe money on the rental agreements regardless of whether NorVergence provided the promised telecommunication services, and (b) file collection suits against consumers in distant forums, which made it difficult for customers to dispute the monthly rental fees.⁴ This action ultimately ended in a default judgment against NorVergence, in which the court found that NorVergence had committed all of the law violations alleged in the complaint.⁵

In September 2004, the Commission's Northwest Region office sent a letter to IFC requesting the production of documents and information in connection with the Commission's investigation of NorVergence and various companies that have been involved with NorVergence in the sale or financing of NorVergence products or services. In addition to seeking information about possible law violations by NorVergence, the investigation sought to determine whether

⁴ The complaint against NorVergence is available on the Commission's web site at: <http://www.ftc.gov/os/caselist/0423184/041104norvergecmplt.pdf>.

⁵ The default judgment is available on the Commission's web site at: <http://www.ftc.gov/os/caselist/0423184/050725defjudg0423184.pdf>.

collection activities against consumers for alleged debts based on the NorVergence rental agreements, by NorVergence assignees like IFC, might violate the FTC Act. Pet. Exh. 1 at ¶ 4. IFC provided only a partial response to the Commission's request for documents and information, but promised produce additional responsive material after completing a privilege review. *Id.* at ¶ 5. IFC, however, never produced this additional responsive material.

In February 2005, the Commission's staff sent a letter to IFC's counsel, asking for information on the status of IFC's production of documents responsive to the Commission's September 2004 request. The letter also identified several additional categories of information that the Commission required from IFC in connection with its investigation. The Commission received no reply to this letter. *Id.* at ¶ 6.

On March 22, 2005, the Commission issued a Resolution Directing Use of Compulsory Process in Non-Public Investigation of the Acts and Practices of Unnamed Persons or Entities in Connection with the Offering, Sale, or Financing of Telecommunications Services and Products by NorVergence, Inc. (FTC File No. 0523010). Pet. Exh. 2. The Resolution authorized the use of compulsory process to determine whether such entities have engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1), in direct or indirect connection with the offering, sale, or financing of telecommunications services and products by NorVergence. *Id.*

In late June 2005, the Commission's staff contacted IFC's counsel by telephone and left a voice mail message asking when the Commission would receive the additional information responsive to the Commission's requests. In response, IFC's attorney left a voice mail message, in which he stated that IFC had sent the Commission a CD-ROM in January 2005, containing

additional responses to the Commission's September 2004 letter. IFC's attorney also stated that most of the supplemental information the Commission had requested in its February 2005 letter could be found in a deposition of an IFC official taken in private litigation, which he would send to the Commission. On June 28, 2005, the Commission's staff informed IFC's attorney, by voice mail message and letter, that the Commission had never received the CD-ROM supposedly sent in January 2005. The Commission's letter also contained a revised supplemental request for documents and information, replacing the one sent in February 2005. The Commission did not receive any reply to its letter. Nor did the Commission receive any of the materials that IFC's attorney referenced in his June 2005 voice mail message. Pet. Exh. 1 at ¶ 8.

In light of IFC's continued failure voluntarily to provide requested documents and information, and in furtherance of the Commission's investigation concerning potential violations of the FTC Act by NorVergence assignees, on August 8, 2005, the Commission issued an administrative CID to IFC, directed to its president and CEO, Rudolph D. Trebels. Pet. Exh. 3. The CID seeks information potential overcharges to consumers in connection with the NorVergence telecommunications equipment rental agreements. Pet. Exh. 1 at ¶ 9. Specifically, the CID seeks documentary material and information regarding:

- insurance coverage on any NorVergence product that IFC obtained or required consumers to pay for (Specifications 1, 2, 5-9, 12-14);
- payments that IFC made or collected from consumers for property or use taxes on any NorVergence product (Specifications 3, 13);
- IFC's compliance with general accounting standards applicable to lease financing (Specifications 4, 10-11); and

- testimony by IFC employees taken in litigation regarding NorVergence products (Specification 15).⁶

The information regarding insurance and taxes is important to the Commission's investigation because the information relates to payments made by consumers that may have been induced by deceptive practices. Pet. Exh. 1 at ¶ 9.

The CID had a return date of August 31, 2005. IFC did not respond to the CID. Pet. Exh. 1 at ¶ 10. On September 19, 2005, the Commission's staff sent a letter to IFC's counsel notifying him that if IFC failed to respond to the CID by the end of the week, staff would forward the matter to the FTC's Office of the General Counsel with a recommendation that it seek judicial enforcement of the CID. Pet. Exh. 4. The Commission received no response to this letter. Pet. Exh. 1 at ¶ 11.

To date, IFC has made no response to the CID. As a result of IFC's failure to comply with the CID, the Commission's law investigation has been severely impeded. *Id.* at ¶ 12.

ARGUMENT

I. THE SCOPE OF ISSUES CONSIDERED IN PROCEEDINGS TO ENFORCE COMPULSORY PROCESS IS NARROW.

Courts have consistently recognized that the Commission has broad powers to secure relevant information through compulsory process – powers that the Supreme Court has likened to those of a grand jury. *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950); accord *CFTC v. Tokheim*, 153 F.3d 474, 477 (7th Cir. 1998) (“like a grand jury, an agency is empowered

⁶ IFC's attorney previously informed the Commission's staff that there is at least one such deposition that contains information directly relevant to many of the CID specifications as they appeared in the Commission's February 2005 letter to IFC requesting documents and information. Pet. Exh. 1 at ¶¶ 8, 9.

to investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not”) (internal quotations omitted); *FTC v. MacArthur*, 532 F.2d at 1140 (“Congress has given the Commission broad investigatory powers.”). A district court’s role in enforcing administrative subpoenas is “sharply limited.” *EEOC v. Tempel Steel Co.*, 814 F.2d at 485; accord *EEOC v. United Airlines*, 287 F.3d at 649; *Inspector General v. Banner Plumbing Supply Co.*, 34 F. Supp. 2d 682, 684 (N.D. Ill. 1998). “The range of issues that can be litigated in an enforcement proceeding such as this is limited, and the scope of the district court’s review is extremely narrow, because of the government’s interest in conducting an expeditious investigation to carry out its mandated duties.” *EEOC v. Suburban Transit System, Inc.*, 538 F. Supp. 530, 532 (N.D. Ill. 1982); accord *FTC v. Texaco*, 555 F.2d 862, 872 (D.C. Cir. 1977) (*en banc*).

The standards for judicial enforcement of administrative compulsory process, including the Commission’s CIDs, are settled:

As long as the investigation is within the agency’s authority, the subpoena is not too indefinite, and the information sought is reasonably relevant, the district court must enforce an administrative subpoena.

EEOC v. Tempel Steel Co., 814 F.2d at 485; accord *EEOC v. United Airlines*, 287 F.3d at 649; *CFTC v. Tokheim*, 153 F.3d at 477; *EEOC v. Quad/Graphics, Inc.*, 63 F.3d 642, 645 (7th Cir. 1995); *EEOC v. A.E. Staley Mfg. Co.*, 711 F.2d 780, 783 (7th Cir. 1983). “In terms of relevancy, it is sufficient that . . . the material subpoenaed touches a matter under investigation . . . even though the material may not be considered ‘evidence’ as the term is employed in the courtroom.” *EEOC v. A.E. Staley Mfg. Co.*, 711 F.2d at 783 (internal quotations omitted). See also *FTC v.*

Shaffner, 626 F.2d 32, 38 (7th Cir. 1980) (“the presumption is that compliance should be enforced to further the agency’s legitimate inquiry into matters of public interest”).

II. THE CID SHOULD BE ENFORCED BECAUSE IT WAS LAWFULLY ISSUED DURING AN INVESTIGATION WITHIN THE COMMISSION'S AUTHORITY AND SEEKS INFORMATION THAT IS REASONABLY RELEVANT TO THE COMMISSION'S INVESTIGATION.

The CID issued to IFC was properly issued by the Commission in an investigation of possible violations of the FTC Act. The Commission’s authority to conduct this investigation derives from Sections 5(a) and 20 of the FTC Act, 15 U.S.C. § 45(a) (authorizing the Commission to prevent unfair and deceptive acts or practices in or affecting commerce) and § 57b-1 (authorizing the Commission to issue CIDs to investigate possible Section 5 violations). The CID provided IFC with proper notice of the nature and scope of the investigation, pursuant to Section 20(c) of the FTC Act, 15 U.S.C. § 57b-1(c), and Commission Rule of Practice 2.7(b), 16 C.F.R. § 2.7. The CID also provided IFC with notice of its right to file with the Commission a petition to limit or quash the CID pursuant to Commission Rule 2.7(d), 16 C.F.R. § 2.7(d).⁷

The information sought by the CID is clearly relevant to the scope of the Commission’s investigation. The Commission’s investigation seeks to determine whether companies that have been involved with NorVergence in the sale or financing of NorVergence products or services (including IFC) have engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act. Specifically, the Commission seeks information regarding potential overcharges to consumers in connection with the NorVergence telecommunications equipment rental

⁷ Commission Rule 2.7(d), requires that any petition to limit or quash a CID be filed with the Commission within twenty days of service or, if the return date is less than twenty days after service, prior to the return date. This rule was stated in the CID. Pet. Exh. 3.

agreements. To this end, the CID requests documents and information regarding: payments for insurance and property or use taxes made by IFC and/or required from consumers who entered into these rental agreements; IFC's compliance with applicable accounting principles; the identity of personnel knowledgeable about these matters; and testimony provided by IFC employees in litigation concerning NorVergence. This information is directly relevant to determining whether IFC's activities in connection with the sale or financing of NorVergence products or services have – like the activities of NorVergence itself – violated the FTC Act. Accordingly, the CID should be enforced.

Moreover, IFC has not challenged – by a petition to the Commission – the validity of the CID, the Commission's authority to issue it, or the relevance of the information requested. IFC has thus waived any such challenge to the CID, because it is a well settled principle of administrative law that a party who first fails to exhaust his administrative remedies will not be heard to raise objections for the first time in court. *See EEOC v. Cuzzens of Georgia, Inc.*, 608 F.2d 1062, 1063-04 (5th Cir. 1979); *EEOC v. City of Milwaukee*, 919 F. Supp. 1247, 1255 (E.D. Wis. 1996); *FTC v. O'Connell*, 828 F. Supp. 165, 168 (E.D.N.Y. 1993); *FTC v. Invention Submission Corp.*, Misc. No. 89-272(RCL), 1991 WL 47104, at *2 n.12 (D.D.C. Feb. 14, 1991), *aff'd*, 965 F.2d 1086, 1089 (D.C. Cir. 1992); *FTC v. Stanley Kaplan Educ. Ltd.*, 433 F. Supp. 989, 992 (D. Mass. 1977). Also, IFC has never asserted by petition to the Commission that compliance with the CID would be unduly burdensome, and thus has waived any such objection as well.

Because the Commission's investigation is lawful, the CID is relevant to the investigation, and IFC has waived any objections to the CID, this Court should enforce the

Commission's CID.

CONCLUSION


For the reasons stated above, the Commission respectfully requests that this Court enter an order requiring respondent IFC Credit Corporation to comply fully with the CID.

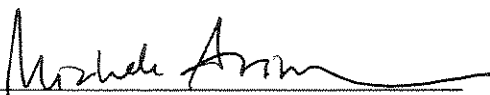
Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel

JOHN F. DALY
Deputy General Counsel for Litigation

Local Counsel:


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(202) 326-3157
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Dated: November 9, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

NOV 10 2005

ROBERT W. DOBINS
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave., N.W.,
Washington, DC 20580,

Petitioner,

v.

IFC CREDIT CORPORATION,
8700 Waukegan Rd., Suite 100,
Morton Grove, IL 60053,

Respondent.

No.

05C 64

JUDGE BUCKLE

ADMINISTRATIVE JUDGE

ORDER TO SHOW CAUSE

Pursuant to the authority conferred by Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, petitioner Federal Trade Commission (the "Commission") having invoked the aid of this Court pursuant to Rule 81(a)(3) of the Federal Rules of Civil Procedure for an order requiring respondent IFC Credit Corporation ("IFC") to comply fully with a Civil Investigative Demand for documentary materials and information that was issued by the Commission in aid of a law enforcement,

And the Court having considered the Petition of the Federal Trade Commission for an Order to Enforce Civil Investigative Demand and papers filed in support thereof,

And it appearing to the Court that petitioner has shown good cause for the entry of this Order, it is by the Court hereby

ORDERED that respondent appear at _____ on the _____ day of _____, 2005,
in Courtroom No. _____, at _____

and show cause, if any there be, why this Court should not grant said Petition and enter an order directing respondent to comply with the civil investigative demand for documentary materials and information that the Commission issued to IFC Credit Corporation, directed to its president and CEO, Rudolph D. Trebels, on August 8, 2005. Unless the Court determines otherwise, notwithstanding the filing or pending of any procedural or other motions, all issues raised by the Petition and supporting papers, and any opposition to the Petition will be considered at the hearing on the Petition, and the allegations of said Petition shall be deemed admitted unless controverted by a specific factual showing.

IT IS FURTHER ORDERED that, if respondent believes it necessary for the Court to hear live testimony, it must file an affidavit or declaration reflecting such testimony (or if a proposed witness is not available to provide such an affidavit or declaration, a specific description of the witness' proposed testimony) and explain why respondent believes live testimony is required.

IT IS FURTHER ORDERED that, if respondent intends to file pleadings, affidavits, exhibits, motions or other papers in opposition to said Petition or to the entry of the Order requested herein, such papers must be filed and delivered to petitioner's counsel no less than 14 calendar days before the date set herein for a hearing. Such submission shall include an explanation as to why such objections were not made or such papers or information not submitted to the Commission in a petition to limit or quash the civil investigative demand. Any reply by petitioner shall be filed with the Court and received by respondent not less than five calendar days, not including any legal holiday, before the date set herein for a hearing.

IT IS FURTHER ORDERED, pursuant to Rule 81(a)(3) of the Federal Rules of Civil

Procedure, that this is a summary proceeding and that no party shall be entitled to discovery without further order of the Court upon a specific showing of need; and the dates for a hearing and the filing of papers established by this Order shall not be altered without prior order of the Court upon good cause shown.

IT IS FURTHER ORDERED, pursuant to Rule 81(a)(3) of the Federal Rules of Civil Procedure, that a copy of this Order and copies of said Petition and the Memorandum in Support thereof filed herein, be served forthwith by petitioner upon respondent, or respondent's counsel, by personal service, by certified or registered mail return receipt requested, or by overnight express delivery service.

SO ORDERED:

Dated: _____

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

NOV 10 2013

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave., N.W.,
Washington, DC 20580,

Petitioner,

v.

IFC CREDIT CORPORATION,
8700 Waukegan Rd., Suite 100,
Morton Grove, IL 60053,

Respondent.

W. D. JAMES
GLENK, U.S. DISTRICT COURT

No. 05C 64

JUDGE B. JAMES

CLERK OF COURT
MAGISTRATE JUDGE

ORDER

Petitioner, the Federal Trade Commission, has invoked the aid of this Court, pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, to require respondent IFC Credit Corporation ("IFC") to comply with a Civil Investigative Demand, which was issued to IFC, and directed to its president and CEO, Rudolph D. Trebels, on August 8, 2005. After considering the papers of record and the arguments of the parties, the Court has determined that the inquiry is within the authority and jurisdiction of the agency, that the requests made by the Civil Investigative Demand are reasonably relevant to the inquiry, and that respondent has waived any objections to the Civil Investigative Demand. Because the Court is of the opinion that the relief sought by the Commission should be granted, it is hereby:

ORDERED that respondent IFC Credit Corporation be, and hereby is, commanded to comply, in full, with the Civil Investigative Demand, which was issued to IFC, and directed to its president and CEO, Rudolph D. Trebels, on August 8, 2005, in the manner designated in that

Civil Investigative Demand, within ten (10) days of issuance of this Order or at such later date as may be designated by the Commission.

SO ORDERED:

Dated: _____

UNITED STATES DISTRICT JUDGE