

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAUS OF TELECOMMUNICATIONS AND ENERGY
AND CONSUMER FRAUDS AND PROTECTION**

-----X

In the Matter of

IRWIN BUSINESS FINANCE CORP.,

Respondent.

-----X

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

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

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

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

3. Respondent Irwin Business Finance Corp. (hereinafter “Irwin”) is a corporation organized and existing under the laws of the State of Indiana, with its principal place of business located at 330 120th Avenue, N.E., Suite 110, Bellvue, WA 98005, is one of the leasing companies which held Equipment Rental Agreements with NorVergence customers in the State of New York and elsewhere.

NorVergence’s Fraudulent Business Scheme

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

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

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

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

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

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

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

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

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

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

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

- a. remove any obligations by assignees of NorVergence to the customers;
- b. in many cases require that all legal actions relating to the agreement be brought in a forum distant from the customer's place of business, and in other cases, in a forum where the leasing company that would take an assignment was located, which was unknown at the time the customer signed the contract (the latter being known as “floating jurisdiction clauses”);

c. a characterize the vast majority of the total fees agreed to by the customer as payments for the Matrix box which grossly exceeded its actual price and value;

d. characterize the Equipment Rental Agreement as a finance lease under Article 2A of the Uniform Commercial Code in a fraudulent and unconscionable attempt to gain the protections of equipment finance leases. In fact, the Agreement was for an integrated telecommunications service offering, although the service component was not documented in the Agreements. Moreover, the equipment purportedly financed under the Agreement was not first offered for sale to the customers or offered in a buy-out to the customer at the end of the Agreement's five-year term;

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

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

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

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

the value of the Equipment Rental Agreements up front.

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

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

16. Although NorVergence had represented to its customers that its Matrix box could be used with any carrier of their choice, after the termination of telecommunications service, the customers could not find carriers who would use the Matrix box to provide service to them. In

fact, the customers were required to pay significantly more for their telecommunications services despite their having the Matrix box which NorVergence had touted as a cost savings solution.

17. Even after the termination of telecommunications service to the customers, and while the customers were required to pay higher costs for alternative telecommunications services provided by other carriers which had no use for the Matrix and Soho boxes, the leasing companies, including Irwin Business, improperly continued to enforce the Equipment Rental Agreements as against the customers.

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

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

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by and between Irwin

Business Finance Corp. and the Attorney General that:

1. This Assurance of Discontinuance shall be binding upon and extend to IRWIN BUSINESS FINANCE CORP. (hereinafter "Irwin", its principals, officers, directors, agents (including, but not limited to third party collection agents), employees, successors and assigns subsequent to the date of this Assurance, and any entity or device through which it may now or hereafter act, as well as any persons who have authority to control or who, in fact, control and direct its business.

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

a. forgive 90% of the remaining principal balance due on the participating New York customer's obligations to Irwin under the Irwin Equipment Rental Agreements as of July 15, 2004 as set forth on Exhibit A;

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

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

d. fully credit the participating New York customer for any payments it has made to Irwin on or after July 15, 2004, and issue refunds to participating New York customers whose

payments have exceeded the sum of (i) 10% of the remaining principal balance as of July 15, 2004 and (ii) any late fees, penalties and insurance charges assessed prior to July 15, 2004; and

e. within thirty (30) calendar days of the customer's acceptance of the proposed settlement, withdraw any and all adverse credit reports filed with any company or agency as to customers who stopped making payments on the Irwin Equipment Rental Agreements on or after July 15, 2004, by notifying in writing each of the companies and agencies to whom they furnished information that the reports are to be withdrawn. Respondent shall furnish customers with copies of such letters by mailing the copies to such customers' last known addresses.

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

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

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

Program

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

4. Irwin represents that it has not assigned any of its right, title or interest to any Equipment Rental Agreements.

5. Within twenty (20) calendar days of the Effective Date of this Assurance, Irwin shall mail a letter in the form annexed hereto as Exhibit B to each New York customer and any guarantor for such customer listed on Exhibit A. Such letter shall inform the New York customers and guarantors of the opportunity to participate in the settlement described herein, of the Settlement Balance due from that customer and/or guarantor, and of the customer's and/or guarantor's options for paying the Settlement Balance if they elect to participate in the settlement. If the customer and/or guarantor is entitled to a refund under the Settlement Program a letter in the form annexed hereto as Exhibit C will be mailed. Irwin represents that it has not agreed to an independent settlement with any New York customer or guarantor after July 15, 2004 and prior to the Effective Date of this Assurance.

6. Each New York customer and/or guarantor who elects to participate in the settlement described herein and pay the Settlement Balance shall complete, execute and deliver to Irwin within 60 days of the mailing of the letter referenced in paragraph 5 of this Assurance a document entitled "Settlement and Mutual Releases," in the form annexed hereto as Exhibit D, which shall be included with the letter to New York customers, whereby the participating New York customer shall (a) elect and agree to pay the Settlement Balance in accordance with one of

the payment options described in paragraph 3; and (b) release Irwin of any and all claims arising out of the customer's Irwin Equipment Rental Agreement. If the customer and/or guarantor is entitled to a refund under the Settlement Program a "Settlement and Mutual Releases" in the form annexed hereto as Exhibit E will be mailed. Any New York customer and/or guarantor who expressly declines to participate in the Settlement Program, who initiates or continues any legal action against Irwin that is inconsistent with the Release required by the Settlement Program, or who fails to respond to the Settlement Program within 90 days of the mailing of the letter referenced in paragraph 5 of this Assurance shall be deemed to have declined to participate in the Settlement Program (hereinafter referred to as a "non-participating New York customer").

7. As to any participating New York customer that executes the Settlement and Mutual Releases described in paragraph 6 above, Irwin agrees completely to settle and release any and all claims that Irwin has or may have had prior to the Effective Date of this Assurance against the New York customer and all of its subsidiaries, parents, affiliates, predecessors, successors, assigns, officers, directors, employees, shareholders, agents and guarantors for any and all damages, restitution, equitable relief, costs, attorneys' fees and penalties related to, based upon or arising out of the participating New York customer's Equipment Rental Agreement. Irwin further agrees that it will not institute any civil action against the participating New York customer for breach of the Equipment Rental Agreement or otherwise seek to enforce the Equipment Rental Agreement against the participating New York customer, provided that the customer satisfies its obligations under the terms of the Settlement and Mutual Releases described in paragraph 6 herein.

8. As to any non-participating New York customer or any participating New York

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

9. Irwin shall provide a copy of this Assurance to all current and future employees, agents and/or independent contractors involved in invoicing and servicing Irwin's portfolio of Equipment Rental Agreements with NorVergence customers who shall be bound by its terms.

AFFIDAVITS OF COMPLIANCE

10. Within sixty (60) days of the Effective Date of this Assurance, Irwin shall submit an affidavit to the Attorney General, subscribed to by an officer of the corporation, attesting that it sent the letters to the New York customers listed in Exhibit A in accordance with the terms of paragraph 5 of this Assurance, and providing an accounting of the customers who elected to participate in the settlement, including the customers' Settlement Balances and payment schedules elected or agreed upon. Within one year thereafter, Irwin shall submit to the Attorney General an affidavit setting forth its compliance with the provisions of this Assurance, together with an accounting of the New York customers who elected to participate in the Settlement Program, including the terms of their payment schedules and payments made. Subsequently, on or after the second anniversary of the date of this Assurance, the Attorney General may request in writing a further updated affidavit setting forth Irwin's compliance with the provisions of this Assurance and an updated accounting of the New York customers who elected to participate in the Settlement Program, including the terms of their payment schedules and payments made, and Irwin shall submit such an affidavit within forty-five (45) calendar days of any such request.

MISCELLANEOUS

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

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

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

To the Attorney General:

**Keith H. Gordon, Assistant Attorney General
New York State Attorney General's Office
Bureau of Telecommunications and Energy
120 Broadway, 25th Floor
New York, New York 10271
tel. (212) 416-6343
fax. (212) 416-8877**

To Irwin Business Finance, Corp.

**General Counsel
IRWIN BUSINESS FINANCE CORP.
330 120th Avenue, N.E., Suite 110
Bellevue, WA 98005
tel. (425) 460-1400
fax. (425) 460-1401**

RIGHTS OF CUSTOMERS

14. Nothing in this Assurance shall be construed to prevent any customer from

pursuing any right or remedy at law which any customer may have against respondent, except to the extent that a customer executes a Settlement and Mutual Releases pursuant to this Assurance.

EFFECTIVE DATE

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

VIOLATION AS PRIMA FACIE PROOF OF LAW VIOLATION

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

ENTIRE ASSURANCE OF DISCONTINUANCE

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

WHEREFORE, the following signatures are affixed hereto this __ day of December, 2004.

IRWIN BUSINESS FINANCE, CORP.

**ELIOT SPITZER, ATTORNEY
GENERAL
OF THE STATE OF NEW YORK**

By: _____

By: _____
JOY FEIGENBAUM
Assistant Attorney General
Bureau of Consumer Frauds and
Protection

By: _____
SHAHLA F. ALI
Assistant Attorney General
Bureau of Telecommunications
and Energy

[EXHIBIT A]

[Exhibit B]

NOTICE TO FORMER NEW YORK NORVERGENCE CUSTOMERS WHO HAVE EQUIPMENT RENTAL AGREEMENTS WITH IRWIN BUSINESS FINANCE CORP., AND TO ANY GUARANTORS

[Date]

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

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

The Settlement Program Offered By Irwin

If you elect to participate in this Settlement Program, Irwin will (a) forgive ninety percent (90%) of the remaining principal balance due under [Lessee’s] Rental Agreement as of July 15, 2004; (b) forgive any late fees or penalties assessed on [Lessee’s] account on or after July 15, 2004; (c) forgive any insurance charges assessed on [Lessee’s] account on or after July 15, 2004 and (d) fully credit you for any payments that you have made to Irwin on or after July 15, 2004. In the event [Lessee’s] payments have exceeded the sum of (i) 10% of the remaining balance due as of July 15, 2004 and (ii) any late fees, penalties and insurance charges assessed prior to July 15, 2004, you would receive a refund of the amount in excess of 10% if you elect to participate in the settlement.

In exchange for the benefits provided above, you must agree to release Irwin from any claims concerning your Rental Agreement, as described more fully below. You must also agree to resolve the “Settlement Balance,” which is the amount equal to ten percent (10%) of the outstanding balance under the Rental Agreement as of July 15, 2004, plus any credits as described in the preceding paragraph. You may elect to pay the Settlement Balance in one of the following ways:

(a) If your Settlement Balance is equal to \$5,000 or less, you may either (i) make a lump sum payment of the entire Settlement Balance or (ii) pay off the Settlement Balance in up to twelve (12) equal monthly installment payments, with the first installment payment to be due on _____, 2005. Irwin will mail you an invoice for the first installment payment, no later than thirty (30) days prior to the date such payment is due.

(b) If your Settlement Balance is greater than \$5,000, you may either (i) make a lump sum payment of the entire Settlement Balance, or (ii) pay off the Settlement Balance in up to twenty-

four (24) equal monthly installment payments, with the first installment payment due _____, 2005. Irwin will mail you a bill for the first installment payment, no later than thirty (30) days prior to the date such payment is due.

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

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

To inform Irwin of your acceptance of this Settlement Program, **you must complete, sign and return to Irwin, by [date 60 days from the date of the mailing of this notice]** the enclosed document entitled “Settlement and Mutual Releases.” In that document, you must (a) elect and agree to pay the Settlement Balance according to one of the two payment options described above (either lump-sum or installment); and (b) fully release Irwin from, and agree not to sue Irwin 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 Irwin based upon [Lessee’s] Rental Agreement. If you are currently involved in any litigation with Irwin over [Lessee’s] Rental Agreement and you wish to participate in the Settlement Program, you and Irwin will mutually dismiss that action with prejudice. Irwin, 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 Irwin will retain all rights under law to enforce the “Settlement and Mutual Releases.”

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

Irwin 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 Irwin that it engaged in any form of unlawful conduct or business practices. Indeed, Irwin 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 Irwin 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 Irwin and the Attorney General prevents you from pursuing any right or remedy at law which you may have against Irwin, except to the extent that you elect to participate in this settlement and execute a Release. If you elect not to participate in the program, or if you enroll in the Settlement Program but change your mind and notify Irwin before making your first payment that you wish to

terminate your participation in the Settlement Program, then Irwin may seek to enforce the Rental Agreement in full and may make use of any of the remedies available to it under the law. Irwin has agreed, however, that it will not institute any legal proceedings against you in any court outside the State of New York.

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

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

1. **Principal balance remaining as of July 15, 2004:**
..... _____
2. **Line 1 reduced by 90%:** _____
3. **Plus unpaid late fees, penalties and insurance charges assessed prior to July 15, 2004** _____
4. **Credit for payments received on or after July 15, 2004:** _____
5. **Total remaining Settlement Balance to be paid:** _____

Monthly payment option: _____ **per month for** _____ **months**

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

Very truly yours,

IRWIN BUSINESS FINANCE CORP.

[Exhibit C]

NOTICE TO FORMER NEW YORK NORVERGENCE CUSTOMERS WHO HAVE EQUIPMENT RENTAL AGREEMENTS WITH IRWIN BUSINESS FINANCE CORP. AND TO ANY GUARANTORS

[Date]

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

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

The Settlement Program Offered By Irwin

If you elect to participate in this Settlement Program, Irwin will (a) forgive ninety percent (90%) of the remaining principal balance due under [Lessee's] Rental Agreement as of July 15, 2004; (b) forgive any late fees or penalties assessed on [Lessee's] account on or after July 15, 2004; (c) forgive any insurance charges assessed on [Lessee's] account on or after July 15, 2004 and (d) fully credit you for any payments that you have made to Irwin on or after July 15, 2004. In the event [Lessee's] payments have exceeded the sum of (i) 10% of the remaining balance due as of July 15, 2004 and (ii) any late fees, penalties and insurance charges assessed prior to July 15, 2004, you would receive a refund of the amount in excess of 10% if you elect to participate in the settlement.

In exchange for the benefits provided above, you must agree to release Irwin from any claims concerning your Rental Agreement, as described more fully below. You must also agree to resolve the "Settlement Balance," which is the amount equal to ten percent (10%) of the outstanding balance under the Rental Agreement as of July 15, 2004, plus any credits as described in the preceding paragraph. In your case, if you elect to resolve the settlement balance you will be entitled to a refund check which Irwin will mail to you on or before [date 30 days from mailing of acceptance of Settlement Program].

To inform Irwin of your acceptance of this Settlement Program, **you must complete, sign and return to Irwin, by [date 60 days from the date of the mailing of this notice]** the enclosed document entitled "Settlement and Mutual Releases." In that document, you must (a) elect and agree to resolve the Settlement Balance described above; and (b) fully release Irwin from, and agree not to sue Irwin 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 Irwin based

upon [Lessee's] Rental Agreement. If you are currently involved in any litigation with Irwin over [Lessee's] Rental Agreement and you wish to participate in the Settlement Program, you and Irwin will mutually dismiss that action with prejudice. Irwin, 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 Irwin will retain all rights under law to enforce the "Settlement and Mutual Releases."

Irwin 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 Irwin that it engaged in any form of unlawful conduct or business practices. Indeed, Irwin 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 Irwin 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 Irwin and the Attorney General prevents you from pursuing any right or remedy at law which you may have against Irwin, except to the extent that you elect to participate in this settlement and execute a Release. If you elect not to participate in the program, or if you enroll in the Settlement Program but change your mind and notify Irwin before resolving the Settlement Balance that you wish to terminate your participation in the Settlement Program, then Irwin may seek to enforce the Rental Agreement in full and may make use of any of the remedies available to it under the law. Irwin has agreed, however, that it will not institute any legal proceedings against you in any court outside the State of New York, unless you take the position that you are subject to jurisdiction only in a forum other than the State of New York.

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

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

- 1. **Principal balance remaining as of July 15, 2004:**
- 2. **Line 1 reduced by 90%:**
- 3. **Plus unpaid late fees, penalties and insurance charges assessed prior to July 15, 2004**
- 4. **Credit for payments received on or after July 15, 2004:**
- 5. **Total remaining Settlement Balance :**

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

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

Yours truly,

Irwin Business Finance Corp.

[Exhibit D]

SETTLEMENT AND MUTUAL RELEASES

between

[NEW YORK LESSEE AND GUARANTOR] and IRWIN BUSINESS FINANCE CORP.

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

I understand that Irwin and the Attorney General of the State of New York have agreed to the terms of this Settlement Program for the purpose of avoiding the expense and inconvenience of litigation and it is not an admission on the part of Irwin that it engaged in any form of unlawful conduct or business practices, and that Irwin 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, Irwin will:

- (a) forgive ninety percent (90%) of the outstanding principal balance under the Rental Agreement as of July 15, 2004;
- (b) forgive any late fees or penalties assessed on the Lessee's account on or after July 15, 2004;
- (c) forgive any property insurance charges assessed on the Lessee's account on or after July 15, 2004;
- (d) fully credit any payments Lessee and/or Guarantor has made to Irwin on or after July 15, 2004; and
- (e) withdraw any and all adverse credit reports Irwin filed as a result of not receiving payment on the Rental Agreement on or after July 15, 2004.

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

1. **Principal balance remaining as of July 15, 2004:** _____
2. **Line 1 reduced by 90%:** _____
3. **Plus any unpaid late fees, penalties or insurance charges assessed prior to July 15, 2004:** _____
4. **Credit for payments received on or after July 15, 2004:** _____
5. **Settlement Balance:** _____

Lessee and/or Guarantor agree to pay the amount on Line 5 by the method checked here and request that Irwin invoice Lessee and/or Guarantor accordingly:

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

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

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

1

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

2. **Release Of Claims**

I understand that, in exchange for the opportunity to pay off the Rental Agreement at a substantial discount, Lessee and/or Guarantor hereby release and discharge Irwin and all of

its subsidiaries, parents, affiliates, predecessors, successors and assigns, officers, directors, employees, shareholders and agents (the "Irwin Parties") from, and covenant not to file or pursue any lawsuit or claim in any place against any Irwin 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 Irwin will mutually dismiss that litigation with prejudice.

In exchange for Lessee and/or Guarantor's payment to Irwin pursuant to this Settlement and Mutual Releases, Irwin 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 Irwin 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 Irwin 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 Irwin Parties concerning the Rental Agreement.

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

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

This Settlement and Mutual Releases shall be deemed accepted upon your return to Irwin 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 _____, 2005.

Dated: _____ [NAME OF NEW YORK LESSEE]

By: _____
[Name]

[Title]
[Address]

By: _____
[Name], as Guarantor

IRWIN BUSINESS FINANCE CORP
By: _____

FILL OUT COMPLETELY AND SEND TWO SIGNED ORIGINALS TO IRWIN AT:

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

[EXHIBIT E]

SETTLEMENT AND MUTUAL RELEASES

between

**[NEW YORK LESSEE AND GUARANTOR] and IRWIN BUSINESS FINANCE CORP.,
INC.**

I, _____, on behalf of the entity named above (the “Lessee”) and/or as personal guarantor (together, the “Lessee and/or Guarantor”), elect to take advantage of the Settlement Program agreed to by the Attorney General of the State of New York and IRWIN BUSINESS FINANCE CORP. to resolve Lessee’s Equipment Rental Agreement with Irwin (the “Rental Agreement”) at a substantial discount and to settle any and all disputes between Lessee and/or Guarantor and Irwin 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 Irwin and related parties.

I understand that Irwin and the Attorney General of the State of New York have agreed to the terms of this Settlement Program for the purpose of avoiding the expense and inconvenience of litigation and it is not an admission on the part of Irwin that it engaged in any form of unlawful conduct or business practices, and that Irwin 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, Irwin will:

- (a) forgive ninety percent (90%) of the outstanding principal balance under the Rental Agreement as of July 15, 2004;
- (b) forgive any late fees or penalties assessed on the Lessee's account on or after July 15, 2004;
- (c) forgive any property insurance charges assessed on the Lessee's account on or after July 15, 2004;
- (d) fully credit any payments Lessee and/or Guarantor has made to Irwin on or after July 15, 2004; and
- (e) withdraw any and all adverse credit reports Irwin filed as a result of not receiving payment on the Rental Agreement on or after July 15, 2004.

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

1. **Principal balance remaining as of July 15, 2004:** _____
2. **Line 1 reduced by 90%:** _____
3. **Plus any unpaid late fees, penalties or insurance charges assessed prior to July 15, 2004:** _____
4. **Credit for payments received on or after July 15, 2004:** _____
5. **Settlement Balance:** _____

Irwin will send a refund check in the amount of [_____] within 30 days of the mailing of Lessee and guarantor’s acceptance of the Settlement Program.

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

2. **Release Of Claims**

I understand that, in exchange for the opportunity to resolve the Rental Agreement at a substantial discount, Lessee and/or Guarantor hereby release and discharge Irwin and all of its subsidiaries, parents, affiliates, predecessors, successors and assigns, officers, directors, employees, shareholders and agents (the “Irwin Parties”) from, and covenant not to file or pursue any lawsuit or claim in any place against any Irwin 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 Irwin will mutually dismiss that litigation with prejudice.

In exchange for Lessee and/or Guarantor’s resolution of the Settlement Balance pursuant to this Settlement and Mutual Releases, Irwin 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 Irwin 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 Irwin 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 Irwin Parties concerning the Rental Agreement.

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

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

This Settlement and Mutual Releases shall be deemed accepted upon your return to Irwin 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 _____, 2005.

Dated: _____

[NAME OF NEW YORK LESSEE]

By: _____

[Name]

[Title]

[Address]

By: _____

[Name], as Guarantor

Irwin Business Finance Corp.

By: _____

FILL OUT COMPLETELY AND SEND TWO SIGNED ORIGINALS TO IRWIN AT:

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

