

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SOMERSET COUNTY COURT OF COMMON PLEAS

COMMONWEALTH OF PENNSYLVANIA
BY ATTORNEY GENERAL
GERALD J. PAPPERT

PLAINTIFF

v.

NORVERGENCE, INC.
And
PETER J. SALZANO, Individually, and PETER
J. SALZANO as President, Chief Executive
Officer and Chairman of NORVERGENCE, INC.

DEFENDANTS

CIVIL DIVISION

NO. 2004 -

**COMPLAINT IN EQUITY
AND PETITION FOR A
PERMANENT INJUNCTION**

COUNSEL FOR PLAINTIFF

E. BARRY CREANY
SENIOR DEPUTY ATTORNEY GENERAL
ATTORNEY NUMBER 39543
OFFICE OF ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION
171 LOVELL AVENUE, SUITE 202
EBENSBURG, PA 15931
(814) 471-1831

HENRY HART, III
SENIOR DEPUTY ATTORNEY GENERAL
ATTORNEY NUMBER 24599
OFFICE OF ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION
21 SOUTH 12TH STREET, 2ND FLOOR
PHILADELPHIA, PA 19107
(215) 560-2414

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Southwestern Pennsylvania Legal Services, Inc.
132 East Catherine Street
Somerset, PA 15501
(814) 443-4615

E. Barry Creany
Senior Deputy Attorney General

Office of Attorney General
Bureau of Consumer Protection
171 Lovell Avenue, Suite 202
Ebensburg, PA 15931
(814) 471-1831

1 **JURISDICTION AND VENUE**

- 2 1. This Court has jurisdiction in this matter pursuant to 42 Pa. C.S. §931(a).
3 2. Venue in this judicial district is proper under 42 Pa. C.S. §931(c) and Pa. R.C.P.
4 No. 1006.

5
6 **PARTIES**

- 7
8 3. Plaintiff is the Commonwealth of Pennsylvania, by Attorney General Gerald J.
9 Pappert, through the Bureau of Consumer Protection, Ebensburg Regional
10 Office, 171 Lovell Avenue, Suite 202, Ebensburg, Cambria County,
11 Pennsylvania 15931.
12 4. Defendant NorVergence, Inc. (hereinafter “NorVergence”) is a New Jersey for-
13 profit corporation which maintained a principal place of business located at 550
14 Broad Street, Newark, New Jersey.
15 5. NorVergence obtained a Certificate of Authority from the Pennsylvania
16 Department of State on or about December 5, 2002, to conduct business within
17 the Commonwealth of Pennsylvania as a foreign business corporation and in so
18 doing, notified the Commonwealth that its primary business purpose was to offer
19 telecommunication services.
20 6. On April 16, 2003, NorVergence filed an Application for Approval to Offer,
21 Render, Furnish or Supply Resale/Facilities-Based Interexchange
22 Telecommunications Services to the Public in the Commonwealth of
23 Pennsylvania (hereinafter the “Application for Approval”) with the Secretary of
24 the Pennsylvania Public Utility Commission (hereinafter the “Commission”).
25 Defendant Peter J. Salzano was the signatory for NorVergence on said
26 Application of Approval and the Affidavit filed in support thereof. The
27 Commission gave NorVergence provisional approval to provide
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

telecommunication services to the public in Pennsylvania; however, the Commission has since denied the NorVergence Application for Approval.

7. NorVergence appointed National Registered Agents, Inc., of 600 North Second Street, Suite 500, Harrisburg, Dauphin County, Pennsylvania, as its registered agent within the Commonwealth of Pennsylvania.
8. NorVergence is in Chapter 7 bankruptcy in the U.S. Bankruptcy Court for the District of New Jersey (Docket 04-32079-RG). Charles M. Forman, Esquire, has been appointed in said bankruptcy proceedings to serve as Trustee for Debtor NorVergence.
9. Defendant Peter J. Salzano (hereinafter “Salzano”) is an adult individual and resident of the State of New Jersey.
10. Salzano is the President, Chief Executive Officer and Chairman of NorVergence. Salzano is being named in his capacity as President, Chief Executive Officer and Chairman of NorVergence, and, in addition, in any other position he held in NorVergence.
11. The Commonwealth is informed, believes and therefore avers that Salzano supervised, controlled, approved, formulated, authorized, ratified, benefited from and/or otherwise participated in the acts and practices hereinafter alleged, or, in the alternative, that Salzano acted in concert with NorVergence or used NorVergence as an agent or instrumentality in perpetrating the acts and practices complained of herein and, therefore, to adhere to the fiction of a separation between Salzano and NorVergence would be unjust, inequitable and would sanction fraud.
12. Unless otherwise specified, whenever reference is made in this complaint to any act of any defendant, such allegation shall be deemed to mean the act of Defendants Salzano and NorVergence acting individually, jointly or severally.

1 **TRADE AND COMMERCE**

- 2 13. At all times relevant hereto the Defendants engaged in trade and commerce
3 within the Commonwealth of Pennsylvania and within Somerset County by
4 advertising for sale, offering for sale and selling a telecommunication package
5 (hereinafter the “telecommunication package”), as more fully set forth below, to
6 residents of the Commonwealth of Pennsylvania.
- 7 14. In order to market said telecommunication package, Defendants deployed a sales
8 staff throughout the Commonwealth of Pennsylvania, including Somerset
9 County, and maintained branch offices within the Commonwealth of
10 Pennsylvania including, but not limited to, a branch office at 2 Bala Plaza, Suite
11 300, Bala Cynwyd, Pennsylvania.
- 12 15. The Commonwealth has reason to believe that the Defendants used or are about
13 to use methods, acts or practices declared unlawful by §201-3 of the Consumer
14 Protection Law which have resulted in or are about to result in harm to
15 Pennsylvania consumers.
- 16 16. The Commonwealth believes that the public interest is served by seeking before
17 this Honorable Court a permanent injunction to restrain the methods, acts and
18 practices of the Defendants as hereinafter set forth. Further, the Commonwealth
19 requests declaratory relief, injunctive relief, civil penalties, costs and other
20 equitable relief as redress for violations of the Consumer Protection Law.

21
22 **DEFENDANTS’ TELECOMMUNICATION PACKAGE MARKETING**

- 23 17. Beginning in approximately April 2003 and continuing through June 2004, the
24 Defendants marketed a telecommunication package to residents of the
25 Commonwealth of Pennsylvania. Specifically, Defendants’ marketing was
26 targeted to the small businesses, non-profit organizations, churches, schools,
27 associations and other smaller consumers who were unlikely to have in-house
28 legal counsel or technology personnel to assist in evaluating the Defendants’

1 offer. One such example of the consumers who were marketed the NorVergence
2 offer is the Somerset Chamber of Commerce.

3 18. The Defendants marketed NorVergence as a company that is “Drastically
4 Reducing Telecommunication Costs”.

5 19. Defendants represented that they were able to provide a consumer with savings
6 on their telecommunications expenditures through the use of “Patent Pending
7 Network Design, based on its Merged Access Transport Intelligence Xchange or
8 Matrix™ (“MATRIX”)”. Defendants represented that the MATRIX devices
9 would route telecommunication in a manner that would provide consumers with
10 the promised savings.

11 20. Defendants represented that consumers who purchased its telecommunication
12 package would receive landline and cellular telephone services and Internet
13 access at a substantial discount, typically 30%, from the amount that the
14 consumers previously paid for such services.

15 21. Defendants represented that their telecommunication package would include all
16 telecommunication services, MATRIX devices and any necessary telephone
17 equipment (i.e., cellular handsets and, in some contracts, conventional landline
18 phones). Defendants marketed all such equipment and services as an integrated,
19 long-term contract.

20 22. Contrary to representations made by the Defendants in their marketing, the
21 equipment included in their telecommunication package was not unique within
22 the telecommunication industry. To the contrary, the NorVergence MATRIX
23 850 is a device that serves as an interface between a consumer’s telephone
24 system and a long distance telecommunication service provider’s T-1
25 communications line. Such devices are commonly used throughout the
26 telecommunication industry and referred to as an integrated access device, or
27 IAD. The NorVergence Soho is actually a firewall/router device that is installed
28 to a consumer’s DSL Internet line.

- 1 23. Defendants purchased all or substantially all of their MATRIX devices from
2 ADTRAN, Inc., a Huntsville, Alabama, manufacturer of network routing and
3 Internet security products. Upon information and belief, the actual price
4 NorVergence paid ADTRAN for the devices was less than \$1,500 for the
5 MATRIX 850 and approximately \$350 for the MATRIX Soho.
- 6 24. Defendants' MATRIX devices were wholly unrelated to a consumer's use of
7 cellular telephone access, and did not significantly change the costs that would
8 result from a consumer's use of conventional landline telephone access. Rather,
9 NorVergence entered into agreements with telecommunication carriers to
10 purchase telecommunication services on a wholesale cost basis. Said
11 telecommunication carriers included, without limitation, Qwest Communications
12 Corporation, Sprint Communications and T-Mobile.
- 13 25. The Commonwealth is informed, believes and therefore avers, that in addition to
14 promising consumers a 25%-30% discount on their telecommunication
15 expenditures, NorVergence also routinely promised unlimited free minutes for
16 both conventional landline calls and cellular calls at no extra cost. NorVergence
17 advised prospective consumers that it could guarantee such unlimited calling,
18 with no permanent charges for five (5) years.
- 19 26. The Commonwealth is informed, believes and therefore avers, that Defendants
20 directed, or otherwise approved, their sales staff to engage in high pressure sales
21 tactics by representing directly or by implication, that:
- 22 a. Only a select number of consumers would be offered the opportunity to
23 obtain the NorVergence telecommunication package at reduced rates.
 - 24 b. By accepting the NorVergence telecommunication package offer,
25 consumers would achieve substantial savings on their telecommunication
26 expenditures.
 - 27 c. The NorVergence telecommunication package offer was available for a
28 limited period of time and, therefore, the consumer must decide

1 immediately whether to accept said offer by executing a series of
2 documents represented to be “non-binding”.

- 3 d. The NorVergence telecommunication package offer was in great demand.
- 4 e. Of those consumers offered the NorVergence telecommunication
5 package, only a select few would qualify for the reduced
6 telecommunication savings, specifically, it was represented that only the
7 NorVergence “Engineering Department” could ultimately determine
8 whether a consumer “qualified” for said offer.

9 27. The Commonwealth is informed, believes and therefore avers, that Defendants
10 directed, or otherwise approved their sales staff, in the course of sales
11 presentations, to represent, directly or by implication, orally or in written and
12 printed materials, that:

- 13 a. NorVergence would provide the consumer with unlimited long distance,
14 cellular phone and high speed Internet access at greatly reduced prices.
- 15 b. Consumers would continue to receive the services for which they
16 contracted regardless of whether anything would ever happen to
17 NorVergence.
- 18 c. NorVergence was a business partner with Nortel Networks and Qwest
19 Communications, companies who were recognized as leaders in the
20 telecommunication industry.
- 21 d. In order to obtain the NorVergence telecommunication package, it was
22 necessary for the consumer to sign an “Equipment Rental Agreement”
23 (hereinafter the “rental agreement”) as well as a “Service Application”.

24 28. The Commonwealth is informed, believes and therefore avers, that Defendants
25 directed their sales staff, in the course of the sales and approval process, to obtain
26 consumers’ signatures on numerous forms including, but not limited to: A
27 “Customer Qualifying Questionnaire”, an “Accurate Bill Receipt and Proposal
28 Request”, a “Receipt of Savings Guarantee Subject to Mutual Due Diligence &

1 Acceptance by Engineering”, a “Credit Application”, a “Letter of Agency”, a
2 “No-Risk Reservation Agreement”, an “Equipment Rental Agreement”, and a
3 “Service Application” which was purported to be non-binding. Consumers were
4 led to believe that unless said forms were completed and executed, they could not
5 be considered for the NorVergence telecommunication package offer. In the
6 process of securing said forms from consumers, Defendants’ sales staff routinely
7 obtained copies of the consumer’s recent telecommunication bills including bills
8 for landline and cellular telephone service and Internet access.

9 29. The Commonwealth is informed, believes and therefore avers, that Defendants
10 directed, or otherwise approved, their sales staff to notify the consumers who had
11 applied for the telecommunications package that they had qualified for the offer
12 and would be able to realize a savings on their telecommunications expenditures
13 of approximately 30%. In presenting the costs of the NorVergence
14 telecommunication package to consumers, Defendants allocated a small fraction
15 of the total price of the telecommunication package for the promised
16 telecommunication services, and that amount was wholly unrelated to the actual
17 costs that would be incurred by providing the promised telecommunication
18 services. Most of the price consumers would pay was allocated to the rental
19 agreement for the MATRIX devices and other equipment.

20 30. The Commonwealth is informed, believes and therefore avers, that Defendants
21 directed their sales staff, in the course of finalizing offers, to require some
22 consumers to personally guarantee payments under the rental agreements.
23 Further, the sales staff was directed to have consumers execute “Delivery &
24 Acceptance” forms from consumers upon delivery of the equipment that was the
25 subject of the rental agreement, even though said equipment was not operational
26 at that time.

1 31. The Commonwealth is informed, believes and therefore avers, that after
2 finalizing the sale of the NorVergence telecommunication package with
3 consumers, NorVergence would sell or assign the rental agreements to a third-
4 party finance company, either for the full five-year term or for some part of that
5 term. The finance company paid NorVergence a discounted portion of the total
6 rental price.

7 32. The Commonwealth is informed, believes and therefore avers, that the finance
8 companies paid NorVergence in excess of \$100 million in upfront payments for
9 the purchase or assignment of the rental agreements.

11 **RENTAL AGREEMENTS**

12 33. The Commonwealth is informed, believes and therefore avers, that most rental
13 agreements that NorVergence entered into with consumers were for a five-year
14 term. They were titled simply “Rental Agreement”, with the only indication that
15 they were non-cancelable appearing in fine print. Although it is believed that
16 NorVergence purchased the various MATRIX devices at prices ranging from
17 \$350 to \$1,500, the cost at which NorVergence “rented” the MATRIX devices to
18 its consumers varied greatly. For example, NorVergence’s rental agreements
19 required consumers to pay from \$250 to \$5,700 per month. The total cost to the
20 consumer over the term of the rental agreement ranged from \$24,000 to
21 \$340,000 for “renting” the MATRIX 850 equipment. The total cost to the
22 consumer for MATRIX Soho equipment ranged from \$10,000 to \$30,000.

23 34. The NorVergence rental agreements were complex, highly technical, commercial
24 contracts which, in a “sea of fine print”, included provisions that were totally
25 inconsistent and/or contradictory to representations made by NorVergence sales
26 staff in the course of securing the consumer’s execution of the rental agreement.
27 In some cases NorVergence had consumers sign more than one rental agreement
28 covering essentially the same equipment which added to the already confusing

1 sales transaction. For example, the Somerset Chamber of Commerce entered
2 into two (2) NorVergence rental agreements; one (1) dated as being accepted by
3 NorVergence on May 25, 2004, identifying NorVergence, Inc., as the rentor, and
4 the other undated rental agreement identifying Wells Fargo Financial Leasing,
5 Inc., as the rentor. True and correct copies of these rental agreements are
6 attached hereto and labeled Exhibit "A".

7 35. The Commonwealth is informed, believes and therefore avers, that in addition to
8 securing personal guarantees for rental agreements, the NorVergence rental
9 agreements included various provisions that would make them more readily
10 saleable. For example, they contained so-called "hell or high water" waiver of
11 defenses clauses. These purport to require the consumer to pay the full amount
12 regardless of any fraud or deception perpetrated by NorVergence in making the
13 original sale or in failing to provide the promised services. Typical language
14 includes:

15 Your duty to make the rental payments is unconditional despite
16 equipment failure, damage, loss or any other problem. If the equipment
17 does not work as represented by the vendor, or if the vendor or any other
18 person fails to provide any service, or if the equipment is unsatisfactory
19 for any other reason, you will make any such claim solely against the
20 vendor or other person and will make no claim against us.

21 In the example language above, the word "us" refers to the rentor, which could
22 be NorVergence, a designated finance company, or an assignee not designated at
23 the time of signing.

24 36. The Commonwealth is informed, believes and therefore avers, that the
25 NorVergence rental agreement also provided, in very fine print, that any disputes
26 under the contract would be resolved in a forum distant from the consumer's
27 place of business and, in many cases, unknown at the time the consumer signed
28 the contract:

This agreement shall be governed by, construed and enforced in
accordance with the laws of the State in which the Rentor's principal
offices are located or, if the lease is assigned by Rentor, the laws of the
state in which the assignee's principal offices are located, without regard

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

to such States choice of law considerations and all legal actions relating to this lease shall be venued exclusively in a state or federal court in that State, such court to be chosen exclusively at Rentor or Rentor’s assignee’s sole option.

Further, upon information and belief, it is averred that, in some cases, NorVergence may have made assignments of the partial term of some rental agreements and/or made multiple assignments on the same rental agreement, adding to the ambiguity of what forum might apply.

- 37. The Commonwealth is informed, believes and therefore avers, that the NorVergence rental agreements characterized the agreements as finance leases under Article 2A of the Uniform Commercial Code and also contained, in very fine print, a provision that stated that if the agreement was a Uniform Commercial Code Article 2A lease, then all the protections of Article 2A could be utilized by the assignee.
- 38. The NorVergence rental agreements are not finance leases under Article 2A of the Uniform Commercial Code because the Commonwealth is informed, believes and therefore avers that:
 - a. NorVergence selected and supplied the MATRIX device equipment to its consumers.
 - b. NorVergence supplied the MATRIX device equipment to its consumers from its existing inventory of such devices and did not acquire devices in connection with the individual rental agreement leases entered into with the consumers.
 - c. Prior to signing the rental agreements, the consumers did not receive a copy of the contract by which NorVergence acquired the MATRIX device equipment that was the subject of the rental agreement.
 - d. It was not a condition of the effectiveness of the rental agreements that the consumers approved the contracts by which NorVergence acquired the MATRIX devices or the right to possess and use said devices.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

e. Prior to signing the rental agreements, the consumers did not receive a statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, provided to NorVergence by the supplier of the MATRIX devices as part of the contract by which NorVergence had acquired the MATRIX devices.

f. Prior to the consumers signing the rental agreements, NorVergence did not inform the consumers in writing of the identity of the person supplying the MATRIX devices to NorVergence; that the consumers are entitled to the promises and warranties provided to NorVergence by the supplier of the MATRIX devices in connection with the contract by which NorVergence acquired the MATRIX devices; or that the consumers may communicate with the supplier of the MATRIX devices and receive an accurate and complete record of the goods supplied and a complete statement of the promises and warranties, including any disclaimers and limitations of them or of remedies.

13 Pa. C.S.A. §2A103.

39. The Commonwealth is informed, believes and therefore avers, that upon assigning the rental agreements, NorVergence was left with its only source of ongoing income being the payments that consumers were obligated to make under the telecommunication service agreements. Because that telecommunication service income was only a small fraction of the cost of providing such services, NorVergence could not meet its operational costs and long term obligations to its consumers unless it set aside most or all of the income derived from the assignment of the rental agreements, even then, that amount might not be sufficient to fund such obligations. Based upon information obtained from the NorVergence Chapter 11 proceedings, the Commonwealth is informed, believes and therefore avers, that it appears that

1 NorVergence did not set aside income derived from the assignment of rental
2 agreements in order to cover its obligations to consumers.

3 40. The Commonwealth is informed, believes and there avers, that beginning as
4 early as the fall of 2003, NorVergence delayed the installation or connection of
5 consumers to the telecommunication services they were promised. By mid-2004,
6 NorVergence had stopped installing or connecting consumers to the promised
7 service and had ceased paying common carriers, other service providers and its
8 employees. Initial filings from the NorVergence Chapter 7 trustee indicate that
9 virtually none of the hundreds of millions of dollars in up-front payments
10 NorVergence received from finance companies for the assignment of rental
11 agreements can be found, nor are there any other substantial assets.

12 41. The Commonwealth is informed, believes and therefore avers, that in July 2004
13 the NorVergence Trustee, pursuant to the Bankruptcy Code, rejected all service
14 agreements which NorVergence had with its consumers. Without the service
15 portion of the telecommunication package, the MATRIX devices and other
16 equipment subject to the rental agreements are useless to the NorVergence
17 consumers.

18 42. The Commonwealth is informed, believes and therefore avers, that in deciding to
19 do business with NorVergence, based upon information provided by or available
20 from NorVergence, the finance companies knew or should have known that
21 NorVergence was selling a discounted telecommunication service package and
22 that the MATRIX devices were merely an incidental part of the
23 telecommunication service package. Additionally, in reviewing rental
24 agreements which NorVergence offered for assignment, the finance companies
25 knew that the total price might vary from \$24,000 to as much as \$240,000 for the
26 exact same devices. As a result, those finance companies knew or should have
27 known that the rental agreements might have been part of a scheme to defraud
28 consumers.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

43. The Commonwealth is informed, believes and therefore avers, that although NorVergence consumers are no longer receiving any of the telecommunication services that NorVergence promised to provide, many finance companies who were assigned rental agreements are insisting on full payment under the terms of the rental agreements. These demands for full payment from finance companies are being made despite the fact that said finance companies know or should know that the MATRIX devices are essentially worthless to the consumer without the promised service, and the consumers are receiving no services.

44. The Commonwealth is informed, believes and therefore avers, that many finance companies have threatened or are threatening collection actions, and have filed or are preparing to file collection litigation in forums distant from the consumer.

45. The Commonwealth is informed, believes and therefore avers, that at the time that the NorVergence bankruptcy was filed, and currently, there are more than 1,000 rental agreements that NorVergence had entered into with consumers that have not yet been assigned to any finance company. NorVergence is providing none of the promised services associated with those rental agreements. If those rental agreements are assigned or sold, either by the Chapter 7 trustee or by NorVergence in the event the bankruptcy action is dismissed, the consumers could be subject to the same type of collection actions by assignees for the rental agreements that have already been assigned. As a result, these consumers could be threatened and/or forced to pay tens or hundreds of thousands of dollars for worthless MATRIX devices and other equipment that they have never received or which has never been installed and functional.

46. The Commonwealth is informed, believes and therefore avers, that NorVergence has a residual interest in an unknown number of rental agreements that were assigned to finance companies for the balance of the terms of such rental agreements. These finance companies would be expected to return the rental agreements to NorVergence, who could begin collecting on the rental

1 agreements for the balance of the terms of such rental agreements or assign the
2 rental agreements to other third parties who might attempt to collect for the
3 balance of the term despite the fact that consumers would not be receiving any of
4 the promised services.

5
6 **COUNT I**

- 7 47. Paragraphs 1 through 46 of the foregoing complaint are incorporated herein by
8 reference.
- 9 48. In numerous instances, in connection with the selling and financing of its
10 telecommunication package, the Defendants represented, expressly or by
11 implication, directly or indirectly:
- 12 a. That NorVergence offered and treated the “non-binding” applications,
13 forms and rental agreements each consumer signed as integral parts of
14 NorVergence’s contract and commitment to provide telecommunication
15 services in exchange for the consumers’ payments.
 - 16 b. That payment on the rental agreement and associated service agreement
17 would result in the consumer receiving the promised discounted
18 telecommunication services for a long term.
 - 19 c. That the equipment listed in the rental agreement would create the
20 promised substantial savings in the consumer’s total cost of
21 telecommunication services.
 - 22 d. That the consumers’ service would not be interrupted, even if
23 NorVergence went out of business, because the Defendants had partnered
24 with companies such as Nortel Networks and Qwest Communications.
- 25 49. The Commonwealth is informed, believes and therefore avers, that in truth and in
26 fact:
- 27 a. NorVergence did not treat the “non-binding” applications, forms and
28 rental agreements each consumer signed as integral parts of its contract

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

and commitment to provide telecommunication services in exchange for consumers' payments. Rather, Defendants treated the rental agreement as a separate hardware financing document so that they could sell the rental agreement as if it were subject to Article 2A of the Uniform Commercial Code and receive the rental income up front regardless of whether NorVergence actually delivered the promised telecommunication services.

- b. Payment on the rental agreement and associated service agreements would not and did not result in the consumer receiving the promised discounted telecommunication service for a long term.
- c. The equipment listed in the rental agreement would not and did not create the promised substantial savings in the consumer's total cost of telecommunication services.
- d. NorVergence merely had contracts with Nortel Networks and Qwest Communications to provide services and equipment and neither company, or any other companies, had given NorVergence any commitment to provide any services or equipment in the event that NorVergence went out of business.

50. Defendants' acts and practices set forth above constitute violations of §201-3 of the Consumer Protection Law in that they fall within the definition of unfair methods of competition and unfair or deceptive acts or practices as defined by the Consumer Protection Law including, but not limited to, §201-2(4)(i), (ii), (iii), (v), (vii), (ix), (xi) and (xxi).

51. Defendants caused and continue to cause irreparable harm by violating the Consumer Protection Law and, therefore, Plaintiff requests this Honorable Court to grant the relief set forth in the Prayer for Relief below.

COUNT II

1
2 52. Paragraphs 1 through 46 of the foregoing complaint are incorporated herein by
3 reference.

4 53. The Commonwealth is informed, believes and therefore avers, that in connection
5 with the selling and financing of its telecommunication package, the Defendants
6 represented, expressly or by implication, directly or indirectly, that they would
7 provide substantially discounted telecommunication services for a long term,
8 however, Defendants failed to disclose:

- 9 a. That NorVergence had no long-term commitment from any service
10 provider for the services that Defendants were promising to provide the
11 consumers.
- 12 b. That the equipment covered by the rental agreement would be of little or
13 no value to the consumer if NorVergence failed to provide the promised
14 telecommunication service.
- 15 c. That the rental agreement purported to make the consumer's obligation to
16 pay absolute and unrelated to the terms, conditions, or performance of
17 any other agreement, including the agreement to provide
18 telecommunication services.
- 19 d. That the rental agreement purported to require, or have the effect of
20 requiring, that the consumers waive all defenses that they may have
21 including, but not limited to, fraud in inducement of the contract.
- 22 e. That any disputes concerning the rental agreement could be resolved in a
23 forum distant from the consumer's location and, in many cases, that
24 forum was not identified at the time the consumer signed the contract,
25 rather it would be determined by a third-party finance company assigned
26 the rental agreement.
- 27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

f. That third-party finance companies would insist on full payment on the rental agreements regardless of whether NorVergence provided the promised telecommunication services.

- 54. Defendants’ acts and practices set forth above constitute violations of §201-3 of the Consumer Protection Law in that they fall within the definition of unfair methods of competition and unfair or deceptive acts or practices as defined by the Consumer Protection Law including, but not limited to, §201-2(4)(i), (ii), (iii), (v), (vii), (ix), (xi) and (xxi).
- 55. Defendants caused and continue to cause irreparable harm by violating the Consumer Protection Law and, therefore, Plaintiff requests this Honorable Court to grant the relief set forth in the Prayer for Relief below.

COUNT III

- 56. Paragraphs 1 through 46 of the foregoing complaint are incorporated herein by reference.
- 57. The Commonwealth is informed, believes and therefore avers, that the Defendants provided others (i.e., third-party finance companies) with the means and instrumentalities necessary for the commission of unfair methods of competition and unfair or deceptive acts or practices by furnishing third-party finance companies with rental agreements that may allow the finance companies to:
 - a. Misrepresent that consumers owe money regardless of whether NorVergence provides the promised telecommunication services.
 - b. Pursue collection activity and file lawsuits for the collection of full payment on rental agreements in distant forums.
- 58. Defendants’ acts and practices set forth above constitute violations of §201-3 of the Consumer Protection Law in that they fall within the definition of unfair

1 methods of competition and unfair or deceptive acts or practices as defined by the
2 Consumer Protection Law including, but not limited to, §201-2(4)(xxi).

3 59. Defendants caused and continue to cause irreparable harm by violating the
4 Consumer Protection Law and, therefore, Plaintiff requests this Honorable Court
5 to grant the relief set forth in the Prayer for Relief below.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Commonwealth respectfully requests this Honorable Court to enter
9 an Order:

- 10 A. Permanently enjoining the Defendants from engaging in any trade and
11 commerce within the Commonwealth of Pennsylvania;
- 12 B. Directing the Defendants to make full restitution to all consumers who have
13 suffered losses as a result of the unfair and unlawful methods, acts and practices
14 alleged in this complaint and any other methods, acts and practices which
15 violate the Consumer Protection Law;
- 16 C. Declaring that all contracts entered into between Defendants and Pennsylvania
17 consumers by the unfair and unlawful methods, acts and practices set forth in
18 this complaint are void *ab initio* and rescinded, and order that the Defendants
19 are jointly and severally liable for the full amount of restitution due consumers;
- 20 D. Enjoining the Defendants from selling, assigning or in any other manner
21 transferring any interest in any of the rental agreements currently in the
22 possession of NorVergence;
- 23 E. Directing the Defendants to disgorge and forfeit all profits they have derived as
24 a result of the unfair and unlawful methods, acts and practices set forth in this
25 complaint and to create a constructive trust on any such profits which the
26 Defendants have transferred to any other person or entity;
- 27 F. Directing the Defendants to pay civil penalties in the amount of One Thousand
28 and 00/100 Dollars (\$1,000.00) for each and every violation of the Consumer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Protection Law, which will increase to Three Thousand and 00/100 Dollars (\$3,000.00) for each violation involving a victim age sixty (60) or older;

G. Directing the Defendants to pay the Commonwealth for the costs of its investigation and prosecution of this action; and,

H. Providing any other such relief as this Honorable Court may deem just and equitable.

DATE: December 8, 2004

Respectfully submitted,

GERALD J. PAPPERT
ATTORNEY GENERAL

FRANK T. DONAGHUE
CHIEF DEPUTY
ATTORNEY GENERAL

E. BARRY CREANY
SENIOR DEPUTY
ATTORNEY GENERAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

Thomas W. Creehan states that he is in excess of eighteen (18) years of age and is an Agent Supervisor for the Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, the Plaintiff in this action. He verifies that the statements made in the foregoing Complaint in Equity and Petition for a Permanent Injunction are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Dated: December 7, 2004

Thomas W. Creehan, Agent Supervisor