

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

In The Matter Of:

File No. 05-32-CZ

US EXPRESS LEASING, INC.  
Respondent.

Hon. James R. Giddings

AG File No. 200515050

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**ASSURANCE OF DISCONTINUANCE**

MICHAEL A. COX  
ATTORNEY GENERAL

Kathy Fitzgerald  
Assistant Attorney General  
Consumer Protection Division  
P.O. Box 30213  
Lansing, MI 48909  
517-335-0855

Dated Filed: October 28, 2005

IN THE MATTER OF  
US EXPRESS LEASING, INC.

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

1. This Assurance of Voluntary Compliance<sup>1</sup> ("Assurance") is entered into by the Attorneys General<sup>2</sup> (collectively, "Attorneys General") of the States of California, Colorado, Connecticut, Georgia, Illinois, Kansas, Maryland, Massachusetts, Michigan, North Carolina, Pennsylvania, and South Dakota (collectively, "Participating States"), and US Express Leasing, Inc. ("US Express").
2. US Express is a corporation organized and existing under the laws of the State of Delaware.
3. US Express has a place of business at 300 Lanidex Plaza, Parsippany, New Jersey 07054.
4. US Express is one of the leasing companies that entered into and holds Equipment Rental Agreements with NorVergence, Inc. ("NorVergence") customers in the Participating States and elsewhere.

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<sup>1</sup> This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

<sup>2</sup>Of the states listed, Connecticut is represented by the Commissioner of the Connecticut Department of Consumer Protection, who enters into this Assurance pursuant to the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Sec. 42-110j, acting by and through his counsel, Richard Blumenthal, Attorney General for the State of Connecticut. Georgia is represented by the Administrator of the Fair Business Practices Act, who is statutorily authorized to undertake consumer protection functions for the State of Georgia, including acceptance of Assurances of Voluntary Compliance. For simplicity purposes, the entire group will be referred to as the "Attorneys General," and such designation, as it includes Connecticut, refers to the Commissioner of the Connecticut Department of Consumer Protection, and as it includes Georgia, refers to the Administrator of the Fair Business Practices Act.

## **BACKGROUND**

5. This Assurance follows an inquiry by the Attorneys General into US Express's business dealings with NorVergence. This inquiry was part of a larger inquiry regarding whether the practices of NorVergence and those of US Express and other financing companies in connection with NorVergence Equipment Rental Agreements ("Rental Agreements") violate any of the consumer protection statutes listed herein at footnote 3.<sup>3</sup>

### **NorVergence's Allegedly Fraudulent Business Scheme**

6. The Attorneys General of Illinois, North Carolina, Massachusetts, Pennsylvania, and Texas and the Federal Trade Commission have sued NorVergence, alleging that NorVergence's business practices violate their respective consumer protection statutes.
7. Among other things, these complaints filed against NorVergence include the following allegations:
- a. That NorVergence's sales presentations contained a number of misrepresentations about the nature of NorVergence's offer, including, but not limited to, that:
    - i. NorVergence was offering to lower a potential customer's monthly expenses for telephone service, high speed Internet service, and wireless

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<sup>3</sup> California Business and Professions Code sections 17200 and 17500; Colorado Consumer Protection Act, 6-1-101, *et seq.*, CRS; Connecticut Unfair Trade Practices Act, C.G.C. 42-110b(a); Georgia Fair Business Practices Act of 1975, O.C.G.A. 10-1-390, *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.*; Kan. Stat. Ann. § 50-623, *et seq.*; Md. Code Ann., Com. Law §2-302; Massachusetts Consumer Protection Statute, G.L. c. 93A; Michigan Consumer Protection Statute, MCL 445.901 *et seq.*; North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. §75-1.1, *et seq.*; Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1 *et seq.*; and South Dakota Deceptive Trade Practices Act, SDCL Ch. 37-24.

telephone service, which discounts could be achieved by installing a Matrix box;

- ii. NorVergence could eliminate all per-minute charges for telephone service, high-speed Internet service, and wireless telephone service using special "voice as data" technology contained in the Matrix box;
- iii. NorVergence arrived at the price for a 60 month contract for the provision of discounted telecommunications services by taking a percentage discount from a customer's monthly telecommunications expenses, usually 30%, and multiplying the remaining percentage, usually 70%, by 60; and
- iv. In the event NorVergence went out of business, customers' telecommunications service would not be interrupted.

b. The complaints further allege that:

- i. The Matrix box takes one of two formats: it is either a T1 box, which has nothing to do with cellular service, or a firewall/router, which has nothing to do with landline telephone service or cellular service;
- ii. The Matrix box has an estimated retail value of \$400 to \$1,500;
- iii. NorVergence crafted the transactions in such a way that the majority of the 60 month contract monthly payment was contained in an "Equipment Rental Agreement", purportedly for the cost of the Matrix box;

- iv. NorVergence immediately assigned its Rental Agreements to various finance companies or caused its customers to execute Rental Agreements directly with finance companies;
  - v. If NorVergence went out of business, it had no arrangements to provide telecommunications services to its customers; and
  - vi. Shortly after NorVergence's creditors forced the company into bankruptcy on June 30, 2004, NorVergence ceased providing telecommunications services to all of its customers.
- c. The complaints also allege that NorVergence included unfair terms in its Rental Agreements, such as the purported waiver of defenses clause and the floating venue clause, and failed to disclose clearly and conspicuously the material terms and conditions of those Rental Agreements.

**US Express's Activities in Connection with the  
NorVergence Equipment Rental Agreements**

- 8. In many cases, shortly after the Rental Agreements were executed between NorVergence and their customers, these agreements were assigned to finance companies.
- 9. US Express sent monthly invoices to its customers in connection with all the NorVergence Rental Agreements in its portfolio and accepted payment from some customers on those invoices.

**THE ATTORNEYS GENERAL'S POSITION**

- 10. The Attorneys General allege that their consumers were fraudulently induced to sign the NorVergence agreements, and that such agreements are void *ab initio*.

11. The Attorneys General allege that US Express knew or should have known of the alleged fraud perpetrated by NorVergence and is not entitled to collect from its customers in the Participating States.
12. The Attorneys General also allege that, under the circumstances, the Rental Agreements are unconscionable in that they contain terms that are unreasonable, unfairly harsh, and one-sided in favor of NorVergence and the leasing companies, all in violation of the statutes set forth in footnote 3 to this Assurance and in violation of Section 2-302 of the Uniform Commercial Code.

#### US EXPRESS'S POSITION

13. US Express denies that it knew or should have known of any alleged fraud perpetrated by NorVergence. US Express asserts that it is not legally responsible for any such alleged fraud perpetrated by NorVergence, and contends that, in accordance with the law of each Participating State, the Rental Agreements with NorVergence customers remain fully enforceable according to their terms notwithstanding any improper conduct by NorVergence.
14. US Express expressly denies that it engaged in any 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.
15. At the same time, in light of the allegations directed at NorVergence, the impact of the NorVergence conduct on US Express's customers, and the concerns expressed by the Participating States, US Express is willing to afford its NorVergence customers an

opportunity to be released from their obligations under the Rental Agreements pursuant to the conditions described herein.

#### **TERMS OF ASSURANCE**

16. This Assurance shall be binding upon and extend to US Express, its officers, directors, agents (including, but not limited to third party collection agents), employees, successors and assigns, 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.
17. By entering into this Assurance, the Parties agree that there are no admissions of wrongdoing or findings of liability or wrongdoing on the part of US Express, that there has been no concession or agreement by US Express as to the validity and/or merits of any investigation, that there has been no approval, sanction, or authorization by any of the Participating States of any act or practice of US Express and that this Assurance does not indicate or constitute the existence or non-existence of any fact or circumstance that may have been alleged in connection herewith by any Participating State or by US Express. This Assurance is entered into solely for the purpose of settlement of disputed claims, and to avoid the expense, uncertainty, delay, and inconvenience that would be associated with continued investigation and potential litigation of the issues. Neither the existence of, negotiation of, nor the terms of this Assurance, nor of any offer made to or agreed upon with any State Customer pursuant hereto shall, in any future proceeding other than for enforcement, default, or breach of this Assurance, be referred to or offered in evidence of wrongdoing, for any purpose, by any person. A State Customer is any US

Express customer in any Participating State that has a NorVergence Rental Agreement. The Participating States acknowledge that US Express has cooperated fully with the investigation in an effort to satisfy the interests of the Participating States and the State Customers.

Customer Settlement Program

18. In order to participate in the settlement terms described herein, each State Customer must pay all amounts due on its Rental Agreement through July 15, 2004, including 100% of any and all monthly payments and charges for late fees and taxes ("Cure Amount"). Each State Customer who elects to participate in, and fully perform under, the settlement terms in the manner described herein will be referred to as a "Participating Customer". Each State Customer who settled its claims with US Express after July 15, 2004 also is eligible to be a Participating Customer on the terms and conditions described in paragraphs 20 through 23 of this Assurance.
19. US Express will offer the following settlement terms to any Participating Customer and any personal guarantor it may have:
  - a. US Express will forgive eighty-five percent (85%) of the remaining contract balance due on each such Participating Customer's obligations to US Express under the Rental Agreement after July 15, 2004, but not including any applicable taxes due thereon or in connection therewith;
  - b. US Express shall forgive any late fees or penalties assessed on the Participating Customer's account on or after July 15, 2004; and

- c. Within thirty (30) days of the delivery of documents by which any State Customer elects to become a Participating Customer, US Express shall withdraw or cause to be corrected any and all adverse credit information filed by it, if any, as to the Participating Customer as a result of not receiving payment from that Customer on its Rental Agreement after July 15, 2004, by providing written notification to each credit bureau to whom US Express furnished information, if any.
20. US Express shall fully credit each Participating Customer for any payments it has made pursuant to the Rental Agreement after July 15, 2004, including, but not limited to, monthly payments, late fees, and taxes. US Express shall issue refunds to those Participating Customers whose post-July 15, 2004 payments exceed the Participating Customer's remaining obligations under the Rental Agreement as provided by paragraph 21 of this Assurance.
21. As to each Participating Customer, US Express agrees to accept, in full satisfaction of the Customer's obligations to US Express under the Customer's Rental Agreement, payment of the Cure Amount, plus payment of fifteen percent (15%) of the remaining contract balance due to US Express under the Rental Agreement as of July 15, 2004, minus any late fees, or penalties ("Settlement Balance"), plus any applicable taxes thereon or in connection therewith. For Participating State Customers, it is agreed that the Rental Agreements are considered terminated as of the date the Participating State Customer signs the Settlement Agreement and Release.
22. US Express agrees that the Settlement Balance shall be paid as follows:
  - a. The Participating Customer shall either elect to:

- i. Make a lump sum payment of the entire Settlement Balance; or
  - ii. If the Settlement Balance is less than \$5,000, pay the Settlement Balance in up to twelve (12) equal monthly installment payments. If the Settlement Balance is \$5,000 or higher, pay the Settlement Balance in up to twenty-four (24) equal monthly installment payments.
  - iii. Nothing in this Assurance shall be construed to preclude US Express in its sole discretion from entering into mutually acceptable alternative payment schedules with any Participating Customer.
- b. If the Participating Customer elects to make a lump sum payment, such payment shall be due within thirty (30) days of the mailing of the fully executed Settlement and Mutual Release by the Participating Customer, as described in paragraph 25 of this Assurance;
  - c. If the Participating Customer elects to make installment payments, the first installment payment is to be due no earlier than the thirtieth (30<sup>th</sup>) day after US Express's receipt of the fully executed Release. US Express shall provide a bill, on a minimum of fifteen (15) days' notice, to such Participating Customer stating the date the first installment payment is due and its amount.
  - d. Any Participating Customer that begins paying its Settlement Balance may pre-pay the remaining balance at any time without penalty.
  - e. In the event no Settlement Balance is due from a Participating Customer and a refund is warranted, US Express shall pay any such refund within thirty (30) days of US Express's receipt of the fully executed Settlement and Mutual Release.

23. Unless prohibited by law, within thirty (30) days of the Effective Date, US Express shall mail a Settlement Letter (in the form annexed hereto as Exhibit A) to each State Customer who entered into a Rental Agreement and any personal guarantor thereof. In this mailing, US Express will print on the outside of the envelope the following: "NorVergence-Related Settlement Material Enclosed" in at least 12 point typeface. Each State Customer will have 35 days from the date of the mailing of the Settlement Letter to respond to US Express to indicate whether they will accept the terms of settlement. If any of the State Customer's letters are returned to US Express as undeliverable, US Express must make reasonable commercial efforts to locate that customer. If located, US Express shall inform the State Customer and personal guarantor of the following:
- a. The thirty-five (35) day opportunity to elect to participate in the settlement described herein in exchange for a release of all claims against US Express relating to NorVergence;
  - b. The Settlement Balance due from that State Customer (which shall include any Cure Amount); and
  - c. The State Customer's options for paying the Settlement Balance if the Customer elects to participate in the settlement.
24. Within thirty (30) days of the Effective Date, US Express shall mail a letter to any State Customer who agreed to and/or executed an independent settlement agreement with US Express after July 15, 2004. Those State Customers will have thirty-five (35) days from the date of mailing of the letter to respond to US Express to indicate whether they will

elect to revise their existing settlement. In that letter, US Express shall inform such settled State Customer of the following:

- a. The thirty-five (35) day opportunity to elect to revise the State Customer's existing settlement to achieve terms equivalent to the Settlement Program described in this Assurance; and
  - b. If the State Customer elects to revise their settlement, the Settlement Balance due and the State Customer's options for payment.
25. US Express shall include with the letters referenced in paragraphs 23 and 24 of this Assurance a document titled "Settlement and Mutual Release." Letters in the form of Exhibit A annexed hereto will be accompanied by a Settlement and Mutual Release in the form of Exhibit B annexed hereto. As referenced in those letters, each Participating Customer will be required to provide a notarized signature of a duly authorized officer, partner or other agent of the company and/or the personal guarantor on the Settlement and Mutual Release and return the same to US Express within thirty-five (35) days of US Express's mailing of the letter.
26. To the extent set forth in the Settlement and Mutual Release, each Participating Customer shall provide US Express with a release of claims arising under the Rental Agreement and any and all NorVergence related issues. As to each Participating Customer who executes a Settlement and Mutual Release, US Express shall provide a release of claims arising under the Rental Agreement, to the extent set forth in the Settlement and Mutual Release. To the extent set forth in the Settlement and Mutual Release, each Participating Customer and US Express shall agree to mutually dismiss with prejudice (and without

award of costs or attorneys' fees to any party) any pending litigation arising from the Rental Agreement or US Express's efforts to collect under or enforce the Rental Agreement.

27. If a State Customer who executes a Settlement and Mutual Release defaults in payment of their Settlement Balances, US Express may pursue collection of the unpaid Settlement Balance plus interest, and reasonable costs of collection including attorneys' fees, as provided for in the Settlement and Mutual Release.
28. US Express further agrees that it shall not institute any civil action against the Participating Customer for breach of its Rental Agreement or otherwise seek to enforce the Rental Agreement against any Participating Customer, unless there is a default as described in paragraph 27. US Express will dismiss any pending litigation against any Participating Customer who is a party to existing litigation provided that, if any such Participating Customer has brought counterclaims or separate claims against US Express, they will be dismissed by the Participating Customer as a condition to US Express's dismissal, which may be accomplished by proffering to and obtaining from counsel for the Participating Customer a stipulation dismissing any and all such claims and counterclaims.
29. In the event that any State Customer does not accept the Settlement outlined in this Assurance and requested in the attached Settlement and Mutual Release within thirty-five (35) days allotted or does not execute the Settlement and Mutual Release, the Rental Agreement shall remain in full force and effect and shall be enforceable by all parties to the same extent that it had been enforceable prior to and without regard to US Express's

settlement offer. However, notwithstanding any provision authorizing otherwise in any Rental Agreement, if US Express chooses to enforce the Rental Agreement pursuant to this paragraph 29 of the Assurance, then any lawsuit it initiates will be filed by US Express in the state of the State Customer's residence, unless the State Customer objects thereto in reliance on the terms of its Rental Agreement, or unless any State Customer has initiated litigation against US Express, in which case US Express may assert counterclaims or separate claims against such State Customer where its action is pending.

#### **Affidavits of Compliance**

30. Within sixty (60) days of the Effective Date of this Assurance, US Express shall submit an affidavit to each Attorney General, subscribed to by an officer of US Express:
  - a. Attesting that it sent the letters to the State Customers in accordance with the terms of this Assurance;
  - b. Providing an accounting of the Participating Customers, including the Participating Customers' Settlement Balances and payment schedules elected or agreed upon; and
  - c. Providing the names of the State Customers whose letters were undeliverable.
31. Within six months from the Effective Date of this Assurance, US Express shall submit to each Attorney General an affidavit, subscribed to by an officer of US Express:
  - a. Affirming its compliance with the provisions of this Assurance as to the Participating Customers from that Attorney General's state;
  - b. Providing an accounting of the Participating Customers, including the terms of their payment schedules and payments made; and

- c. On or after the second anniversary of the date of this Assurance, the Attorneys General may request in writing a further updated affidavit setting forth US Express's compliance with the provisions of this Assurance as to the Participating Customers from that Attorney General's state and an updated accounting of the Participating Customers from that Attorney General's state, including the terms of their payment schedules and payments made, and US Express shall submit such an affidavit within forty-five (45) days of any such request.
32. The affidavits to be provided pursuant to paragraphs 30 and 31 of this Assurance shall be used only for the purposes of assuring compliance with this Assurance, and shall be used, cited or referred to for no other purposes whatsoever, and shall not constitute any admission of liability or obligation whatsoever on the part of US Express, except to provide to the Participating States information concerning the status and compliance with this Assurance.

#### **General Provisions**

33. This Assurance is entered into by the Parties on their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Assurance.
34. This Assurance shall be binding upon US Express as well as its officers, directors, agents (including, but not limited to, third party collection agents), employees, successors and assigns, 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.

In no event shall assignment of any right, power, or authority under this Assurance avoid the obligation to comply with this Assurance.

35. The Parties have negotiated, jointly drafted, and fully reviewed the terms of this Assurance and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Assurance.
36. As used in this Assurance, the plural shall include the singular and the singular shall include the plural.
37. Except as otherwise explicitly provided in this Assurance, nothing herein shall be construed to limit the authority of the Attorneys General to protect the interests of the Participating States or the people of these States.
38. If any portion of this Assurance is held invalid or unenforceable by operation of law, the remaining terms of this Assurance shall not be affected.
39. This Assurance contains the entire agreement among the Parties. Except as otherwise provided herein, this Assurance may be modified only by a written instrument signed by or on behalf of a Participating State and US Express, and then shall be binding only with respect to any or each such State so executing.
40. The exhibits to this Assurance are and shall be considered a part of this Assurance.
41. This Assurance is agreed to by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in, this Assurance nor any action taken hereunder shall constitute, or be construed as:
  - a. An approval, sanction, or authorization by the Attorneys General of any act or practice of US Express;

- b. Having any impact on the business practices of US Express, including but not limited to, the terms of equipment rental or lease agreements or insurance practices, other than as specifically provided herein regarding the rental of Norvergence equipment;
  - c. An admission by US Express that any of its acts or practices described in or prohibited by this Assurance are unfair or deceptive or violate any of the consumer protection or other laws of any of the Participating States;
  - d. Any agreement or admission by any party to this Assurance as to the existence or non-existence of any fact or allegation that has been made in connection herewith;  
or
  - e. The applicability of any statute, law, rule, or regulation to the business or agreements of US Express, except to the extent, and then solely for the purposes provided for, herein.
42. Each person executing this Assurance represents to the other party to the Assurance that he or she is duly authorized to execute and deliver this Assurance, and that, upon the occurrence of the Effective Date, this Assurance shall be a valid, binding, and enforceable agreement, and that all formalities required therefore have been or will be undertaken.
43. Unless otherwise prohibited by law, any signature by the parties to this Assurance may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be one and the same Assurance.

### **Rights of Customers and US Express**

44. Nothing in this Assurance shall be construed to prevent any State Customer or US Express (collectively referred to as "rental parties") from pursuing any right or remedy which one rental party may have against the other, except to the extent that a Participating Customer executes a Settlement and Mutual Release pursuant to this Assurance, in which event the rights of the rental parties shall be as provided for therein.

### **Effective Date**

45. This Assurance shall be effective on October 26, 2005 ("Effective Date").

### **VIOLATION OF ASSURANCE AS PRIMA FACIE PROOF OF VIOLATION OF CONSUMER PROTECTION STATUTES**

46. The parties understand that pursuant to the statutes cited in footnote 3 to this Assurance, a violation of this Assurance shall constitute prima facie evidence of a violation of those statutes in any subsequent proceedings brought by the Attorneys General against US Express or any of his officers, agents, directors or employees. It is further understood that upon any default, an Attorney General's Office has the right to file appropriate legal proceedings to enforce this Assurance.

### **RELEASE**

47. The subject matter of this Assurance is the issues covered in paragraphs 8 through 15 of this Assurance. The Attorneys General acknowledge that the execution of this Assurance constitutes a complete settlement and release by the Attorneys General of all the civil claims and causes of action for damages, fines, costs, restitution, injunction, penalties, and any other remedies that were asserted or could have been asserted by the Attorneys

General, either individually or collectively, on or prior to the effective date of this Assurance against US Express arising from the subject matter of this Assurance and pursuant to any common law authority each of the Attorneys General possess, and pursuant to any consumer deceptive or unfair trade practices statutes listed in footnote 3 of this Assurance and the regulations promulgated pursuant to such statutes, as well as any consumer protection laws that each of the Attorneys General has authority to enforce.

**THE PARTIES TO THIS ASSURANCE CONSENT TO THE FORM, CONTENT, AND  
ENTRY OF THIS ASSURANCE ON THE DATES UNDER THEIR RESPECTIVE  
SIGNATURES.**

IN THE MATTER OF  
US EXPRESS LEASING, INC.

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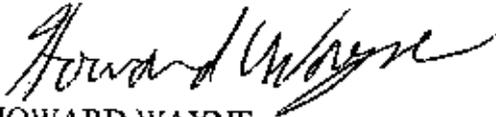
By: W C Carey  
William C. Carey  
Secretary & General Counsel

Date: 10/25/05

IN THE MATTER OF )  
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US EXPRESS LEASING, INC. )

BILL LOCKYER  
Attorney General of California

By

  
HOWARD WAYNE  
Deputy Attorney General

Date: October 12, 2005

IN THE MATTER OF

US EXPRESS LEASING, INC.

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John W. Suthers  
Attorney General of  
The State of Colorado

By: Andrew P. McCallin

Andrew P. McCallin  
Assistant Attorney General  
Business Regulation Unit  
Consumer Protection Section

Date: October 28, 2005

IN THE MATTER OF  
US EXPRESS LEASING, INC.

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RICHARD BLUMENTHAL  
CONNECTICUT ATTORNEY GENERAL  
on behalf of

COMMISSIONER EDWIN R. RODRIGUEZ  
CONNECTICUT DEPARTMENT OF  
CONSUMER PROTECTION

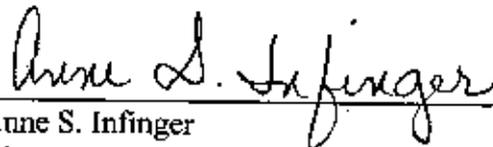
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(860) 808-5420

Date: October 17, 2005

IN THE MATTER OF US EXPRESS LEASING, INC.  
ASSURANCE OF VOLUNTARY COMPLIANCE

Date: October 17, 2005

JOSEPH B. DOYLE  
Administrator, Governor's Office of Consumer Affairs

A handwritten signature in cursive script that reads "Anne S. Infinger". The signature is written in black ink and is positioned above a horizontal line.

Anne S. Infinger  
Director, Legal Division  
Governor's Office of Consumer Affairs  
2 Martin Luther King, Jr. Drive, Suite 356  
Atlanta, GA 30334-4600

IN THE MATTER OF  
US EXPRESS LEASING, INC.

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LISA MADIGAN  
Illinois Attorney General

By:

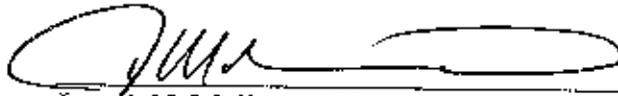
Elizabeth Blackston  
Elizabeth Blackston  
Assistant Attorney General

Date: 10/20/05

IN THE MATTER OF )  
 )  
US EXPRESS LEASING, INC. )

Dated October 12, 2005

PHILL KLINE  
ATTORNEY GENERAL FOR THE STATE OF KANSAS



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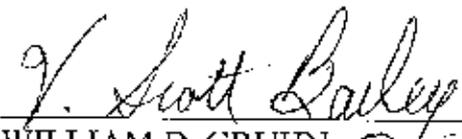
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IN THE MATTER OF  
US EXPRESS LEASING, INC.

Dated: October 17, 2005

J. JOSEPH CURRAN, JR.  
Attorney General of the State of Maryland

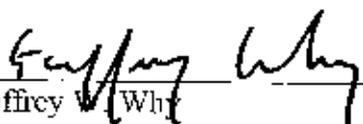
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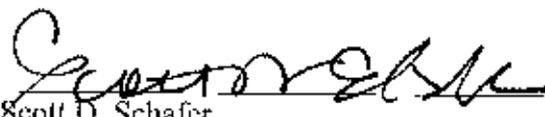
  
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IN THE MATTER OF  
US EXPRESS LEASING, INC.

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**COMMONWEALTH OF MASSACHUSETTS  
THOMAS F. REILLY  
ATTORNEY GENERAL**

  
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\_\_\_\_\_  
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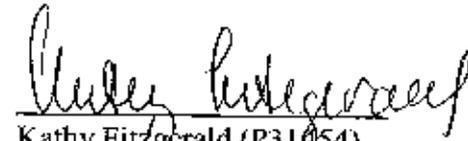
Date: October 25, 2005

In the Matter of US Express Leasing, Inc.  
ASSURANCE OF VOLUNTARY COMPLIANCE

MICHAEL A. COX  
ATTORNEY GENERAL  
STATE OF MICHIGAN

Dated: 10/14/05

By:

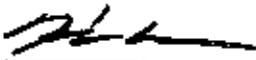


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IN THE MATTER OF  
US EXPRESS LEASING, INC.

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ROY COOPER  
Attorney General of North Carolina

By:   
Kevin Anderson  
Assistant Attorney General  
N.C. Department of Justice

Date: October 17, 2005

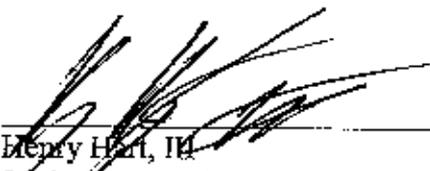
In the Matter of US Express Leasing, Inc.  
ASSURANCE OF VOLUNTARY COMPLIANCE

Dated:

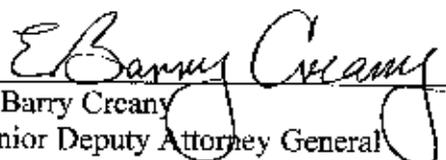
THOMAS W. CORBETT, JR.  
Attorney General of Pennsylvania

FRANK T. DONAGHUE  
Chief Deputy Attorney General

By:

  
Henry Hart, III  
Senior Deputy Attorney General

By:

  
E. Barry Creany  
Senior Deputy Attorney General

IN THE MATTER OF  
US EXPRESS LEASING, INC.

)  
)  
)

Larry Long  
Attorney General, State of South Dakota

By:



\_\_\_\_\_  
Paul Cremer  
Assistant Attorney General  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
Telephone (605) 773-3215

Date: October 6, 2005

EXHIBIT A  
US EXPRESS LEASING, INC.  
SETTLEMENT LETTER

\_\_\_\_\_, 2005

[Insert Customer Name]

[Insert Guarantor Name]

**RE: NOTICE TO FORMER [INSERT STATE] NORVERGENCE CUSTOMERS WHO  
HAVE EQUIPMENT RENTAL AGREEMENTS WITH US EXPRESS LEASING, INC.,  
AND TO ANY GUARANTORS**

Dear [Insert Customer Name] and/or [Insert Guarantor Name]

You are receiving this notice because the records of US Express Leasing, Inc. ("US Express") reflect that [Insert Customer Name] entered into an Equipment Rental Agreement (referred to herein as the "Rental Agreement") with NorVergence, Inc. ("NorVergence"), which was subsequently assigned to US Express. Pursuant to an agreement with the Attorney General of the State of [insert State] (the "Attorney General"), US Express is pleased to offer you a one-time opportunity to participate in a Settlement Program by which you may resolve any outstanding balance on the Rental Agreement at a substantial discount, and settle any and all disputes between you and US Express arising from or relating to the Rental Agreement.

**The Settlement Program Offered By US Express**

If you elect to participate in this Settlement Program, in exchange for being current on your rental payments under the Rental Agreement as of July 15, 2004 (the "Cutoff Date") US Express will: (a) forgive eighty-five percent (85%) of the remaining principal balance; and (b) forgive any late fees or penalties assessed on your account on or after the Cutoff Date. You will also receive credit for any payments made to US Express after the Cutoff Date. In the event that payments you actually made after the Cutoff Date exceeded 15% percent of the remaining principal balance due as of the Cutoff Date (plus applicable taxes), you will receive a refund of the amount in excess of that amount if you elect to participate in the Settlement Program. You are responsible for all applicable taxes.

In exchange for the benefits provided above, you must be current on your payments under the Rental Agreement as of the Cutoff Date, or you must bring your payments current to the Cutoff Date. You must also agree to release US Express from any claims concerning your Rental Agreement, US Express's efforts to collect under or enforce your Rental Agreement, or US Express's involvement with NorVergence, as described more fully below. You must also agree to pay US Express the "Settlement Balance," which is the amount equal to fifteen percent (15%) of the outstanding balance under your Rental Agreement as of July 15, 2004 (plus all amounts, if any, necessary to bring your account current as of that date), minus any late fees or penalties paid or charged since the Cutoff Date, plus any credits as described in the preceding paragraph. After settlement, you may be responsible for potential tax liabilities including but not limited to property and usage taxes of the Matrix box and other telephone equipment that was financed through US Express. In regards to these taxes, you may have an affirmative obligation to report these tax liabilities to either your local tax assessor or state department of revenue depending on your state's laws. You may elect to pay the Settlement Balance in one of the following ways:

(a) If your Settlement Balance is equal to Four Thousand Nine Hundred Ninety-Nine and 99/100 Dollars (\$4,999.99) or less, you may either make a lump sum payment of the entire Settlement Balance or pay off the Settlement Balance in up to twelve (12) equal monthly installment payments, with the lump sum payment or the first installment payment to be due within thirty (30) days of US Express's receipt of the fully executed Settlement and Mutual Release (attached) (also referred to as "Release"). US Express will mail you a bill for the first installment within fifteen (15) days of US Express's receipt of the fully executed Release.

(b) If your Settlement Balance is Five Thousand and 00/100 Dollars (\$5,000) or more, you may either make a lump sum payment of the entire Settlement Balance or pay off the Settlement Balance in up to twenty-four (24) equal monthly installment payments, with the lump sum payment or the first installment payment to be due within thirty (30) days of US Express's receipt of the fully executed Release. US Express will mail you a bill for the first installment within fifteen (15) days of US Express's receipt of the fully executed Release.

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

(c) If your account is current through July 15, 2004 and you are entitled to a refund from US Express, US Express will send the refund to you within thirty (30) days of US Express's receipt of the fully executed Release.

To participate in this Settlement Program, **you must complete, sign and return to US Express Leasing, Inc., postmarked within 35 days from the date of this notice**, two copies of the enclosed Release. Please note that, in order to participate in this Settlement Program, your signatures on these documents must be notarized. Upon US Express's receipt of the fully executed Release, US Express will send you a written notification terminating the Rental Agreement.

By accepting this proposal, you (a) elect and agree to pay the Settlement Balance; and (b) fully release US Express from, and agree not to sue US Express for, any and all claims that you have or may have had against US Express relating to your Rental Agreement or any other matter arising from your dealings with NorVergence, including any such claims you may have as a member or representative of various proposed class action lawsuits that have been brought against US Express on behalf of asserted classes of NorVergence customers (as well as any such proposed class action lawsuits that may be brought in the future). If you are currently involved in any litigation with US Express over your Rental Agreement and you wish to participate in the Settlement Program, you and US Express will mutually dismiss that action with prejudice.

US Express, 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 your Rental Agreement. Both you and US Express will retain all rights under law to enforce the Release.

US Express has agreed to propose this Settlement Program for the purpose of avoiding the expense and inconvenience of litigation and it is not an admission on the part of US Express that it engaged in any form of unlawful conduct or business practices. Indeed, US Express 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 US Express 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 US Express and the Attorney General prevents you from pursuing any right or remedy at law, equity or contract which you may have against US Express, except to the extent that you elect to participate in this Settlement Program and execute a Release. If you elect not to participate in the Settlement Program, then US Express may seek to enforce all terms of the original Rental Agreement in full and may make use of any of the remedies available to it under the law, equity or contract. US

Express will institute such legal proceedings against you in a court in the State of [insert State], unless you object to the jurisdiction of that Court.

**If You Elect To Participate In The Settlement Program:**

If you elect to participate in the Settlement Program, and then default on your payment obligation thereunder, US Express will have the right to accelerate all payments remaining due thereunder, and declare as compensation for the loss of its bargain, and not as a penalty, a sum equal to all amounts then due under this Settlement Agreement. US Express will, in that event, also be entitled to receive default interest at the rate of 1% per month on all outstanding balances from the date of default until the date of payment, as well as its costs of collection, including attorneys' fees.

**IMPORTANT:** If you elect to participate in the Settlement Program, but thereafter fail to pay US Express the Settlement Balance as promised in the Release, US Express may seek to enforce its rights to receive payment (including default interest and costs of collection including attorneys' fees) by use of any of the remedies available to it under the law, equity or contract. US Express has agreed, however, that it will not institute any legal proceedings against you in any court outside the State of [insert State].

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

Currently, the remaining balance on your Rental Agreement after you have brought your Rental Agreement account current up to the Cutoff Date of July 15, 2004 is \$\_\_\_\_\_. If you agree to participate in the Settlement Program, your Settlement Balance will be \_\_\_\_\_, which results in a savings to you of \$\_\_\_\_\_.

More specifically, as of [date of letter] US Express has the following information about your Rental Agreement and what the Settlement Program would require you to pay:

- A. **Unpaid Balance Due as of July 15, 2004 including applicable taxes:** \_\_\_\_\_
- B. **Plus 15% of Remaining Balance Due after July 15, 2004 plus applicable taxes:** \_\_\_\_\_
- C. **Minus: Monies Paid since Cutoff Date (includes monthly payments, late fees, penalties, interest, or settlement amounts):** \_\_\_\_\_

**Total:**

**Amount to be Paid (Settlement Balance)** \_\_\_\_\_

or

**Amount to be Refunded** \_\_\_\_\_

**Payment options: Lump sum payment or \_\_\_\_\_ per month for \_\_\_\_\_ months**

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

Yours truly,

US Express Leasing, Inc.

EXHIBIT B  
US EXPRESS LEASING, INC.  
SETTLEMENT AND MUTUAL RELEASE

between

**[Customer and Guarantor]**  
and  
**US EXPRESS LEASING, INC.**

I, \_\_\_\_\_, on behalf of the entity named above (the "Customer") and as personal guarantor (together, the "Customer and Guarantor"), elect to take advantage of the Settlement Program agreed to by the ATTORNEY GENERAL OF THE STATE OF [insert State] and US EXPRESS LEASING, INC. ("US Express") to pay off Customer's Rental Agreement with US Express (the "Rental Agreement") at a substantial discount and to settle any and all disputes between Customer and/or Guarantor and US Express arising from the Rental Agreement. With this Settlement and Mutual Release (the "Settlement Agreement" or "Release") I am: (1) accepting the terms of the Settlement Program offered by US Express and (2) entering into a mutual release of claims with US Express and related parties.

I understand that US Express and the Attorney General of the State of [insert State] 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 US Express that it engaged in any form of unlawful conduct or business practices, and that US Express 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. Terms Of The Settlement Program**

By accepting the terms of this Settlement Program, I understand that, in exchange for being current on all rental payments due on the Rental Agreement through July 15, 2004 (the "Cutoff Date"), US Express will:

- (a) forgive eighty-five percent (85%) of the remaining principal balance as of July 15, 2004;

(b) forgive any late fees or penalties assessed on [Customer's] account on or after the Cutoff Date; and

(c) You will also receive a credit for 100% of any and all payments made to US Express after the Cutoff Date.

I also understand that US Express's records reflect the following information about Customer's Rental Agreement account:

1. **Unpaid Balance Due as of July 15, 2004 including applicable taxes** \_\_\_\_\_
2. **Plus 15% of Remaining Balance Due after July 15, 2004 plus applicable taxes** \_\_\_\_\_
3. **Minus: Monies Paid since Cutoff Date (includes monthly payments, late fees, penalties, interest, or settlement amounts):** \_\_\_\_\_

**Total:**

4. **Amount to be Paid (Settlement Balance)** \_\_\_\_\_

or

5. **Amount to be Refunded** \_\_\_\_\_

**[NOTE: If Settlement balance due to US Express]**

Lessee and/or Guarantor agree to pay the amount Settlement Balance by the method checked here and request that US Express invoice Lessee and/or Guarantor accordingly:

\_\_\_\_\_ Pay the Settlement Balance on Line 5 in a lump sum within 30 days of your delivery of this agreement.

\_\_\_\_\_ Pay the Settlement Balance on Line 5 in \_\_\_\_\_ equal monthly installments of \_\_\_\_\_, beginning on the date specified in the first US Express invoice, which

payment date shall be at least 15 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, US Express may seek to enforce the Release in full and make use of any of the remedies available to it under the law, including the right to declare as compensation for the loss of its bargain, and not as a penalty, a sum equal to all amounts then due or to become due under this Settlement Agreement. US Express will also be entitled to receive default interest at the rate of 1% per month on all outstanding balances from the date of default to date of collection, as well as its costs of collection, including attorneys' fees. However, US Express will file suit against Lessee and/or Guarantor only in a court in their home State, unless Lessee and/or Guarantor take the position that Lessee and/or Guarantor are not subject to jurisdiction in that State.

Checks are to be made payable to US Express Leasing, Inc. and sent to [ADDRESS TO BE ADDED]. Please include the account number on the check.

**[NOTE: If Refund Payment Due by US Express]**

US Express will send a refund check in the amount of \_\_\_\_\_ within 30 days of the receipt of Lessee's and/or Guarantor's acceptance of this Settlement.

**2. Release Of Claims**

I understand that, in exchange for the opportunity to pay off the Rental Agreement at a substantial discount, Customer and Guarantor hereby release and discharge US Express, and all of its subsidiaries, parents, affiliates, predecessors, successors and assigns, officers, directors, employees, shareholders and agents (the "US EXpress Parties") from, and covenant not to file or pursue any lawsuit or claim in any place against any US Express Party for, any and all claims (including claims as a member or representative of a proposed class action, whether pending now or filed later) that Customer and/or Guarantor has or may have had against the US Express Parties for any and all damages, restitution, equitable relief, attorneys' fees and/or penalties relating to the Rental Agreement or Customer's dealings with NorVergence. Customer and/or Guarantor further agree that if they are currently involved in any litigation arising from the

Rental Agreement or any efforts to collect under or enforce the Rental Agreement, Customer and/or Guarantor and US Express will mutually dismiss these claims with prejudice.

In exchange for Customer and/or Guarantor's payment to US Express pursuant to this Settlement Agreement, except for the reservations contained herein, US Express hereby releases and discharges Customer and/or Guarantor from, and covenants not to file or pursue any lawsuit or claim in any place against Customer and/or Guarantor for, any and all claims that US Express has or may have had against Customer 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 relating to the Rental Agreement. Notwithstanding the Release contained in the prior sentence, Customer and/or Guarantor shall remain liable for any amounts claimed against US Express by any governmental entity or other third-party after the date of this Settlement Agreement, for which, under the terms of the Rental Agreement, Customer was liable in addition to the rental payment amounts stated therein.

I hereby acknowledge and represent that I have read this Settlement Agreement; that I have had the opportunity to consult with a lawyer concerning it; that Customer and/or Guarantor are voluntarily entering into this Settlement Agreement; that neither US Express 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 Customer and/or Guarantor has or may have against the US Express Parties concerning the Rental Agreement.

I further agree that this Settlement Agreement 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 Customer and/or Guarantor change their mind as provided above.

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

This Settlement Agreement shall be deemed accepted upon your return to US Express of an executed copy of this Settlement Agreement.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the undersigned has caused this Settlement Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_, 2005.

Dated: \_\_\_\_\_

[NAME OF CUSTOMER]

By: \_\_\_\_\_ [Name]

[Title]

[Address]

By: \_\_\_\_\_  
[Name], as Guarantor

US EXPRESS LEASING, INC.

By: \_\_\_\_\_

**FILL OUT COMPLETELY AND SEND TWO SIGNED ORIGINALS TO US Express at:  
[ADDRESS TO BE ADDED]**

**PLEASE KEEP A COPY FOR YOUR RECORDS. A FULLY EXECUTED DOCUMENT  
WILL BE SENT TO CUSTOMER AND ANY GUARANTOR UPON COMPLETION OF  
THE TERMS OUTLINED HEREIN**

EXHIBIT C  
US EXPRESS LEASING, INC.

**NOTICE OF TERMINATION OF RENTAL AGREEMENT**

\_\_\_\_\_, 2005

[Insert Customer Name]

[Insert Guarantor Name]

**RE: NOTICE TO FORMER [INSERT STATE] NORVERGENCE CUSTOMERS OF  
TERMINATION OF EQUIPMENT RENTAL AGREEMENT.**

Dear [Insert Customer Name] and/or [Insert Guarantor Name]

**Pursuant to the Settlement and Mutual Release (the "Settlement Agreement") executed between you and US Express Leasing, Inc. ("US Express") please be advised that the Equipment Rental Agreement has been terminated.**

**Accordingly, pursuant to the terms of the Settlement Agreement, this notice is to advise you that, except as specifically provided in the Settlement Agreement, your Rental Agreement has been terminated as of [Insert Date of US Express's Receipt of the Signed Settlement Agreement].**

Sincerely,

US Express Leasing, Inc.