



STATE OF TEXAS  
OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION

**CIVIL INVESTIGATIVE DEMAND**

TO: OFC Capital  
C/o General Counsel  
576 Colonial Park Drive, Suite 200  
Roswell, Ga. 30075

Via Certified Mail: RRR

Pursuant to the authority of § 17.61 of the TEXAS DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION ACT, § 17.41 *et seq.*, TEX. BUS. & COM. CODE, you are hereby directed to produce the documentary material listed in Exhibit C. Please review the "Definitions" and "Instructions" applicable to the Civil Investigative Demand. They are labeled as Exhibits A and B, respectively.

You are to make available the documentary material described in Exhibit C to the person designated below as "authorized agent". This material shall be produced on or before January 18, 2005, by courier or certified mail to the Office of Attorney General, 300 W. 15th St., 9th Floor, Austin, Texas 78701.

This Civil Investigative Demand is relevant to the subject matter of an investigation of possible violation(s) of TEXAS BUSINESS & COMMERCE CODE §§ 17.46(b)(2), (b)(3), (b)(5), (b)(12) and (b)(23). The general subject matter of this investigation is possible false, misleading or deceptive acts or practices in the marketing of telecommunications services and equipment and actions to obtain payment on assigned agreements for such services and/or equipment.

**TAKE NOTICE THAT pursuant to § 17.62, TEX. BUS. & COM. CODE, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000.00 or by confinement in the county jail for not more than one year, or both.**

ISSUED THIS 28<sup>th</sup> day of December, 2004..

Leela R. Fireside  
Assistant Attorney General  
CONSUMER PROTECTION DIVISION  
300 W. 15<sup>th</sup> Street, 9<sup>th</sup> Floor  
Austin, Texas 78701

AUTHORIZED AGENT:  
Rosalinda Fierro  
(512) 475-4176  
(512) 473-8301 (FAX)

**EXHIBIT A**  
**DEFINITIONS**

1. "Company" shall mean OFC Capital, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the Company.
2. Without limiting the term, a document is deemed to be within your "control" if you have ownership, possession, or custody of the document, or the right to secure the document or copy thereof from any person or public or private entity having physical possession thereof.
3. "Document" means and includes all written, printed, recorded, and graphic matter, regardless of authorship, both originals and non-identical copies, in your possession, custody, or control, or known by you to exist, irrespective of whether the writing was intended for or transmitted internally by you, or intended for or transmitted to any other person or entity. It includes communications in words, symbols, pictures, photographs, sounds, films, and tapes, as well as information stored in or accessible through computer or other information storage and retrieval systems, together with all codes and/or programming instructions and other materials necessary to understand and use such systems.
4. As used herein, the words "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of this request any answer, response or document that might be deemed outside its scope by another construction.
5. "Any" means any and all.
6. "Showing" and "reflecting" a given subject shall mean any document or communication that constitutes, evidences, contains, embodies, comprises, respects, relates to, concerns, touches upon, incident to, identifies, states, refers to, deals with, comments on, responds to, describes, involves or is in any way pertinent to that subject including but not limited to documents concerning the presentation of other documents.
7. "Identifying" means to give a reasonable, detailed description thereof. When referring to a person, it includes providing a present or last known address, telephone number, title or position, and place of employment, and, if previously or presently employed by you, the date he or she was hired and the date he or she was terminated, if applicable.
8. "Goods" means tangible chattels or real property purchased or leased for use.
9. "Services" means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.
10. "Consumer" means an individual, partnership, corporation, this state, or subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of \$25 million or more, or that is owned or controlled by a corporation or entity with assets of \$25 million or more.

## **EXHIBIT B**

### **INSTRUCTIONS**

1. Unless otherwise stated, the time period covered by this Civil Investigative Demand is from the Company's initial dealings with NorVergence until the date of its response to this request.
2. It is not sufficient to fail to provide documents if you can obtain them from persons reasonably available to you or under your control.
3. If the requested information is stored only on software or otherwise is "computer-based information," you are directed either to produce the raw data along with codes and programs necessary for translating it into usable form by The Office of the Attorney General of Texas, or to produce the information in a finished usable form. In either case, you must include all necessary glossaries, keys, indices, and software necessary for interpretation of the material.
4. Each document and other tangible thing produced shall be clearly designated as to which Request, and each sub-part of a Request, that it satisfies.
5. In any situation in which it is not clear in which capacity you are responding, you are to designate all relevant capacities.
6. Supply records and documents that provide the information described in Exhibit C. Where no applicable record or document exists, you should provide the requested information in a written statement signed by a responsible Company official.

## EXHIBIT C

1. The following information concerning the Company's corporate structure:
  - a. the correct legal name and main business address of the Company;
  - b. the names and titles of all officers, directors, and principal stockholders or owners of the Company
  - c. the date and state of incorporation, if applicable, of the Company
  - d. the correct legal names and addresses of all affiliated or subsidiary companies and the nature of their relationship with the Company;
  - e. the names and titles of all officers, directors, and principal stockholders or owners of each such affiliate and subsidiary company; and
  - f. a description of all business or type of business activities conducted by the Company.
2. The principal place of business of the Company and any offices it may have in Texas.
3. The name and title of each person who is, or has been, responsible for formulating, directing, controlling, supervising, and/or executing procedures and practices for the Company's acceptance of assignments of NorVergence rental agreements or other NorVergence financing documents.
4. If any persons having the duties described in the previous question during the time period relevant to this request are not currently employed by the Company, identify those persons by name, last known address and phone number, position(s) held at the Company, date of termination, and reason for termination.
5. If any person having the duties described in question 3 above, and employed by the Company, signed any documents related to the assignment of NorVergence rental agreements in a space on the document that indicates it is a space for a signature from a representative of NorVergence, please identify that person, provide the most recent contact information the Company has for that person, and provide a description of that person's job duties for the Company at the time that person was also signing documents on behalf of NorVergence.
6. Please provide any documentation the Company has reflecting any due diligence it did (a) when it initially decided to pay NorVergence for the assignment of NorVergence rental agreements, and/or (b) that it did prior to, or contemporaneous with, obtaining assignment of each NorVergence rental agreement for any Texas consumer.
7. If the assignment of NorVergence rental agreements was discussed at any board meeting or committee meeting within the Company, provide any memoranda, notes, or other documents reflecting the presentation of the assignment opportunity to the Board or the Committee and any response to that presentation.

8. Please provide any agreements the Company has, or had, between NorVergence and the Company regarding the terms of any assignment of rental agreements from NorVergence to the Company.
9. Please provide the following or equivalent account information from the Company's databases. It should be provided in database form (Microsoft Access, Excel, or delimited ASCII, on 3.5 inch diskette, CDROM, DVD, or ZIP-100) for all NorVergence contracts. This paragraph is not seeking to have the Company manually compile information located in only individual customer files. To the extent that the database uses abbreviations for any category of information, please provide explanations of those abbreviations.
  - a. NorVergence and the Company account and file numbers for all Texas customers;
  - b. Business name, address, and phone number of customers in Texas
  - c. Each individual personally liable under the rental agreement, and nature of liability (e.g. primary or guarantor) with name, address, and phone number;
  - d. Terms of the rental agreements with Texas customers, including initial payment amount, monthly payment amount, total number of months, total due over the life of the contract, amount paid as the time of preparation of your reply, outstanding balance, descriptions of item(s) financed including all products and services, date of agreement, date of assignment from NorVergence to the Company, amount paid or credited to NorVergence by the Company for the assignment, type of collateral for the contract, value of the collateral for the contract and term of agreement assigned to the Company;
  - e. Current status of accounts for all Texas customers (e.g. active, default, in collections, suit filed, reassigned to NorVergence pursuant to recourse agreement, etc.)
  - f. If suit has been filed against Texas customers, date of filing, amount sought, and location of court;
  - g. Notes of complaints or disputes by any Texas customer, if contained in computerized records; and
  - h. Any documentary evidence that Texas consumers received the equipment and/or services they were promised by NorVergence.
10. Provide approximate or estimated percentage of the Company's business represented by the NorVergence rental agreements for the period during which the Company has been accepting NorVergence rental agreements.
11. Provide copies of all correspondence, contracts, memoranda, and any other documents relating to the relationship between the Company and NorVergence, other than documents in individual customer files, including but not limited to:
  - a. All material provided by NorVergence relating to the nature of NorVergence's business, services, or products;
  - b. All materials relating to the terms and procedures under which the rental agreements would be assigned to the Company; including setting the price to be paid to NorVergence;

- c. All materials relating to procedures for enforcing NorVergence agreements, whether received from or sent to NorVergence, or used internally by the Company;
  - d. All records of inquiries made by the Company regarding the nature of NorVergence's business, whether made to NorVergence or to third parties;
  - e. All internal documents discussing the nature of NorVergence's business or its business practices, or the actual or expected profit/loss from the Company's NorVergence business;
  - f. All contracts, memoranda of understanding, amendments, and other documents that reflect or reflected the relationship between NorVergence and the Company; and
  - g. If the Company required proof of delivery of equipment and/or services by NorVergence to consumers, provide documents evidencing that communication with NorVergence.
12. Provide example copies of all form letters and telephone scripts used in collection on NorVergence contracts.
  13. For each NorVergence account in which the Company has filed a collection suit in a forum other than where the Texas customer company or individual resides or signed the NorVergence contract, provide copies of the entire file and the cause number and court identifying information for the suit.
  14. Provide all letters and other documents, including records of phone calls, received or sent by the Company that relate to:
    - a. Complaints from customers about NorVergence's practices, products, or services;
    - b. Communications from government agencies, Better Business Bureau, or consumer or business organizations that relate to complaints from customers about NorVergence;
    - c. Private litigation in which a customer asserted claims or counterclaims against the Company where a NorVergence contract was involved;
    - d. Law enforcement proceedings, actions, or investigations of the Company relating to or involving any NorVergence contracts.
  15. Provide all letters, notes, memos, e-mails, or other documentation of any communication between the Company and any other leasing company or other business regarding NorVergence, the NorVergence rental agreements, the Company's collection activities related to NorVergence accounts and any litigation involving NorVergence accounts.
  16. Provide any documents the Company has regarding any information it obtained prior to assignment of the NorVergence rental agreements valuing the "Matrix box" or any other equipment that purported to be the equipment rented to the consumers under the rental agreements.
  17. Provide any documents, including tape recordings, reflecting that any Texas consumer received and accepted as working any goods or services they were paying for pursuant to each consumer's agreement with NorVergence that was assigned to the Company.

18. Provide exemplar copies of correspondence to Texas consumers regarding the Company's collection efforts related to rental agreements on which the consumers had ceased payment.
19. For each NorVergence account in which the Company has filed a collection suit in a forum where the Texas customer company or individual resides or signed the NorVergence contract, provide copies of the entire file and the cause number and court identifying information for the suit.
20. If not covered by any previous request, provide copies of all internal memoranda and reports that refer to the performance of NorVergence contracts or the nature or type of complaints received or problems reported with NorVergence contracts, including but not limited to documents discussing the Company's master agreement with NorVergence or the amending of the master agreement with NorVergence regarding the assigned rental agreements.