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January 22, 2004

Dan Baldwin
Telecom Agent Association
Found & Editor-at-Large
31500 Grape Street #3-307
Lake Elsinore, CA 92532

Dear Dan:

Please be advised that the following contains issues, concerns, and/or opinions I may have in regards to my review of the NorVergence contract. Not necessarily all issues, concerns and/or opinions regarding the contract have been addressed. It is solely based upon the contract which I have received for my review. I do not include in my review any additional information which may be contained on NorVergence's website or additional information, contained elsewhere. In this regard, you agree to release me from any liability pertaining to and/or related to my opinion article.

Sincerely,

Danielle L. Blocker

TAA Note: In an effort to obtain an outside opinion of the Norvergence contract and rental agreement, TAA asked an attorney, Ms. Blocker, to review a Norvergence contract and rental agreement which was forwarded to TAA by a Norvergence prospect.

The four opinions TAA requested from Ms. Blocker are outlined in blue on the pages that follow.

Please be advised that these opinions are dated from January 2004 based on a Norvergence contract and rental agreement forwarded to TAA from a Norvergence prospect in December 2003. TAA has no way of knowing if the Norvergence contract and rental agreement reviewed by Ms. Blocker is representative of any other Norvergence contract and rental agreement.

The following opinions do not represent legal advice and are to be used for informational purposes only. TAA strongly advises TAA members to seek advice from their own counsel prior to making any business decisions. In this regard, TAA members agree to release TAA from any liability pertaining to and/or related to this information.

1. **“Your opinion of the NorVergence contract and rental agreement as to “balance” between NorVergence and customer.”**

It is in my opinion that there is no “balance” between NorVergence and customer, as far as a “meeting of the minds”. The contract seems entirely one-sided, which isn’t unusual. The customer may be giving up certain rights, which he may not be aware of. The customer may require certain “needs”, and NorVergence may meet those needs, however, at the expense of the customer.

My concern is that there is no guarantee or trial period. Yes, they do allow you to review the contract during the 12th month, and if you find “**two** or more written quotes... from alternate providers for the same services that are 10% less than the proposed costs, NorVergence will discount the customer’s monthly payout to equal the lowest confirmed quote for the balance of the term”, however, it is my understanding that there are no competing companies which offer identical services. This is not to say that two companies won’t emerge 12 months after the contract has been entered into, but at this time, I’m not certain that this is plausible.

2. **“Your recommendations on how to change the contract & agreement to make it more balanced.”**

First of all, you may want to ask NorVergence what other companies offer identical services.

Second, on the **MATRIX T1 Non-Binding Services Application** it indicates that the “customer agrees that NorVergence may enhance or modify underlying carriers, business telephone numbers, transport facilities and handsets at any time during the term at NorVergence cost.” The problem is not who will pay for the modifications, my concern would be with the modification of the business telephone numbers at any time. It is my understanding that NorVergence has a National Conversion Assistance Program which may provide financial assistance for new Business Cards, etc., but I believe this program is only offered when the customer signs the original contract with NorVergence. The modification at any time clause may submit the customer to further unexpected expenses at a later date if business telephone numbers are to be modified. You may want to seek further clarification from NorVergence on this issue.

Third, the National Conversion Assistance Program is not a guarantee, it is merely a request. It may be beneficial to clarify who is and who is not entitled to this assistance (or how this determination is made) as there may be some unexpected costs arising from the change of phone numbers, i.e. business cards, letterhead, notification to clients, etc. if the customer is not entitled to the assistance. In addition, how much assistance is offered and what is it based upon?

Fourth, a maximum of four numbers are allowed per Matrix Box in regards to Unlimited Domestic Toll Free Service. The customer may want to clarify what numbers these include and whether or not additional Matrix Boxes need to be rented.

Fifth, by signing the **Equipment Rental Agreement** the customer authorizes NorVergence to insert or correct missing or incorrect information on the Rental and then notice will be sent to the customer of such changes. I would request that notice be given to the customer prior to any changes being made. This merely preserves the customer's rights under the contract. Prior notification allows the customer to dispute any changes which may be made, rather than having to undue changes later.

Sixth, I would seek clarification on the clause "Your obligations to make all Rental Payments for the entire term are not subject to set off, with holding or deduction for any reason whatsoever" as found in the **Equipment Rental Agreement**.

Seventh, two Personal Guarantees (separate from the customer) are required in order to enter into the contract with NorVergence. If the Renter (the customer) defaults, NorVergence does not have to notify the Guaranty of such default, nor does NorVergence have to proceed first against the Renter (the customer) before enforcing the guaranty. The Guaranty is subject to all applicable laws of the rental. This clause, in and of itself, merely protects NorVergence and holds a third party responsible. The customer has agreed to enter into the contract, with NorVergence, not the Guaranty, and thus, has agreed to abide by the terms of the contract. Additional guarantees should not be made, as NorVergence has legal remedies, which it may seek, against the customer if the customer defaults.

Eighth, the customer agrees to appoint NorVergence as its attorney-in-fact to sign the customer's name to any document related to taxes and fees. I would be extremely leery of this clause, as it is likely that the customer may not be notified of such signing until after such signing has been made. This is a huge risk. One, I'm not sure, the customer would be willing to take, nor should take. I would try to define this clause, as it appears too broad.

3. "The specific risks a customer incurs in accepting the contract and agreement "as is"."

The customer must read the contract in its entirety and realize that the contract is for a term of five years. There are certain items, which I have delineated below, which seem to be "buried" in the contract, of which, the customer must be made aware.

First, written notice of non-acceptance of the equipment must be provided to NorVergence within 10 days after delivery of the equipment.

Second, the **Service Application** authorizes the Service Provider Carrier to guarantee pricing, however, the **Equipment Rental Agreement** authorizes NorVergence to change the rental payment by "not more than 15 %".

Third, the number portability form (NPF) must be attached in order for NorVergence to transfer the business telephone numbers and/or toll free numbers to unlimited domestic inbound calling without per minute charges.

Fourth, the reservation of the “Voice as Unlimited Data High Speed T-1 Access Hardware” must be accompanied by an Authorized Credit Application and an Equipment Rental Agreement.

Fifth, the Matrix Gateway or CCS Solution is a rental for five years, and, as such, the customer agrees to keep it in good repair at his own cost. Written notice must be given to the manufacturer, not NorVergence, if there are any defects or nonconformity items with the hardware within the warranty period. NorVergence makes no warranties, either express or implied with this agreement. If the equipment is damaged or lost or the customer has any claims against the supplier or manufacturer, the customer agrees to continue making rental payments.

Sixth, “One new State of the Art Tri-Mode Cellular Handset per Cellular access number” may be requested every 12 months, free of charge, but must be requested by the customer. Any requests within the 12 months are subject to availability and any upgrade fee.

Seventh, on the **Equipment Rental Agreement** the customer agrees to authorize NorVergence to insert or correct missing or incorrect information on the Rental and then notice will be sent to the customer of such changes.

Eighth, the Equipment is not to be used for “personal, family or household purposes.”

Ninth, two Personal Guarantees are required in order to enter into the contract with NorVergence. The Guaranty does not have to be notified if the Renter (the customer) is in default and NorVergence does not have to first proceed against the Renter (the customer). The Guaranty is subject to all applicable laws of the rental and held liable in the event of a default.

Tenth, the customer may not assign it rights, duties or obligations. NorVergence may assign its rights, but not its obligations, and does not have to notify the customer.

Eleventh, the customer agrees to appoint NorVergence as its attorney-in-fact to sign the customer’s name to any document related to taxes and fees. (This seems extremely broad and huge risk.)

Twelfth, the Rental will automatically renew for succeeding one-year periods commencing at the expiration of the original Rental Term (five years) if NorVergence has not received written notice, by certified mail, from the customer, not less than 120 days nor more than 180 days prior to the expiration of the Rental Term.

4. **“Other information or recommendations you believe would be helpful for a small business owner trying to decide what to do about NorVergence.”**

I would request a list of references from NorVergence and contact them and inquire as to their customer satisfaction. In addition, I would utilize the Internet for any negative feedback regarding NorVergence and try contacting the affected person/companies. I would also check with the Better Business Bureau regarding their business practices.