

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

|   |   |                                     |
|---|---|-------------------------------------|
| In the Matter of the Application of NorVergence, Inc. | ) |                                     |
| for a Certificate of Service Authority to Resell      | ) | <b><u>Case No. LA-2004-0236</u></b> |
| Intrastate Interexchange Telecommunications           | ) | Tariff No. YL-2004-0693             |
| Services within the State of Missouri                 | ) |                                     |

**RESPONSE OF NORVERGENCE, INC.  
TO ORDER DIRECTING FILING**

COMES NOW NorVergence, Inc. ("NorVergence" or "Applicant"), by and through its counsel, and respectfully submits its Response to the Order Directing Filing issued by Regulatory Law Judge Ronald D. Pridgin on January 15, 2004. In support of its Response, NorVergence states as follows:

1. On November 25, 2003, NorVergence, Inc., filed an application for a certificate of service authority to provide intrastate interexchange telecommunications services. The application included tariff sheets bearing an original effective date of January 4, 2004. On November 26, 2003, NorVergence submitted a letter that stated the effective date of the tariff sheets should have been January 9, in order to provide for a 45-day effective date on the tariffs, as mandated by the Commission's rules. The extension letter filed by NorVergence therefore corrected the effective date to January 9, 2004.

2. On December 12, 2003, counsel for NorVergence and the Commission's technical staff exchanged voice mails and discussed various provisions of NorVergence's proposed tariff, including the inclusion of the name and address of the Company's president in the footer of the tariffs.

3. In order to give the Applicant additional time to file substitute tariff sheets to make the changes to the tariffs suggested by the Commission Staff, and give the Commission additional time to review the proposed tariffs before the effective date of January 9, 2004, counsel for NorVergence, on the afternoon of January 7, 2004, hand-delivered to the Data Center and Adam McKinnie, the Commission Staff's telecommunications analyst assigned to the case, a letter extending the effective date of the proposed tariffs to January 16, 2004. At the time of the filing of the letter extending the tariffs, counsel for NorVergence was unaware of the issuance of any Order Suspending Tariffs in this matter.

4. Also on January 7, 2004, Regulatory Law Judge Pridgin issued an Order Suspending Tariffs which suspended the proposed tariffs until February 8, 2004, or until otherwise ordered by the Commission.

5. On January 8, 2004, counsel for NorVergence received a hard copy of the Order Suspending Tariffs which had been placed in his mailbox at the Data Center.

6. On January 14, 2004, NorVergence filed substitute tariff sheets which included the changes to the tariff sheets suggested by Staff.

7. On January 15, 2004, Regulatory Law Judge Pridgin issued an Order Directing Filing which directed NorVergence and the Commission Staff to file pleadings by January 22, 2004, explaining their positions on whether NorVergence, Inc. "has authority to override the Commission's January 7 order that suspended the tariffs by subsequently filing a letter to extend the effective

date and by subsequently filing substitute tariff sheets." (Order Directing Filing, p. 2).

8. This pleading is intended by NorVergence to comply with the Commission's Order Directing Filing. First, NorVergence would respectfully state that it was not attempting to "override" the Commission's suspension order when it filed the letter extending the effective date of the tariffs on January 7, 2004. As already mentioned above, counsel for NorVergence was not aware of the issuance of an Order Suspending Tariffs at the time he hand-delivered to the Data Center and the Commission's technical staff the letter extending the effective date of the tariffs on the afternoon of January 7, 2004. At the time of the filing of the extension letter, NorVergence was intending to give the parties and the Commission additional time to resolve this matter without the need for suspension of the tariffs. In any event, NorVergence does not believe that its letter extending the effective date of the tariffs on January 7, 2004, has the effect of "overriding" or otherwise affecting the Commission's Order Suspending Tariffs issued and filed on January 7, 2004. From NorVergence's perspective, its proposed tariffs have now been suspended until February 8, 2004, or until otherwise ordered by the Commission.

9. Second, NorVergence does not believe that the filing of its substitute tariff sheets on January 14, 2004, in any way overrides the Commission's Order Suspending Tariffs. The filing of the substitute tariff sheets was intended to make changes to the original tariffs that were suggested by the Commission Staff. The filing of substitute tariff sheets by applicants is routinely

done to correct typographical errors or otherwise make substantive changes to proposed tariffs. In this case, these changes included the addition of the name and address of the Company's president in the footer of each of the tariff sheets as well as a few other technical changes suggested by the Commission Staff.

10. It is NorVergence's understanding from discussions with the Commission Staff counsel on January 21, 2004, that the Staff is prepared to file, in the near future, its Staff Recommendation recommending the approval of the Company's Application For a Certificate of Service Authority and the Company's proposed tariffs, as modified by the filing of the substitute tariff sheets on January 14, 2004. If NorVergence's understanding is correct, then the Company believes that it would be unnecessary to address the question of whether the filing of the extension letter or the substitute tariffs had any effect on the Commission's Order Suspending Tariffs. Upon the filing of the Staff Recommendation, the Commission could issue its standard Order Granting Certificate of Service Authority and Approving Tariffs as it would in other cases involving applications for certificates of service authority to provide intrastate, interexchange telecommunications service. NorVergence would respectfully recommend that the Commission follow this standard procedure used in similar cases.

WHEREFORE, having complied with the Commission's Order Directing Filing, NorVergence would respectfully request that the Commission accept its Response, and proceed to approve the Company's Application and Tariffs after the Commission Staff files its Staff Recommendation in this matter.

Respectfully submitted,

/s/ James M. Fischer

James M. Fischer, MBN 27543  
FISCHER & DORITY, P.C.  
101 Madison Street, Suite 400  
Jefferson City, Missouri 65101  
Telephone: (573) 636-6758  
Facsimile: (573) 636-0383  
E-mail: jfischerpc@aol.com

ATTORNEY FOR APPLICANT

### **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, First Class, U.S. Mail, postage prepaid, this 22nd day of January, 2004, to:

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Office of the Public Counsel  
P.O. Box 2230  
Jefferson City, MO 65102

/s/ James M. Fischer

James M. Fischer