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December 15, 2011

By Hand

The Honorable J. Frederick Motz,
United States District Court for the District of Utah,
Frank E. Moss United States Courthouse,
350 S. Main Street,
Salt Lake City, Utah 84101.

Dear Judge Motz:

With respect to the subject we were discussing earlier--whether to be middleware (as that phrase is used for Novell's theory), the software must be present on "all or nearly all" PCs (Testimony of Roger Noll, Tr. at 1926)--I would also like to direct the Court's attention to the following (all on direct examination):

1. Prof. Noll, Tr. at 1774:

Q. For PerfectFit and AppWare to potentially reduce the applications barrier to entry, **does it matter how successful WordPerfect is on Windows?**

A. Yes. **Once again, it's crucial** because what matters to the future degree of competitiveness of the operating system market is at the beginning how many people are using these cross-platform applications. If a lot of people are using cross-platform applications, then there is more competition in the operating system market. If only a few are using them, there's much less competition in the market.

2. Prof. Noll, Tr. at 1780:

A. Yes. This -- again, it's a document that refers to the fact that the goal here is to penetrate their combination of applications of middleware products as far as possible into not only PC operating systems but also this network enabled thin client system that I discussed before. **Because that, again, is a bigger penetration of these programs, that the greater number of people are using cross-platform applications** and middleware software and, hence, more competition in the operating system market.

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3. Prof. Noll, Tr. at 1781:

And if these middleware products succeed in creating a **group of cross-platform applications that are popular on Windows**, then these three other products become much more effective competitors against Windows because people won't have to pay -- face these switching costs moving from Windows to these other operating systems because their applications will be able to move with them.

4. Prof. Noll, Tr. at 1783:

Q. Professor Noll, how does this document support, if at all, you view that Lotus Notes threatened the Windows monopoly?

A. The crucial features of Lotus -- **first of all, Lotus 1-2-3 is an extremely popular and powerful spreadsheet program. Secondly, because it's popular, it's on lots of desktops.** Lotus Notes is a piece of software that accompanies application software that is written by Lotus, including 1-2-3, or sold by Lotus, and the important fact about Lotus Notes is that, first of all, it's cross-platform. **Secondly, it's being distributed with this very popular Lotus program.**

5. Prof. Noll, Tr. at 1785:

A. What this finding of fact refers to is the fact that Netscape's Navigator was released at a time when the PC operating system and the telecommunication network could really start supporting serious use of the Internet. There was that constellation of events that **caused Navigator to be extremely popular** because it was off scale the best browser to access the internet.

6. Prof. Noll, Tr. at 1786:

A. But Navigator had these other features to it as well, which is that it exposed APIs, and it enabled people to write applications that would be written for Navigator as opposed to written for Windows. **And because Navigator was ubiquitous among everybody who wanted to use a computer to access the internet**, that was an extremely important potential platform for future applications.

7. Prof. Noll, Tr. at 1787:

Q. What aspects, if any, of your economic analysis of the applications barrier to entry are supported by this finding of fact?

A. This finding of fact essentially puts into what I just said, that it **is referring to the**

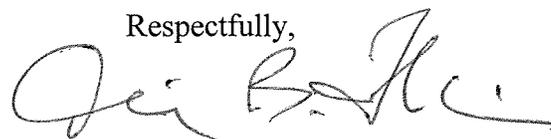
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fact that on the one hand Navigator was popular and ubiquitous among a certain category of PC users and, secondly, it exposes APIs and therefore threatens the operating systems monopoly.

It should be clear to all that to be a threat to Windows, middleware must, as Professor Noll said at Trial Tr. 1926, be present on "all or nearly all" PCs.

Respectfully,

A handwritten signature in black ink, appearing to read "David B. Tulchin". The signature is fluid and cursive, with a large initial "D" and "T".

David B. Tulchin

cc: Jeffrey Johnson, Esq.