COMPAQ

August 3, 1995

Steve Ballmer
Executive Vice President
Sales and Support
Microsoft Corporation
1 Microsoft Way
Redmond, Washington 98052-6399

Ref: OPK Rules

Dear Steve:

I am writing to you in an effort to resolve several issues that have recently come to my attention and which need to be addressed in an expeditious manner. For the most part I believe that these issues are a result of standard OEM license provisions that do not fully contemplate the existence of the Compaq-MS Frontline Partnership Agreement. I trust that once you've reviewed the issues outlined below, you too will agree that MS did not intend to impose terms and conditions that conflict or amend our Frontline Partnership Agreement. Given our desire to finalize our plans to roll out Windows95 in an expeditious and timely manner, I have circumvented the usual escalation process in an effort to resolve these issues quickly.

In connection with the delivery of the Win95 OEM Pre-install Kit ("OPK"), Compaq recently received Microsoft's Win95 OPK User's Guide. The Windows 95 OPK User's Guide purports to set forth some OPK documentation as well as some "Requirements and Restrictions" (See Chapter 1, Pages 1 through 4) concerning the use of the OPK.

We are somewhat concerned about these "Requirements and Restrictions" insofar as they may be construed as a unilateral attempt to amend the provisions of the Frontline Partnership Agreement. We are also concerned that the Requirements and Restrictions may set an unacceptable precedent for amendment of the Frontline Partnership that is not in the interest of either party. Accordingly, we believe that the contract amendment provisions set forth in the Frontline Partnership Agreement should be strictly adhered to in the event that either party desires to amend the Frontline Partnership Agreement.

GOVERNMENT EXHIBIT
98CV01232
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We are open to accepting the "Requirements and Restrictions" as "recommendations" for the use of the OPK and accordingly believe that the recommendations may be adopted by Compaq to the extent that they best fit Compaq's business interests and the needs of our customers. These recommendations will be adopted to a greater or lesser degree by the different product divisions, depending on customer and business requirements. I have set out our major concerns below in an exemplary fashion:

Example #1: The Consumer Product Division has already informed Microsoft that it will provide a Compaq user registration as well as a simplified registration for America OnLine at initial customer powerup of the consumer PC. This necessarily requires that Compaq alter the start-up sequence of Windows95 to supersede the Microsoft Welcome screen. Compaq's plans also require that the Windows 95 preinstallation process be accomplished in a manner other than that recommended by Microsoft. We believe that this action is consistent with our Frontline Partnership Agreement insofar as the agreement permits Compaq to adapt the operating system to enable the software to execute on our systems and/or to improve the installation process. We are doing this to provide the simplest initial configuration of our consumer PCs.

Example #2: Compaq plans to have "ready-to-run" products in the consumer channel later this year. The "ready-to-run" product concept necessarily will require that the use of a 23-digit "COA" (certificate of authenticity) registration number be automatically inserted by Compaq during the factory installation process and not by the user. This process will eliminate the end user's need to use Microsoft's planned COA and EULA (end user license agreement process) and will result in a modification of Microsoft's Win95 start-up sequence. We believe that these actions are consistent with our Frontline Partnership Agreement insofar as the Frontline Partnership Agreement permits the use of a "break the seal" EULA and does not specify a requirement for a COA (online or otherwise).

Example #3: We have previously informed Microsoft's of our desire to use a Compaq specific CD-ROM to restore the hard disk image. Compaq has previously used a CD-ROM with the operating systems and other applications "zipped" and compressed on the CD-ROM. To the extent that this appears inconsistent with the "recommendations" with respect to an encrypted version of Windows 95, we believe that our plans are consistent with a long-standing interpretation of the Frontline Partnership Agreement and the mechanism we have previously used to restore the hard disk image

As an adjunct to the recovery CD-ROM issue: the use of an MS Companion CD (for restoration purposes) with embedded Microsoft advertising and endorsement materials places Compaq in the difficult position of placing "free" advertising in its products when third parties are required to pay for similar advertising and promotion. As a Frontline partner, Compaq is prepared to discuss and negotiate an agreement to place MS' advertising and promotional materials in Compaq's products, however this will require recognition of the value by Microsoft.

As we have indicated above, we are prepared to adopt the OPK "recommendations" to the extent that it fits our mutual business interests and the needs of our customers; however, our decision to adopt some of these recommendations should not be viewed as an agreement to accept future unilateral modifications which are attached to an OPK or other product deliverables. To the extent that Microsoft would like Compaq to consider future modifications to the Frontline Partnership Agreement, we believe that it would be appropriate to work these issues well in advance of the delivery of an OPK in an effort to avoid any last minute surprises.

Even though we reserve our right to select which OPK recommendations we will implement, in the spirit of the Frontline Partnership Agreement we are prepared to have each product division share with Microsoft any deviations to the proposed OPK "recommendations". These deviations will be shared with Don Hardwick or any other designated Microsoft representative.

If you would like to discuss this further, please feel free to call me at your convenience.

Regards,

Gary Stimac
Senior Vice President & General Manager
Systems Division

cc: Joachim Kempin, Microsoft
Jan Claesson, Microsoft
Don Hardwick, Microsoft
John Rose, Compaq
Lorie Strong, Compaq
Steve Goldberg, Compaq