From: Kevin P. Rice
To: Microsoft ATR
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Subject: Microsoft Settlement

My name is Kevin Rice. I live in Bellevue, Washington, and work as a business analyst. As part of my work, I use many of Microsoft's products, including Microsoft Windows NT and Microsoft Office 97. I consider myself to be a power user and build sophisticated documents with Microsoft Excel and Access that include procedures written using built in macro language for Office, Visual Basic for Applications. At home, I use an Apple Macintosh and Microsoft Office 98, so I am familiar with multiple computer operating systems.

The Revised Proposed Final Judgement as currently structured does not meet the public interest. The proposed penalties are inadequate given Microsoft's anticompetitive behavior as outlined in the Findings of Fact, and Microsoft has too much influence over enforcement through the Technical Committee. The current competitive situation in the computer industry and its impact on consumers requires tougher, enforceable penalties.

According to the Findings of Fact, Microsoft has engaged in anticompetitive business behavior. It is important that there be punishment for this behavior; without adequate punishment, Microsoft has no incentive to discontinue and alter the behavior deemed anticompetitive by the courts. Microsoft could easily defend itself against complaints using the legal system, while small businesses with innovative products beneficial to the consumer would have no practical recourse, even in the courts, if they were the victims of any anticompetitive practice by Microsoft. The Final Judgement in Civil Action 94-1564 prohibits Microsoft from entering "into any License Agreement that by its terms prohibits or restricts the OEM's licensing, sale or distribution of any non-Microsoft Operating System Software product." Also, Microsoft cannot enter into an agreement with an OEM that prohibits the OEM from "licensing, purchasing, using or distributing any non-Microsoft product." According to the Findings of Fact, Microsoft has already violated the prohibitions in the Final Judgement by not allowing OEMs to install their own tutorial software to their computers' boot sequence. This prevented OEMs from offering a useful benefit to consumers. Microsoft also violated the spirit of the Final Judgement by not allowing OEMs to delete the Internet Explorer icon from the Windows desktop; this discouraged OEMs from putting an alternative browser on the desktop because it would be confusing to consumers. Given this behavior, stricter remedies would be appropriate. However the Revised Proposed Final Judgement does little more than restate the prohibited behavior of the previous Final Judgement using more precise language updated to reflect the current industry environment. This will not prevent

Microsoft from altering their behavior in ways that may (or may not) be in compliance but would still be anticompetitive, requiring more legal action and prolonging harm to consumers. The language in the RPFJ also does nothing to penalize Microsoft for illegal behavior. This will make the prohibitions in the RPFJ more difficult to enforce, since violations of the prior Final Judgement resulted in no significant penalty to Microsoft.

The RPFJ calls for the establishment of a Technical Committee, with one member chosen by Microsoft and another member that the Microsoft-chosen TC member must agree to. Given that Microsoft has been "found guilty" of anticompetitive monopoly maintenance, they have too much influence over the makeup of the TC. The selection process for the Technical Committee is analogous to giving an accused murderer the ability to choose some of the jurors for his trial. A better alternative would be to give Microsoft limited veto ability similar to a jury selection process, with members randomly selected from a pool of candidates that meet the qualifications outlined in the RPFJ.

The current Revised Proposed Final Judgement does not improve the competitive environment in the computer industry and does not benefit consumers or the public interest. Because of the lack of serious alternatives to Microsoft products, consumers pay more for those products in extra time spent resolving defects in Microsoft software. These defects range from bugs that interfere with the desired use of computer software to vulnerabilities to viruses such as Melissa, Code Red, and Nimda. In addition there may be an unknown number of potential innovations in computer hardware or software that will not be made available to consumers because of fear of anticompetitive business practices by Microsoft. Netscape is but one example of what can currently happen to a business with an innovative product in conflict with Microsoft's business goals. Therefore, it is critical that any settlement or other remedy of this case effectively curbs Microsoft's anticompetitive behavior.