

April 8, 2013

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

*Re: CG Docket No. 10-145 (Implementation of CVAA -- Section 718)*

Microsoft Corporation (“Microsoft”) wishes to clarify that Section 716(e)(1)(B) does not provide the Commission with authority to impose a pass-through requirement on stand-alone browsers. Specifically, Section 716(e)(1)(B) only provides rulemaking authority over three categories of equipment and services — “advanced communications services, the equipment used for advanced communications services, and networks used to provide advanced communications services” — none of which include free-standing browsers. 47 U.S.C. § 617(e)(1)(B). Free-standing browsers are not themselves ACS. As discussed below, the Commission already has determined that “equipment used for [ACS]” does not include free-standing software. And browsers clearly are not “networks.”

Given the limited scope of the Commission’s rulemaking authority under Section 716(e)(1)(B), it would not be appropriate to interpret the Commission’s pass-through rule to encompass free-standing browsers. The Commission made clear that it was relying on Section 716(e)(1)(B) to promulgate the pass-through authority embodied at 47 C.F.R. §14.20(a)(5). *ACS Report and Order* ¶ 101. As the Commission noted, the language of 47 C.F.R. §14.20(a)(5) “incorporates the text of” Section 716(e)(1)(B). *Id.* Since Section 716(e)(1)(B) cannot support a pass-through requirement imposed on browsers, neither can 47 C.F.R. §14.20(a)(5) be understood to impose such a requirement.

If the Commission could regulate free-standing browsers under Section 716, then it could also regulate other free-standing non-ACS software. Yet this is what the Commission correctly determined after extensive consideration that it could *not* do when it found that, with respect to software that is not itself ACS, the statute “does not impose independent regulatory obligations on providers of software that the end user acquires separately from equipment used for advanced communications services.”<sup>1</sup> *ACS Report and Order* ¶ 58. This interpretation is consistent with

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<sup>1</sup> See also *ACS Report and Order* ¶ 57 n.126 (citing Letter from Gerard J. Waldron, Counsel to Microsoft Corp., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-213, at 1-2, <http://apps.fcc.gov/ecfs/document/view?id=7021708102> (filed Sept. 9, 2011) (“Microsoft Sept. 9 *Ex Parte*”)); Letter from Glenn S. Richards, Executive Director, Voice on the Net Coalition, to Marlene H. Dortch, Secretary, FCC, CG (continued...)

the Senate Report's statement that authority to regulate equipment that includes ACS components does not mean that the non-ACS components are subject to the CVAA. *See* S. Rep. No. 111-386, at 7 (2010) ("New sections 716(a) and 716(b) require that manufacturers and service providers, respectively, make their devices and services accessible to individuals with disabilities, if achievable. It is the Committee's intent that these obligations apply to the specific equipment or services to the extent that they are used for advanced communications services."). Regulating free-standing software is an enormous step that the Commission already and correctly determined is unwarranted and unauthorized.

Even insofar as the Commission interprets Section 716(e)(1)(B) and 47 C.F.R. §14.20(a)(5) to support a pass-through requirement for browsers pre-installed by manufacturers of equipment used for ACS, the regulation will apply directly only to the manufacturer of the equipment and not on the maker of the browser. As the Commission has suggested would be the case, manufacturers of equipment used for ACS are taking steps to ensure that their downstream suppliers of pre-installed software take the steps that are necessary for the equipment manufacturers to comply with the CVAA. *See ACS Report and Order* ¶¶ 69-70. However, "Congress chose to focus [the Commission's] regulatory and enforcement efforts on the equipment manufacturers and the ACS providers" rather than on makers of free-standing browsers and other non-ACS software. *Id.* ¶ 68.

Please direct any questions to the undersigned.

Sincerely,

/s/

Gerard J. Waldron  
*Counsel to Microsoft Corp.*

cc: Lyle Elder  
Matthew Berry  
Alex Hoehn-Saric  
Karen Peltz Strauss  
Rosaline Crawford  
Walter Jacobson  
James Miller

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Docket No. 10-213, at 4-5, <http://apps.fcc.gov/ecfs/document/view?id=7021702555> (filed Aug. 12, 2011) ("VON Coalition Aug. 12 *Ex Parte*"); Letter from Glenn S. Richards, Executive Director, Voice on the Net Coalition, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-213, at 3, <http://apps.fcc.gov/ecfs/document/view?id=7021707526> (filed Sept. 6, 2011) ("VON Coalition Sept. 6 *Ex Parte*").