UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, PLAINTIFF, V. MICROSOFT CORPORATION, DEFENDANT.	C.A. NO. 98-1232
STATE OF NEW YORK, ET AL., PLAINTIFFS, V. MICROSOFT CORPORATION, DEFENDANT.	C.A. NO. 98-1223
MICROSOFT CORPORATION, COUNTERCLAIM-PLAINTIFF, V. DENNIS C. VACCO, ET AL., COUNTERCLAIM-DEFENDANTS.	JANUARY 13, 1999 WASHINGTON, D.C.

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TRANSCRIBED DEPOSITION EXCERPTS

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1 (DEPOSITION EXCERPTS OF BRAD ALAN SILVERBERG.)
2 Q. WITHIN MICROSOFT AFTER WINDOWS 95 WAS
3 RELEASED, DID THE COMPANY TRACK THE SHARE OF
4 USAGE OF IE?
5 A. YES, IT DID.
6 Q. AND IT TRACKED THAT SEPARATELY FROM
7 USAGE OF WINDOWS?
8 A. YES, IT DID.
9 Q. WHY? WHY DID YOU TRACK SHARE OF IE?
10 A. SEE HOW--COMPARE IE SHARE WITH
11 COMPETITIVE PRODUCTS, COMPETITIVE TECHNOLOGIES.
12 Q. AND WHAT COMPETITIVE TECHNOLOGIES WERE
13 YOU COMPARING IE USAGE TO?
14 A. NAVIGATOR, CYBERDOG, OTHERS.
15 Q. IN MOST OF THE COMPARISONS THAT YOU'RE
16 FAMILIAR WITH, WAS THE COMPARISON GENERALLY IE TO
17 NAVIGATOR AND NOT TO VARIOUS OTHER PRODUCTS?
18 A. THAT WAS THE PRIMARY ONE.
19 Q. AND WHY DID MICROSOFT DO THAT? WHY WAS
20 IT IMPORTANT TO KNOW OR TO COMPARE IE USAGE TO
21 NAVIGATOR, FOR EXAMPLE?
22 A. BECAUSE NAVIGATOR WAS A COMPETITIVE
23 PLATFORM TECHNOLOGY TO WINDOWS AND WE WANTED TO
24 TRACK OUR PROGRESS VERSUS THEIR PROGRESS.
25 Q. AND IN WANTING TO DO THAT, WHY DID YOU

1 TRACK USAGE OF IE TO THIS WHAT YOU'VE DESCRIBED
2 AS ALTERNATIVE PLATFORM TECHNOLOGY INSTEAD OF,
3 LET'S SAY, WINDOWS USAGE COMPARED TO NAVIGATOR
4 USAGE?
5 A. WELL, WE WERE COMPARING IT TO THE IE
6 COMPONENT OF WINDOWS.
7 (EXCERPT.)
8 Q. AT THE TIME THAT YOU WERE INVOLVED IN
9 IE 4, WAS IT CONTEMPLATED THAT OUTLOOK EXPRESS
10 WOULD BE PART OF OR SHIPPED WITH IE 4?
11 A. OUTLOOK EXPRESS HAS BEEN ALWAYS PART OF
12 IE, WITH IE 3 AND INTERNET AND MAIL AND NEWS AND
13 THEN IE 4.
14 Q. AND WHEN YOU SAY OUTLOOK EXPRESS HAS
15 ALWAYS BEEN PART OF IE 4, WHAT DO YOU MEAN BY
16 PART OF?
17 A. PART OF.
18 Q. WHAT?
19 A. PART OF. YOU GET IE 4, YOU GET OUTLOOK
20 EXPRESS. PART OF.
21 Q. BY PART OF, DO YOU MEAN ANYTHING MORE
22 THAN THAT? JUST THAT THEY ARE SHIPPED TOGETHER;
23 WHEN YOU GET ONE, YOU GET THE OTHER?
24 A. NO. I MEAN, FOR INSTANCE, THE--JUST AN
25 ESSENTIAL PART OF IT. THE HTML AUTHORING,

1 DISPLAY OF OUTLOOK EXPRESS, IS THE UNDERLYING
2 WINDOWS INTERNET COMPONENT, MSHTML. IT'S JUST
3 PART OF IT.
4 Q. I'M SORRY, TO UNDERSTAND THAT LAST ONE,
5 HTML AUTHORING FOR OUTLOOK EXPRESS--
6 A. OUTLOOK EXPRESS, YOU CAN AUTHOR YOUR
7 NOTES AND VIEW NOTES AS HTML. THE UNDERLYING
8 HTML ENGINE IS THE UNDERLYING HTML ENGINE OF
9 WINDOWS THAT COMES WITH INTERNET EXPLORER.
10 Q. AND THAT'S, AT LEAST IN PART, THE
11 MSHTML?
12 A. YES. THAT WE CALL "TRIDENT." I DON'T
13 KNOW THE EXACT DLL. MIGHT BE MSHTML, MAY BE SOME
14 OTHERS, BUT WE CALLED IT "TRIDENT."
15 Q. DO YOU KNOW, DOES MICROSOFT
16 OUTLOOK--NOT OUTLOOK EXPRESS, BUT OUTLOOK USE
17 TRIDENT WITH THE MSHTML?
18 A. EXPRESS 98 DOES. OUTLOOK 97 DID NOT.
19 Q. IS OUTLOOK 98 PART OF INTERNET
20 EXPLORER?
21 A. NO, IT'S NOT.
22 Q. IS IT PART OF OFFICE, IF YOU KNOW?
23 A. YES, IT IS.
24 Q. IS IT PART OF WINDOWS 98?
25 A. I DON'T BELIEVE SO, BUT I CAN'T SPEAK

1 DEFINITIVELY ON WHAT'S IN WINDOWS 98 AND WHAT
2 ISN'T.
3 Q. DURING YOUR TIME EITHER AT AICG OR THE
4 INTERNET PLATFORM AND TOOLS DIVISION, TO YOUR
5 KNOWLEDGE, DID MICROSOFT TRACK THE USAGE OR SHARE
6 OF OUTLOOK EXPRESS OR ITS PREDECESSOR THAT YOU'VE
7 DESCRIBED?
8 A. I BELIEVE IT DID, YES.
9 Q. AND GENERALLY, JUST AS BEST YOU RECALL,
10 WHAT DID IT DO? HOW DID IT TRACK OUTLOOK
11 EXPRESS?
12 A. I DON'T RECALL THE SPECIFIC NUMBERS.
13 Q. AND I'M SORRY. I DIDN'T MEAN TO ASK
14 FOR PRECISE NUMBERS. I'M JUST CURIOUS WHAT SORTS
15 OF THINGS--I MEAN, HOW WAS IT TRACKED GENERALLY?
16 WAS IT DONE WITH--THROUGH SURVEYS OR--
17 A. I DON'T KNOW THE METHODOLOGY.
18 Q. DO YOU KNOW IF OUTLOOK EXPRESS USAGE
19 WAS TRACKED SEPARATELY OR IN CONJUNCTION WITH
20 USAGE OF IE?
21 A. WHAT DO YOU MEAN?
22 Q. IN OTHER WORDS, WOULD MICROSOFT TRACK
23 THE USAGE OF OUTLOOK EXPRESS OR ITS PREDECESSOR
24 BY ITSELF APART FROM USAGE NUMBERS OR SHARE
25 NUMBERS FOR HOW MANY PEOPLE ARE USING IE?

1 A. I MEAN, WE COULDN'T PRESUME THAT
2 EVERYBODY WHO WAS USING IE WAS ALSO USING OUTLOOK
3 EXPRESS; SO WE WERE TRACKING THE NUMBER OF PEOPLE
4 WHO WERE USING THE OUTLOOK EXPRESS COMPONENT OF
5 IE AS WELL AS PEOPLE WHO WERE USING IE.
6 Q. AND WHEN YOU SAY YOU COULDN'T PRESUME
7 THAT PEOPLE WHO WERE USING IE WERE USING THE
8 OUTLOOK EXPRESS COMPONENT, WHY NOT? WHY COULDN'T
9 YOU PRESUME THAT?
10 A. WHY COULD YOU?
11 Q. IS THERE ANY CONNECTION BETWEEN
12 OUTLOOK--
13 A. IT WASN'T REQUIRED. I MEAN, YOU
14 WEREN'T FORCED. YOU COULD USE WHATEVER E-MAIL
15 PROGRAM YOU WANTED TO WHEN YOU USED IE. IT
16 WASN'T--YOU KNOW, WINDOWS DIDN'T COME UP AND
17 MONITOR WHAT E-MAIL PROGRAM YOU WERE USING AND
18 PROHIBIT YOU FROM USING IT. WHATEVER A CUSTOMER
19 WANTED TO USE HE COULD USE.
20 (EXCERPT.)
21 Q. DO YOU RECALL GENERALLY, THOUGH, THAT
22 THERE WAS A SPECIFIC MARKETING BUDGET FOR IE 3,
23 WHATEVER THE EXACT NUMBER WAS?
24 A. THERE WAS A MARKETING BUDGET FOR IPTD.
25 I DON'T RECALL HOW THAT WAS BROKEN OUT, UNDER

1 WHAT CATEGORIES. I THINK IT'S SAFE TO ASSUME WE
2 HAD SOME--WE HAD INTENDED TO SPEND SOME MARKETING
3 MONEY BEHIND INTERNET EXPLORER 3. I DON'T KNOW
4 IN WHAT FORM THAT TOOK--WHETHER THERE WAS A
5 SPECIFIC BUDGET OR ALL THAT. I DON'T RECALL AT
6 THIS POINT.
7 Q. OKAY. AND WHY DO YOU SAY IT'S SAFE TO
8 ASSUME THAT YOU WERE GOING TO DO THAT?
9 A. WELL, WE SPENT SOME MONEY MARKETING
10 INTERNET EXPLORER 3. WE RAN ADS, WEB ADS, HAD
11 SOME PREVIEW PROGRAMS, YOU KNOW. DON'T KNOW WHAT
12 ELSE.
13 Q. WHY DID MICROSOFT DO THAT? WHY DID YOU
14 SPEND MONEY MARKETING IE 3?
15 A. PLAYING DUMB AGAIN?
16 Q. SOME OF THESE QUESTIONS I--I REALIZE
17 SOME OF THESE QUESTIONS MAY BE OBVIOUS FOR YOU,
18 BUT IN ORDER TO REALLY UNDERSTAND IT AND HAVE THE
19 RECORD, WE NEED TO ASK THEM.
20 A. MICROSOFT WANTED TO PROMOTE INTERNET
21 EXPLORER 3 AND HELP IT BECOME POPULAR, MAKE
22 PEOPLE AWARE OF ITS EXISTENCE AND ITS ADVANTAGES.
23 (EXCERPT.)
24 Q. IN GENERAL, THOUGH, WHY WAS GETTING AOL
25 AND COMPUSERVE TO SHIP IE 3 OR A CUSTOMIZED

1 VERSION OF IE 3 A PRINCIPAL ACTION NEEDED FOR
2 WHATEVER GOAL WAS--MICROSOFT HAD IN MIND?
3 A. SURE.
4 AOL--IN PARTICULAR, AOL WAS VERY
5 POPULAR. BY OUR ESTIMATES, ABOUT 40 PERCENT OF
6 ALL, MAYBE EVEN MORE, 40 PERCENT OF ALL INTERNET
7 CLIENT SHARE BELONGED TO AOL. IT DIDN'T SHOW UP
8 IN SOME OF THE LESS SOPHISTICATED MORE WIDELY
9 KNOWN SHARE NUMBERS BECAUSE OF THE SOPHISTICATED
10 TECHNIQUES AOL DOES TO CASH (SIC) THINGS SO THEY
11 DON'T SHOW UP ON SOME OF THE COMPUTER HIT BASED
12 THINGS. BUT BY OUR ESTIMATES, THEY WERE ABOUT 40
13 PERCENT.
14 SO, THE QUICKER WE COULD GET AOL TO
15 SUPPORT IE, IE IN MICROSOFT INTERNET PLATFORM
16 TECHNOLOGIES WOULD BECOME SUBSTANTIALLY MORE
17 POPULAR QUITE QUICKLY.
18 Q. AND WHEN YOU SAY 40 PERCENT OF ALL
19 CLIENT--OF ALL INTERNET CLIENT SHARE WAS AOL,
20 WHAT DO YOU MEAN BY THAT?
21 A. THAT WOULD INCLUDE, SAY, AOL, IE,
22 NAVIGATOR, MOSAIC, HOTJAVA, ALL THE OTHER
23 FLAVORS. AND THAT WAS--ABOUT 40 PERCENT, WE
24 BELIEVED, WAS ABOUT AOL. I THINK IT WAS 40
25 PERCENT. IT WAS HIGH.

1 Q. AND BY SHARE--I'M JUST TRYING TO
2 UNDERSTAND--DOES THAT MEAN OF ALL PEOPLE--
3 A. END USERS.
4 Q. --WHO ACCESS THE INTERNET?
5 A. I THINK IT WAS END USERS. I'M NOT SURE
6 IF IT WAS CORPORATE, BUT I DON'T RECALL. FOR
7 SOME REASON, END USERS STICKS IN MY MIND.
8 CORPORATE ACCOUNTS DON'T TEND TO USE AOL. BUT I
9 THINK END USERS WHO ARE DIALING UP TO TALK TO THE
10 INTERNET, I THINK 40 PERCENT WERE USING AOL.
11 Q. TO YOUR KNOWLEDGE, WHEN INTERNET
12 EXPLORER IS DISTRIBUTED AS PART OF OR ALONG WITH
13 WINDOWS, IS THERE ANY SEPARATE CHARGE FOR THE IE
14 PORTION THAT IS ATTRIBUTED TO--THAT IS INCLUDED
15 IN THE OVERALL PRICE FOR WINDOWS?
16 A. SAY THAT AGAIN.
17 Q. SURE.
18 WHEN IE--WHEN WINDOWS IS SOLD WITH IE
19 AS EITHER PART OF IT OR INCLUDED ALONG WITH IT,
20 DOES PART OF THE CHARGE FOR WINDOWS INCLUDE SOME
21 CHARGE FOR INTERNET EXPLORER ITSELF?
22 A. I DON'T UNDERSTAND THAT QUESTION.
23 MICROSOFT CHARGES FOR WINDOWS INTERNET EXPLORER
24 AS AN INTEGRATED COMPONENT OF WINDOWS.
25 Q. TO YOUR KNOWLEDGE, HAS ANYONE WITHIN

1 MICROSOFT EVER IDENTIFIED OR ALLOCATED A PORTION
2 OF THE PRICE OF WINDOWS THAT IS ATTRIBUTABLE TO
3 WHAT YOU DESCRIBE AS THE INTERNET EXPLORER PART
4 OF WINDOWS?
5 A. NOT THAT I'M AWARE OF.
6 Q. IN FACT, ARE YOU AWARE THAT SOME
7 MICROSOFT REPRESENTATIVES, AT LEAST IN THE PAST,
8 HAVE SAID THAT INTERNET EXPLORER WILL BE FOREVER
9 FREE? HAVE YOU HEARD THAT?
10 A. I HEARD BILL ANNOUNCE IT ON DECEMBER 7.
11 Q. AND HE SAID THAT IE WILL BE FOREVER
12 FREE? IS THAT GENERALLY--
13 A. HE SAID "FREE NOW, FREE FOREVER,"
14 SOMETHING LIKE THAT.
15 Q. WHEN YOU WERE WORKING ON THE
16 DEVELOPMENT OF WINDOWS 95, WAS THERE--
17 A. CAN YOU PUT THE CID BACK OUT HERE?
18 Q. WHEN YOU WERE WORKING ON THE
19 DEVELOPMENT OF WINDOWS 95, WAS--WERE YOU INVOLVED
20 IN ANY DISCUSSIONS ABOUT HIGHWAY--IF THERE WERE
21 ANY, ABOUT HOW MICROSOFT WOULD MAKE BACK WHATEVER
22 MONEY WAS SPENT DEVELOPING INTERNET EXPLORER?
23 A. I DON'T RECALL ANY. MICROSOFT MAKES
24 BACK THE MONEY BY SELLING WINDOWS. IT'S PART OF
25 WINDOWS. THEY SELL WINDOWS. THAT'S WHAT WE GET

1 PAID FOR. INTERNET EXPLORER IS AN INTEGRATED
2 COMPONENT OF WINDOWS.
3 Q. ARE YOU AWARE FROM DISCUSSIONS WITHIN
4 MICROSOFT OF ANY OTHER WAYS BEYOND SALES OF
5 WINDOWS THAT MICROSOFT EXPECTS TO MAKE BACK
6 WHATEVER MONEY IT HAS SPENT DEVELOPING OR
7 MARKETING OR PROMOTING INTERNET EXPLORER?
8 A. I'M NOT AWARE OF ANY.
9 Q. DO YOU KNOW--HAS THERE BEEN ANY
10 DISCUSSION ALONG THE LINES THAT IF MORE PEOPLE
11 ARE USING INTERNET EXPLORER, MICROSOFT MIGHT SELL
12 MORE SERVER PRODUCTS, FOR EXAMPLE?
13 A. SAY THAT AGAIN?
14 Q. SURE.
15 CAN YOU READ THAT QUESTION?
16 (QUESTION READ.)
17 A. I DON'T RECALL THAT SPECIFICALLY, NO.
18 Q. OKAY.
19 A. IT IS WORTH NOTING SERVER PRODUCTS ARE
20 WINDOWS.
21 BY MR. MALONE:
22 Q. OKAY. I'M SORRY. LET ME BACK UP.
23 WHEN YOU GAVE YOUR EARLIER ANSWER ABOUT
24 MICROSOFT WOULD MAKE BACK ITS MONEY SPENT ON
25 DEVELOPING IE THROUGH SELLING WINDOWS, DID YOU

1 MEAN WINDOWS BOTH A CLIENT--

2 A. I MEANT WINDOWS, WINDOWS NT, WINDOWS NT

3 SERVER--WINDOWS.

4 (EXCERPT.)

5 Q. ANY OTHER WAY OTHER THAN SALES OF

6 WINDOWS THAT YOU BELIEVE MICROSOFT EXPECTED TO

7 MAKE BACK THE MONEY THAT IT SPENT RELATIVE TO

8 MARKETING AND DEVELOPING THE INTERNET EXPLORER?

9 A. NOT THAT I CAN RECALL.

10 (EXCERPT.)

11 Q. DO YOU RECALL THAT AT&T WAS IN THE

12 ONLINE SERVICES FOLDER?

13 A. IT WOULD BE THE SAME ANSWER. I RECALL

14 IT. ONCE WE DID HAVE A DEAL WITH AT&T, WE DID

15 SHIP THEIR CLIENT. I DON'T RECALL THE METHOD BY

16 WHICH--WHETHER IT WAS IN THE ONLINE SERVICES

17 FOLDER OR ALSO IN THE INTERNET CONNECTION WIZARD.

18 IT WAS A FAIRLY CONFUSING ARRAY OF MECHANISMS WE

19 HAD.

20 Q. I BELIEVE YOU SAID EARLIER THAT YOU

21 WERE INVOLVED PERSONALLY IN AT LEAST SORT OF THE

22 BEGINNING PARTS OF THE NEGOTIATIONS WITH AT&T; IS

23 THAT RIGHT?

24 A. THAT'S CORRECT.

25 Q. DURING YOUR INVOLVEMENT, WAS IT

1 CONTEMPLATED THAT IN RETURN FOR AT&T BEING PLACED
2 EITHER IN THE ONLINE SERVICES FOLDER OR THE
3 CONNECTION WIZARD OR REFERRAL SERVER, THAT THEY
4 WOULD DISTRIBUTE IE EITHER EXCLUSIVELY OR WITH
5 SOME MINIMUM PERCENTAGE OF IE SHIPMENTS?
6 A. MY RECOLLECTION IS THAT WE DISCUSSED
7 INCLUDING THE AT&T CLIENT WITH WINDOWS IN SOME
8 MANNER--I DON'T RECALL WHAT MANNER--IN EXCHANGE
9 FOR SOME PREFERENCE IN AT&T'S TREATMENT OF
10 INTERNET EXPLORER.
11 AND AGAIN, I DON'T RECALL THE SPECIFICS
12 OF HOW MUCH PREFERENCE THERE WAS AND WHAT WAS
13 DISCUSSED, WHERE WE ENDED UP. THERE WAS A
14 CERTAIN AMOUNT OF NEGOTIATION THAT TOOK PLACE AND
15 ROLE PLAYING, SHALL WE SAY, AT THE BEGINNING.
16 Q. WHY IS IT THAT MICROSOFT WAS INTERESTED
17 IN SOME PREFERENCE FOR IE WITH AT&T IN RETURN FOR
18 WHATEVER PLACEMENT IT WAS CONSIDERING GIVING AT&T
19 IN WINDOWS?
20 A. WELL, AT&T WANTED MICROSOFT TO BE A
21 DISTRIBUTION FACILITY FOR ITS--AND CUSTOMER
22 ACQUISITION FACILITY, WHICH WAS SOMETHING OF
23 POTENTIALLY GREAT VALUE. AND WE WANTED SOMETHING
24 OF VALUE IN RETURN. THAT TENDS TO BE THE BASIS
25 FOR MOST ARRANGEMENTS, EXCHANGE OF VALUE.

1 Q. AND WHEN YOU SAY THAT WINDOWS, BEING A
2 DISTRIBUTION VEHICLE AND, I THINK, CUSTOMER
3 ACQUISITION VEHICLE--AGAIN, I DON'T HAVE YOUR
4 EXACT WORDS, SO CORRECT ME IF I'M WRONG--WAS
5 SOMETHING THAT COULD HAVE BEEN OF GREAT VALUE TO
6 AT&T, WHAT DO YOU MEAN BY THAT?
7 A. WELL, WITH EVERY COPY OF WINDOWS,
8 MICROSOFT WOULD SHIP AND MAKE AVAILABLE AND MAKE
9 IT EASY FOR CUSTOMERS TO SIGN UP TO THE AT&T
10 INTERNET SERVICE. THAT'S A TREMENDOUS VALUE TO
11 THEM.
12 AND IN EXCHANGE, MICROSOFT WANTED
13 SOMETHING OF VALUE FROM AT&T, MAINLY PREFERENCE.
14 Q. AND I THINK YOU ALSO MENTIONED--MAYBE
15 IT'S JUST PART OF THE SAME THING--THAT AT&T
16 WANTED WINDOWS TO BE A CUSTOMER ACQUISITION
17 VEHICLE?
18 A. YEAH. THAT'S BY MAKING IT VERY EASY
19 FOR CUSTOMERS TO SIGN UP FOR AT&T SERVICE. THEY
20 WOULD BE ABLE TO ACQUIRE, TO SIGN UP CUSTOMERS
21 VERY EASILY. AND THEY WANTED MICROSOFT TO BE AN
22 ACTIVE PARTNER IN HELPING THEM DO THAT. AND AS A
23 RESULT, WE WANTED THEM TO BE--IN EXCHANGE, WE
24 WANTED THEM TO BE AN ACTIVE PARTNER IN HELPING TO
25 SUPPORT AND PROVIDE INTERNET EXPLORER--SUPPORT

1 INTERNET EXPLORER.

2 Q. AND SPECIFICALLY BY SUPPORTING INTERNET

3 EXPLORER, WHAT MICROSOFT WAS LOOKING FOR WAS SOME

4 PREFERENCE IN THE NUMBER AMOUNT OF INTERNET

5 EXPLORER THAT AT&T SHIPPED?

6 A. AT&T WANTED MICROSOFT TO BE AN ACTIVE

7 PARTNER IN RECRUITING CUSTOMERS FOR THEM. WE

8 WANTED THEM TO BE AN ACTIVE PARTNER IN RECRUITING

9 CUSTOMERS FOR US.

10 (EXCERPT.)

11 Q. OKAY. LET ME GO BACK UP TO THE PART OF

12 THE E-MAIL THAT YOU WROTE. THE SECOND PART AFTER

13 "TOM EVSLIN HAS TOLD ME" IS, "B, HE VERY BADLY

14 WANTS IN THE WINDOWS BOX."

15 WHAT DID YOU MEAN BY THAT?

16 A. I MEANT THAT HE WANTED TO HAVE

17 MICROSOFT DISTRIBUTE THE AT&T CLIENT AND, YOU

18 KNOW, SIGN UP SERVICE AND SO ON IN THE WINDOWS

19 BOX.

20 Q. AND BY BEING IN THE WINDOWS BOX, IS

21 THAT SOMETHING LIKE BEING IN AN ONLINE SERVICES

22 FOLDER, FOR EXAMPLE?

23 A. YES. BEING IN THE ONLINE SERVICES

24 FOLDER WOULD BE, QUOTE, IN THE WINDOWS BOX. BY

25 WINDOWS BOX, THAT'S NOT A PHYSICAL--I MEAN,

1 DISTRIBUTING WITH OEM'S IS PART OF THE WINDOWS
2 BOX. I DON'T MEAN THE RETAIL THING. I MEAN PART
3 OF WINDOWS. HE WANTS TO BE PART OF WINDOWS.
4 Q. OKAY. AFTER THAT, THE NEXT SENTENCE
5 SAYS--THIS IS YOU CONTINUING--"I HAVE TOLD HIM
6 THAT THE ONLY WAY WE CAN EVEN CONSIDER AT&T BEING
7 IN THE WINDOWS BOX IS IF AT&T GIVES IE EXCLUSIVE
8 OR VERY, VERY PREFERENTIAL TREATMENT (A LA WHAT
9 WE HAVE WITH AOL)."
10 DO YOU SEE THAT?
11 A. YES, I DO.
12 Q. WHAT DID YOU MEAN BY THE ONLY WAY YOU
13 CAN CONSIDER AT&T BEING IN THE BOX IS IF IT GIVES
14 EXCLUSIVE OR VERY, VERY PREFERENTIAL TREATMENT?
15 A. SURE.
16 WELL, THIS WAS PART OF THE NEGOTIATIONS
17 POSTURING THAT WAS GOING ON. WHEN I TALKED TO
18 MR. EVSLIN, HE WAS--WHAT'S THE POLITE WAY TO PUT
19 IT?--VERY OBNOXIOUS, SHALL WE SAY.
20 AT&T WORLDNET HAD JUST BEEN ANNOUNCED
21 OR WAS ABOUT TO BE ANNOUNCED. I'D HAVE TO LOOK
22 AT THE DATES, BUT I THINK IT WAS JUST ANNOUNCED.
23 AND IF YOU'LL RECALL, THEY CAME WITH A BIG
24 SPLASH. THEY CAME OUT IN 1995 WITH UNLIMITED
25 USAGE, A LOT OF STORIES IN THE WALL STREET

1 JOURNAL, AND HE WAS JUST WRITING. HE THOUGHT
2 AT&T WAS JUST TAKING OVER THE WORLD. HE JUST
3 POUNDED HIS FIST, "I DEMAND TO BE IN THE WINDOWS
4 BOX. I DEMAND TO BE IN THE WINDOWS BOX."
5 I SAID, "OKAY. WE CAN TALK ABOUT THAT.
6 BUT WHAT ARE YOU GOING TO DO FOR ME?"
7 "I'M NOT GOING TO DO SHIT FOR YOU. I
8 AM THE KING OF THE WORLD, YOU KNOW. YOU'RE GOING
9 TO DO THIS FOR ME BECAUSE I'M AT&T."
10 AND SO I LET HIM KNOW THAT PROBABLY
11 WASN'T GOING TO FLY. SO I TOOK AN EXTREME
12 POSITION IN THE OTHER DIRECTION WHICH WAS, "YOU
13 WANT TO BE PART OF THE WINDOWS BOX, YOU'RE GOING
14 TO HAVE TO DO SOMETHING SPECIAL FOR US. THERE
15 ARE VERY, VERY FEW PEOPLE WE ALLOW TO BE IN THE
16 WINDOWS BOX. IF YOU WANT THAT PREFERENTIAL
17 TREATMENT FROM US, WHICH IS EXTRAORDINARY
18 TREATMENT, WE'RE GOING TO WANT SOMETHING VERY
19 EXTRAORDINARY FROM YOU.
20 AND HE WAS BEING VERY SQUISHY AND
21 OBNOXIOUS AND VERY NONCOMMITTAL AND SAID, "I'M
22 NEVER GOING TO AGREE TO ANYTHING LIKE THAT."
23 I SAID, "FINE. WHEN YOU'RE READY TO
24 TALK ABOUT SOMETHING A LITTLE MORE REASONABLE, WE
25 CAN TALK."

1 Q. THE STATEMENT HERE, THE ONE WE JUST
2 READ ABOUT, "I HAVE TOLD HIM THAT THE ONLY WAY WE
3 CAN EVEN CONSIDER AT&T BEING IN THE WINDOWS BOX
4 IS IF AT&T GIVES IE EXCLUSIVE OR VERY, VERY
5 PREFERENTIAL TREATMENT," IS THAT SOMETHING YOU
6 ACTUALLY TOLD MR. EVSLIN?
7 A. I DON'T RECALL THE EXACT WORDS.
8 CERTAINLY THE MESSAGE WAS, YOU WANT TO BE IN THE
9 WINDOW BOX, WE'RE GOING TO EXPECT--YOU'RE GOING
10 TO HAVE TO CHANGE YOUR ATTITUDE ABOUT YOUR NOT
11 GOING TO DO ANYTHING FOR US IF YOU WANT TO BE
12 PART OF IT. YOU WANT EXTREME VALUE? WE WANT
13 SOME VALUE.
14 I DON'T RECALL THE EXACT WORDS I USED.
15 Q. THE REFERENCE AT THE END OF THAT
16 SENTENCE IN PARENTHESIS TO "WHAT WE HAVE WITH
17 AOL," WHAT DID THAT REFER TO?
18 A. IT REFERRED TO THE FACT THAT WE DO HAVE
19 A GOOD ARRANGEMENT WITH AOL WHERE THEY GIVE SOME
20 LEVEL OF PREFERENCE, FAVORABLE PREFERENCE, TO THE
21 INTERNET EXPLORER. I DON'T RECALL THE SPECIFICS
22 OF WHAT THEY ARE. AND IF THEY WANTED TO HAVE A
23 SIMILAR POSITION TO AOL IN THE BOX, THEN WE WOULD
24 WANT THE SIMILAR POSITION TO AOL IN TERMS OF
25 LEVEL OF PREFERENCE WE GET.

1 Q. AND BASED ON WHAT YOU SAY HERE--

2 A. AND I DIDN'T GIVE SPECIFICS BECAUSE I

3 WASN'T FAMILIAR--I DIDN'T KNOW SPECIFICS, WHAT

4 THEY WERE VERY WELL, BUT MADE IT CLEAR THAT--YOU

5 KNOW, WHEN HE TOOK AN EXTREME POSITION, I'M GOING

6 TO START OUT WITH A MORE EXTREME POSITION ON THE

7 OTHER SIDE, AND HOPEFULLY WE'LL COME TO A PLACE

8 IN THE MIDDLE. AND I THINK WE DID.

9 Q. GIVEN WHAT YOU SAY HERE, "IF AT&T GIVES

10 IE EXCLUSIVE OR VERY, VERY PREFERENTIAL TREATMENT

11 (A LA WHAT WE HAVE WITH AOL)," IS IT THE CASE

12 THAT THE PREFERENCE AOL GAVE MICROSOFT WAS EITHER

13 EXCLUSIVE OR VERY PREFERENTIAL?

14 A. IT WAS PREFERENTIAL. IT WASN'T

15 EXCLUSIVE.

16 Q. IS IT BOUND TO VERY, VERY PREFERENTIAL

17 TREATMENT, AS YOU SAID IT IN HERE?

18 A. I DON'T KNOW HOW TO QUANTIFY "VERY,

19 VERY."

20 Q. BUT IT'S COMPARABLE TO WHATEVER THE

21 ACTUAL AOL ARRANGEMENT IS?

22 A. SIMILAR TO WHAT THE ARRANGEMENT WITH

23 AOL WAS. IF WHAT THEY WERE LOOKING FOR FROM

24 MICROSOFT WAS SIMILAR TO WHAT AOL GOT FROM

25 MICROSOFT, THEN WE WOULD WANT SOMETHING SIMILAR

1 IN RETURN.

2 Q. YOU THEN GO ON. THE NEXT SENTENCE

3 SAYS, "PARITY IS COMPLETELY UNACCEPTABLE FOR THEM

4 TO BE IN THE BOX.

5 IS THAT AN ACCURATE STATEMENT OF THE

6 SUBSTANCE OF WHAT YOU TOLD MR. EVSLIN?

7 A. YEAH. MR. EVSLIN SAID THE BEST HE

8 COULD DO WAS MAYBE PARITY. HE SAID HE WOULD HAVE

9 A HARD TIME SELLING PARITY, WHICH HE--YOU KNOW,

10 BUT HE DEMANDED TO BE IN THE WINDOWS BOX.

11 AND I SAID NO.

12 Q. WHAT WAS YOUR UNDERSTANDING OF WHAT HE

13 MEANT BY PARITY AS SOMETHING HE COULD SELL?

14 A. I DON'T RECALL AT THE TIME. I JUST

15 DON'T--I DON'T RECALL.

16 Q. DO YOU HAVE A GENERAL UNDERSTANDING OF

17 WHAT PARITY MEANS IN THIS CONTEXT?

18 A. YEAH. IT COULD TAKE A NUMBER OF FORMS,

19 AND I DON'T--I DON'T REALLY KNOW WHAT IT REALLY

20 MEANT.

21 Q. WOULD IT BE FAIR--I'M SORRY. GO AHEAD.

22 A. BUT I'D HAVE TO SAY IT WAS--BASED ON

23 INTERACTIONS WITH MR. EVSLIN AT THAT TIME, THE

24 CIRCUMSTANCES UNDER WHICH HE LEFT MICROSOFT, I'D

25 SAY PEOPLE WERE SOMEWHAT WEARY OF ANY COMMITMENTS

1 OF PARITY FROM MR. EVSLIN, THAT THEY DIDN'T
2 REALLY TRUST HIS--DIDN'T TRUST HIM THERE.
3 Q. FINALLY, YOU GO ON AFTER THE SENTENCE
4 WE JUST READ TO SAY, "HE GROANED. I TOLD HIM IT
5 WAS COMPLETELY NONNEGOTIABLE, AND HE HAD TO
6 DECIDE."
7 IS THAT, AGAIN, A FAIR STATEMENT OF THE
8 SUBSTANCE OF WHAT YOU TOLD MR. EVSLIN?
9 A. IT'S A FAIR STATEMENT THAT HE IS--HE
10 WASN'T GOING TO GET IN THE BOX WITH PARITY. IF
11 YOU WANT PARITY, WE COULD DO A PARITY DEAL. I
12 SAID, FINE. IF YOU WANT TO BE IN THAT BOX, IT
13 NEEDS TO BE MORE THAN PARITY.
14 Q. AND WOULD A PARITY DEAL BE WHAT YOU
15 REFER TO IN THE FINAL SENTENCE OF THIS PARAGRAPH,
16 "I DID SAY WE'D LICENSE THEM IE FOR
17 REDISTRIBUTION (AS THEY HAVE WITH NSCP TODAY) BUT
18 THAT'S SEPARATE FROM HIS DESIRE TO BE WITH
19 WINDOWS; IN OTHER WORDS, THE PARITY OPTION MEANS
20 NO WINDOWS BOX."
21 A. WHAT'S YOUR QUESTION?
22 Q. IS THAT WHAT YOU MEANT A SECOND AGO
23 WHEN YOU SAID IF THEY WANTED A PARITY DEAL, YOU'D
24 GIVE THEM A PARITY DEAL?
25 A. YES. IF THEY WANTED A PARITY DEAL,

1 THEY COULD GET IE FOR REDISTRIBUTION. BUT HE
2 WANTED TO BE PART OF THE BOX. HE WANTED MORE
3 VALUE FROM US; WE EXPECTED MORE VALUE FROM HIM.
4 Q. DOWN BELOW, NOW, ABOUT THREE-FOURTHS OF
5 THE WAY DOWN THE PAGE, THIS IS IN KEVIN CHERRY'S
6 MESSAGE UNDER THE OVERVIEW "HEADING," DO YOU SEE
7 THE NEXT TO THE LAST PARAGRAPH, THE ONE THAT
8 STARTS "AT&T HAS SOME HARD DECISIONS"?
9 A. YES, I SEE IT, YES.
10 Q. OKAY. CAN YOU TAKE A MINUTE AND READ
11 THAT PARAGRAPH.
12 (WITNESS COMPLIES.)
13 A. OKAY.
14 Q. THE FIRST SENTENCE THERE READS, "AT&T
15 HAS SOME HARD DECISIONS TO MAKE REGARDING HOW
16 IMPORTANT THEIR COMMITMENT TO NETSCAPE IS
17 COMPARED TO GETTING IN WIN 95/IE SIGNUP AND A
18 STRONGER MICROSOFT RELATIONSHIP."
19 WHAT WAS YOUR UNDERSTANDING OF WHAT
20 AT&T'S COMMITMENT TO NETSCAPE AS REFERRED TO HERE
21 WAS?
22 A. MY UNDERSTANDING--I DON'T KNOW WHAT
23 MR. CHERRY WAS REFERRING TO, BUT MY UNDERSTANDING
24 WAS AT THE TIME AT&T WAS A VERY HEAVY PROMOTER OF
25 NETSCAPE'S BROWSER, AND THEY DID HAVE A--BEYOND

1 WORLDNET, THEY ALSO HAD OTHER RELATIONSHIPS WITH
2 NETSCAPE.
3 (EXCERPT.)
4 Q. THE SENTENCE CONTINUES, "THEY'D REALLY
5 LIKE TO BE BROWSER-NEUTRAL AND ARE STRONGLY
6 MOTIVATED TO PRESERVE THEIR PARTNERSHIP WITH
7 NETSCAPE."
8 DO YOU SEE THAT?
9 A. YES, I DO.
10 Q. WHAT, IF ANYTHING, DID MR. EVSLIN TELL
11 YOU ABOUT AT&T WANTING TO REMAIN BROWSER-NEUTRAL?
12 A. BASICALLY THAT.
13 Q. DID HE SAY WHY AT&T WANTED THAT?
14 A. NOT THAT I RECALL.
15 Q. WHAT, IF ANYTHING, DID HE SAY ABOUT
16 AT&T?
17 A. I MEAN, HE DID SAY THEY WERE STRONGLY
18 MOTIVATED TO PRESERVE THEIR PARTNERSHIP. BUT
19 BEYOND THAT, WHY, I DON'T KNOW. YOU'D HAVE TO
20 ASK MR. EVSLIN.
21 Q. THE SENTENCE CONTINUES, "BUT BRADSI HAS
22 TOLD THEM THAT TO GET IN THE BOX THEY NEED TO
23 GIVE US PREFERRED STATUS; BRADSI ALSO TOLD THEM
24 HE'D LET THEM USE OUR BOUNTIES TO PAY DOWN THE
25 NETSCAPE MIN COMMITS IF WE GOT PREFERRED STATUS."

1 DO YOU SEE THAT?

2 A. YES, I DO.

3 Q. WHAT IS THAT REFERRING TO?

4 A. I DON'T RECALL. I MEAN, OUR BOUNTIES

5 WOULD REFER TO AS WE SIGNED UP--AS A CUSTOMER

6 WOULD SIGN UP THROUGH THE ONLINE SERVICES FOLDER,

7 WE WOULD GET A SHARE OF THAT--OF THE SIGNUP FEE.

8 Q. FROM AT&T?

9 A. FROM WHICHEVER ISP OR CUSTOMER THEY

10 SIGNED UP FOR, WE WOULD GET A SHARE OF THAT, AND

11 THAT'S WHAT THAT REFERS TO.

12 SO, APPARENTLY, WE WERE DISCUSSING

13 MAKING THAT AMOUNT NEGOTIABLE OR SOMETHING. I

14 DON'T RECALL AT THE TIME. I'M JUST READING WHAT

15 IT SAYS HERE.

16 Q. THE REFERENCE TO LET THEM, AT&T, USE

17 OUR BOUNTIES TO PAY DOWN THE NETSCAPE MIN COMMITS

18 IF WE GOT PREFERRED STATUS, DOES THAT MEAN THAT

19 AT&T COULD USE THE BOUNTIES THAT THEY OR THEIR

20 USERS WOULD OTHERWISE PAY TO YOU FOR SIGNUPS FROM

21 BEING IN THE WINDOWS BOX TO ESSENTIALLY PAY DOWN

22 THE NETSCAPE MINIMUM COMMITMENTS THAT THEY WOULD

23 BE LOSING IF IE GOT PREFERRED STATUS?

24 A. THAT'S MY INTERPRETATION. BUT I

25 DON'T--THAT'S MY INTERPRETATION RIGHT NOW. I

1 DON'T RECALL WHAT WAS DISCUSSED AT THE TIME.
2 Q. WHAT, IF ANY, IMPACT WOULD THE
3 PREFERRED STATUS THAT YOU WERE SEEKING FOR IE
4 WITH AT&T HAVE ON THEIR DESIRE EXPRESSED HERE TO
5 BE BROWSER-NEUTRAL?
6 A. I DON'T UNDERSTAND THE QUESTION.
7 Q. IF AT&T DID A DEAL WITH MICROSOFT IN
8 WHICH IE WAS PREFERRED IN SOME WAY, WHAT EFFECT
9 WOULD THAT HAVE ON AT&T BEING BROWSER-NEUTRAL?
10 A. THEY WOULDN'T BE. IF THEY WERE--GAVE
11 IE PREFERRED, THEY WOULDN'T BE BROWSER-NEUTRAL.
12 Q. FINALLY, THE NEXT TO THE LAST PARAGRAPH
13 THAT BEGINS, "IT'S VERY CLEAR," DO YOU SEE THAT?
14 A. UH-HUH.
15 Q. THE FIRST SENTENCE THERE SAYS, "IT'S
16 VERY CLEAR THAT THEY REALLY, REALLY WANT TO BE IN
17 THE WINDOWS BOX AND ARE ESPECIALLY HELL-BENT ON
18 OBTAINING THE MOST FAVORABLE POSITION IN THE
19 PHONE BOOK."
20 BASED ON YOUR DESCRIPTIONS WITH
21 MR. EVSLIN, WHAT, IF ANY, UNDERSTANDING DID HE
22 GIVE YOU ABOUT WHY AT&T REALLY, REALLY WANTED TO
23 BE IN THE WINDOWS BOX?
24 MR. HOLLEY: JUST TO BE CLEAR, YOU JUST
25 SAID "DESCRIPTIONS."

1 MR. MALONE: I MEANT DISCUSSIONS. I'M
2 SORRY IF I SAID "DESCRIPTIONS."
3 THE WITNESS: I DON'T RECALL. WHAT I
4 DO RECALL WAS MR. EVSLIN'S DEMEANOR AS IF AT&T
5 HAD A BIRTHRIGHT TO BEING IN THE WINDOWS BOX
6 BECAUSE THEY WERE AT&T. BUT HE DIDN'T
7 REALLY--AND I DIDN'T CARE WHAT HIS REASONS WERE.
8 HE HAD SOMETHING I HAD--HE WANTED SOMETHING I
9 HAD, I WANTED SOMETHING HE HAD.
10 (EXCERPT.)
11 Q. WAS PART OF THE VALUE TO AT&T THAT
12 YOU'VE DESCRIBED OF BEING IN THE BOX, BEING IN
13 WINDOWS BASED ON YOUR KNOWLEDGE THAT INTERNET
14 EXPLORER WOULD BE ESSENTIALLY, IN YOUR TERMS,
15 PART OF OR SHIPPED WITH EVERY PC THAT WENT OUT
16 WITH WINDOWS 95 ON IT?
17 A. THE VALUE TO AT&T WAS THAT THEIR
18 CUSTOMIZED CLIENT WOULD BE PART OF WINDOWS, NOT
19 JUST INTERNET EXPLORER, BUT THE AT&T CUSTOMIZED
20 CLIENT AS WELL AS EASY ACCESS TO SIGN UP AND HAVE
21 YOUR PC CONFIGURED FOR ACCESS TO THE AT&T
22 WORLDNET SERVICE WAS PART OF WINDOWS. THAT'S A
23 DIFFERENT STATEMENT THAN WHAT YOUR QUESTION WAS.
24 Q. THAT EASY ACCESS TO SIGN UP AND
25 CONFIGURATION, THAT'S AT&T BEING IN THE ONLINE

1 SERVICES FOLDER?

2 A. WHATEVER--I'M NOT SURE WHETHER IT WAS

3 PART OF--WE DISCUSSED THIS ALREADY. I

4 DON'T--THERE WAS SOME MECHANISM TO MAKE IT EASY,

5 WHETHER IT WAS THE ONLINE SERVICES FOLDER, THE

6 INTERNET CONNECTION WIZARD, OR AT&T'S OWN SIGNUP

7 WIZARD OR WHATEVER, I DON'T KNOW. WE MADE IT

8 VERY EASY FOR AT&T TO ACQUIRE CUSTOMERS AND SIGN

9 UP AND HAVE THEM CONFIGURED. AND YOU WOULDN'T

10 HAVE TO DO A CD MAILED TO YOU. IT WAS ALL RIGHT

11 THERE, AND IT WOULD BE CONFIGURED.

12 (EXCERPT.)

13 Q. SO, YOU CAN'T RECALL IF THIS EPISODE,

14 IF YOU WILL, WAS PART OF WHAT STARTED IT?

15 A. NO IDEA. NO IDEA.

16 I THINK--THE BEST OF MY RECOLLECTION

17 WAS THAT THEY WERE--I DON'T--IS THAT THERE WAS A

18 DEBATE WITHIN MICROSOFT OVER WHETHER WE SHOULD DO

19 A DEAL WITH AOL AND SHIP THE AOL CLIENT WITH

20 WINDOWS. MR. GATES WAS ORIGINALLY STRONGLY

21 OPPOSED, AS WAS THE MSN TEAM.

22 MR. CHASE, MYSELF, AND MR. MARITZ WERE

23 IN FAVOR. AND THE BEST OF MY RECOLLECTION IS

24 THAT THIS WAS PART OF MR. MARITZ'S INTERNAL

25 MANEUVERING TO BUILD A CASE TO MR. GATES ON WHY

1 WE SHOULD DO A DEAL WITH AOL.

2 Q. AND BY "THIS," YOU MEAN THE SHOPPING

3 TRIP RESULTS REFERRED TO IN THE MESSAGE?

4 A. I GUESS, YEAH.

5 SO, I THINK MR. MARITZ WAS UNDERPLAYING

6 THE IMPORTANCE TO MAKE MR. GATES FEEL MORE

7 COMFORTABLE. I KNOW MR. GATES WAS VERY, VERY

8 UNCOMFORTABLE ABOUT SHIPPING AOL.

9 Q. FROM WHAT YOU HEARD OR WERE TOLD, WHY

10 WAS BILL GATES VERY UNCOMFORTABLE WITH THE IDEA

11 OF SHIPPING AOL ON WINDOWS?

12 A. HIS--HIS BIGGEST--WELL, WHAT I REMEMBER

13 AS THE BIGGEST FLASHPOINT WAS HE FELT IT WAS

14 PUTTING A BULLET THROUGH MSN'S HEAD. I THINK

15 THAT MIGHT HAVE BEEN EVEN HIS WORDS, SOME OF THE

16 ONES THAT I REMEMBER, WHETHER THEY WERE ONES HE

17 ACTUALLY USED OR NOT. AND MR. SIEGELMAN WAS

18 VERY, VERY UNHAPPY ABOUT THE PROSPECT, AND SO IT

19 WAS A RATHER HEATED DISCUSSION INTERNALLY.

20 Q. AND MR. SIEGELMAN WAS THE HEAD OF MSN

21 AT THAT POINT?

22 A. MR. SIEGELMAN WAS IN CHARGE OF MSN.

23 Q. WHAT WAS YOUR UNDERSTANDING OF WHY

24 MR. GATES FELT THAT SHIPPING AOL WITH WINDOWS WAS

25 THE EQUIVALENT OF PUTTING A BULLET THROUGH MSN'S

1 HEAD? HOW WOULD THAT WORK?

2 A. I DIDN'T THINK IT WAS, SO I DIDN'T--I

3 DISAGREED WITH THAT POINT OF VIEW. I THINK IT

4 WAS JUST MR. SIEGELMAN GOING NONLINEAR, WHICH HE

5 WAS WANTING TO DO.

6 Q. WAS HIS BASIC CONCERN, AS YOU

7 UNDERSTOOD IT, THAT ESSENTIALLY AOL WAS A

8 COMPETITOR TO MSN, SO PUTTING ACCESS AND SIGNUP

9 SOFTWARE FOR AOL ON WINDOWS WOULD TAKE AWAY FROM

10 THE SUCCESS OF MSN?

11 A. I BELIEVE THAT WAS ONE OF HIS CONCERNS.

12 I DON'T THINK I COULD DO JUSTICE TO DESCRIBE WHAT

13 HIS CONCERNS REALLY WERE. THAT WOULD CERTAINLY

14 BE ONE OF THEM, BUT IT WAS NOT A PARTICULARLY

15 RATIONAL DEBATE UNTIL--IT TOOK A WHILE FOR IT TO

16 BECOME RATIONAL.

17 AND THIS WAS PART OF MR. MARITZ AND

18 MY--MR. MARITZ ARRANGED THIS, I BELIEVE, BUT IN

19 WORKING WITH MR. MARITZ AND MR. CHASE TO TRY TO

20 GET MR. GATES TO SEE THE BENEFITS TO MICROSOFT

21 WORKING WITH AOL.

22 Q. WHAT DID YOU AND MR. MARITZ AND

23 MR. CHASE DESCRIBE TO BILL GATES THAT THE

24 BENEFITS OF WORKING WITH AOL WOULD BE?

25 A. WELL, FIRST AND FOREMOST, TO HAVE--AOL

1 WAS GOING TO CHOOSE A PARTNER, WHETHER IT WAS US
2 OR NETSCAPE, AND WE HAD TO DECIDE WHETHER WE
3 WANTED IT TO BE US OR THEM. AND WE LOOKED AT
4 THEIR--I GUESS IT SAYS 30 PERCENT HERE. I THINK
5 I SAID 40 PERCENT EARLIER. IT WAS SIGNIFICANT.
6 TO HAVE AOL AS A PARTNER FOR 30 PERCENT, 40
7 PERCENT OF INTERNET WAS A SIGNIFICANT ISSUE.
8 AND WE FELT THAT COULD BE FAVORABLE TO
9 OUR BUSINESS IF WE PARTNERED WITH THEM AS OPPOSED
10 TO NETSCAPE. AND WE CAN THANK NETSCAPE FOR BEING
11 AS ARROGANT AND DISAGREEABLE A PARTNER AS
12 POSSIBLE FOR GETTING THE DEAL.
13 I BASICALLY TOLD MR. CASE--WELL, WE HAD
14 COMPONENTIZED ARCHITECTURE, AS YOU'RE AWARE, THAT
15 WILL MAKE IT VERY EASY FOR AOL TO BUILD THEIR OWN
16 SPECIALIZED CLIENT. NETSCAPE DID NOT HAVE SUCH
17 AN ARCHITECTURE, AND ANY REQUESTS AOL WANTED IN
18 TERMS OF SPECIAL FEATURES REQUIRED
19 DEVELOPMENT--SPECIAL DEDICATED DEVELOPMENT EFFORT
20 FROM THE NETSCAPE DEVELOPMENT CREW.
21 MR. CASE WOULD ASK MR. SCHELL--THIS IS
22 MR. CASE TELLING US THE STORY. I WASN'T THERE,
23 OBVIOUSLY. MR. CASE TOLD US HE WOULD ASK
24 MR. SCHELL FOR PARTICULAR FEATURES, AND
25 MR. SCHELL WOULD BASICALLY TELL HIM TO SCREW OFF,

1 THAT YOU'LL GET WHAT WE GIVE YOU WHEN WE GIVE
2 YOU, IF WE DECIDE TO GIVE IT TO YOU.
3 AND WE CAN THANK MR. SCHELL FOR HELPING
4 US HELP--FOR MAKING NETSCAPE SUCH A DISAGREEABLE
5 AND SO ARROGANT PARTNER WHILE MICROSOFT WORKED
6 WITH AOL AND WAS VERY EXTRAORDINARILY
7 ACCOMMODATING ONCE WE DECIDED--ONCE WE CONVINCED
8 MR. GATES THAT WE WANTED THE DEAL.
9 Q. WAS THE PART OF WORKING WITH AOL THAT
10 MR. GATES AND MR. SIEGELMAN WERE SO WORRIED ABOUT
11 IN TERMS OF MSN AOL SHIPPING IE, OR WAS IT AOL
12 BEING GIVEN SOME PLACEMENT IN THE WINDOWS BOX, AS
13 YOU DESCRIBED IT EARLIER, ON THE WINDOWS DESKTOP?
14 A. I DON'T RECALL. I DON'T RECALL THE
15 SPECIFICS. IT WAS PROBABLY THE WAY STEVE CASE
16 SPELLS HIS NAME, I DON'T KNOW.
17 JUST--MR. SIEGELMAN WAS VERY, VERY EDGY REGARDING
18 AOL AND USED WHATEVER ARGUMENT HE COULD TO
19 CONVINCE MR. GATES.
20 ULTIMATELY, HE LOST THE ARGUMENT, AND
21 HE WAS VERY UPSET ABOUT THAT, AND I THINK THAT
22 WAS A SIGNIFICANT FACTOR ON HIS LEAVING THE
23 COMPANY, BECAUSE HE DID LEAVE SHORTLY THEREAFTER.
24 (EXCERPT.)
25 Q. AND ARE THERE SPECIFIC PARTS OR

1 IMPLEMENTATIONS OF THE ACTIVE DESKTOP THAT YOU
2 BELIEVE ARE RESPONSIBLE FOR NOT BEING WELL
3 ADOPTED OR NOT BEING SUCCESSFUL?
4 A. I DON'T--I'M JUST NOT HAPPY WITH THE
5 WAY IT TURNED OUT. AND I WASN'T HAPPY DURING THE
6 DEVELOPMENT OF IE 4. MY TEAM KNOWS IT.
7 Q. WHY DON'T YOU USE IT? WHAT DON'T YOU
8 LIKE ABOUT IT?
9 A. I DON'T SEE HOW THAT'S RELEVANT TO THE
10 TOPIC.
11 Q. I'M TRYING TO UNDERSTAND. YOU, AS A
12 MICROSOFT EXECUTIVE, THOUGHT THAT THE QUALITY AND
13 THE IMPLEMENTATION OF IE 4 WASN'T WHERE IT SHOULD
14 BE, WASN'T GOOD ENOUGH. I JUST WANT TO TRY TO
15 UNDERSTAND WHAT YOU THOUGHT WAS WRONG WITH IT.
16 A. I JUST DIDN'T LIKE IT. I DON'T SEE HOW
17 IT'S RELEVANT TO THE DISCUSSION.
18 Q. I JUST NEED TO UNDERSTAND WHAT DID YOU
19 THINK WAS WRONG WITH IT, WHAT YOU DIDN'T LIKE.
20 MR. HOLLEY: WE'RE HAVING A LAWSUIT NOW
21 ABOUT QUALITY OF THE PRODUCT?
22 THE WITNESS: DIDN'T LIKE IT. DIDN'T
23 SUIT MY NEEDS.
24 BY MR. MALONE:
25 Q. BEYOND YOUR SPECIFIC NEEDS, WHAT DID

1 YOU THINK ABOUT THE ACTIVE DESKTOP WAS
2 RESPONSIBLE FOR ITS LACK OF ADOPTION WHICH YOU
3 DESCRIBED EARLIER?
4 A. I DON'T KNOW. IT CERTAINLY REQUIRES
5 MORE MEMORY, SO THAT'S A FACTOR.
6 Q. WHAT ELSE?
7 A. I DON'T KNOW. CUSTOMERS DON'T SEEM TO
8 LIKE IT. IT SEEMS LIKE THE MARKET'S WORKING
9 PRETTY WELL. IF CUSTOMERS DON'T LIKE IT, THEY'RE
10 NOT ADOPTING IT.
11 Q. WHEN YOU SAY THE ACTIVE DESKTOP
12 REQUIRES MORE MEMORY, WHAT SIGNIFICANCE DOES THAT
13 HAVE TO THE USER?
14 A. IF A USER DOESN'T HAVE THAT MEMORY, IT
15 COULD SLOW DOWN HIS OVERALL OPERATION OF THE
16 SYSTEM, WHICH MOST USERS DON'T CARE TO DO.
17 Q. SO, WHATEVER APPLICATIONS THE USER HAD
18 RUNNING MIGHT BE LESS--MIGHT BE SLOWER TO
19 PERFORM?
20 A. WELL, THE SYSTEM MIGHT BE SLOWER, NOT
21 JUST THE APPLICATIONS, BUT WINDOWS ITSELF WOULD
22 BE SLOWER--COULD BE SLOWER IF YOU DIDN'T HAVE
23 SUFFICIENT MEMORY.
24 Q. IS THAT SOMETHING--
25 A. BUT I'M NOT--I'M NOT HERE, YOU KNOW, TO

1 JUDGE IT. JUST THE FACT IS IT'S NOT--I DIDN'T
2 LIKE IT. I EVENTUALLY WILL. BUT THE INITIAL
3 IMPLEMENTATIONS WASN'T--DIDN'T SUIT MY NEEDS. I
4 THINK THE DATA SUPPORTS THAT IN TERMS OF THE
5 AMOUNT OF TRAFFIC, THIS LEVEL OF SUCCESS THAT
6 ACTIVE CHANNELS HAS.
7 Q. THE ISSUE YOU JUST DESCRIBED OF THE
8 ACTIVE DESKTOP REQUIRING MORE MEMORY AND THAT
9 MIGHT SLOW DOWN THE OVERALL SYSTEM FOR USERS, IS
10 THAT SOMETHING THAT GETS BETTER OR GOES AWAY IF
11 THE USER TURNS THE ACTIVE DESKTOP OFF, TO USE THE
12 COLLOQUIAL TERM?
13 A. YES, IT DOES. YOU USE LESS MEMORY
14 WITHOUT THE ACTIVE DESKTOP. IT'S CALLED THE
15 WORKING SIDE OF THE SYSTEM DECREASES.
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