ORAL ARGUMENT SCHEDULED FOR FEBRUARY 26 & 27, 2001

No. 00-5212 (Consolidated with No. 00-5213)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICROSOFT CORPORATION,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 98-1232 (TPJ)
Hon. Thomas Penfield Jackson, United States District Judge

MOTION OF LAURA BENNETT PETERSON, AMICUS CURIAE,
FOR LEAVE TO FILE ACCOMPANYING BRIEF
OUT OF TIME

I, amicus curiae Laura Bennett Peterson, hereby respectfully move for leave to file the accompanying Court-authorized brief on January 22, 2001. As the accompanying Declaration attests, this filing after the January 12 deadline is occasioned by a condition yielding significantly impaired vision. Because this condition, which my ophthalmologist's technical associate ascribes to severe eye strain, could not effectively be treated or remedied, but must resolve itself over time on its own, I was regrettably incapacitated, despite sustained effort to the

best of my ability, from completing my brief until this time. This condition, which has associated physical symptoms, arose prior to the January 12 deadline, was at its worst from January 12 through January 15, and continues to cause discomfort and significant incapacity (including blurred vision and difficulty in reading and writing) to this day. Since I work on my own, it has not been possible to have anyone else complete and submit my brief while I have been incapacitated.

I have consulted with counsel for the parties about this Motion, which none of them oppose. Microsoft Corporation, through its counsel Bradley P. Smith, indicated to me in a telephone discussion on January 17 that it has no objection to my filing out of time. The United States, through its counsel Catherine G. O'Sullivan, noted in a telephone conversation with me on January 18 that this Court's Order of October 11, 2000 (issued prior to the November 3, 2000 Order granting amici's motions for leave to participate, but referenced in that prior Order) "may not contemplate," in her words, motions for the extensions of deadlines; nonetheless, the United States does not object to my Motion herein to file my amicus brief out of time. The States, through their counsel Richard L. Schwartz, with whom I spoke by telephone on January 18, concur with the U.S. Department of Justice's position and also do not object to this Motion to file out of time. Appellees' position remains consistent, then, I believe, with that expressed in their Joint Responses to Motions Regarding Amicus Participation, filed October 30, 2000: "We support the Court's permitting any amicus filings that it would find helpful."

As the government Appellees noted in their own January 18, 2001 Motion for Enlargement of Time to File CD-ROM, they too are governed by the above-referenced Orders dated October 11, 2000 and November 3, 2000, including the deadlines therein. This Court

demonstrated its understanding of the extenuating circumstances that underlay their Motion for Enlargement of Time in its Order granting their Motion on January 19.

My brief, prompted by my interest and concern over decades in antitrust law and economics, will, I believe, assist the Court by providing a perspective, not developed in the other participants' briefs, on the critical concept of an "applications barrier to entry," as well as on remedies. My brief, unlike the briefs filed prior to January 12, also considers the implications of the district court's bifurcation of findings and conclusions, along with the implications of the mixed questions of law and fact that this case presents. Because of my condition, I have not even read, let alone based any part of my brief on, any brief filed on January 12.

The acceptance of my brief at this time would not set back the schedule for filing any other brief or prejudice any of the other participants. Microsoft Corporation, which alone has the right to file another substantive brief, would not be harmed were this Motion to be granted, since I support its request for relief and it will have a week to consider my position before it files its Reply Brief on January 29.

I recognize and regret the burden on the Court of considering this Motion. At the same time, for the reasons presented above, I respectfully request that the Court grant my Motion for Leave to File the Accompanying Brief Out of Time.

Respectfully submitted,

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Laura Bennett Peterson
700 New Hampshire Avenue NW
Washington, DC 20037-2407
(202) 298-5608

January 22, 2001

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DECLARATION OF LAURA BENNETT PETERSON,
AMICUS CURIAE,
IN SUPPORT OF HER MOTION
FOR LEAVE TO FILE BRIEF OUT OF TIME

I, Laura Bennett Peterson, on oath, depose and state as follows:

1. I am an amicus curiae in the above action.

2. I verify and attest to the truthfulness of the facts set forth in the accompanying Motion of Laura Bennett Peterson, Amicus Curiae, for Leave to File Accompanying Brief Out of Time.

Sworn and subscribed to under the penalty of perjury on this 22nd day of January, 2001.

_____
Laura Bennett Peterson

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2001, I served a copy of the foregoing Motion of Laura Bennett Peterson, Amicus Curiae, for Leave to File Accompanying Brief Out of Time, together with the Declaration of Laura Bennett Peterson, Amicus Curiae, in Support of Her Motion for Leave to File Accompanying Brief Out of Time, on (1) a listed counsel for each of the participants identified in the Certificate of Service submitted with the Brief for Appellees United States and the State Plaintiffs (Messrs. Smith, Boe, Falk, Black, Cohen, Getman, Bork, and Burton), at the addresses provided therein, (2) on the other individual amici (Messrs. Lundgren and Hollaar) identified therein, at the addresses therein, and (3) on the following additional counsel identified, with listed addresses, in the Certificate of Service submitted with the Brief for Defendant-Appellant Microsoft: Ms. O'Sullivan and Mr. Schwartz.

I have served the above-mentioned Motion by hand with the following exceptions: Mr. Boe has been served by facsimile and overnight mail; Mr. Schwartz has been served by e-mail (at his suggestion) and overnight mail; Messrs. Burton, Getman, Hollaar, and Lundgren have, with their consent, been served by first-class mail only.

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Laura Bennett Peterson