

# EXHIBIT B

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Facsimile Transmittal

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Total number of pages (including this cover sheet): 6

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**Microsoft**

July 20, 1995

via Facsimile

Mr. Robert J. Frankenberg  
Chairman and CEO  
Novell, Inc.  
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Provo, Utah 34606-6194

Dear Bob:

Thank you for your letter of June 23. It is good that we are back on track with discussion of the issues that stand in the way of closer cooperation. As we have discussed, a constructive working relationship is good for our mutual customers -- as they often remind us.

I am pleased to learn that Novell has fixed the problem concerning long file names. Still, it would seem to be in our mutual customers' interests for Microsoft to ship the "patch" along with Windows 95 since long file names will be a default condition used by all applications.

With regard to Novell applications, all known incompatibilities have been resolved for Windows 95, except for one extremely minor and unlikely-to-occur situation for which there also exists a viable workaround. We reviewed the reports from Novell for its Windows 95 client development, and everything appears to be in good shape. (In fact, Novell sent us email thanking us for the fine support.) Should you be interested, we would be happy to provide you with a list of all the problems Novell reported and their resolution. Since there are no known incompatibilities, there is no need to ship any Windows 95 patches with Novell applications as requested in your letter.

With respect to the Beta Exchange Agreement, our understanding, through public sources, is that "Corsair" and "Ferret" are clients to access Netware servers. We are interested in testing those clients for compatibility with our operating system products. We should think Novell would be interested in this objective to save our mutual customers grief. If Corsair and Ferret have nothing to do with accessing Netware servers, we withdraw the request; otherwise, it makes sense to sign the Beta Exchange Agreement as we proposed.

Regarding the NCP copyright issues, we have previously advised you in meetings and correspondence that we disagree with Novell's assertions as to the copyrightability of such subject matter. Our position has not changed. Recent case law appears to reaffirm both that protocols such as the NCPs are not copyrightable subject matter, and that even if they are copyrightable, Microsoft's use of NCPs to make its products interoperate with Novell products

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would be considered a fair use under copyright law. Therefore, Microsoft has not violated any Novell copyrights.

Microsoft's efforts to provide compatibility with Netware are for the benefit of our mutual customers. Though two years have passed since the commercial release of Windows NT, Novell still has not delivered a credible client for that operating system. With shipment of Windows 95 imminent, Novell has not even begun beta testing a feature-complete client for Windows 95. Consequently, Microsoft has had no choice but to invest substantial resources just to provide appropriate clients for Netware customers using Windows NT Workstation and Windows 95. The response from our mutual customers has been overwhelming support of Microsoft's interoperability efforts.

Regarding antitrust, your letter rebashes Novell's old allegations about Microsoft's success in the desktop operating systems and applications businesses. You will recall that in our meeting of last January 10 you stated that those issues were "behind us." That is as it should be. If Novell and Microsoft are to move forward in a constructive manner to address the needs of our customers in this rapidly changing industry, we need to focus on the future, not the past.

While we would be pleased to work with Novell to resolve the various compatibility and other issues that affect users of our respective products, we do not intend to spend additional time going over allegations that have been exhaustively investigated by two government agencies, the Federal Trade Commission and the Department of Justice, and found to be without merit. The DOJ specifically rejects your allegation that Microsoft's success in desktop operating systems was achieved "in part at least, through conduct violative of the United States antitrust laws." In its recent brief to the U.S. Court of Appeals for the District of Columbia Circuit in the consent decree case, for example, the DOJ stated it had concluded that "there was no basis for an antitrust challenge to Microsoft's acquisition of monopoly power in the market for operating system software for IBM-compatible personal computers." (March 7, 1995 Brief at 4.) The Department further concluded that Microsoft's OEM licensing practices (which Microsoft believes, in any event, were wholly lawful) "had made only a *minor and nonmaterial* contribution to its continuing market dominance." (*Id.* at 8, emphasis added.) Novell filed a very broad complaint with Directorate General IV of the European Commission, which proceeded to investigate those allegations in coordination with the DOJ. As you know, DG IV concluded its investigation by entering into a stipulated undertaking with the same terms as the consent decree with the DOJ. Novell DOS did not fare well in the marketplace because it did not provide the right combination of price, functionality, performance, compatibility and quality that customers demand.

The FTC and DOJ also thoroughly investigated Novell's "leveraging" allegations concerning applications, including your allegations about "undocumented calls" and so forth, and found them to be "not provable." (Joint Appendix at 16) In fact, Microsoft goes out of its way to make early copies of API and protocol specifications available, hold design reviews (that even our competitors attend), and run the largest beta test programs in the industry. Novell has been

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invited to participate in many of these "Open Process" events – and all without requiring a tit-for-tat arrangement. As a result of Microsoft's Open Process, thousands of applications and systems are supported at the time that new operating system versions are released to market. Furthermore, our comprehensive and readily available documentation ensures a high degree of third party support and corporate interest. Anyone can produce a sophisticated application for Windows, using a variety of tools, with the resulting product running on a variety of hardware systems, supported by thousands of peripherals, from a multitude of vendors – all at competitive prices. Microsoft focuses on customer needs for easy access, integration, and distribution of information.

#### SUMMARY AND RECOMMENDATIONS

Microsoft interoperability efforts have resulted in substantial growth for the industry (including Novell) and major benefits for customers. This has been accomplished through a vibrant market where competitive prices, performance, and innovation abound. Microsoft appreciates such competition as it drives us to produce better products. We applaud and concur with your stated goal of "creating better products for our customers worldwide."

Your letter is confusing in that it is unclear exactly what you wish Microsoft and Novell to settle. You offer legal arguments and assertions on various subjects and then conclude with four requests that you consider necessary to "settle these issues". Microsoft offers the following in response to those four items:

- (1) EQUAL ACCESS: You proposed that Microsoft "make available to Novell those OS interfaces . . . of any type which might interact with Novell's software products at the same time and the same level of specificity as those things are made available to Microsoft's own applications programmers." Novell is fully aware that Microsoft publishes operating system interfaces and protocols, for use by anyone to produce applications or interoperable products. Novell has received early copies of specifications, has been invited to Open Process design reviews, and has received early copies of forthcoming Microsoft operating systems releases (which include networking support). Novell has even been given a special email alias for direct access to the Windows development teams. This is in stark contrast to the inattention Novell has given to Microsoft with regard to Netware compatibility. In spite of repeated requests, Novell consistently refuses to disclose information concerning, or provide beta copies of, client or server products – even after repeatedly promising such information or beta copies. Notwithstanding such poor treatment, Microsoft has continued to provide Novell with access to information regarding Microsoft products.
- (2) UNIX ROYALTY: Microsoft is entitled to the \$15 per copy royalty owed to Microsoft each time Novell ships a copy of UNIX System 5.3 or higher on the Intel platform. Microsoft undertook a major project under the Centaur Agreement and delivered quality work on time

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in return for this royalty. Your letter provides no reason why Microsoft should forego this compensation for its work.

- (3) PATENT LICENSE: No discussion of patent licenses can be entertained if Novell does not intend to have a symmetrical arrangement. If, as you state in your letter, Novell would only "consider" such a cross-license of Novell patents, then previous, good faith discussions that Microsoft initiated have been in vain. Novell's apparent position is especially inappropriate given the relative sizes of our respective patent portfolios.
- (4) NCP LICENSE: Novell has not proposed a license for NCP technology. Rather, what you have proposed is a client license agreement. Microsoft did respond to the proposal stating that key business issues had to first be resolved. Among other comments, we stated that Microsoft will not cease development and delivery to customers of its NCP-compatible technology, the primary reason being that Novell's track record on delivering clients has been poor at best. The most recent release of Novell's client for Windows NT is a case in point. Recent trade press indicates the product is flawed in several important respects. (See July 3rd *Communications Week*.) Further, the client license terms are confusing to customers with mixed networking environments and prevent companies like Microsoft from even testing the client. Novell has been unable to adequately assure Microsoft that it can meet Microsoft product delivery objectives for completeness, quality, and timeliness. Microsoft cannot compromise our mutual customers' requirements for connectivity and interoperability.

The items we feel ought to be discussed with genuine sincerity are:

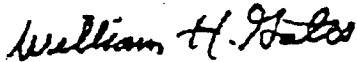
- (1) A Patent Cross-License.
- (2) A reasonable Windows 95 and Windows NT client license that does not require us to cease development and shipment of our NCP-compatible software.
- (3) Completion of the Mutual Customer Support Agreement.
- (4) Execution of the proposed Mutual Beta Product Exchange Agreement (covering all current and near-term networking client software).
- (5) Novell's acknowledgment of our ability to use NCP protocols.

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Microsoft is eager to provide a better framework for working together to the benefit of our mutual customers. I would be happy to discuss these matters in depth, at your convenience.

Sincerely,



William H. Gates  
Chairman and CEO

cc: Bob Kruger

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