

DTOS II

**PLAINTIFF'S  
EXHIBIT**  
4066  
Comes v. Microsoft

People

1.  2/9/00 8:55a First call re: clarification of documents
  1.  Callan: Dell wants to sign the agreement with Dell Products, LP. This would need to be reflected in II (d) as well under COMPANY Subsidiaries
    1.  We may be able to trade the overall license with LP to get out of the regional subsidiaries. Not sure about this one
    2.  Callan open to getting tax staff involved as needed (Emily Perrino, inf'l tax)
    3.  AllenWi: where are patents owned? Callan: as noted in the patent cross license (Dell Computer Corporation as in the 80ms.)
  2.  Section I
    1.  LTD Effective date should be March 1, 1997 RonWoll
  3.  Section II
    1.  (a)(iv)(C) Question: BIOS locked CD - does it need to be created by an AR?  
Answer given: Yes
    2.  (a)(iv)(C) - Did we go back and look at the LTD and are we assuming that the LTD definition is what we want to state? RonWoll here.
    3.  (d) Again, wanting to ensure that all Dell entities are granted equivalent rights - needs to include Dell Products LP
    4.  (a)(i) - wants to know if there are any advertising/mktg. guidelines available NOW. I replied w/ "Portfolio" CD and that other guidelines come out with promo etc.
    5.  (a)(iv) asked if going forward the Resource Guide will be our only controlling doc. - will there be successors? AllenWi unlikely to change by very much...but some change is likely.
    6.  (f) JoeK: three concepts: (1) distribution, (2) "first sale", and (3), pursuant to the EULA. Dell is concerned about (3). RonWoll What is MS' role for the OEMs' role wrt EULA? There are some pieces of the EULA that could be modified by an OEM...like "venue" etc.  
AllenWi: lots of work, would there be value to the OEM to do so?  
Callan: there are a few spots (i.e. "return for a refund from the OEM", and "venue") that they may want to make some changes. Callan may provide us with a
  4.  Section III
    1.  (a)(i) Royalties are based upon COMPANY's estimated shipment volume indicated in Exhibit(s) C - wanted to know what this was about. Answered that our product royalties are tied to volume, and we use the est. volume column to record the expected volume. Doesn't really apply to Dell since we are clear about their volume and position in the market.
    2.  (d) Clarified why we want royalty reports by the 25th of the month (revenue recognition and tracking business). JoeK believes that this is tied into the efforts between MSLI finance/audit and Dell royalty administration...outcome of their discussions should drive a process that can be reflected in the agreement.
  5.  Section IV
    1.  Why aren't there terms offering a second year on this agreement? RonWoll: we are looking at changes in business model etc., and we foresee many changes. It's MS' choice and we don't think it makes sense to prolong the changes. AllenWi: comments about how we are going to be simplifying the next LTD...new licenses will be under the new LTD.
  6.  Section V
    1.  Callan - we will need to ensure that any side letter effective dates will need to be date after the Effective Date of the DTOS so that it will be effective. RonWoll
  7.  Schedule
    1.  2/9/00 JoeK reviewing with Dell execs
    2.  Ongoing - JoeK working with extended teams within Dell. Formal response due back to us by 3/6. Dell hopes to get our feedback by 3-20; 3/31 target for completion.
    3.  2/15 Negotiation Session - Location: potentially San Francisco
      1.  Internal use, MFN, per system, audit/reconciliation, price
      2.  Focus on Tom Green/RichardF issues - top -8 items
  8.  Actions
    1.  AllenWi+Callan: get tax/legal separate call set up to discuss Dell Products, LP AllenWi
    2.  Schedule 2-15 meeting
    3.

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1.  2/17/00 9:15a San Francisco
  1.  RichardF - we don't want to see the teams restore for 60 days; we are trying to accept practices that aren't worth really fighting about.  
Positioned that we would solve some issues, but may not get there all the way
  2.  Tom Green: echoed the desire to make progress, but expects that we may not solve all issues.
  3.  Major issues as identified by Dell team
    1.  MFN language
      1.  Prior (from above)
        1.  Assurance that Dell has the bottom line "level playing field"....net effect is that there is no material difference in Balance Sheet. They are concerned that we might use a midg, program level of funding that could reduce OEM "costs"
        2.  Essentially, I think they want us to agree that we won't spend more marketing \$\$ with another OEM than we would spend with them....and if another OEM came to us with a big sack of \$\$ to mkt., that we would have to then offer Dell the ability to match the program.
        3.  JoeK: MFN should also include APM changes, warranty terms, indemnification, other items that might affect Dell's bottom line.
        4.  2/16/00 2:50p Review with RF/AWRW prior to session
          1.  Definition should stick with price and payment terms and "marketing or rebate programs whose intent is to reduce COMPANY's effective royalty rate"
      2.  2/17/00 9:27a
        1.  JoeK talked about balance - hits the P/L in a material way.  
Same opportunities as others; clear that some things don't match Dell's business. They don't want to shackles us, but they want to be able to choose to participate.  
TomG: wants for us to "Ask"...for Dell's participation
        2.  Wants a base commitment - for his constituents, that gives confidence
        3.  RichardF: wants straightforward; and with terms that each party can actually execute against. We believe that you Dell want price and payment that can match competitors; then Dell's model will carry them to be successful.  
Clarifies that Dell is looking for P/L.
        4.  JoeK: points to Windows 2000 development - felt that they did not have the access, or the inside track to being very involved in the early development. What Dell is looking for is some "added written incentive" to make sure that Dell is included in any development effort...when we think "let's go work with OEMs" they want to make sure that Dell is included.  
"This is something that is not really workable...I don't know how we can guarantee performance...especially given the wide variety of technologies that a development organization overall goes after."
        5.  RichardF: sees what Dell is looking for; but wants us to develop with Dell in a positive way, and avoid the call "our contract says that you will work with us, and you aren't"
        6.  Tom Callan: what's missing - marketing, advertising, and licensing terms. (Callan pointed to 18(a) in particular.  
Callan: he wants MS to offer Dell the same level of \$\$ spends on marketing as any other OEM. A budget level and reconciliation level accounting to ensure that Dell has spent the same \$\$ with MS as any other OEM.  
RichardF: distinction between programs that intend to decrease royalty and overall marketing programs.  
RichardF: we need to think about this....the expansion to include "real" marketing money; Partner Fund expenditures should be the same, with written terms.
        7.  TomG: scope runs across the entire business...includes things like "if someone has better terms around 12(d)...they are looking for all aspects of a license that could affect how much cost is incurred.  
AllenW/RF: we may be able to state the "spirit" of working to make certain
        8.  JoeK: the areas that we really care about:  
"Cost - terms around the Product itself  
"Presentation of the product to the market; ISP hooks, content hooks in the product.
        9.  Callan: what's the process for measuring/compliance -
      10.  Actions
        1.  We will consider the marketing aspects of MFN (I don't think that we should do this in any case)  RichardF
        2.  Dell will take the other pieces and propose terms (pointing to different sections of the license perhaps?) - AllenWi suggested privately that he can draft the "spirit" text and will give it to RichardF to propose.  
2/17/00 4:51p AllenWi drafted text and provided to Tom Green.  AllenWi
2.  Pricing
  1.  Prior (from above)
    1.  Preliminary: proposal is flat to slightly higher overall. Dell has specific price points to hit (or cost objectives) for their systems. Typical comments re: "all components declining in cost, but MS OS is increasing"
    2.  JoeK: will present back to us their cost for COA + BIOS locked media, and they will want us to "cover" them.
    3.  NTW4 Pricing: assumptions that we are making. Interesting comments from JoeK re: market motion/transition...he wanted to know what assumptions we may be making as far as migration to Win2K from NTW....but, bottom line is that we (MS) are making no assumptions; rather we are simply putting money behind the product that we want to progressively get the market moved to.
    4.  2/16/00 3:40p Discussion with RF/RW/AW: for the \$21 promo discount, focus needs to be on our decision to promote our latest/greatest. Invite Dell to come up with proposals on how they can add value to MS to incent us to extend the \$21 discount to single NTW installs.  
My text draft on default OS, web advertising, Premier page "Dell recommends Windows 2000 for business".
  2.  2/17/00 11:14a

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MS-PCA 2604306

## DTOS II

People

1.  Tom Green: Intense interest by Dell in driving Windows 2000 - MS should understand this clearly. Dell wants to "drive the living shit" out of it. Sales segments hear from customers (and from Gartner) - wants some strong incentives to get these customers to move more quickly (incentives on price).  
Green: Dell doesn't have the technology in place today to do dual-install.  
\* From Maring: concerned about "punishing" existing companies by raising their prices for NTW systems. He is concerned that customers would not want to receive dual installed systems; higher cost to manage by the customer.
  2.  Green wants some good/healthy discounts to get the business to move to Windows 2000...lower price on Windows 2000, plus no increase on NTW. He agrees that a price differential is good....he gets that no problem.
  3.  Green: P/A...there are things that MS has done to increase costs where they want recognition. Also wanting recognition for Dell's ability to really affect the market (more coming on this?)
  4.  RichardF: we are open to listen to creative ways that Dell can bring value to MS for the NTW box...he separated out small business, where dual install or Dell advocacy can affect the buyer (value to MS) and in Maring's area where dual install is complex and not tenable to the customer.
  5.  JoeK: operating margins 97-99 have gone from 11% to 9%. ASP's are declining 3-5%.  
Pricing analysis, current vs. our proposal
    1.  Win2k moves from 58.86 to 55 + 2.07 = 57.07. The 2.07 is Dell's cost of implementing the COA and BIOS locked media.  
WinNTW moves from 105.01 to 126 + 2.07 = 128.07  
Win2K moves from 105.01 to 105.01 + 2.07 = 107.01  
JoeK "needs" to decrease our pricing by 20%.
    2.  Dell forecast for FY01: 16.4M units
    3.  Dell looking for 20% decrease in our royalty
      1.  2% due to increased distribution costs (COA, media)
      2.  2-4% due to costs associated related to Win2K rollout
      3.  3-5% in general ASP declines
      4.  Add 10% is a target to increase their own margins; based on increased volumes and market position.
  6.  RichardF: MS is spending money to drive demand via MS Marketing instead of using that same level of funding to OEM discounts...the NTW Mix Model
  7.  Discount for Windows NTW - both teams are committed to finding ways for Dell to add value to MS in a RonWoll order to earn the Windows 2000.  
Action: I need to send JoeK/Tom Green/TomC my created text for promoting Windows 2000 broadly.
  8.  RichardF: wants to work with TomBaum to understand how our media implementation impacted Dell, but he's focused on it so a learning experience. Very much not interested in paying for things that are Dell's business model's problem....  
JoeK: MS transferred to Dell the costs of creating backup media. Past license "value proposition" included MS covering this cost. JoeK...to have the same value proposition, either:
    1.  Reduce my price by the \$2.07 and Dell will continue to manage/own the creation of the backup media. RichardF
    2.  MS takes back the management of the backup media.
  9.  JoeK: What could Dell bring to MS that would get them a net 20% decrease in OS royalty pricing? RichardF
    1.  This is a fair question to ask...it's the "No way that Dell would ever do that" when in fact, they just might.
      1.  Is this "Dell will not sell anything but Windows 2000" or is there something else that would justify a 20% decrease?
  10.  JoeK: he would like to see us offer a special promotion of Windows 2000 and Office 2000 Professional bundled together, with a very strong "value proposition" to customers to drive attach rates.
    1.  RichardF: "I could do that....if I wanted to go to jail" - clearly stated though that we are not willing to entertain those discussions.
  11.  Developing Markets
    1.  Dell really wants us to recognize that Dell has a unique ability to deliver legitimate OS products...and they want us to give them add'l margin to help promote that. This is very hard for us, since competing against \$0 royalties
3.  Per System vs. Per Copy
    1.  Pnoc (from above)
      1.  Dell wants to understand why we are asking for this...what is the value that Microsoft gets from this term. It's commitment to the MS Platform.  
JoeK: "per system" would also add cost to Dell's business (creating phantom sku's etc.) and would look for us to concede \$ on royalty.  
2/16/00 3:48p Discussion: MFN, price, per system all represent "the best" overall. Per copy is an option, but it's a \$2.00 price differential...which is exactly in line with what we have offered other customers in similar circumstances.
      2.  Very sensitive...concern that we would add cost to Dell by "per system" terms if they needed to create new sku's in order to offer other OS systems.
      3.  My thoughts: we created per system based on channel based OEMs and when we were in a position to lock in systems (and actually gain market share). Once we are at 99+% of Dell's business, we don't really have anything to gain within the term of this license agreement.
      4.  Dell is very emotional about this term; our need is for consistency across licenses.
      5.  JoeK/Tom Green: What about using the type of terms that we have in the MDA, where we have terms that state "unless otherwise requested by a customer" and where they commit to merchandising every system with a Microsoft OS.  
Our action is to consider and look at how we might write this one in. RonWoll
  4.  Internal Usage

MS-PCA 2604307

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DTOS II

People

1. o Prior (from above)
    1. o Fundamental pieces - Dell believes that MS gets value from having them use their products (i.e. showcases, etc.). JoeK recognizes that MS is seeking to see the value of our products, and wants to explore how Dell may return value to MS in other ways. He is concerned about Dell's ability to manage this internally....
  2. o 2/17/00 4:16p
    1. o Tom Green: timing is really bad...Dell is scrutinizing their operating expenses across the company. Tom reinforced the level of emotion about this....Tom suggested that this has visibility all the way to the top.
    2. o Our needs are twofold: first need is for consistency of terms - no other OEMs have continuing free usage. Second need is for establishing value for the product.
    3. o Tom Callan: why don't we remove the terms from this agreement (takes care of our need for consistency) and have Dell and MS marketing, field, technical teams to get together and come up with a proposition to MS that will justify free internal usage.
      1. o This is a great idea; what I need to do is offer them free usage until June 30 th for both new systems and upgrades....that way, Dell can move to Windows 2000 completely...then for future products, the teams come up with a value-based program that gives MS promotion etc., and Dell get free internal usage.
 

JoeK's biggest concern is with Dell's inability to manage the distribution and tracking of new systems (many/most come via returns/refurbishment) as well as upgrades (today, they allow users to take bits and spread without much IT control).
      2. o RichardF wants to table this for now and let us "go think" about it.
5. o Reconciliation/Audit
  1. o Hopeful that Norm Ruppen and team from MSLI are working on a process. JoeK brought up that they would be bringing closure of the current audit to this negotiation. This would be very strange that they would bring an issue completely outside of the license negotiation and perhaps use this as a carrot or lever.
  2. o 2/17/00 4:05p Both teams here agree that we need to let the MSLI finance/audit team and Dell's royalty administration teams come up with a process and associated language that will satisfy both MS and Dell.
6. o Millennium
  1. o Prior (from above)
    1. o Dell does not intend to sign a contract without Millennium - our decisions about how to
  2. o 2/17/00 4:17p
    1. o Ms: Millennium royalty to Dell will not be any more than Windows fix today. Richard is probably mad at me for giving this away so quickly; but we needed something to get the conversation away from negatives. Dell was happy about this; changed the tone of the discussion.
7. o Leasing
  1. o Prior (from above)
    1. o There are some terms that Callan/JoeK want to change - i.e. Large customer return of APMs: JoeK believes that today they can re-lease or sell via DFO with the license
    2. o 2/15/00 8:45a Leasing Discussion - Four major points
      1. o Term 12mo. - 36mo.: Dell is turned into our ability to control licensing downstream, and are not comfortable signing the agreement (JoeK words) without understanding our future direction. JoeK/TomC: Why does Microsoft need the right to double dip on OEM Product? Claim that the marketplace won't support that...AllenW (privately) we are moving to a services model, where we may charge rental companies/ASP's additional monies in order to rent our products. Our positioning with Dell was that MS needed the flexibility for our business model in the future... Other discussion: What Dell really wants is for us to remove any terms re: leasing from our agreements, and allow Dell to sell/rent/lease however they want, since our OS "is just a component" to a Customer System. Further, they want (Callan) us to modify the EULA to remove the restrictions on renting/leasing...this would effectively hand all of our ASP type business to Dell. NFW. Action: Discuss Thursday, as JoeK/TomC were not satisfied and would not agree to leaving the term in place without understanding our future plans. We are unwilling to give away our flexibility and acknowledging that the OS component to a Customer System should be treated as any other hw component: once paid for, Dell has all control.
      2. o Terms for refreshing systems, changing OS, etc.: Action is on JoeK and TomC to review our license and edit as they may need for their business. We are in agreement that these terms can be resolved.
      3. o Terms re: APM management. Our terms state that customers must return the APM - Dell wants the ability to work with customers to responsibly manage APM destruction/return/Dell mgmt. We are OK with this; action is for JoeK/TomC to review our terms and comment how they would put processes in place to help customers manage APMs.
      4. o Third Party Leasing Agents: Dell wants to stick with license terms between MS and Dell, as they do not foresee any non-Dell entity acting on Dell's behalf. We are OK with this; AllenW action to review Add'l Provision 344/345 and edit as needed.
  3. o 2/16/00 4:08p We are pretty weak in the area of "renting"....i.e. George Bush campaign. We have solid leasing terms, which are reflected in the agmt. For ASP markets, that's a separate agreement and separate terms.
2. o 2/17/00 4:17p
  1. o Callan/JoeK: Dell only wants to focus on OEM distribution; again, they are focused on why we have any lease terms at all....as long as the system has the OS and has been paid for.
  2. o Dell questions
    1. o Why can't Dell offer leases of shorter term than 6 mos.?
    2. o Why can't Dell offer leases of longer term than 3 years?
  3. o MS needs to go think about the 12mos./36mos. terms and whether or not we need them.
  4. o Refreshing a system after 36mo. lease and requiring an update to our newest OS is difficult for Dell: thePRichardF would likely not have qualified/tested such an old system on a newer OS. We should likely just let Delligo with the old OS.

## DTOS II

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1.
  - o Strategy
  - 1.
    - o Position the new agreement as the best overall agreement in the industry, with pricing at par with any competitor and with terms which are better than any other competitor.
2.
  - o Pricing
  - 1.
    - o PGL for Consumer/Home Family: \$66.75 less MDA (\$16) = \$50.75. Current price is \$42.86, which is CPQ+10%. I think that it will be hard to get CPQ up from \$39, particularly given the pressure on low-cost systems sold to consumers in the retail channel.
    - o PGL for Business OS: \$128 less \$21 Windows 2000 discount (net \$107); less MDA (\$16) gets to \$91. From today's price of between \$87.86 and \$89.01 (depending on NTW Mix Model discount each month) this is probably reasonable.
3.
  - o Key Issues - MS
  - 1.
    - o Price:
    - 1.
      - o MS desires an increase of between \$2 and \$3.15 over their current price for Windows NTW. No discount for NTW4 means that Dell would pay (single install) \$112, which is an increase of \$23 over current pricing.
      - o Windows 2000 Promotional discount strongly advantages the indirect OEM, and punishes an OEM who delivers exactly what the customer has ordered. There needs to be some way to mitigate this advantage.
      - 1.
        - o Ideas for Windows 2000 promotion as a compromise: large banners/ads on www sites shown to public; Promotional ads on Premier pages - may include revolving "facts" or mtg. bullets. "Active advocacy" and promotion are the key terms to focus on to reach a solution that brings value to MS.
    - 2.
      - o Per System vs. Per Copy:
      - 1.
        - o Dell's shipments of WDF are 99% of total shipments (as represented to us by Dell); "per copy" terms today allow Dell to manage sku's efficiently, and allow any OS to be shipped on any platform. Risk is that a trend in the industry that would dramatically decrease Windows' overall % could happen at Dell, resulting in 6M+ pricing for volumes far below. At 99% of shipments today, Dell shouldn't really complain about "per system"....although they will insist on "per copy"
    - 3.
      - o Modifications to Windows (DellPlus)
      - 1.
        - o Agreement today is very vague: a "customer request" is all that is required for Dell to be able to "fully setup and configure the Product software as part of an overall installation customization effort for the customer". This is too gray, especially given:
          1.
            - o The pervasive nature of the internet; Dell could very easily create a configurator on any web page that could represent a "customer request".
            - 2.
              - o Dell's business model (and stated direction) to drive more volume through DellPlus. While we don't really hear horror stories about DellPlus images, I'm convinced that many systems go out heavily modified.
        - 2.
          - o Need terms to limit or put some scope on this ability. Risk is that DellPlus could become Dell's standard offering within the timeframe contemplated by this license.
  - 4.
    - o BTD audit terms
    - 1.
      - o "Notwithstanding the BTD, " terms? We could propose a full section in this license that effectively neuters the BTD audit terms. We could make this change as part of a trade for a written MFN.
  - 5.
    - o MFN
    - 1.
      - o Sections 4(h) and 4(i) of the BTD call on MS to negotiate in good faith for a deal that matches the best deal out there; the DTOS itself doesn't have any MFN-type terms today. Do we want to offer MFN terms in order to get other concessions?
  - 6.
    - o Internal use rights
    - 1.
      - o Dell's license has terms that give Dell the royalty-free ability to use "Product" for internal business productivity. Dell has interpreted this to mean "in all cases", including upgrades to installed base. (Technically, the amendment which adds the Windows 2000 Upgrades could be modified to exclude Dell's internal use, since it is not signed.)
      - o The license itself identifies royalty free use of "Product", which also includes Upgrades in the case of the Exh. C for Windows 2000 Upgrades in Amendment 6. Windows 98 and Windows 98 Second Edition also were covered using this definition of "Product". Windows NTW4 would not be covered under this scenario, as there is no license Exhibit for a Windows NTW Upgrade.
  - 7.
    - o COMPANY Subsidiaries exercising License Agreement rights directly
    - 1.
      - o Current agreement allows Dell to withhold taxes regionally; net is less revenue to MS (How much withheld last year??). MS can claim as a foreign tax credit, but I think we'd rather have the revenue. This is VERY important to Dell, as they are then able to take tax benefits by working Subsidiary-to-Microsoft.
  - 8.
    - o Dual Install and Dual Boot
    - 1.
      - o Dell's terms for these situations are in Add1 Provision 26 to Exh. C1, and should be outlined in Attachments to Exh. C1 instead. Current terms would allow for Windows 2000/Windows 98SE dual install or dual boot, which our standard agmt. does not allow.
4.
  - o Key Issues - Dell
  - 1.
    - o Price - Both absolute price and relative price to their competitors
    - 1.
      - o Dell will likely demand the best price, not just Compaq's price given the track today that will have Dell pass Compaq in total shipments probably in MS FY01. Dell knows that Compaq pays \$39 for Windows 9x and \$61 for NTW given Exh. 72 on the DOJ website (since removed). This came out during the March 26, 1999 OOC review in Austin.
      - o Dell will likely seek a commitment from SteveB to give them the best absolute price; may also insist on "lower than today" pricing.
    - 2.
      - o MFN - actually is a "price" issue, but important enough to note separately
      - 1.
        - o Dell's BTD Section 4(i) commits MS to negotiate in good faith for "best pricing" for Dell in negotiations for the successor to the existing agreement.
    - 3.
      - o Maintain flexibility wrt DellPlus
    - 4.
      - o Windows 2000 Promotional Discount
      - 1.
        - o Dual install breaks Dell's business model
        - 2.
          - o No discount on NTW unfair to those customers who will be piloting Win2K, but still taking NTW.
          - 3.
            - o Expiration as of March 31, 2001 (allows 1 yr. of discount only)
    - 5.
      - o Millennium inclusion in DTOS II
      - 1.
        - o I intend to leave Millennium out of the negotiation pending results of the negotiation re: Additional Provision 18.
    - 6.
      - o Aggregation of volume (Consumer OS and Business OS Families)
    - 7.
      - o
  - 5.
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  - o Schedule
1.
  - o 2/9/00 JoeK reviewing with Dell execs
2.
  - o Ongoing - JoeK working with extended teams within Dell. Formal response due back to us by 3/6. Dell hopes to get our feedback by 3-20; 3/31 target for completion.
3.
  - o 2/15 Negotiation Session - Location: potentially San Francisco
  - 1.
    - o Internal use, MFN, per system, audit/reconciliation, price
  - 2.
    - o Focus on Tom Green/RichardF issues - top ~8 items
8.
  - o Actions
1.
  - o AllenWi+Callan: get tax/legal separate call set up to discuss Dell Products, LP
2.
  - o Schedule 2-15 meeting.
3.
  - o
6.
  - o 2/10/00 10:30a
1.
  - o Major issues as identified by Dell team
1.
  - o Internal Usage
1.
  - o Fundamental pieces - Dell believes that MS gets value from having them use their products (i.e. showcase, etc.). JoeK recognizes that MS is seeking to see the value of our products, and wants to explore how Dell may return value to MS in other ways. He is concerned about Dell's ability to manage this internally....
2.
  - o Pricing
1.
  - o Preliminary: proposal is flat to slightly higher overall. Dell has specific price points to hit (or cost objectives) for their systems.
2.
  - o JoeK: will present back to us their cost for COA + BIOS locked media, and they will want us to "cover" them.
3.
  - o NTW4 Pricing: assumptions that we are making. Interesting comments from JoeK re: market motion/transition.
3.
  - o Per System vs. Per Copy
1.
  - o Dell wants to understand why we are asking for this...what is the value that Microsoft gets from this term.  
It's commitment to the MS Platform.  
JoeK: "per system" would also add cost to Dell's business (creating phantom sku's etc.) and would look for us to concede \$ on royalty.
4.
  - o MFN language
1.
  - o Assurance that Dell has the bottom line "level playing field"...net effect is that there is no material difference in Balance Sheet. They are concerned that we might use a mktg. program level of funding that could reduce OEM "costs".
2.
  - o Essentially, I think they want us to agree that we won't spend more marketing \$\$ with another OEM than we would spend with them...and if another OEM came to us with a big sack of \$\$ to mkt., that we would have to then offer Dell the ability to match the program.
3.
  - o JoeK: MFN should also include APM changes, warranty terms, indemnification, other items that might affect Dell's bottom line.
5.
  - o Millennium
1.
  - o Dell does not intend to sign a contract without Millennium - our decisions about how to
6.
  - o Reconciliation/Audit
1.
  - o Hopeful that Norm Ruppen and team from MS/LJ are working on a process. JoeK brought up that they would be bringing closure of the current audit to the negotiation. This would be very strange that they would bring an issue completely outside of the license negotiation and perhaps use this as a carrot or lever.
7.
  - o Leasing
1.
  - o There are some terms that Callan/JoeK want to change - i.e. Large customer return of APMs; JoeK believes that today they can re-lease or sell via DFD with the license
2.
  - o 2/15/00 8:45a Leasing Discussion - Four major points

## DTOS II

1.
  - o Term 12mo. - 36mo.; Dell is tied into our ability to control licensing downstream, and are not comfortable signing the agreement (JoK words) without understanding our future direction. JoK/TomC: Why does Microsoft need the right to double dip on OEM Product? Claim that the marketplace won't support that...AllenWi (privately) we are moving to a services model, where we may charge rental companies/ASP's additional monies in order to rent our products. Our positioning with Dell was that MS needed the flexibility for our business model in the future...  
Action: Discuss Thursday, as JoK/TomC were not satisfied and would not agree to leaving the term in place without understanding our future plans. We are unwilling to give away our flexibility and acknowledging that the OS component to a Customer System should be treated as any other hw component: once paid for, Dell has all control.
  - o Terms for refreshing systems, changing OS, etc. : Action is on JoK and TomC to review our license and edit as they may need for their business. We are in agreement that these terms can be received.
  - o Terms re: APM management. Our terms state that customers must return the APM - Dell wants the ability to work with customers to responsibly manage APM destruction/return/Dell mgmt. We are OK with this; action is for JoK/TomC to review our terms and comment how they would put processes in place to help customers manage APMs.
  - o Third Party Leasing Agents: Dell wants to stick with license terms between MS and Dell, as they do not foresee any non-Dell entity acting on Dell's behalf. We are OK with this; AllenWi action to review Add'l Provision 344/345 and edit as needed.