Karl Neumann (LCA)

Bill - I don't know if you have been reading mail but we have been talking to robg over weekend and are discussing deal which is in first mail attached/ below.

We have been trying to see if we could do deal with both PN & Vxtreme, and we need your opinion on whether you agree to doing deal with both PN & Vxtreme as it would mean large sums:
PN deal is $30M cash and $60M investment in PN
Vxtreme is $65M.
So we are talking total of $95M cash and $60M investment which we may/may not get back. I am uncomfortable making call at this level without your explicit knowledge.

If we have to chose one, I would rather chose deal with Robg/PN. Abay & Jim Durking would rather chose a Vxtreme deal. As of tonight, I am pushing forward with a PN deal which will have to get done asap, if we are not to risk losing Vxtreme.

The reason for doing Vxtreme in addition to PN is to remove them from competitor, gain access to their patents, and gain technology infusion in case PN decides to agressively be in base software business. But I must admit to start getting concerned that we may be overinvesting.

See second mail attached for some discussion.

---Original Message---
From: Paul Maritz
Sent: Sunday, June 15, 1997 8:28 PM
To: 'robg@prognet.com'; 'brucej@prognet.com'
Cc: Greg Maffei
Subject: Draft agreement for discussion purposes

Rob - here is the draft as indicated. There are some changes since we spoke (eg. board seat) that can up after discussing things more tonight.
I will be meeting with my folks again tomorrow am early. I proposed we meet at 10:30am at Microsoft (Bldg 6), and bring a lawyer.
Send me email if you need to change plans.

Thanks.

Agreement between Microsoft and Progressive Networks on Media Streaming Technology
Confidential - Draft for Discussion Purposes Only
June 15, 1997

1. This agreement is entered to this day xx/yy/zz, between Microsoft Corporation ("MS"), a Washington Corporation, and Progressive Networks ("PN"), a XXX corporation, and shall be binding on both parties.
2. Standard Code shall mean the code used in PN's streaming audio and video client and server products, including associated tools, Personal Broadcast Software, and Software Development Kits, for all operating system platforms, including all versions of Microsoft Windows, all versions of UNIX, the Macintosh operating system, and the WebTV operating system. It shall also include all third party code included in the foregoing products. It shall also include all associated documentation, specifications, and tools developed by PN, necessary to build and create derivative works of the code. Standard Code does not include code PN's "Splitter" products or for its for-fee client software.
3. PN hereby grants to MS a perpetual, irrevocable, worldwide, non-exclusive, fully paid-up license to Standard Code in source and binary form. This license shall include the rights to create derivative works,

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and to use the Standard Code in source and binary form in any way. The license shall also include the right to sublicense, and further grant the right to sublicense, and otherwise distribute, the Standard Code, in source and binary form, and derivative works thereof. If PN does not have sufficient rights in third party code included in Standard Code, to grant the foregoing rights, then PN shall so notify MS, and shall grant MS all the rights which it can grant, and shall facilitate (including paying up licenses at PN's expense, and/or lifting exclusive licenses as appropriate) MS obtaining fuller rights from such third parties.

4. On a date within 180 days of signing this agreement, such date to be set by MS at its sole discretion, PN shall make delivery to Microsoft of the Standard Code. At that time, PN shall deliver to MS, PN's latest version of Standard Code, including works in progress. PN shall also provide MS with six man-months of free consulting help by knowledgeable PN employee's to train MS on how to build and create derivative works of the Standard Code.

5. MS shall have the option, at its sole discretion, of receiving two further deliveries, with associated six months of free consulting, of PN's latest versions of Standard Code, including work in progress, during the two years following the date of the above delivery, for an additional fee of $25 million dollars for the first optional delivery, and $30 million for the second. MS shall decide the dates for such deliveries at its sole discretion. If such deliveries are made, then the code delivered shall be considered Standard Code for purposes of this agreement and shall be subject to all the terms of this agreement.

6. PN shall grant Microsoft a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up license to use the trademarks "Real Audio" and "Real Video" with MS products which incorporate Standard Code, or which use PN specifications, or which are compatible with Standard Code.

7. PN shall grant Microsoft a license to create and distribute products, not restricted to products including Standard Code, using PN's patents, that have been granted, applied for, or which may be applied for in the next five years.

8. PN shall grant Microsoft access to, and the right to create products conforming to, the specifications of any PN product, not restricted to products including Standard Code, that have been created or which may be created in the next five years. Such specifications shall include specifications for API's, protocols, and formats.

9. In the event that MS is sued by a third party, PN agrees to assign sufficient rights to MS to enable MS, at its sole discretion, to counter-sue such third party, and for MS to control such suit.

10. MS and PN shall work in good faith to conclude promptly the agreement currently being negotiated to align media file formats, and client technology.

11. For three years after signing of this agreement, MS agrees to negotiate in good faith with PN for a binary distribution license to MS created derivative works of Standard Code with terms no less favorable those granted to other resellers of MS software.

12. In consideration for the above rights, MS's sole financial obligation, unless explicitly provided otherwise, shall be to pay PN the sum of $30 million dollars. Of this sum, $20 million shall be paid within 30 days of signing this agreement, $10 million shall be paid on satisfactory delivery of the Standard Code to MS.

13. If within three years of signing this agreement, PN licenses all or a substantial portion of the Standard Code in source form for other than escrow purposes, or provides a royalty free binary license to the server portions of the Standard to a third party, then Microsoft shall be entitled to a refund of all monies paid for delivery of Standard Code.

14. PN agrees to sell to MS non-voting preferred stock, convertible into voting or non-voting common stock (at Microsoft's option), equal to a 20% interest for a sum of $60 million to Microsoft, and Microsoft agrees to purchase it.

13. PN will grant Microsoft a five-year option to purchase for $100 million an additional interest in PN (which will be on voting or non-voting stock at Microsoft's option) equal to 20% of the fully-diluted stock after the exercise of the option.

14. As long as Microsoft holds at least 5% of the fully-diluted stock of PN, at Microsoft's option, PN will offer a Microsoft designee a seat on the PN Board of Directors or the right to be an observer to the PN Board of Directors.

15. The terms of this agreement shall be confidential, and not disclosed by a party to this agreement without express consent of the other party. The timing and content of an announcement of this agreement must be jointly agreed.

16. If a competent court or government entity shall strike down any particular term of this agreement, the rest of the agreement shall continue in full force and effect.

17. If there is disagreement about the meaning of any term of this agreement, or about the obligations of the parties in this agreement, the parties agree to promptly submit the disagreement to binding arbitration,

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whereby each party shall pick an arbitrator, and the arbitrators shall pick a third, and the majority vote of the arbitrators shall decide.

18. MS and PN warrant that they have sufficient right and title to enter into this agreement.
19. Usual disclaimers, limitations of liability, etc.
20. The laws of the State of Washington shall govern this agreement.

—Original Message—
From: Paul Maritz
Sent: Sunday, June 15, 1997 9:04 AM
To: Anthony Bay; Greg Maffei; David Rinn; Jim Durkin
Cc: Bob Gomulkiewicz (LCA); Bill Gates
Subject: PN & Vxtreme - Sunday call, attorny-client confidential

We took Robg through the "lets do both" scenario yesterday, with somewhat predictable results. He says he will never do a deal where we first do a deal with Vxtreme - reason being if there code base gets entrenched the level of risk to him of not being able to build value on top of it, have decent transition, new players in equation, etc. gets too high.

We articulated back our dilemna that (i) if we do deal with him first, then doing Vxtreme deal may be impossible, mainly for regulatory concerns, possibly for people concerns, and (ii) Vxtreme is on the block, they will not sit around for long period. So we could end having neither PN, nor Vxtreme.

On the other hand, I must admit that in the absence of an IP concern, and if we could be confident to get it done, I would rather do a "Proposal 1" PN deal. Reason being that Vxtreme's assets are really at the 56K+bit video space, and for a while this going to be an audio/low-bit rate battle, and there PN has the overwhelming market advantage. I remember how long it took to move Novell. We can re-build/buy equivalent assets to Vxtreme ourselves, if we have time. So this comes down to assesment of:

1. Vxtreme IP - how serious is it? Hard to know as we have not done close due diligence, but they make big claims. If Vxtreme gets bought by IBM or even Oracle, I worry a whole lot less (unfortunately it will miss our x-license window with IBM, but we will come to some arrangement with IBM). So danger is if Nscp busy Vxtreme (worry some), or if they get bought by some "entrepreneurial outfit" (seems unlikely??).
2. Recreating Vxtreme scaleable codec asset - are other companies working on this?
3. Complexity of doing a deal with Robg. Do we get it done or not. We would have to basically get the key elements of a deal done on Monday, or risk losing Vxtreme.

I think we should focus on these three topics for 12pm call.

Wrt compexity of doing deal with Robg, issues are:
1. We would have to get unfettered access to use Real Audio/Video with our products, and they cannot create "Better Real Audio" without giving it to us too.
2. We have to be aligned on protocols/formats. They claim that they are signing up to do this via the "Chris Phillips" discussions. But what is the stick to keep them aligned. They could want lots of "outs" on this.
3. We have to decide how to handle UNIX (default is that we get the code and market it too).
4. They want to keep their splitter technology out now. I think it is OK, but we have to crisp.

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