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September 21, 2017

Via Email

Hon. James L. Robart
United States District Judge
United States Courthouse
Seattle, Washington 98101

Re: *Microsoft Corp. v. U.S. Dept. of Justice*, No. 17-CV-00538JLR

Dear Judge Robart:

The parties submit this letter jointly in response to Your Honor's request for a brief summary of open discovery issues in anticipation of the telephonic conference set for 1:30 p.m. today.

Microsoft asserts facial and as-applied challenges to the constitutionality of 18 U.S.C. § 2705(b), which authorizes the issuance of non-disclosure orders ("NDOs") in connection with legal process seeking information from Microsoft concerning its customers. Microsoft has therefore sought discovery from the Federal Defendants concerning the applications for NDOs issued to Microsoft in recent years, which includes considerable material filed under seal in other courts, much of which is subject to the constraints of Fed. R. Crim. P. 6(e), governing grand jury secrecy. The nature of these documents, and the fact that they are located across the country (and generally maintained in files by investigation rather than by the court's docket number), pose logistical challenges for both parties. As a result, the parties have been working together to explore ways to facilitate production of the information Microsoft seeks without imposing unnecessary burdens on the government. The parties believe relief from certain interim deadlines will increase the likelihood that the parties can resolve these issues without having to burden the Court with motion practice.

The parties propose adjusting four deadlines—without disturbing the June 4, 2018 trial date:

Disclosure of expert testimony under FRCP 26(a)(2): old deadline of October 17, 2017;
new deadline of **November 9, 2017**

Motions related to discovery to be filed by: old deadline of November 17, 2017; new
deadline of **December 12, 2017**

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Discovery completed by: old deadline of December 18, 2017; new deadline of **January 11, 2018**

Dispositive motions and motions challenging expert testimony: old deadline of January 18, 2018; new deadline of **February 12, 2018**

The parties look forward to discussing these proposed changes to the schedule, as well as the reasons for our request, with the Court.

Very truly yours,

Davis Wright Tremaine LLP

/s/ Stephen M. Rummage

Stephen M. Rummage

United States Department of Justice

/s/ Helen J. Brunner

Jennie Kneedler
Helen J. Brunner