

# Caldera

## FOR IMMEDIATE RELEASE

### **CALDERA SUBMITS EVIDENCE TO COUNTER MICROSOFT'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

Evidence Includes E-mail and Other Documents Exchanged Between Bill Gates and Other Top-Level Microsoft Employees

Salt Lake City, UT -- April 28, 1999 -- Caldera® today filed publicly a comprehensive, 188-page Statement of Facts in its antitrust lawsuit against Microsoft. The statement will serve as a factual foundation for subsequent filings by Caldera in U.S. Federal Court in Utah required in response to nine motions for partial summary judgment brought by Microsoft. In January, Microsoft submitted the motions in an attempt to have portions of Caldera's case thrown out. Caldera's Statement of Facts, along with soon-to-be-filed individual responses to Microsoft's motions, introduce evidence never before made public that establishes factual support for Caldera's claims.

This evidence includes 449 exhibits, expert reports, and deposition testimony of Microsoft executives including Bill Gates, Steve Ballmer and Brad Silverberg.

"Our filings establish Microsoft's liability in our antitrust lawsuit," said Bryan Sparks, President and CEO of Caldera, Inc. "For the first time since we filed our case in July of 1996, the public will be able to see some of the evidence that supports our contention that Microsoft systematically and routinely engaged in predatory acts in maintaining their operating system monopoly -- acts that involved employees at all levels of the company."

The comprehensive Statement of Facts presents a chronology of Caldera's evidence, much of which is presented in the form of Microsoft e-mails, internal memos and sales reports. Caldera believes its evidence will demonstrate a contradiction between what Microsoft has said publicly and done privately.

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For example, in the Aug 16, 1993 issue of PCWEEK, Bill Gates was quoted as saying, "Is there anything Microsoft has ever done to intentionally build in incompatibilities? The answer is absolutely not." However, when Microsoft was designing and coding Windows 3.1, one of its senior engineers, Phil Barrett, said in a September 1991 e-mail, "heh, heh, heh...my proposal is to have bambi [code name for work on Windows 3.1] refuse to run on this alien OS [DR DOS 6]. comments? The approach we will take is to detect dr 6 and refuse to load."

Caldera believes its evidence establishes that:

Microsoft has used misleading product announcements known in the industry as "vaporware" to dampen sales and diffuse interest in DR DOS

Microsoft made false and misleading statements about DR DOS to create FUD (Fear, Uncertainty and Doubt) in the industry

Microsoft developed intentional incompatibilities to make it appear to be difficult for DR DOS to work with Windows

Microsoft used "per-processor" and other exclusionary licensing terms to block out DR DOS

Moreover, Caldera believes its evidence demonstrates that Windows 95 is not an "integrated operating system" as Microsoft has asserted, but rather a simple combination of Windows and MS-DOS. Microsoft documents reveal that Microsoft released Windows 95 as a single product to eliminate operating system competition from Novell.

Until recently, almost all court filings containing information coming from Microsoft documents have been held under court seal because Microsoft has designated those documents as confidential under a protective order. Caldera claims that Microsoft has overused the confidentiality designation.

During the course of Caldera vs. Microsoft, the first of several antitrust lawsuits brought against Microsoft in the past three years, Microsoft has attempted to discredit Caldera's claims by making statements to which Caldera was unable to respond because the documents were previously sealed.

For instance, Microsoft Associate General Counsel Tom Burt said in February 1999, "There is simply no factual basis for Caldera's claims. Many of Caldera's allegations merely recycle claims that the Federal Trade Commission and Department of Justice reviewed years ago and decided were  
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groundless...After nearly three more years of investigation, Caldera still has no evidence to support its claims." The public can now see some of the evidence Caldera relies on to support its claims.

Burt's statement that Caldera's allegations have "no factual basis" and were found by the government to be "groundless" are contradicted by a statement by Attorney General Janet Reno at the conclusion of the government's investigation of Microsoft in July 1994. Reno said, "Microsoft's unfair contracting practices have denied other U.S. companies a fair chance to compete, deprived consumers of an effective choice among competing P.C. operating systems, and slowed innovation." In addition, Anne K. Bingaman, Assistant Attorney General in charge of the Antitrust Division in 1994 said, "Microsoft is an American success story but there is no excuse for any company to try to cement its success through unlawful means, as Microsoft has done with its contracting practices." Even though Microsoft agreed in 1994 to a consent decree dramatically changing its licensing practices, Caldera alleges in its case that Microsoft continued to engage in anticompetitive practices to maintain its operating system monopoly.

"Microsoft attempts to downplay the use of e-mail as evidence, even though in his recently released book, Gates counsels that all business communication should flow through e-mail," said Steve Hill, lead attorney for one of Caldera's law firms handling this case. "Caldera has attached Microsoft's e-mail and other Microsoft documents as exhibits to its Statement of Facts. These documents show that what Microsoft discusses in e-mail often translates into action."

#### Hearing Schedule

The Statement of Facts filed today and subsequent rebuttals to each of Microsoft's motions for partial summary judgment are preparatory to a series of hearings scheduled by U.S. District Judge Dee Benson, who has been assigned as trial judge to Caldera v. Microsoft. During these hearings, Judge Benson will rule on Microsoft's nine separate motions to have portions of Caldera's case thrown out. The hearings, which begin on May 25, will take place in U.S. District Court in Salt Lake City, where the case will eventually go to a jury trial on January 17, 2000. A schedule of these hearings can be accessed at [www.calderathin.com/lawsuit/index.html](http://www.calderathin.com/lawsuit/index.html).

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## Contact Information

Caldera, Inc. can be reached at (801) 426-5001 or via E-mail at [legal@caldera.com](mailto:legal@caldera.com). A full copy of Caldera's Statement of Facts and additional information about Caldera vs. Microsoft can be accessed at [www.caldera.com](http://www.caldera.com).

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Caldera, Inc., the parent company of Caldera Systems, Inc. and Caldera Thin Clients, Inc., was founded by Bryan Sparks in October 1994 as a start-up venture funded by Ray Noorda, former CEO of Novell®, Inc. Caldera Thin Clients, Inc. provides compact solutions designed for Internet set-top devices and other embedded OEM solutions, including DR DOS and DR-WebSpyder, a graphical, DOS-based Internet browser. Caldera Systems, Inc. designs, develops and markets a line of Linux-based business solutions, including OpenLinux, technical training and support.

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