MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

(302) 658-9200
(302) 658-3989 FAX

STEPHEN J. KRAFTSCHIK
(302) 351-9378
(302) 498-6233 FAX
skraftschik@mnat.com

January 10, 2018

The Honorable Richard G. Andrews
United States District Court
for the District of Delaware
844 North King Street
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: *Acceleration Bay LLC*; C.A. Nos. 16-453 (RGA); 16-454 (RGA); and 16-455 (RGA)

Dear Judge Andrews:

On December 15, 2017, pursuant to the Court's December 12, 2017 Order, Defendants submitted the attached claim constructions for Term 10 (network) and the two preamble terms: Terms 24 and 25 (the "Preamble Terms"). For the Preamble Terms, the constructions were:

- Term 24: "The preamble is limiting. 'A non-routing table based computer readable medium containing instructions for controlling communications of a participant of a broadcast channel within a network;'" and

- Term 25 "The preamble is limiting. 'A computer-based, non-routing table based, non-switch based method for adding a participant to a network of participants.'"

At the hearing, Plaintiff agreed to Defendants' constructions, including for the two Preamble Terms. Dec. 18, 2017 *Markman* Tr. at 8:3-9, 9:5-14 (Ex. A).

Your Honor requested that the parties submit a joint agreed order. Plaintiff agrees with the construction for Term 10 ("network") but is now unwilling to agree (fully) to Defendants' constructions for the Preamble Terms. Even though Defendants' December 15 Constructions plainly state that the "The preamble is limiting," Plaintiff's position now seems to be that the preambles are not limiting and that Plaintiff did not agree to this aspect of Defendants' constructions. This is not an issue that Plaintiff raised when it agreed to Defendants' December 15 constructions. Nor did Plaintiff reserve any rights as to these constructions when it made that agreement. Plaintiff's failure to timely raise this issue waives it. Moreover, from a substantive position, Plaintiff's position makes no sense. The language of the preambles was substantively amended during prosecution to secure allowance of these claims.

Further, there would have no reason for Your Honor to construe or the parties to agree to a construction of the Preamble Terms if they were not limiting.

Accordingly, Defendants request entry of their attached proposed order.

Respectfully,

/s/Stephen J. Kraftschik

Stephen J. Kraftschik (#5623)

SJK:ncf
Enclosure
cc: Clerk of Court (Via Hand Delivery; w/enclosure)
All Counsel of Record (Via Electronic Mail; w/enclosure)