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December 13, 2017

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:

When addressing Term 19 at the hearing Plaintiff stated that “the approach that the Court took with respect to m-regular, pointing to the configured to language is exactly the way to resolve the issue here.” Tr. at 62:6-8. The Plaintiff then explained “Our position is, if the network is *configured* such that it would be m-regular and incomplete, *if that's a state that it seeks [and] achieves*, then it's infringing.” *Id.* 71:15-17 (emphasis added); *see also id.* at 67:2-5; 69:12-16. In response, Defendants provided the Court with an alternative that was based on the way the Court resolved the m-regular dispute, *i.e.*, “thus the m-regular graph is configured to maintain a non-complete state.” *Id.* at 74:17-75:19. In light of the parties’ apparent agreement on the “configured to” aspect of the construction, the Court invited the parties to discuss this term and to provide any further comments to the Court. Tr. at 77:21-78:4.

The Parties conferred but were unable to reach agreement. Yesterday, Plaintiff proposed a new construction that does not include or capture the essence of the “configured to” language it advanced at the hearing. Its new construction merely restates that the network is non-complete (“one¹ or more of the participants are not directly connected to each other”) without resolving the central dispute between the parties, *i.e.*, whether the claims cover a network *configured to be complete* that may have non-completeness by happenstance, such as may be caused by the inability of participants to establish a direct connection. The criticality of being non-complete was emphasized both during the original prosecution (*see, e.g.*, B-1, ‘344 Patent File History, 9/10/03 Amendment, at 11) and during the more recent IPR proceedings, where Plaintiff told the PTAB that the claimed network is “always... an incomplete graph” (D-2, Patent Owner’s Preliminary Response to Petition for the ‘344 Patent at 26). Defendants’ original

¹ Defendants do not understand how it is possible for “one” participant to “not [be] directly connected to each other” – this is nonsensical.

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construction of Term 19, i.e., “thus the m-regular graph is always non-complete” is correct because it holds Plaintiff to the clear statements it made to the PTAB and resolves the central dispute between the parties that occasional incompleteness is not covered by these claims. However, Defendants respectfully suggest that, at the very least, the claims should be interpreted to require a non-complete state whenever it is possible for the network to be non-complete, which Defendants’ alternative construction (“thus the m-regular graph is configured to maintain a non-complete state”) captures.

Respectfully,

/s/ Stephen J. Kraftschik

Stephen J. Kraftschik (#5623)

SJK:nf

cc: Clerk of Court (Via Hand Delivery)
All Counsel of Record (Via Electronic Mail)