

and to non-professional subscribers for \$29 per month per controlled device, plus \$1,000 per month per distributor. TotalView is offered through distributors to professional subscribers for \$150 per month per controlled device and to non-professional subscribers for \$150 per month per controlled device, plus \$7,500 per month per distributor (a single TotalView distributor payment covers distribution of DepthView, PowerView, and TotalView to professional and non-professional subscribers).

It is important to note, however, that the incremental costs to a user of the PowerView and TotalView services are lower than the total approved fees because the total fees, described above, include fees for NQDS. The NQDS-only fees (incremental to the Level 1 charges) are \$30 for professional users and \$9 for non-professional users. There is no distributor fee for the NQDS service. Therefore, the incremental cost of PowerView is \$45 per professional subscriber and \$20 per non-professional subscriber. The incremental cost for TotalView is \$120 per professional subscriber and \$141 per non-professional subscriber. The DepthView prices cited above do not include any NQDS charges, because DepthView is treated as an upgrade from the Level 1 service. In other words, the approved fees for DepthView of \$50 for professionals and \$25 for non-professionals are also the incremental cost of DepthView. The incremental fees over and above the fees for NQDS form the basis of Nasdaq's proposed Enterprise License Pilot.

Enterprise License Pilot. To encourage the broadest possible display of the SuperMontage data contained in the ViewSuite products, Nasdaq is proposing an optional pilot program to offer an enterprise-wide license to distributors. This pilot would enable each distributor to provide a ViewSuite product to large numbers of subscribers for a fixed rate based upon a multiple of (1) the incremental cost of the ViewSuite product⁹ and (2) the size of that distributor's reported subscriber base for NQDS (in the case of PowerView and TotalView) or for Level 1 (in the case of DepthView) for the Predicate Month—December 2002, unless a distributor had no NQDS or Level 1 subscribers in December 2002, in which case the license fee will be based upon the most recent reported month thereafter in which the

distributor reported subscribers. The fee for an Enterprise License will remain the same throughout the pilot, even if its NQDS subscriber base increases or decreases. This Enterprise License Pilot does not apply to the Level 1 or NQDS data services. Therefore, all distributors will continue to be obligated to report and assess monthly fees separately for all entitled Level 1 and NQDS subscribers throughout the pilot period. In order to apply the Enterprise License equally across all distributors, the Enterprise License program will have a specific multiple that applies equally to all distributors; distributors with large reported subscriber bases will pay proportionately more than those with smaller subscriber bases.

More specifically, the price of an Enterprise License for TotalView will equal the incremental cost of providing TotalView to 25% of each distributor's Predicate Month NQDS professional and/or non-professional subscriber base. In addition the distributor would have to pay the approved monthly distributor fee of \$7,500. For example, if a distributor had 8,000 NQDS professional displays and 2,000 non-professional displays in December 2002, it could purchase a TotalView professional and non-professional Enterprise License for a monthly charge of (25% of 8,000) times \$120 (the incremental cost of TotalView for professional subscribers) plus (25% of 2,000) times \$141 (the incremental cost of TotalView for non-professionals subscribers), plus the distributor fee of \$7,500, for a total of \$318,000 per month. That monthly cost would apply throughout the nine-month pilot program regardless of how the distributor chooses to expand its TotalView user base.

The price of an Enterprise License for PowerView will equal the incremental cost of providing PowerView to 35% of each distributor's Predicate Month NQDS professional and/or non-professional subscriber base. In addition the distributor would have to pay the approved monthly distributor fee of \$1,000. For example, if a distributor had 8,000 NQDS professional displays and 2,000 non-professional displays in December 2002, it could purchase a PowerView Enterprise License for a monthly charge of (35% of 8,000) times \$45 (the incremental cost of PowerView for professional subscribers) plus (35% of 2,000) times \$20 (the incremental cost of PowerView for non-professionals subscribers), plus the \$1,000 distributor fee, for a total of \$141,000 per month. That monthly cost would apply throughout the nine-month pilot program regardless of how the

distributor chooses to expand its PowerView user base.

The price of an Enterprise License for DepthView will equal the incremental cost of providing DepthView to 25% of each distributor's Predicate Month 2002 Level 1 professional and/or non-professional subscriber base. In addition the distributor would have to pay the approved monthly distributor fee of \$1,000. For example, if a distributor had 8,000 Level 1 professional displays and 2,000 non-professional displays in December 2002, it could purchase a DepthView Enterprise License for a monthly charge of (25% of 8,000) times \$50 (the incremental cost of DepthView for professional subscribers) plus (25% of 2,000) times \$25 (the incremental cost of DepthView for non-professionals subscribers), plus the \$1,000 distributor fee, for a total of \$113,500 per month. That monthly cost would apply throughout the nine-month pilot program regardless of how the distributor chooses to expand its DepthView user base.

Non-Display Enterprise License Pilot. Distributors that offer non-display uses of the ViewSuite data packages can also benefit from the non-display enterprise license pilot. Since such distributors may have no NQDS subscribers at present, we will assess the fee based on a percentage (using the same percentages described above for the Enterprise License) of the non-display controlled devices they serve from a predicate month. The predicate month to determine the base for the license is the most recent month prior to the launch of the pilot program.¹⁰ This is consistent with the definition of controlled device in our original rule filing on these products and allows non-display end users to benefit from this pilot period.

The pilots will begin on April 1, 2003, and will run for nine months, but will only be available to distributors that enroll during the first two months of the pilot.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

¹⁰ To calculate the fee for the non-display license Nasdaq will use the non-display ViewSuite population in the most recent month prior to the launch of the pilot program: *i.e.* March 2003. That population (and the resulting monthly fee) would then be fixed for the term of the enterprise license (although the vendor would be entitled to extend the benefits to as many additional customers as they liked). Telephone Conversation between Eleni Constantine, Associate General Counsel, Office of General Counsel, Nasdaq, and Susie Cho, Special Counsel, Division of Market Regulation ("Division"), Commission, on March 6, 2003.

⁹ Nasdaq must utilize the incremental cost of the ViewSuite products, rather than the total cost, because the NQDS and Level 1 data feeds are subject to the Nasdaq UTP Plan and may not be discounted.