

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 05-cr-00545-EWN

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSEPH P. NACCHIO,

Defendant.

TENDERED FOR FILING
MARCH 15, 2007

Edward W. Nottingham
United States District Judge
by Jamie L. Hodges
Judicial Assistant/Deputy Clerk

MOTION FOR FORTHWITH STATUS HEARING
BASED UPON RECENT PREJUDICIAL PRETRIAL PUBLICITY

Defendant Joseph P. Nacchio, by and through undersigned counsel, requests a forthwith hearing to address the implications of a detailed article in today's Rocky Mountain News setting forth what appears to be a prosecutorial order of proof for the trial starting Monday. Mr. Nacchio shows the Court as follows:

1. The RMN article, attached as Exhibit A, sets forth a timeline of events claimed to be taken from Qwest news releases, press interviews, analysts calls, congressional testimony and civil and criminal court documents. However, there is at

least one fact identified in the timeline that, to our knowledge, has *never* come up in any filing or transcript in this criminal case, or in any of the numerous civil cases (we have not had time to do a complete search on this point):

In mid-January, Qwest stock has rebounded to \$45 a share, but Nacchio says he still believes it is undervalued. *Qwest spends nearly \$1 billion to buy back 22 million shares, a move that bolsters the company's stock price.*

Ex. A (italicized emphasis added).

Until now, this fact- - that Qwest bought back 22 million shares in January - - has never been referenced in the media, certainly not in this case and we believe also not in the civil cases. Moreover, the conclusion - - that it bolstered the stock price, juxtaposed with Mr. Nacchio's own stock sales in January - - has never been reported, but may well be a prosecution theory. We cannot help but wonder as to the source.

2. The organization of this timeline reads like a prosecutor's opening statement. We cannot accept that a Rocky Mountain News reporter did not have assistance in putting together this timeline. We have previously expressed concern about prosecutorial efforts to prejudice Mr. Nacchio in the media, and we express that

concern now - - did the government have a hand in this article. We request a hearing on this concern as soon as the Court permits.

3. Regardless of the provenance of the material for this particular article, the fact is that it is out there and jury selection begins Monday. A continuance is pointless because we cannot control what might continue to be written about this case. The Denver Post, for example, has an entire blog page devoted to this case, complete with evidentiary details. The defense has completed a demographic survey of the two divisions from which our jury pool will be drawn. The results show that, in the Denver Division, 49% of the people have heard of Mr. Nacchio, and 32% have a negative impression. The negative numbers go up among those who read one or both of the two Denver newspapers. For readers of the Rocky Mountain News, 61% have heard of Mr. Nacchio, and 45% have a negative impression. For readers of The Denver Post, 64% have heard of Mr. Nacchio, and 52% have a negative impression.

4. Accordingly, the relief we ask for is to be able to conduct individual voir dire on the issue of recent publicity, and the source of negative attitudes toward Mr.

Nacchio. General questioning of the venire, we fear, will both enhance the risk of infecting other prospective jurors, and inhibit frank responses.

5. We are submitting this motion directly to chambers in order to avoid further negative publicity.

Respectfully submitted this 15th day of March, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2007, a true and correct copy of the foregoing MOTION FOR FORTHWITH STATUS HEARING BASED UPON RECENT PREJUDICIAL PRETRIAL PUBLICITY was served on the following via email:

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