

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

3 Criminal Action No. 05-cr-00545-EWN

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs.

7 JOSEPH P. NACCHIO,

8 Defendant.

9 REPORTER'S TRANSCRIPT
10 TRIAL TO JURY
11 VOLUME ONE

12 Proceedings before the HONORABLE EDWARD W. NOTTINGHAM,
13 Judge, United States District Court for the District of
14 Colorado, commencing at 12:04 p.m., on the 20th day of March,
15 2007, in Courtroom A1001, United States Courthouse, Denver,
16 Colorado.

17
18
19
20
21
22
23
24 THERESE LINDBLOM, Official Reporter
25 901 19th Street, Denver, Colorado 80294
 Proceedings Reported by Mechanical Stenography
 Transcription Produced via Computer

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

APPEARANCES

1
2 For the Government

CLIFFORD B. STRICKLIN, ESQ.
JAMES O. HEARTY, ESQ.
KEVIN TRASKOS, ESQ.
United States Attorney's Office
1255 17th Street
Denver, Colorado
LEO WISE, ESQ.
COLLEEN CONRY, ESQ.
U.S. Department of Justice
1400 New York Avenue
Washington, D.C.

3
4
5
6
7 For the Defendant

HERBERT J. STERN, ESQ.
JEFFREY SPEISER, ESQ.
EDWARD NATHAN, ESQ.
MARK RUFOLLO, ESQ.
Stern & Kilcullen
75 Livingston Avenue
Roseland, New Jersey
JOHN M. RICHILANO, ESQ.
MARCI GILLIGAN, ESQ.
Richilano & Gilligan
1800 15th Street
Denver, Colorado

8
9
10
11
12
13
14
15 P R O C E E D I N G S

16 *THE COURT:* Good afternoon, members of the jury.
17 We're ready to hear the opening statements of the lawyers.

18 Mr. Hearty.

19 **OPENING STATEMENT**

20 *MR. HEARTY:* May it please the Court. Counsel.
21 Ladies and gentlemen of the jury, good afternoon.
22 This is a case about cheating. Joe Nacchio, who is
23 the chief executive officer at Qwest Communications, he sold
24 100 million worth of Qwest stock, and when he knew about
25 problems at Qwest, problems that people outside Qwest did not

1 know.

2 And after learning about those problems, in
3 December 2000, Mr. Nacchio sold his stock faster than he ever
4 sold it before.

5 Joe Nacchio is charged with 42 counts of insider
6 trading for selling \$100 million worth of Qwest stock in the
7 first five months of 2001.

8 Now, the judge will instruct you on what the law is.
9 And just in its most basic terms, it is illegal for a corporate
10 insider to sell stock in his company on the basis of important
11 inside information; that is, information people outside the
12 company don't have. And that's based on a very simple
13 principle, fairness.

14 Corporate insiders are in a position where they can
15 take advantage of the information that they have that people
16 outside the company don't have.

17 Now, at its core, this case is fairly simple.

18 Joe Nacchio was the chief executive officer of a very
19 large company, Qwest Communications. And because of that
20 position, he had -- he knew a lot of information that people
21 outside the company did not know. And in December 2000,
22 Mr. Nacchio learned of problems that Qwest would be facing in
23 2001. And those problems were kept inside Qwest. People
24 outside the company did not know about them.

25 In fact, Mr. Nacchio frequently talked to investors

1 during this time frame, and he told investors that everything
2 at Qwest was great, that Qwest was better than his competitors.

3 Now, Mr. Nacchio, the evidence will show, knew that
4 the problems that he was told about were not known outside the
5 company. And he knew that the information was information that
6 would be important to investors, and that he sold \$100 million
7 of Qwest stock.

8 The people outside Qwest, including the people who
9 bought the stock that he sold, did not have the benefit of
10 knowing about those problems, so when they made the decision to
11 buy Qwest stock, they didn't have the advantage that he had of
12 knowing about those problems when they made the decision how
13 much they were willing to pay for Qwest stock.

14 When Joe Nacchio sold \$100 million worth of Qwest
15 stock in 2001, we will prove that the playing field was not
16 level.

17 Ladies and gentlemen, my name is Jim Hearty, and
18 together with my colleagues, we represent the United States of
19 America. And I know you were introduced to most of my
20 colleagues yesterday, but many of you were sitting in different
21 seats in different courtrooms. I'm going to take a moment now
22 to introduce you to everybody.

23 This is Cliff Stricklin, he's another one of the
24 attorneys on the case; Colleen Conry; over here is Leo Wise,
25 who I don't think you have been introduced to yet; and Kevin

1 Traskos; and also assisting the United States in this case is
2 Special Agent Susan Montoya, sitting here next to Mr. Traskos,
3 with the FBI; and Postal inspector Joe Jan Henderson; and
4 finally Mr. Mike Denno, who is going to be helping us with our
5 courtroom presentation so you'll be able to see exhibits and so
6 forth, hopefully, on the screens in front of you here shortly.

7 This is a straightforward case. It isn't a case about
8 accounting; it's a case about fairness. There would have been
9 nothing wrong with Mr. Nacchio selling his stock, so long as he
10 told investors outside of Qwest, including the investors who
11 bought the stock that he sold, about the problems that he knew
12 about inside Qwest, problems that he knew about because of his
13 position as an insider at Qwest Communications.

14 Now, in late 2000, you're going to hear that many of
15 Qwest's competitors were beginning to have problems. And in
16 November and December of 2000, big companies like AT&T, SBC and
17 WorldCom were telling their investors they weren't performing
18 as well as they had expected to. They were telling investors
19 they weren't going to grow as much as they had previously told
20 them to expect.

21 You're going to hear that growth, particularly in this
22 time frame and in this industry, telecommunications, was very
23 important to investors and so, therefore, had a significant
24 impact on company stock price.

25 And you're also going to hear that when the company

1 failed to meet the growth objectives that they set for
2 investors, the company's stock price was punished. It would
3 typically drop.

4 Now, Mr. Nacchio told you -- chose to talk to
5 investors frequently. And you'll hear that he was a persuasive
6 promoter of Qwest. And he knew that what he said about Qwest,
7 particularly what he said about Qwest's future growth
8 projections, had a significant impact on Qwest stock prices.

9 And in late 2000 and early 2001, Mr. Nacchio talked to
10 investors frequently. And he repeatedly told them that Qwest
11 was different than his competitors who were struggling.

12 In fact, he told investors to expect high growth from
13 Qwest. And in his words, Qwest's growth was two to three times
14 that -- that is, Qwest's growth that he was projecting for
15 investors was two to three times that of its competitors. And
16 unlike other companies, Mr. Nacchio told investors that he was
17 very confident that Qwest would achieve those high growth
18 targets that he told investors to expect.

19 However, at the same time, Mr. Nacchio is being told
20 very different information from his executive team inside
21 Qwest. He was being told that the targets that he set for 2001
22 were unrealistic. He was being told that in order for Qwest to
23 achieve those growth targets, Qwest would have to grow in a way
24 that it never grew before.

25 In fact, he was told that Qwest would have to grow its

1 core recurring business at twice the rate that it had grown in
2 2000; that is, it would have to double its rate of growth when
3 economic conditions at that time were driving the prices down
4 for many of Qwest's products.

5 Now, inside Qwest, Mr. Nacchio knew about those risks.
6 However, outside Qwest, investors didn't.

7 Now, by April of 2001, Mr. Nacchio knew that the risk
8 that Qwest would not be able to achieve the growth targets that
9 he told investors to expect was even greater, because by
10 April 2001, Mr. Nacchio had the results of how Qwest had
11 actually performed in the first three months of the year. And
12 what he knew is that Qwest was not growing at a rate that was
13 sufficient to hit the yearly targets that he had told investors
14 to expect.

15 He was also told during that time period that the way
16 that Qwest had made its numbers in the past, that is, the way
17 that Qwest had achieved the growth targets that they told
18 investors to expect, were large, one-time transactions, and he
19 was told that in the second half of 2001, not to count on
20 large, one-time transactions to make the numbers.

21 Now, inside Qwest, Mr. Nacchio knew of those risks.
22 But outside Qwest, investors didn't.

23 Now, with the benefit of knowing these risks, risks
24 that the public did not know, Mr. Nacchio sold \$100 million
25 worth of Qwest stock. And you will hear that keeping the

1 problems that Mr. Nacchio knew about inside the company from
2 getting out helped keep Qwest's stock price up. Therefore,
3 when Mr. Nacchio sold his stock, he made more money.

4 You'll also hear that Mr. Nacchio sold many more
5 shares of Qwest stock during this time period than he ever sold
6 before.

7 In fact, in just the first five months of 2001,
8 Mr. Nacchio sold 250,000 more shares than he had in the
9 previous 18 months combined.

10 Now, as I've described to you, you're going to learn
11 through this trial that there was information about problems
12 that Qwest was facing in 2001 that the public did not know
13 about. And whether or not Qwest, the company, should have
14 disclosed that information to investors is not what this case
15 is about.

16 What's important in this case is that Mr. Nacchio knew
17 about these problems, because he was a Qwest insider. And if
18 he was going to sell his stock, those problems needed to be
19 disclosed to other investors, and they weren't.

20 Now, the evidence will show that Joe Nacchio kept that
21 information from the public, because he knew that if disclosed
22 that it would impact Qwest's stock price. And one of Joe
23 Nacchio's rules at Qwest was, you never say anything that will
24 hurt the stock price. And Mr. Nacchio owned a lot of Qwest
25 stock.

1 You're going to hear, however, that the stock that
2 Mr. Nacchio owned was not stock that he went out and purchased
3 from the New York Stock Exchange like other investors; it was
4 stock that was granted to him by the company. And many of you,
5 I'm sure, have heard of stock options. The vast majority of
6 the stock that Mr. Nacchio sold that he's charged with in this
7 case he obtained from stock options.

8 Now, what stock options are is, they are an option
9 that Mr. Nacchio had to buy Qwest stock at a certain price.
10 And for the counts charged in the Indictment, Mr. Nacchio was
11 able to buy that stock at \$5.50. He turned around and he sold
12 that stock, essentially the same day, for roughly around \$40 a
13 share.

14 So Mr. Nacchio didn't have to pay any money out of his
15 pocket for those shares that he sold.

16 The evidence will show that Joe Nacchio knew the rules
17 against insider trading. In October 2000, Mr. Nacchio sent out
18 a notice to all Qwest employees. And the purpose of that
19 notice was to ensure compliance of Qwest with the laws against
20 insider trading. And in that notice, all Qwest employees were
21 told that it is a crime to sell Qwest stock on the basis of
22 important information that has not been disclosed to the
23 public.

24 Now, as you consider the evidence that the United
25 States will present to you during this trial, there are at

1 least three important facts that I'd like you to keep in mind
2 that show how Mr. Nacchio took advantage of investors when he
3 sold his stock.

4 The first is, that Mr. Nacchio controlled what Qwest
5 said to the public.

6 Two, Mr. Nacchio knew that investors wanted additional
7 information about how Qwest was growing.

8 And three, Mr. Nacchio didn't give them that
9 information. He didn't tell investors that much of Qwest's
10 past growth had been based upon large, one-time transactions
11 rather than on recurring business that is more stable and more
12 reliable.

13 Now, I'm going to explain some background facts to
14 you, so bear with me. I know many of you know a fair amount
15 about investments and stock markets, so some of this stuff
16 might be old news, but if you could bear with me while I go
17 through some basic facts that are important to understanding
18 the evidence in this case.

19 The first is related to the stock market. Qwest was a
20 public company, and what that means is that the company was
21 owned by the public in the forms -- form of stock.
22 Essentially, what stock respects is an ownership share in the
23 company. And Qwest's stock was traded on the New York Stock
24 Exchange.

25 What that is, that's actually a physical place in New

1 York City where buyers and sellers of Qwest stock would go to
2 determine a price that Qwest stock be bought and sold. It's
3 essentially an auction. And so for every share of Qwest stock
4 that Mr. Nacchio sold that he's charged with in the Indictment,
5 somebody had to purchase that stock, and they had to purchase
6 that stock for the price that he sold it for.

7 You're going to refer to hear people refer to Wall
8 Street, or in this case, street. What that means is large
9 investors and analysts. When people say, Mr. Nacchio talked to
10 the street, or talked to Wall Street, that's really what we're
11 talking about.

12 Analysts are people who follow stocks and companies
13 and their performance. So there were analysts in late 2000 and
14 early 2001 that followed Qwest's stock. And they would track
15 how Qwest was performing and monitor what Mr. Nacchio said
16 about Qwest's future growth projections.

17 And they would make recommendations to investors about
18 whether or not they should buy or sell or hold Qwest stock.

19 They also made recommendations about how much they
20 felt Qwest stock price was worth.

21 And you're going to hear that Qwest stock was owned in
22 different ways, basically. One of the main ways that Qwest
23 stock was owned by investors was through mutual funds. These
24 are basically just places where groups of people invest, and
25 they pay someone to make investment decisions for them. And so

1 these mutual fund companies, companies like Janus, American
2 Funds, Fidelity, they have analysts that work for them that
3 would follow Qwest stock and make recommendations as to whether
4 or not the fund managers should own Qwest stock or not.

5 Qwest stock was also owned by pension funds.
6 Basically, worked the same way. People's retirement savings
7 being managed by a fund manager, who is making decisions about
8 how those funds are invested.

9 And Qwest stock, of course, was also owned directly by
10 individual investors, who also at times would listen to the
11 recommendations of the analysts.

12 Now, Mr. Nacchio knew the importance of impressing
13 Wall Street, and so he chose to talk to Wall Street frequently.

14 It's worth having some basic understanding of how
15 investors and analysts value Qwest stock during this time
16 period. And so I'm going to talk a little bit about how that
17 was done. There is going to be on your screen in front of you
18 some slides that I think they're -- you all share one of the
19 screens, so hopefully you'll be able to see this on the
20 projector.

21 Can you all see that on your screen?

22 Sorry about the delay.

23 So investors -- how investors make decisions about
24 Qwest stock. And one of the most important things I -- I
25 mentioned this a couple of minutes ago to investors, is what

1 was Qwest's future growth rate? So investors are more
2 concerned, of course, when they're making decisions about how
3 Qwest is going to do in the future, not necessarily what they
4 did in the past. They'll use the past information to try to
5 help determine what they're going to do in the future. What
6 they're interested in is how the company is going to do in the
7 future.

8 Particularly, they're interested in the future growth
9 rate of the company. And the idea there is, is that investors
10 are willing to pay more for stock today if that stock is
11 predicted -- that company, I should say, is predicted to grow
12 in the future.

13 And the more the company's predicted to grow in the
14 future, the higher price investors are generally willing to pay
15 today for that stock.

16 And so one of the other pieces of information that
17 investors -- I apologize.

18 Hopefully that makes more sense and tracks what I'm
19 telling you.

20 One of the other things that investors wanted to know
21 from Qwest, and from other companies, is, how are they growing?

22 That goes to investors are trying to evaluate whether
23 or not the growth projections being given to them by the
24 company are realistic, can they count on them?

25 And so investors want to know as much information as

1 they could about how the company was growing and what their
2 plan to grow in the future was.

3 And then finally, the last point on this slide is
4 investors wanted to know, did Qwest achieve their growth
5 targets? This relates to the credibility of what the growth
6 targets are. Investors are interested to look back at Qwest
7 management and say, have you achieved your growth targets that
8 you told us you were going to achieve in the past?

9 And you'll hear that Mr. Nacchio understood the
10 importance of achieving those growth targets. And in fact, he
11 told employees that even a small miss, that is, even a slight
12 miss, in achieving those growth targets that he sets for
13 investors would result in a serious impact to Qwest stock
14 price. And in Mr. Nacchio's words, Qwest stock will get
15 whacked if they miss by even a small amount.

16 The next thing I want to talk to you about is the
17 slide I had in front of you a minute ago, and we'll get there.

18 That is, what is guidance. You're going to hear in
19 this trial the term "guidance." And these are the growth
20 projections that Qwest management -- and at Qwest, it was Joe
21 Nacchio that set Qwest guidance, but it is what Mr. Nacchio
22 told investors to expect that the company could achieve.

23 And the future growth of the company.

24 You're going to hear from investors -- you're going to
25 hear that investors relied on guidance, because executives

1 inside the company like Mr. Nacchio know much more about the
2 company than people outside the company, so they relied on that
3 information in making their investment decisions. And guidance
4 is also referred to as targets. So you're going to hear these
5 growth projections that Mr. Nacchio makes referred to both ways
6 as guidance and targets. In fact, this afternoon, I'll
7 probably refer to them more as targets. That's just a term
8 that is more comfortable for my use. It's basically the same
9 thing. Guidance and targets.

10 Now, you'll hear that Mr. Nacchio knew the importance
11 that investors placed on guidance, and particularly on future
12 growth.

13 And so Mr. Nacchio's guidance to investors was that
14 Qwest would grow a lot in the future. And you'll hear that
15 that helped drive Qwest stock price up, or at least keep it up.

16 We will prove, however, that investors outside Qwest
17 did not know what Mr. Nacchio knew about the risks of Qwest's
18 ability to achieve that guidance that he told investors to
19 expect in 2001.

20 Now, many of you have probably seen the large sign on
21 the building just more than a block away from this courthouse,
22 the large Qwest sign on the Qwest tower. During this trial --
23 in fact, that's the sign -- by the way at night, for those of
24 you in the Denver area, blue neon light that comes out of that
25 sign, during this trial will take you to the 52nd floor of

1 the Qwest tower where Mr. Nacchio's office was, and where
2 Mr. Nacchio was told in late December -- December,
3 December 2001, and early -- 2000 and early 2001 that Qwest was
4 going to have big problems achieving the growth rates that
5 Mr. Nacchio told investors to expect in 2001.

6 But investors that bought the stock that Mr. Nacchio
7 sold weren't in those meetings. They didn't have the benefit
8 of knowing about those problems. So when they made the
9 decision to buy Qwest stock, they didn't know about those
10 problems, and Mr. Nacchio didn't tell them.

11 Just in terms of basic, what was Qwest and what is
12 Qwest. Large telecommunications company, headquartered here in
13 Denver.

14 And telecommunications, really what we're talking
15 about is phone companies.

16 Now, as you all know in 2000, also today, phone
17 companies do a lot more than just land line telephone service.
18 It's also internet service and cellular service, just other
19 kinds of information services.

20 But basically, we're talking about a phone company.

21 Now, U S West was the combination of two companies.
22 Qwest was a much smaller company that basically acquired a much
23 larger U S WEST in 2000.

24 U S West as probably most of you remember was the
25 local phone company that provided telephone service in Colorado

1 and 14 state region surrounding Colorado.

2 And U S WEST was much bigger than Qwest. When Qwest
3 acquired U S WEST, Qwest was only about 25 percent of the
4 combined company; whereas U S WEST was the remainder
5 three-quarters of the company.

6 And companies in the rel- -- and the relative size of
7 companies are often evaluated on revenue. So revenue is
8 something -- company's revenue and revenue growth is something
9 that was very important to investors when they evaluated
10 companies, including Qwest.

11 And all revenue is, that's the amount of money that
12 the company brings in during the course of the year.
13 Essentially, their income.

14 And there are only two types of revenue. There is
15 either recurring revenue and non-recurring revenue. And while
16 those two names -- two words might be readily apparent what
17 that means, it's worth understanding, because it's important in
18 this case.

19 Recurring revenue is where Qwest would have a customer
20 that would pay Qwest month after month after month. So Qwest
21 could count on receiving income or revenue from that customer
22 relationship.

23 So it would be like a telephone customer, someone has
24 a telephone service with Qwest, you pay your bill this month,
25 pay your bill next month, and so forth. Qwest can predict that

1 revenue and count on that revenue, because they're counting to
2 get it each month.

3 It's more predictable, it's more sustainable, it's
4 more reliable.

5 And you're going to hear in the telecommunications
6 industry, anyway, it was considered revenue of higher quality.

7 Now, non-recurring revenue, on the other hand, at
8 Qwest was referred to as one-timers. And the name is
9 descriptive. It was revenue that the company earned one time.
10 There wasn't an ongoing relationship with the customer, where
11 Qwest could count on a revenue stream that kept coming in. So
12 they'd have to start over each quarter or each period and earn
13 additional one-timers.

14 And the principal kind of one-timer at Qwest were
15 these large contracts, where Qwest would sell a customer access
16 to a piece of their network. And so basically what they would
17 do is a customer would buy the right to use a piece of their
18 network for 20 years. So let's say from Denver to Chicago, a
19 customer would go to Qwest and say, we just want to be able to
20 transmit this much information across your network for the next
21 20 years. And Qwest would structure those contracts in a way
22 that they would be able to get all of that money up-front,
23 essentially, paid up-front.

24 And so Qwest would generate all of that revenue today,
25 but they wouldn't get the revenue for the next 20 years.

1 You're going to hear that these one-timers, because
2 they have to start over with them each quarter, they're less
3 reliable, less predictable.

4 You're also going to hear that Qwest used these
5 one-timers as a way to achieve their growth targets that they
6 set with investors, starting in 1998 and through 2000.

7 Now, the problem with growing your company through
8 one-timers is that you have to start over each quarter. And if
9 you're growing your company by relying on one-timers, not only
10 do you have to be able to do as many of those one-timers as you
11 did last quarter, you have to do more to make the growth
12 projections that you told investors to expect.

13 And that problem is even further complicated in
14 2000 and 2001, because the industry was getting more and more
15 competitive, which was driving the price of Qwest one-timers
16 down.

17 So not only did Qwest have to sell more one-timers in
18 subsequent quarters to make -- to account for the growth, they
19 had to sell even more to make up for the prices that were
20 dropping in these one-timers that they sold.

21 I actually think I have a slide that I forgot to
22 project to you on this. I spent all of that time preparing it,
23 I'm going to make you look at it.

24 Again, just to review this, because this is important.
25 Two types of revenue, recurring revenue on the left-hand side

1 of your screen, and non-recurring on the right. And the way
2 this chart is set up is basically two examples to help you
3 understand the difference between recurring and non-recurring
4 revenue.

5 For recurring revenue, we're talking about something
6 like a telephone customer, ongoing relationship with a
7 customer. And on the other hand, non-recurring revenue, these
8 20-year contracts that I was telling you about, where Qwest
9 structures them in a way to get that revenue up-front, which is
10 great, of course, for the revenue today, but you don't have --
11 your -- you can't count on that revenue in the future. You
12 have to go out and sell more of these in the next quarter.

13 So the recurring revenue is considered more
14 predictable, reliable, sustainable, generally, higher quality.
15 Non-recurring, one-timers, you're going to hear that reference
16 a lot, both this afternoon while I'm talking and also during
17 trial, less reliable because Qwest has to start over each
18 quarter.

19 These are complicated deals. Qwest has to go out and
20 find a customer for these networks. And we're talking big, big
21 dollars. These are complicated deals to close.

22 Now, inside Qwest you will hear that Mr. Nacchio
23 valued recurring revenue over non-recurring revenue, basically
24 for the reasons that we've just talked about.

25 And internal Qwest financial documents, they tracked

1 their recurring revenue separate from their non-recurring
2 revenue, on their internal financial documents.

3 And you will hear that Mr. Nacchio pushed the
4 different divisions at Qwest to earn more recurring revenue and
5 to rely less on the more risky, one-time revenue.

6 However, outside Qwest, Joe Nacchio did not tell
7 investors how much of their revenue came from the one-timers.
8 He didn't break down the difference between one-time revenue
9 and non-recurring revenue, even though that's the way the
10 company tracked revenue inside, in their internal documents.

11 Now, this case isn't about whether or not Qwest, the
12 company, had to -- should have disclosed that breakdown.
13 However, we will prove that Joe Nacchio knew this information
14 was important to investors; and that he knew that investors
15 outside Qwest in late 2000 and early 2001 did not know how much
16 Qwest was relying on these one-time revenue deals to make their
17 numbers; and that Joe Nacchio knew that if he told investors
18 how much Qwest relied on one-time revenue, Qwest's stock price
19 would fall.

20 Because, of course, investors value recurring revenue
21 more than non-recurring revenue, for the same reason that
22 Mr. Nacchio did, because it was more predictable, more
23 sustainable, more reliable.

24 When investors were making decisions about whether or
25 not to hold -- own Qwest stock, they wanted to know, can they

1 count on those predictions, growth projections that Mr. Nacchio
2 told them to expect.

3 Now, I've got this large chart here I'm going to put
4 up, as long as I can get it up on the easel, and it's going to
5 show you rough kind of organization diagram of the company,
6 kind of how the company was broken up.

7 Just real basic schematic of how the company was
8 organized, and the principal players who interacted with
9 Mr. Nacchio directly on a routine basis.

10 And obviously, you met Mr. Nacchio. He was the head
11 man at the company, the chairman and the chief executive
12 officer.

13 You will hear that Mr. Nacchio was hired to be Qwest's
14 CEO in 1997, and that Mr. Nacchio had spent over 20 years at
15 AT&T and had risen to the highest levels at AT&T. He was an
16 experienced telecommunications executive, who knew the business
17 and the industry well.

18 Now, when Mr. Nacchio first got to Qwest, Qwest was a
19 private company, but soon after that, went public. And what
20 that means is, Qwest was able to make money by selling -- make
21 money from investors, basically, by selling stock, going
22 public. Those investors give money to Qwest, and in turn, they
23 would get a piece of the ownership of the company.

24 Now, Mr. Nacchio handpicked his executive team. These
25 were his people. He put them in these positions.

1 Afshin Mohebbi, this gentleman right here, was the
2 president and chief operating officer at Qwest. His title
3 changed a little bit throughout the time period we're concerned
4 with, and that's late 2000 into 2001. But what didn't change
5 is he was always a key executive who reported directly to
6 Mr. Nacchio.

7 Mr. Mohebbi was hired by Mr. Nacchio in the spring of
8 1999. That is around the time that Qwest was negotiating the
9 acquisition or merger with U S WEST. Mr. Mohebbi was an
10 experienced telecommunication executive.

11 Now, around the time that Qwest was going public,
12 Mr. Nacchio needed somebody to be the head of investor
13 relations. That's the person that helped Mr. Nacchio interact
14 with investors. So he went back to AT&T where he used to work,
15 and he hired Lee Wolfe to be his head of investor relations.

16 And what Mr. Wolfe's job was, was to help Mr. Nacchio
17 deal with investors, so he would tell Mr. Nacchio the kind of
18 information that investors wanted about Qwest, and he would
19 also tell Mr. Nacchio how investors reacted or what they
20 thought about things that Mr. Nacchio had said publicly about
21 the company or the company's press releases.

22 And Mr. Wolfe will tell you how Mr. Nacchio dealt with
23 investors, and he'll tell you that Mr. Nacchio was very active
24 in investor relations and spoke to investors frequently.

25 One of the principal ways that Mr. Nacchio

1 communicated with investors was on what are called investor
2 calls. And on these investor calls, there are literally
3 hundreds of investors and analysts that listened to what
4 Mr. Nacchio said about how Qwest was doing.

5 And one of the regular types of investor calls that
6 Mr. Nacchio held were what are called earnings release calls.
7 And Qwest would hold an earnings release call four times each
8 year, because they divided up the financial performance of the
9 company into quarters. And so each quarter lasted three
10 months, and so January through March was Qwest's first quarter,
11 and so forth through the year.

12 And so after a quarter would end, Mr. Nacchio would
13 hold an earnings release call where he would talk to investors.
14 Usually these calls took place about three weeks after the
15 quarter ended. And in those calls, Mr. Nacchio would tell
16 investors how Qwest had performed in the past quarter, and he
17 would also tell them -- issue guidance, we've talked about
18 targets, for what the expected growth rate of Qwest was in the
19 future.

20 Robin Szeliga was the chief financial officer at
21 Qwest. You'll hear that Ms. Szeliga joined Qwest back before
22 the merger, the finance department of Qwest in 1998, and she
23 rose to the position of senior vice president in charge of
24 financial planning and analysis. And even though that's a
25 mouthful, those are the people at the company.

1 Her responsibility was for preparing overall company
2 financial information for internal consumption, that is, for
3 how they managed the business. So this would include budgets
4 and plans and also forecasts.

5 And in 2001, Mr. Nacchio promoted Ms. Szeliga to be
6 the chief financial officer for the company.

7 Now, Ms. Szeliga is going to tell you about the budget
8 process. That's the process where the company tried to build
9 their budget or their plan for what they were going to do in
10 2001. And they did that in the fall of 2000. And Ms. Szeliga
11 was responsible for that process.

12 And then she'll tell you about how the company was
13 performing and the management reports that the company created
14 in early 2001 to monitor how the company was performing.

15 Ms. Szeliga will also tell you that she pled guilty to
16 insider trading for selling 10,000 shares of Qwest stock in
17 April 2001.

18 She admitted to selling Qwest stock on the basis of
19 inside information, because she admitted that she knew that
20 Qwest was not achieving its growth in the way that it told
21 investors it was.

22 And because of that, she knew that a risk of
23 investment in Qwest stock was greater than what the public
24 knew.

25 Now, the operations at Qwest were principally divided

1 into three divisions. Now, there were other divisions of
2 Qwest, and at Qwest they called these business units. But
3 these are the three principal business units represented on the
4 chart here. Each one of these business units represented about
5 one-third of the company's overall revenues.

6 So the customer and small business business unit was
7 the business unit that sold phone service and internet service
8 to households and to small businesses. It was the largest
9 recurring revenue business at the company.

10 The wholesale division, wholesale division sold
11 telecommunications products to other telecommunication
12 companies, and the wholesale division was the division that
13 sold the majority of the one-timers that Qwest had relied on.

14 And finally, finally global business was the business
15 division that sold telecommunications products to large
16 companies.

17 I mentioned the significance of the merger between
18 Qwest and U S WEST. That -- that merger changed Qwest
19 completely. The merger was announced in June 1999, and it took
20 about a year to close; that is, the companies did not become
21 one until June 30, 2000.

22 And, again, three-quarters of the combined company was
23 from U S WEST. Only a quarter of it came from Qwest.

24 You will hear when the merger was announced, Qwest
25 investors weren't very happy. In fact, Qwest's stock price

1 dropped nearly 25 percent the day the merger was announced.
2 And you will hear the reason for that was, was that Qwest
3 investors were growth investors. They invested in Qwest
4 because Qwest was a high growth company. However, when Qwest
5 announced that they were acquiring U S WEST, those growth
6 investors weren't very happy about it, because U S WEST was
7 not a high growth company.

8 At this time frame, U S WEST was growing maybe
9 5 percent per year, somewhere in that ballpark.

10 You will hear that Joe Nacchio was upset by the
11 market's reaction to the announcement of the merger, and so he
12 went out to talk to investors, and he sought to heavily promote
13 the combined company.

14 And what he told investors in the summer of 1999 was
15 that the combined company would grow 15 to 17 percent over the
16 next five years.

17 That was a huge growth rate for the combined company.
18 Remember, three-quarters of that company was growing at only
19 5 percent. But now after the merger, Mr. Nacchio tells
20 investors because of the synergies, basically, the benefits
21 they're going to get from bringing two companies together, that
22 now he's telling investors to expect 15 to 17 percent growth in
23 the combined company.

24 Again, Mr. Nacchio tells investors that that is two to
25 three times the growth rate of Qwest competitors.

1 And you will hear that Mr. Nacchio never backs off
2 those high growth projections through the time that he's
3 selling the stock in 2001, in spite of the fact that after the
4 merger closes in the summer of 2000, he's repeatedly told by
5 his -- his executive team that those growth rates are too high.

6 Now, as you can imagine, when Qwest acquired U S
7 WEST in the summer of 2000, when the two companies became one,
8 there was a difficult process, as the Qwest management team was
9 taking over, basically, the much larger U S WEST.

10 And so in July and August, Mr. Nacchio and his team
11 were trying to bring the two companies together.

12 In early September, Ms. Szeliga, who was in charge of
13 financial planning and analysis, will tell you that they hadn't
14 even built a budget or a plan, finalized their budget or plan
15 for the end of 2000. And they really hadn't even started
16 trying to build a budget or a plan for 2001.

17 But Mr. Nacchio, he decided to go out and tell
18 investors on September 7 that Qwest was going to grow even more
19 than he had told them earlier. He raised growth guidance. He
20 raised the projections that he told investors to expect in
21 2001.

22 You will hear from Mr. Wolfe, the head of investor
23 relations, that he urged Mr. Nacchio to actually lower guidance
24 at that time, not raise it. But Mr. Nacchio went out and he
25 told investors to expect even more growth from the company in

1 2001, when they hadn't even built a plan yet for what they were
2 going to be able to do in 2001.

3 You're going to hear about the budget setting process.
4 That's the process where Qwest went about the hard work of
5 trying to build a budget for what they could do in 2001 as a
6 combined company.

7 Now, of course, after Mr. Nacchio has already gone out
8 and told investors what to expect, they start that process.

9 And what you're going to hear from Qwest executives,
10 Mr. Nacchio's executive team, is that the budget process for
11 2001 was broken, that is, unrealistically, high targets were
12 imposed on the divisions at Qwest. And the experienced
13 telecommunications executives that Mr. Nacchio put to run its
14 divisions presented aggressive plans for what they thought they
15 could do in 2001 if everything went perfect. And those plans
16 were still hundreds and millions of dollars lower than the
17 target that Mr. Nacchio imposed on their business units.

18 Mr. Nacchio's response to the division heads when they
19 came up with a plan that was short of the target that he
20 imposed, the number is the number. Come up with a plan to hit
21 the number.

22 They struggled coming up with the plan to hit the
23 number, and you're going to hear about that. So the budget
24 process was delayed as they were trying to come up with the
25 budget and plan.

1 Towards the end of that process, in December,
2 Ms. Szeliga, again, who was the person responsible for trying
3 to put that budget together for the company, and who sat in
4 meetings with her finance team and then with the finance team
5 and heads of the different divisions, and also sat in the
6 meetings with Mr. Nacchio, where those leaders of the divisions
7 were telling Mr. Nacchio and telling Ms. Szeliga what they
8 thought they could do in the business units for 2001, after
9 sitting through that entire process, Ms. Szeliga came to the
10 conclusion that the targets for 2001 were \$1 billion too high.

11 So she went to Mr. Nacchio, and she told him that.

12 Mr. Nacchio still told investors that Qwest was going
13 to do the higher number, the additional billion dollars.

14 You're going to hear that the plan that Qwest put in
15 place to try to achieve those higher numbers in 2001 required a
16 big change from how Qwest had been performing in the past,
17 because, remember, you know, it's a much larger company.

18 And Qwest realized that they couldn't make those
19 growth targets by relying on these one-timers like they had in
20 the past. They knew that in 2001 they were going to have to
21 grow their recurring revenue business at a rate that they had
22 never grown it before, because otherwise they wouldn't be able
23 to achieve those targets.

24 Now, Mr. Mohebbi, the president of the company at this
25 time frame, was concerned enough about the 2001 plan that he

1 sent Mr. Nacchio two memos in December of 2000 to express his
2 concern about the plan.

3 And he'll tell you that he put these concerns in
4 writing, even though Mr. Nacchio did not like to receive bad
5 news in writing, because he wanted to make sure that he got
6 Mr. Nacchio's attention, and that Mr. Nacchio frequently did
7 not react well when he heard bad news and was confronted with
8 bad news. So Mr. Mohebbi put these concerns in writing, made
9 sure he got Mr. Nacchio's attention.

10 And what Mr. Mohebbi told Mr. Nacchio in those two
11 memos in December of 2000 was that the targets for 2001 were a
12 huge stretch.

13 And, again, what that huge stretch means is that Qwest
14 had to grow their recurring revenue business at twice the rate
15 that it had grown in 2000 in order to have a chance to achieve
16 the 2001 targets.

17 And you'll hear in the telecommunications business,
18 that's a huge increase, particularly in this time frame, where
19 increasing competition was causing prices for many of Qwest's
20 products to fall.

21 Mr. Mohebbi also told Mr. Nacchio that Qwest would
22 have big problems in the second half of 2001 if that recurring
23 revenue didn't pay off right from the beginning of the year,
24 because if it didn't take off at the beginning of the year,
25 then it was more likely to miss as the year went on. And as

1 the year went on, there wouldn't be enough of the one-timers to
2 fill the gap between the recurring revenue and the total
3 revenue that Mr. Nacchio told investors to expect in the second
4 half of the year.

5 And Mr. Mohebbi also reminded Mr. Nacchio that Qwest's
6 track record, that is, their history on being able to grow
7 recurring revenue at a sufficient rate to achieve their overall
8 target revenue was not good.

9 Again, the problem was the overly high growth plans.
10 It wasn't that Qwest wasn't growing. Qwest was growing. It's
11 just the targets were too high.

12 Now, I think -- I'd like to use a chart that I'm going
13 to put up on this board to try to illustrate to you what
14 Mr. Mohebbi was talking about.

15 Can everybody see that okay?

16 *THE COURT:* I think the jurors on the end may be
17 having trouble.

18 *MR. HEARTY:* I'll scoot it forward a little bit.

19 *THE COURT:* Can all the jurors see the chart? Raise
20 the hand if you cannot see the chart.

21 Proceed.

22 *MR. HEARTY:* Now, just to get you oriented on this
23 chart. What this red line represents is the overall revenue
24 growth in Qwest's budget or plan for 2001. Okay. So this is
25 total revenue. The red line represents total revenue.

1 So the plan was for \$2.8 billion in total revenue.
2 Okay. That's what the red line represents.

3 Down at the bottom is the financial report. So the
4 first quarter, second quarter. First quarter represents a
5 point in time on March 31, and this is the -- what their plan
6 was to be able to achieve the \$2.8 billion in total revenue.

7 What Mr. Mohebbi was communicating to Mr. Nacchio was
8 that if the recurring revenue -- and that's going to be
9 represented by the blue line that I'm going to draw there -- if
10 recurring revenue did not grow fast enough at the beginning of
11 the year to hit that growth, hit the overall company growth,
12 that it was extremely likely that it would continue to miss and
13 miss more as the year went on.

14 So while -- and by the way, you're going to hear
15 people refer to the gap, and what that means is, again, the
16 blue line is the recurring revenue, the red line is total
17 revenue, so the distance between those two lines is what they
18 referred to as the gap.

19 And the only way that gap could be filled in was with
20 the one-timers. And so what Mr. Mohebbi was communicating to
21 Mr. Nacchio, they may have enough one-timers to fill in that
22 gap in the first quarter, and they may even have enough
23 one-timers to fill in that gap in the second quarter. But as
24 the year went on, the second half of the year, the gap gets too
25 big, and they won't be able to fill it with one-timers.

1 That's what Mr. Mohebbi was concerned about and what
2 he was telling Mr. Nacchio about in December of 2000.

3 Again, the evidence will show that Mr. Mohebbi was not
4 telling Mr. Nacchio anything he didn't know. Mr. Nacchio was a
5 experienced telecommunications executive that knew that
6 recurring revenue was more reliable than one-timers. He was
7 telling him that if the recurring missed early in the year, it
8 was very likely it was going to continue to miss by more as the
9 year went on.

10 In fact, at Qwest they would refer to that concept as
11 the rule of 78. I don't know much really about what that
12 means, other than the fact that as time went on, it was harder
13 to make up for that miss, and you also now had a business trend
14 for how things were performing. As time went on, you had less
15 time for recurring revenue to earn the money that you needed to
16 make up for the difference.

17 And in fact, Mr. Nacchio referred to this problem as a
18 miss early in the year is like a snowball rolling downhill;
19 that is, the miss just keeps getting bigger as the year goes
20 on.

21 I'd like to have you look at your screens there again.
22 I'm going to display for you a timeline.

23 Let me try to get you oriented on the timeline.

24 You see the date here in the middle of the screen.
25 That is obviously the months. We're talking about really

1 principally November and December. The information that is
2 going to come up, flags going to come up above that line,
3 represents information that was known outside the company, and
4 below that line is information that was only known inside the
5 company.

6 So the first flags that you're going to see on here
7 are budget meetings that Mr. Nacchio was participating in as
8 the company was struggling to come up with their budget for
9 2001 as I described to you. So it's in these meetings where
10 Mr. Nacchio -- one on November 9, November meeting on
11 November 16. These are meetings where Mr. Nacchio is meeting
12 with his executive team about the problems and the difficulties
13 that the divisions are having with trying to come up with a
14 budget to hit the targets that have been imposed upon the
15 divisions.

16 So November 9 meeting, November 16 meeting.

17 On December 1, Mr. Nacchio and others make a -- their
18 first budget presentation to the Board of Directors. And the
19 budget is not done yet. They haven't finished the budget
20 process when they go to talk to the Board of Directors. In
21 fact, you'll hear that some of the numbers were targets that
22 were assigned to the different divisions, and the presentation
23 that is given to the Board of Directors hadn't even been
24 communicated yet to the division heads who ran the divisions.

25 Now, somewhere in the first two weeks of December

1 is -- Mr. Mohebbi's memo is sent -- is sent to Mr. Nacchio.
2 And again in that memo, Mr. Mohebbi tells Mr. Nacchio that the
3 growth targets for 2001 are a huge stretch, and that recurring
4 revenues must take off early for them to have a chance to hit
5 those targets. Again, reminding Mr. Nacchio that Qwest's track
6 record, that is their history, past performance, is not good in
7 being able to get the recurring revenue to grow at a sufficient
8 rate to hit the overall targets.

9 On December 12 and 13, there are a couple of budget
10 closure meetings. What is interesting about these meetings is
11 even this late, December 12 and 13, there is still hundreds of
12 millions of dollars being moved from one division to another,
13 as they basically try to impose this unrealistic target on the
14 divisions in order to total up, right, and trying to total up
15 all the pieces to get up to the number that Mr. Nacchio told
16 investors to expect back on September 7, before they even had
17 the plan.

18 December 20 is when Mr. Mohebbi sends the second
19 memorandum to Mr. Nacchio, where he tells Mr. Nacchio that
20 Qwest is going to have big problems if they don't crank up
21 recurring revenue by April, because there will not be enough
22 one-timers to close the gap in the third and fourth quarter,
23 second half of the year.

24 Now, at this time frame, outside Qwest, Qwest
25 competitors are telling their investors that they're not doing

1 as well as they had predicted. AT&T and SBC around this time
2 frame are lowering their growth guidance, their growth
3 projections that they told investors to expect.

4 And what happened is, Qwest stock price drops
5 20 percent between December 18 and December 20. And
6 Mr. Nacchio decides he better go out and talk to investors.
7 And so he conducts an impromptu investor call on December 21.

8 In that call, Mr. Nacchio reaffirms the targets that
9 he told investors about back in September. And he tells
10 investors that he's very confident that Qwest will achieve the
11 2001 growth targets that he set, and that Qwest stock should
12 not be adversely affected by problems that its competitors are
13 having.

14 And he tells that to investors even though that he
15 knew that the targets he imposed on his divisions were
16 unrealistic, and that the president of the company had told him
17 that the targets required a huge stretch, and that his
18 executive that was responsible for building the budget thought
19 that the targets were \$1 billion too high.

20 Ladies and gentlemen, \$1 billion -- first of all, it's
21 a lot of money. But also we're talking 2 1/2 billion is the
22 growth, basically, he's telling the investors to expect. One
23 billion is 40 percent of that growth. As I told you, you're
24 going to hear that growth and the amount of growth was very
25 important to investors.

1 Now, the result of Mr. Nacchio going out and talking
2 to investors on December 21, the next day Qwest stock price
3 goes from 32 bucks to over 37 bucks. What Mr. Nacchio said to
4 investors had a direct effect on the stock price.

5 Now, on January 2 and January 3, Mr. Nacchio sold just
6 over \$14 million of Qwest stock, approximately 350,000 shares.

7 Now, the way that those shares were sold was unusual.
8 Mr. Nacchio signed an instruction, that is an instruction where
9 he made a commitment to sell that stock on an earlier date.
10 You'll see that that instruction was signed by Mr. Nacchio. In
11 order for that instruction to be effective, Mr. Nacchio had to
12 certify that he was not in possession of insider information at
13 the date that he made the commitment to sell that stock.

14 However, what you're going to learn and what the
15 evidence will show is the document that Mr. Nacchio signs was
16 created -- wasn't created before December 13. So the actual
17 physical piece of paper that Mr. Nacchio signs wasn't created
18 until December 13, okay.

19 However, the date on the document was backdated to
20 November 3, which is six weeks earlier than the document --
21 than what the evidence will show of when the document was
22 created.

23 Now, what's happened since November 3? All of those
24 meetings that we went through on the difficulty of closing the
25 budget, where Mr. Nacchio is being told by his division heads

1 that the targets that are imposed -- that he imposed on their
2 divisions was too high.

3 The other thing that has happened in that time period
4 is it's around the time period that Mr. Mohebbi gives him his
5 first memo expressing his concern about the plan for 2001.

6 Let's take a look at that. This is it. I don't want
7 to get too bogged down in all the details. You'll be able to
8 see this during trial again.

9 But the first highlighted portion there in the second
10 paragraph is the certification, so Mr. Nacchio certifies that
11 the undersigned -- the undersigned certifies that as of the
12 date hereof he has no material, non-public information, and is
13 not otherwise prohibited from trading in Qwest stock.

14 Now, that date, if you look down at the bottom, left
15 of the page, is November 3.

16 But the evidence will show that this document wasn't
17 even created until December 13. And you see up at the top of
18 the page, this document is addressed to Salomon Smith Barney.
19 Salomon Smith Barney was one of Mr. Nacchio's brokers.

20 And you'll hear that there is no evidence that this
21 document was even sent to Mr. Nacchio's broker.

22 Now, you're going to hear about the shares that
23 Mr. Nacchio sold based on that instruction, and those shares
24 were sold January 2 and January 3.

25 The way Mr. Nacchio obtained those shares was

1 different than the rest of the shares that he's charged with
2 selling in the Indictment. These two sales, by the way,
3 January 2 and January 3, represent Count 1 and Count 2 in the
4 Indictment.

5 And Mr. Nacchio obtained those shares differently.
6 They were called growth shares. And so Mr. Nacchio is entitled
7 to a certain amount of compensation based upon the success of
8 the company, that is, the growth of the company. And
9 Mr. Nacchio -- the amount that he was entitled to was
10 determined actually a year and a half earlier, when the company
11 merged, basically, around the time of the merger announcement
12 in 1999. Mr. Nacchio knew he was getting those shares, and the
13 number of shares was calculated based upon the amount of money
14 that he was entitled to.

15 He was entitled to \$25 million. So the number of
16 shares that he was issued was determined based upon the stock
17 price during this time period.

18 So Mr. Nacchio was entitled to the same amount of
19 money regardless of what the stock price was. And the reason
20 that you see \$14 million worth of stock here rather than 25 is
21 the company basically backed out the amount of taxes that
22 Mr. Nacchio would have to pay on that income and then only
23 issued, essentially, the net number of shares -- number of
24 shares to hit the net amount of compensation that he would
25 receive after taxes.

1 But those shares, when they were issued to him,
2 weren't different than any other shares. Once he got them,
3 they were common stock. And Mr. Nacchio didn't have to sell
4 them on January 2 or January 3. That's just when he would
5 receive them. And it wouldn't have cost Mr. Nacchio anything
6 if he kept them or held them because the taxes were already
7 taken care of separately.

8 And you will hear that in the past when Mr. Nacchio
9 was issued growth shares, he held some of those shares. And
10 the other thing that's not any different about those shares is
11 that when Mr. Nacchio sold those shares, somebody else bought
12 them, and they bought them for the price that Mr. Nacchio sold
13 them for. And they weren't in the meetings that Mr. Nacchio
14 was in in December. And they didn't know about the warnings
15 that Mr. Mohebbi had given Mr. Nacchio about his concerns for
16 the plan in 2001.

17 Now, in the beginning of January of 2001, the company
18 went about preparing for their earnings release, and they had
19 an earnings release call, again, roughly three weeks after the
20 end of the quarter that ended December 31, where Mr. Nacchio
21 went out and talked to investors on January 24.

22 And you're going to hear that during this time period
23 investors started asking more questions. They wanted more
24 information on how Qwest was growing, and they weren't getting
25 it. And on January 24, Mr. Nacchio went out and talked to

1 investors again, and he told investors how Qwest had done in
2 the fourth quarter 2000. And he reaffirmed that he was
3 confident that Qwest would achieve the growth targets that he
4 previously set back in September, and what he referred to as
5 industry leading growth rates in the face of a weakened
6 economy.

7 He does not tell investors what he knew, that his
8 division leaders, his executives that he put in place to run
9 his divisions, told him that the targets that were imposed upon
10 their divisions were unrealistic, and what Ms. Szeliga had told
11 him about believing the targets were a billion dollars too
12 high, and what Mr. Mohebbi had told him about the targets --
13 characterizing the targets as a huge stretch and telling
14 Mr. Nacchio that Qwest would have big problems in the second
15 half of the year if the recurring revenue didn't grow in a way
16 it had never grown before right from the start of the year.

17 Then when trading window -- I'll tell you about the
18 trading window in a second. But when the trading window opens
19 two days later after the earnings call, Mr. Nacchio sells \$31
20 million worth of Qwest stock between January 26 and February
21 15. What the trading window is the window that the companies
22 put on insiders like Mr. Nacchio on when they can sell Qwest
23 stock.

24 It's not unique to Qwest, by the way. Many public
25 companies have these kind of restrictions. Basically it's

1 around the time when the company is preparing their earnings
2 releases, that insiders are not allowed to trade, not allowed
3 to sell stock. Therefore, when the window is open, insiders
4 are allowed to sell stock, so long as it's not based on
5 material, non-public information.

6 I'm going to use another timeline that will come up on
7 your screen here to talk about some significant events that
8 occurred February through May of 2001.

9 And again, this one is set up the same as the last
10 one, so the -- above the date bar there, just to orient you,
11 again, are events that occurred that are public events, and
12 below the date bar are events that are not public. These are
13 meetings that occur on the 52nd floor of the building just
14 about a block away from here.

15 Now, on February 15, the trading window closes. And
16 so Mr. Nacchio has now just sold \$31 million worth of Qwest
17 stock between January 26 and February 15, and then he enters
18 into a sales plan. And what a sales plan is, is it's a way
19 that insiders, in particular -- particularly, chief executive
20 officers like Mr. Nacchio, can sell their stock by making a
21 commitment today to sell their stock in the future, even if
22 there is subsequent restrictions that come up in the future.

23 So, for instance, by Mr. Nacchio entering into a sales
24 plan to sell 11,500 shares of stock per day, by entering into
25 that plan before the trading window closes, he's allowed to

1 sell that stock even when the trading window is closed.

2 And the other restriction that frees him up -- that
3 this is designed to free him up from, is if Mr. -- when
4 Mr. Nacchio makes the commitment to sell that stock today at
5 some time in the future, if he later comes in to inside
6 information, but he's made the commitment now, he's still
7 allowed to sell that stock, because he's not controlling those
8 shares. He's made the decision to make those sales earlier in
9 time.

10 So, of course, for the sales plan to be effective,
11 Mr. Nacchio has to certify in the sales plan that he's not
12 currently in possession of insider information.

13 Now, when Mr. Nacchio enters into the sales plan,
14 Qwest issues a press release, because you'll hear that
15 sophisticated investors and analysts paid attention to when
16 insiders sold significant amounts of Qwest stock, because,
17 obviously, that could concern them if they think that company
18 insiders are dumping their stock.

19 So when Mr. Nacchio entered into this plan, Qwest
20 issued a press release. And in that press release, Mr. Nacchio
21 announced the reasons why he was entering into the sales plan.

22 And the first reason was, is that Qwest had granted
23 Mr. Nacchio a lot of stock options. And many of those stock
24 options -- in fact, all the ones that he sells that he's
25 charged with here were set to expire in about two and a half

1 years from this time frame. And so this plan was designed so
2 that Mr. Nacchio could exercise and sell all of those shares
3 before his options expired.

4 And the other reason that he tells investors that he's
5 entering into the plan is because the Board of Directors at
6 Qwest had expressed concern about Mr. Nacchio, what they
7 called, bunching his sales. And that is, because he had all of
8 these options that were going to expire in two and a half
9 years, they were worried that if those options were all
10 exercised and sold in big groups, that that wouldn't look good
11 to the marketplace. And so this plan was designed to solve
12 those problems.

13 And you will hear that it would have. I mean, first
14 of all, the plan was to sell 11,500 shares per day until all of
15 those options were gone. That would even out all of those
16 sales.

17 And then secondly, had Mr. Nacchio stayed in this
18 plan, all of those options that were going to expire in two and
19 a half years would have been exercised and sold under the terms
20 of this plan three months before expiration.

21 Now, you're also going to hear testimony in this case
22 that financial analysts advised Mr. Nacchio to diversify.
23 Typical financial advice, pretty much all industries, but
24 particularly executives at public companies who frequently had
25 a large percentage of their wealth connected to the stock in

1 the company where they worked.

2 And so this plan would have helped Mr. Nacchio
3 diversify as well, because all of these stock options would
4 have been sold, exercised and sold on a regular schedule before
5 they expired.

6 But even though this plan solved all of those
7 problems, Mr. Nacchio cancels the plan on March 1.

8 Now, when he canceled the plan, the trading window is
9 closed, so he couldn't sell stock at that time outside of the
10 plan.

11 And then as we go through March, now, Mr. Nacchio
12 starts having his internal meetings. And you're going to hear
13 about a meeting on March 20 where -- this is ten days before
14 the quarter closes, so the company is now, you know, bringing
15 together their financial updates on where they are as they're
16 preparing to close the first quarter on March 31.

17 And this presentation that was prepared for
18 Mr. Nacchio March 20 shows that even ten days before the
19 quarter, that the company needs \$500 million of one-timers that
20 haven't been closed yet, haven't been finished, in order to
21 make the quarter.

22 And so what it shows is that the recurring revenue per
23 plan is not taking off the way the plan called for. The
24 company is having to rely more on the one-timers in order to
25 make the first quarter.

1 On April 9, the quarter is over, and so Ms. Szeliga,
2 who is the chief financial officer, prepares -- her staff
3 prepares an update, product update of how the company has done
4 first quarter compared to what their plan was.

5 And you will see that in that plan that Ms. Szeliga
6 presents to Mr. Nacchio that recurring revenue is not taking
7 off, the recurring revenue is already 19 percent below plan,
8 and that the shift -- the shift that Qwest was relying on to
9 happen in 2001 to have a chance to meet those growth targets
10 was not occurring at the rate expected. And the company was
11 having to increase -- had to rely more on one-timers, the
12 non-recurring revenue, than they had planned to.

13 And you will hear that Mr. Nacchio got angry in this
14 meeting. He didn't like what the performance results were.

15 Two days later, on April 11 through April 13,
16 Mr. Nacchio conducts business unit reviews with the various
17 divisions of Qwest on how their business units had performed in
18 the first quarter. Basically, gets more of the same
19 information; that is, that the recurring revenue business is
20 not performing the way that their plan called for, and they're
21 having to rely more on these one-timers in order to make the
22 numbers.

23 And he's also told during these meetings that the
24 market for these one-timers, for the non-recurring, is worse
25 than they expected, while they're working on -- while the

1 different divisions, primarily the wholesale division is
2 working on one-timers for help for the second quarter numbers,
3 that they don't see any more significant one-timers in the
4 second half of the year.

5 So I want to go back to this chart here and talk about
6 what Mr. Mohebbi was concerned about and expressing to
7 Mr. Nacchio back in December, was coming true; that is, the
8 recurring revenue was not taking off and was already 20 percent
9 off plan.

10 But it's even worse than that, because now the gaps in
11 the second half of the year are going to have even less
12 one-timers to fill them, because now Mr. Nacchio's told that
13 the market for the one-timers is even worse than they had
14 expected.

15 So Mr. Mohebbi predicted if the recurring revenue did
16 not take off early there wouldn't be enough one-timers.

17 Well, now, the market for the one-timers is even worse
18 in the second half of the year. The wholesale unit tells
19 Mr. Nacchio that they're working on deals, big deals, that are
20 going to help him meet the second quarter, but they don't see
21 any significant big deals after that time frame, in the second
22 half of the year.

23 What does Mr. Nacchio do after getting those -- having
24 those meetings on the 52nd floor of the Qwest tower, just a
25 block or so away from this courthouse? He goes out and he

1 talks to investors.

2 On April 24, he has the first quarter earnings call
3 with investors, and in that call, he tells investors that Qwest
4 had a strong quarter, that he was very pleased with Qwest's
5 performance, and that he is confident that Qwest will achieve
6 the growth rates that he previously told investors to expect in
7 2001, and that he sees nothing to dissuade him from that plan
8 that he announced 18 months ago, after the merger closed, the
9 15, 17 percent revenue growth rate.

10 Why don't we listen to what Mr. Nacchio said in his
11 own words. I'm going to play now two excerpts from that call.
12 The first excerpt is Mr. Nacchio at the beginning of the call,
13 or very early in the call. And Mr. Denno, can you play that
14 now.

15 (Tape played.)

16 Your Honor, is there a way to get the volume higher?

17 I'm going to ask if Mr. Denno will play it again.
18 Apparently that's as loud as we can get it, so I apologize for
19 that. You'll have an opportunity during trial to hear this
20 tape again. Hopefully we'll do a better job getting that
21 louder.

22 I'll ask Mr. Denno to play that again. Do the best
23 you can to listen to what Mr. Nacchio says.

24 (Tape played.)

25 There is the second clip, which is the last statement,

1 statement that Mr. Nacchio makes during the investors call.

2 It's another short excerpt about the same length.

3 Again, it's the last words that Mr. Nacchio says to investors
4 on this call, on April 24.

5 (Tape played.)

6 Mr. Nacchio tells investors how well Qwest is doing,
7 even though he knew that they had missed their recurring
8 revenue plan by almost 20 percent, and that now they were going
9 to have, very likely at least, to have big problems in the
10 second half of the year, achieving growth rates that he told
11 investors to expect.

12 And even -- it could even be worse, because the market
13 for the one-timers, he didn't tell the investors about that,
14 the market for the one-timers was worse than anticipated, what
15 they were going to try to use to fill that gap, they were
16 going -- there were going to be less of them. He knew that,
17 but he didn't tell them that.

18 Two days later, the trading window opens, where
19 Mr. Nacchio is now for the first time since it closed, and he
20 canceled his plan, and is allowed to sell stock again,
21 according to the company policy.

22 On April 26 through May 15, while the trading window
23 is open, Mr. Nacchio sells \$49 million worth of Qwest stock,
24 just in those few days. In fact, on April 26 alone, the first
25 day that he had a chance to sell his stock, he sold 350,000

1 shares of Qwest stock and received over \$13 million, just for
2 the sales on that day.

3 Then the next day, April 27, he sold 300,000 more
4 shares, for nearly \$12 million.

5 You will see that what he sold -- the rate that he
6 sold while this window was open was seven times the rate that
7 his plan called for that he canceled back on March 1. His plan
8 called for him to sell 11,500 shares per day. When you look at
9 the trading days that he was allowed to sell during this
10 window, he sold over 80 -- averaged selling over 80,000 shares
11 per day.

12 When the trading window closes, on May 16, Mr. Nacchio
13 sets up another sales plan, and he sells an additional 75,000
14 shares of stock under that sales plan between May 16 and
15 May 20.

16 I want to show you two charts to kind of depict what
17 Mr. Nacchio's trading pattern was during this time period.

18 Okay. What this first one depicts here is on the
19 left-hand side of the screen, the bottom left, you see
20 Mr. Nacchio's sales when he's in the plan, okay. Down there at
21 the bottom is when he's selling 11,500 shares per day. And the
22 way this chart works is essentially accumulating the number of
23 sales that he makes day after day, just kind of putting them on
24 top of each other. That's why you're seeing it come up. The
25 first day he sells 11,500, the next day he sells another 11,500

1 and so on.

2 Then when he cancels the plan on March 1, the window
3 is closed, so he can't sell stock between March 2 and April 25.
4 And then the first day the window opens, on April 26, he sells
5 350,000 shares of stock. And you can see the way those sales
6 work, then, kind of spiking up, as you go -- as you go to the
7 right-hand side of the chart there.

8 Then where you see a kind of gradual level off, if you
9 look down at the bottom, that's when he gets into the trading
10 plan, the window closes again, on May 16.

11 If you compare how many shares Mr. Nacchio would have
12 sold had he stayed in the plan -- so had he stayed in the plan,
13 you compare the shares that he would have sold under the plan,
14 compared to what he actually sold by starting in the plan,
15 cancelling, and selling at a much greater rate in the window,
16 that's what this chart depicts.

17 Mr. Nacchio would have sold about -- would have sold
18 about 790,000 shares under the plan during this time period.
19 What he actually sold was over 1.4 million shares, nearly twice
20 as many shares.

21 And the value of that to him is had he stayed in the
22 plan, he would have made about 29, almost \$30 million. By
23 cancelling the plan, he's selling at a much greater rate when
24 the window opened, he made over 55 million.

25 The evidence will show that Mr. Nacchio's plan solved

1 all of his problems but one. It didn't allow him to sell his
2 shares fast enough.

3 Now, ladies and gentlemen, there are always risks when
4 people invest in the stock market. However, Joe Nacchio knew
5 about risks that people -- risk at Qwest that people outside
6 the company did not know. And Mr. Nacchio didn't tell them.
7 In fact, he did the opposite. He assured investors that
8 everything was great at Qwest, that Qwest was doing very well,
9 and then he sold \$100 million worth of Qwest stock.

10 The evidence will show that when Mr. Nacchio saw a
11 storm coming at Qwest, he sold as much stock as he could while
12 he still could. Joe Nacchio told the public that Qwest was
13 different than its competitors who were struggling. He told
14 investors that he was very confident that Qwest could achieve
15 the high growth rates that he told them to expect.

16 But at the same time, he was being told different
17 information from his executive team inside Qwest. He was being
18 told that there were severe risks in Qwest's ability to achieve
19 those targets.

20 Joe Nacchio kept those risks from investors as he sold
21 his stock faster than he had ever sold it before. He sold
22 250,000 more shares in just the first five months of 2001 than
23 he had sold in the previous year and a half combined.

24 After the evidence has been presented, the United
25 States will have another chance to speak to you, we'll ask you

1 to convict Joe Nacchio of insider trading, because the evidence
2 will have proved that Joe Nacchio cheated.

3 Joe Nacchio sold \$100 million worth of Qwest stock
4 when he knew of problems at Qwest that people outside the
5 company did not know. And then he sold the stock faster than
6 he ever sold it before to take advantage of the inside
7 information that he had.

8 Thank you.

9 Thank you, Your Honor.

10 *THE COURT:* All right. We'll take a 15-minute recess
11 at this time.

12 And then we'll -- do you wish to make an opening
13 statement, Mr. Stern?

14 *MR. STERN:* Yes, I do.

15 *THE COURT:* Very well.

16 Court will be in recess until 10 minutes of 2:00.

17 (Recess from 1:35 p.m. to 1:53 p.m.)

18 *THE COURT:* Mr. Stern.

19 *MR. STERN:* Thank you, Your Honor.

20 **OPENING STATEMENT**

21 *MR. STERN:* If it please this honorable Court,
22 gentlemen for the prosecution, my colleagues, members of the
23 jury.

24 I'm getting a little dry.

25 I am going to do everything that I can to demonstrate

1 to you in every way that I can that the Indictment that has
2 been brought in this case is incorrect. You haven't heard much
3 about that from the prosecution, but I'm going to show it to
4 you. And I'm going to stand before you and tell you, not with
5 carefully selected pictures in which my client is the only one
6 not smiling, but using the actual documents in the case, how we
7 who have no burden of proof in this case, none at all -- I
8 don't have to say a word to you, as the judge has informed you,
9 but how we are going to demonstrate, show you and prove to you
10 that the charges in this case are absolutely false.

11 And we're going to do it using the words of the
12 Indictment. We're not going to get confused about growth
13 targets. There are no growth targets in this Indictment.
14 There is only publicly stated financial targets. And very
15 quickly -- well, maybe not so quickly -- I'm going to
16 demonstrate to you the difference and perhaps why the
17 representative of the United States used growth targets rather
18 than the words of the Indictment, publicly stated financial
19 targets.

20 I am going to tell you that this Indictment charges
21 that Mr. Nacchio knew non-public, material information, not
22 important information, which the prosecutor has chosen to use,
23 but in the words of his Indictment, non-public, material
24 information about the publicly stated financial targets of
25 Qwest, not growth targets, not important information.

1 And you're going to be able to decide why those kinds
2 of terms were fudged when the terms are very specific in the
3 Indictment.

4 I am going to demonstrate to you that there was no
5 non-public, material information, that Joseph Nacchio sold on
6 no such thing, that he believed passionately, fervently and
7 honestly in the publicly stated financial targets of his
8 company, that he stood behind them with his personal wealth,
9 with his children's money.

10 And I'm going to do that, use that, by imposing on
11 your time a little bit. It is not possible to demonstrate that
12 to you without spending some time doing it.

13 This is not like a politician's speech. You know,
14 they stand before us, promise the sun, the moon and the stars,
15 then we vote, and then they deliver or they don't deliver.

16 I know very well and you know very well that you're
17 going to vote on the basis of what is delivered in this
18 courtroom, and I am here to tell you what we are going to
19 deliver. We, who have no burden to do anything, are going to
20 do -- to demonstrate and show you that this Indictment is
21 wrong. And although this is not the Indictment that we
22 brought, I'm going to show it to you, even though he did not.

23 Now, make no mistake about it, a public guidance was
24 issued stating what the public financial targets of Qwest were
25 for 2001. And those targets were issued on September 7, 2000.

1 Now, I'm starting at this point, and then I'm going to
2 drop back. But I think it's important for you to see what the
3 actual public statement of financial targets was.

4 It was issued on September 7. Joe Nacchio did, in
5 fact, issue it.

6 Now, you remember that the prosecutor in this case
7 told you that the public could count on it. You remember, he
8 used those words, the public could count on it.

9 Let's talk for a minute about what these targets,
10 financial targets were. They were issued on September 7 for
11 year end 2001, that's 16 months in the future, on the basis of
12 a newly formed company, just a couple of months old, that is to
13 say, the merger of Qwest and U S WEST, clearly, and obviously
14 dependent on people's good faith, to be sure, reasonable, to be
15 sure, but nonetheless, good faith and reasonable projections of
16 what a year would look like -- pardon me, 16 months into the
17 future would look like.

18 And because it is a projection, and because it is
19 dependent on the divisions and departments and places all over
20 the world, because Qwest was a worldwide company -- and because
21 it's most of all dependent, as we learned during jury voir
22 dire, about what an economy would be like 16 months into the
23 future, and, of course, this guidance was issued on
24 September 7, 2000, for year end 2001, and because of all of
25 that, before the guidance is even issued -- and this is the way

1 it reads, on September 7, I think maybe -- could you put that
2 on the screen, Candy?

3 I don't know if you folks could see it. I blew it so
4 much, but --

5 Maybe you could yellow it as I go.

6 The current 8-K, that's what it is called in technical
7 terms, folks, it's a filing with the SEC. That's the way you
8 make these announcement. The 8-K form contains projections and
9 other forward looking statements that involves risks and
10 uncertainties. These statements may differ materially from
11 actual future events or results. Readers are referred to
12 documents on file with the SEC.

13 Specifically, the most recent reports which identify
14 important risk factors that could cause actual results to
15 differ from those contained in the forward looking statements,
16 including potential fluctuations in quarterly results, changes
17 in demand for the registrants' products, that would be Qwest,
18 dependence on new product development and acceleration of the
19 deployment of advanced new services, such as broadband data,
20 wireless and video services, which could require substantial
21 expenditure of financial and other resources in excess of
22 contemplated levels, rapid and significant changes in
23 technologies and markets, adverse changes in the ability to
24 provide, et cetera, and so forth and so on -- and financial
25 results expected to result from the acquisition of U S WEST

1 timely or at all and difficulties in combining the operations
2 of Qwest and U S WEST.

3 As you have heard, that combination had taken place
4 only three months before.

5 Now, to say that the investing public could count on a
6 projection made 16 months into the future is simply wrong. But
7 make no mistake about it, those projections we will show you
8 were honestly made, reasonably made, and not made up.

9 Moreover, we will prove to you that the internal
10 debates and discussions were not about the publicly stated
11 financial targets of Qwest but were instead internal debates
12 about a budget which was \$700 million higher than the publicly
13 stated financial targets of Qwest and deliberately stated
14 \$700 million higher as aspirational goals within Qwest in order
15 to energize and get the people working at Qwest to exceed the
16 public guidance.

17 And you are going to learn, and I'm going to
18 demonstrate before you, that all of the documents that the
19 prosecutor has referred to in his case were debates and
20 discussions about the internal budget which was \$600 million
21 higher than the publicly stated financial targets of Qwest, and
22 that a great deal of that discussion and debate was because
23 people's bonuses, their end of year financial returns to
24 themselves, depended not on meeting the publicly stated
25 financial targets of Qwest, but the internal budgets of Qwest

1 which were, in fact, set hundreds of millions of dollars higher
2 in order to do everything possible, not just to meet the
3 publicly stated financial targets of Qwest, but to exceed them.

4 It is to be regretted that there has been no effort up
5 till this point to distinguish between internal budgets, to
6 which the public has no access, have no right to know about,
7 and the publicly stated financial targets of Qwest which is
8 what is charged in this Indictment.

9 Moreover, you have heard from the representative of
10 the prosecution that the so-called important -- not material,
11 non-public information, but the so-called important information
12 which he says drove Joe Nacchio to accelerate the sales of his
13 stock in January -- that's what he told you, because he has to
14 say that, because the Indictment says that. The Indictment is
15 wrong, he's wrong, but he says it. He says that the important
16 non-public -- important non-public information was a note that
17 Mr. Mohebbi wrote to Mr. Nacchio. But he didn't show it to
18 you.

19 He said in that note Mr. Mohebbi said the growth
20 targets were a huge stretch. Do you recall it? He said it
21 several times. A huge stretch. He didn't say it. And he did
22 not refer to -- he was not talking about the publicly stated
23 financial targets which are in this Indictment and which has a
24 different number than the internal budgets.

25 I'm going to show you the Mohebbi letter. They don't

1 even know when it was written, because it's not dated, so they
2 speculate, it's sometime between December 1 and December 14.
3 That's on their chart. That's what they showed you. Had no
4 date.

5 Moreover, you will be surprised to learn that
6 Mr. Mohebbi didn't mail it to Mr. Nacchio. He didn't hand it
7 to Mr. Nacchio. He left it on his chair. It doesn't matter.
8 Because we are going to prove to you from the words of the
9 letter and from the mouth of Mr. Mohebbi after they have called
10 him to the stand, that that letter was not about the public
11 financial statements of Qwest that the public had a right to
12 consider, but the internal budgets of Qwest which had been
13 deliberately set \$700 million higher in order to get those
14 employees to exceed -- exceed those public targets.

15 Oh, you'll have no doubt about this before I step down
16 from here, unless His Honor throws me out or I fall down,
17 because I'm going to show you those budgets. Not by slides
18 saying, Nacchio stole, Nacchio had information. I'm going to
19 show you the actual budgets. I'm going to show you how those
20 budgets say that themselves, that they are higher than the
21 publicly stated financial targets of Qwest.

22 And as far as the acceleration of sales in January, we
23 who have no burden of proof are going to prove to you that
24 there was no acceleration, none. We are going to prove to you
25 what the sales were, item by item, and why they were done.

1 Because please, I implore you remember this: This is
2 a fraud case, insider information. Insider trading is a
3 shorthand way of saying stealing. It is an accusation that
4 Joseph P. Nacchio took advantage of somebody, committed fraud
5 upon them, and we are going to demonstrate to you before I sit
6 down that that is not true, not just because I say it, I'm
7 going to show it to you by documents, by what he did, by what
8 he didn't do.

9 I'm going to do this, although I have the right, as
10 His Honor has told you, to sit quiet and do nothing.

11 Make no mistake, what is in the Indictment -- let me
12 read it to you, for he has not. "Qwest through Nacchio and
13 others issued financial guidance generally referred to as
14 targets."

15 See, those are the ones issued.

16 Referred to as targets to the investing public
17 concerning Qwest's future revenue growth and earnings.

18 That's not internal budgets. That's what you tell the
19 people outside.

20 Then they say, "No later than December 4, 2000,
21 through and including September 10, 2001, Nacchio was aware
22 of," not important information, "Nacchio was aware of material,
23 non-public information about Qwest's business, including but
24 not limited to, (a)" -- here are the magic words, folks -- do
25 you have it up there? Thanks.

1 "Including, (a), that Qwest's publicly stated
2 financial targets, including its targets for 2001, were
3 aggressive and a huge stretch."

4 Do you see that, folks, aggressive and a huge stretch?
5 But I want you to notice something. There are quotes around
6 "huge stretch." I'm sure you can see it. I hope you can see
7 it.

8 There is no quote around the "(a)." Notice that. And
9 I'm going to show you why. That is direct copy from the memo
10 that -- undated memo that Mr. Mohebbi wrote. And he didn't
11 write that the publicly stated financial guidance was a huge
12 stretch as written in this Indictment.

13 He was writing that the budget had a huge stretch, and
14 I'm going to explain to you what that meant. Not just because
15 I say it, because I'm going to produce the internal documents
16 of Qwest that demonstrate what Mr. Mohebbi was talking about.
17 He will confirm it, I'm confident, from the stand. And it's
18 not about what this Indictment says.

19 But I, who have no burden of proof, I'm probably going
20 to have to take a little time to do all of this, but I'm going
21 to show it to you, because your task is important. You know
22 that. I know that. And this isn't just about winning and
23 losing. Let me tell you something at this stage of my life,
24 this is about doing the right thing.

25 I don't know if -- he told you it doesn't matter that

1 Qwest didn't have to change anything, Nacchio couldn't trade.
2 I don't understand that. The numbers are either in good faith,
3 reasonable and honest, in which case anybody can trade on it,
4 we'll prove to you, or the numbers are make believe, in bad
5 faith, not reasonable. In that case, you can't keep those
6 numbers out there. It's not right. It's not just Nacchio
7 trading; it's the world trading.

8 Well, that's a large undertaking, but I'm going to do
9 it.

10 I have to drop back and tell you a little bit about
11 this company, about the man, about his stock positions, how he
12 came to them, what it means.

13 Qwest was -- and in this small way, I agree with the
14 prosecutor -- Qwest was a private company. Was owned entirely
15 by one of the leading citizens of this community, I understand,
16 named Phillip Anschutz, a very wealthy man, moved from oil to
17 railroads to telecommunications. And he wanted to build a
18 telecommunication company of enormous size, something that
19 would stun the world. And he wanted to do it with stuff I
20 don't even understand, because I'm not of the right generation,
21 fiber optic cable, built along the right of way of the railroad
22 that he used to own, so he kept the right of way to lay the
23 fibers. And he had 48 fibers, whatever that means.

24 But I understand that with just four of them you could
25 accommodate the entire telecommunications capability of AT&T,

1 MCI, WorldCom, the whole United States. And it was his dream
2 to make this into one of the dominant companies in this field.

3 He did not have the expertise. He had brilliance, he
4 had money, he had investing ability, we'll prove to you. But
5 he needed somebody to take this company which had four or five
6 hundred employees, maybe an annual income of a few hundred
7 million dollars, if that, and he needed somebody with the
8 expertise to transform the company.

9 And he recruited Joe Nacchio.

10 Who is Joe Nacchio? We will prove to you in this --
11 in this too, I agree, this small way I agree with the
12 prosecutor in the case, he was one of the leading people in the
13 field in the United States.

14 He was right at the top -- right under the chairman
15 and CEO of AT&T. He was well paid, well positioned. And Phil
16 Anschutz wanted him. Joe Nacchio did not apply for the job.
17 Anschutz went to get him. He will take the stand and confirm
18 this. You know that he's on our witness list.

19 Now, Joe Nacchio didn't want the job. He didn't want
20 the job for personal reasons. He had a personal problem at
21 home. It's never been revealed publicly. I have to do this,
22 for reasons you will understand later on as I go through this
23 presentation.

24 He had a sick child. His child wasn't physically ill,
25 had emotional difficulties. And Nacchio was torn between his

1 natural desire to do something entrepreneurial with
2 Mr. Anschutz, and the felt need that he had to be with his
3 family. And he didn't want to take the job.

4 And so what Mr. Anschutz did was to tell him and to
5 guarantee him that he did not have to move to Denver, that he
6 would open an office in New Jersey. Oh, you won't have to
7 worry about whether or not I'm telling you the truth, because
8 we're going to mark his contract into evidence, and those
9 provisions are right in the contract.

10 In December 1996, the only way that Mr. Anschutz could
11 get Mr. Nacchio to come and make Qwest into the company that
12 Mr. Nacchio -- Mr. Anschutz wanted, was to guarantee him that
13 he would have a New Jersey office, that he would not have to
14 come more than four days a week, and even get credit for the
15 flying time off the four days, or he wouldn't have taken the
16 job.

17 Now, in addition to that, because Mr. Nacchio was so
18 highly ranked in AT&T, and had so many benefits which had
19 accrued in AT&T, in the contract -- once again, I'm going to
20 mark this contract into evidence at the earliest opportunity
21 that His Honor will allow me to do it, so you'll understand
22 that I'm not just standing up here telling you a story.

23 You have it up there?

24 Thank you. Honest to God, I didn't know -- do you
25 have that provision about the -- well, it's at the bottom of

1 the page, where it says "Position and duties," if you look at
2 A, it goes over to the next page, Candy.

3 Four days a week. Office in New Jersey. I don't know
4 if you folks can see it or not.

5 "The executive shall perform his duties and
6 responsibilities at the company's offices in New Jersey,
7 provided that he has to travel four days a week" -- I really
8 didn't intend -- let me -- it's there. I hope you can see it.

9 In addition to that, he had vested rights at AT&T,
10 \$11,300,000 in vested rights at AT&T. And Mr. Anschutz wrote
11 him a check for that amount of money to get him to leave his
12 position at AT&T, to turn down other offers from other
13 companies, to come and create what Mr. Anschutz wanted to
14 create, this company, Qwest.

15 That, too, you will see in the contract -- don't put
16 it up --

17 It's an attachment to the contract, paid over three
18 years, and you will find specified in the contract what all the
19 \$11,300,000 is for, every part of the benefits he had accrued
20 at AT&T.

21 Now, I want to emphasize something to you, folks.
22 It's a private company we're talking about. Nobody's business.
23 It's part of the background of the case. Didn't cost the
24 public anything. This is Phillip Anschutz' personal money that
25 he was willing to spend to attract Joseph Nacchio to come here

1 and create this company.

2 But Mr. Nacchio was not willing to come for that
3 reason, because all that did was to cash him out of his
4 position at AT&T. He would come here, he would sacrifice what
5 he had to sacrifice in terms of his home life, but only if
6 there was an entrepreneurial advantage, some sort of way that
7 he could make a lot of money, in crass terms, not just for
8 himself, but for the very family who would be deprived of his
9 presence.

10 And so what Phillip Anschutz promised him and put into
11 a contract was that Joseph Nacchio should have 3 percent of the
12 growth of Qwest. Mind you, Qwest, the private company.

13 These were called growth shares. They weren't real
14 shares in one sense, in another sense they were. Some places,
15 some of you may know of this, it's called phantom stock. It's
16 a participation in the growth of the company due in part to
17 your efforts and, of course, your colleagues' efforts. And he
18 was given, Nacchio was, 3 percent. Let me give you a
19 hypothetical.

20 Suppose when somebody in that position joins a
21 company, the company's valued at a billion dollars. If the
22 company grows to \$2 billion through your efforts and those of
23 your colleagues, you're entitled to 3 percent of the growth.
24 That would be \$30 million. That's a lot of money. But I take
25 it, that's what America is about. It wasn't the public's

1 money; it was Phil Anschutz' money. But in a real sense, it
2 was everybody's money who was cooperating together within Qwest
3 to increase the value of the company.

4 In 1997 Qwest, the private company, went public. At
5 the time it was valued, it was valued by the investment bankers
6 and the people who do these things at \$2 billion. My -- it was
7 slightly less, but I'm not going to make us crazy with 900 --
8 1,900,000,000 some odd -- that's craziness. It was valued at
9 roughly 1 billion when Mr. Nacchio joined. It was valued at
10 2 billion by the investment bankers when it went public.

11 And Joe Nacchio was entitled to \$27,697,830.

12 It's important that I write that down, because
13 although you do not know it, because I will show you, most of
14 that money are the first two counts of this Indictment.

15 They gave me all of these things, and I don't --

16 \$27,697,830, that's how much money Phil Anschutz owed
17 Joseph Nacchio. And so when the company went public, this was
18 a debt of the company to Joe Nacchio, and it was all the public
19 filings, all the things -- we will introduce all the evidence
20 to back up what I've told you now, all the fancy documents and
21 all the letters.

22 As a matter of fact, I'm sure I have one handy.

23 Trust me, I'll do it.

24 Now, when the company went public, you see, he
25 couldn't get his money out right away. Why? Because under the

1 original growth share agreement, it all wouldn't vest at once.

2 Why? When you have a valuable executive, they do what
3 they call golden handcuffs. They keep you around. How do they
4 do that? They don't let all the money vest at once.

5 And so while all the 27 million some odd thousand
6 dollars was a debt of the company, Nacchio couldn't get it at
7 once.

8 Under the plan, the so-called growth share plan -- and
9 witnesses will testify to this, documents will flow in about
10 it, unfortunately -- in February of '98, he was entitled to
11 \$1,107,913. February of '99, a similar amount. February 2000,
12 a similar amount, but small. Each year, 20 percent would vest,
13 and each year he could withdraw 20 percent of 20 percent.

14 And the last was supposed to be December 31 of 2001.
15 Okay. And that was to be the big one, about \$24 million.

16 Members of the jury, I'll return to this in a moment,
17 but this is what you must understand to understand the first
18 two counts of this Indictment, why they are wrong, why they are
19 unjust.

20 That money was to be paid in the Qwest stock, but it
21 was not dependent on the value of the Qwest stock.

22 On February of '98, he would get \$1,107,913 in Qwest
23 shares, no matter what the price of the shares were. If the
24 price of the shares were a dollar, he'd get \$1 million; if the
25 price of the shares were \$10, he would get, you know -- I don't

1 do math so good, but 110,000 shares, I guess. If the price of
2 the shares -- well, you can do the math.

3 In other words, it was totally immaterial as to what
4 the price of the stock was. He would have no earthly reason to
5 pump up, lie about, be extravagant, anything concerning the
6 earnings with a -- private or internal about Qwest because his
7 remuneration didn't matter.

8 I will show you this later.

9 What happened to him was, on August the 13th --
10 August the 13th of 1999, they advanced the payment of the
11 last tranche, \$24 million to January 1, '01, and those are the
12 shares that were sold on that time.

13 I'm going to come back to this. But if you remember
14 the presentation you just heard, he's pumping up the stock,
15 pumping up the stock so he can make the money on January 1 and
16 January 2, Counts 1 and Count 2, and the truth of the matter
17 is, it didn't matter if the stock sold for 10 cents a share,
18 he'd get the same amount of money. And that is irrefutable.
19 Hold me to it.

20 Moreover, he never wanted any shares like this. We
21 were told in the opening, why not keep it? Because every time
22 he got shares, he had to write a check to the United States
23 Government. This is not like options, ladies and gentlemen,
24 you know. This is direct compensation.

25 And so every year he wrote to the company, don't give

1 me the stock, give me money. But I'll show you why, because I
2 have to -- as a guy sang from where I come from, we have to
3 make all the stops along the way. But you'll see it.

4 So Qwest went public. He was entitled to this amount
5 of money, \$27 million, because that's what the private company
6 owed him. And if you wanted to buy the company publicly, that
7 was the obligation that was his.

8 What else? They wanted him to stay. The company
9 issued 100 million shares of stock to the public at \$22 a
10 share. That was the public offer. There is no dispute about
11 it. If we have to, we'll bring in documents like this to
12 demonstrate.

13 You recall he had been promised by Anschutz 3 percent
14 of the company, 3 percent of the growth of the company.
15 Nothing of the capital. Nothing of the capital. And in order
16 to keep him as chief executive officer, they continued the
17 3 percent growth program. How did they do it? They gave him
18 options which equaled 3 percent of the growth of the company.

19 So he got 3 million options. 3 million options. So
20 100 million, got 3 million options. And this was in, I
21 believe, 1997.

22 And the stock went way up and started splitting. His
23 3 million -- it split twice. He got 3 million options at \$22 a
24 share. It split once, so he had 6 million options at \$11 a
25 share. Split again, and he wound up with 12 million options at

1 \$5.50. Okay. But they would be worthless to him, indeed,
2 unless the stock went up. And they were given to him for that
3 reason, to incentivize him and energize him to make this into a
4 great company. And he did.

5 You will hear in a little while when we get to the
6 September 7 guidance, which he issued a 21 billion .3 to 21
7 billion .7 for year ending 2001, how he had grown that company,
8 through mergers, through acquisitions, through investments into
9 the company by Microsoft, by Bell South, by Treasury stock, not
10 public stock. How he had grown the company from 400 employees
11 to 65,000 employees does. It is not make believe, mirrors.
12 It's a real company, with real income.

13 I now would like to give you a survey of what he was
14 doing with these options. But I must tell you one more thing
15 about these 12 million options. He could not get them all at
16 once.

17 Do you remember what I mentioned about golden
18 handcuffs? They would only be given in tranches every year.
19 Every year on December 31, he would get an additional 2,400,000
20 options.

21 So let us watch him. Let us see what he has done from
22 the beginning of 1998. Let us see whether it is true, as
23 alleged in this Indictment, that he accelerated his trading in
24 January of '01 because Mr. Mohebbi dropped him a note and left
25 it on his chair about the internal budgets.

1 May I do this, Your Honor?

2 *THE COURT:* Yes.

3 *MR. STERN:* This is 1998, the IPO, initial public
4 offering, has been in 1997. His first tranche of 2,400,000
5 options of his total of 12 have vested -- he's executing. Why
6 shouldn't he?

7 You know what I didn't tell you, folks? When he made
8 his deal with Anschutz in the private company, his salary was
9 \$600,000. That's a lot of money. I'm not kidding around with
10 that. That's not why he agreed to do what he did in terms of
11 his family. It was to have an entrepreneurial chance to make a
12 lot of money. And when Qwest went public, his salary was about
13 600, \$650,000. That's all he was being paid.

14 And I listened to you folks during the voir dire that
15 we had, and I heard what you said. And I'm here to tell you
16 that he never got a big salary, ever got a big salary, that he
17 began with that company about 600, \$650,000 a year, plus a
18 bonus of 3 or 400,000, and that his total salary and bonus even
19 at the end, when Qwest was high as a kite, never exceeded about
20 a million and a half dollars.

21 He did what I heard in this courtroom you're supposed
22 to do, get your money by increasing shareholder value.

23 But, of course, when you do that, and your options do
24 mature, do begin to vest, again, then, again you cash them in,
25 and that's what he did.

1 The first year, his first tranche vested December 31,
2 1997, the year Qwest went public. Yes, the IPO. He had 2400,
3 he executed on 1,131,000 shares. He decided to keep 351,000
4 shares, folks. That means, ladies and gentlemen, he paid taxes
5 on the difference between \$5.50 a share and \$19.93 a share.
6 That difference represents the profit on the exercise. He held
7 the stock, paid personal income taxes on it, and never sold it,
8 ever.

9 Well, I'll come to that.

10 In all, he exercised 47 percent of his available
11 options in that year.

12 Let's look at 1998. I hope this is 1998.

13 Here is 1999. He had 1,268,092 remaining that he
14 didn't exercise the year before, right? I think you all saw
15 that on the chart. If not, I want to verify it for you, so you
16 shall know that I'm telling you the truth.

17 There it is. That's what he had left. And --

18 Shows you how good I am.

19 He has that left, carried over from the year before.

20 On December 31, his next tranche of 2,400,000 vested.
21 So at the beginning of the year, he had vested shares of
22 3,668,902 options. He exercised 1,881,000 options. No one is
23 claiming he had any inside information. They're not attacking
24 him -- indicting him for any of that. He exercised options,
25 51 percent of all of his available options. That's what he was

1 in it for. It wasn't for the salary; it was for the increase
2 in the share price.

3 And you can see that the prices increased, goes up,
4 goes down. And as many of you taught us yesterday, that's what
5 it is in the market. 51 percent.

6 I'm showing you this because of the Indictment
7 allegation that his sales accelerated after Mohebbi left a note
8 on his chair sometime between December 1 and December 14 of the
9 year 2000.

10 Something else happened that year, folks. He was
11 granted an additional 9,000 options at a strike price of 28.50.
12 Did I say 9,000? I mean 9 million. That's quite a difference.

13 Again, golden handcuffs. Couldn't have it all at
14 once. 25 percent of it would vest, but beginning August 13,
15 2000.

16 So began the year with a 351,000 personal shares, he
17 executed on 51 percent of the 5 1/2 that he had, and now he had
18 in his pocket additional options.

19 On that same day, August 13 of 2000, the company
20 advanced the payment date of the \$24 million that were due him
21 for the growth shares.

22 And in a letter that we show marked into evidence --
23 trouble is, when you try to show people you've really got it,
24 you've got a lot of stuff. Here it is.

25 Exhibit 1704. Please put it on the screen if you can,

1 please. Maybe I have the wrong exhibit.

2 If you read the paragraph next to the end, "It is also
3 agreed that the growth share payments in the amount of
4 25 million . . . payable to you during the year 2001 under the
5 growth share plan will be paid in full January 1, 2001."

6 On that day, he would receive that much in Qwest
7 shares no matter what the price of the shares were. \$1, he'd
8 get 25 million.

9 Now, the numbers, I understand, don't completely match
10 up. But you're going to find out that the whole accounting
11 was -- but that is the growth shares, make no mistake about it.
12 Directors of Qwest will come into this courtroom and confirm
13 it. And he had no interest in what the price of the share was,
14 in terms of that payment. Of course, he cared about the price.
15 But I mean, in terms of pumping up the stock as has been
16 suggested because he wanted to sell in order to be indicted on
17 the first two counts, he had no interest.

18 So let's return to the year 2000.

19 He had at the end of the year 1,787,902; and on
20 December 31, 1999, an additional 2,400,000 options vested.

21 He now had 4,187,902 options available. See, when the
22 Government, as the prosecution has styled itself, the United
23 States, says the sales were accelerating, they don't happen to
24 mention that he was also getting inundated with options. But
25 even then it's not accelerating in terms of percentages. So

1 he's executing, he's executing. And then on March 1, 2000, he
2 executes on 200,000 shares, pays tax on \$41, nearly, a share,
3 because he holds the shares. Holds them.

4 So out of the gross proceeds of \$8,150,000, he pays
5 income tax to the United States, Colorado, and to New Jersey
6 and holds the shares. He's still holding the first 351,000.
7 He now has 551,000, personal account. He began -- that's by
8 March. He began with 4,187,000 options.

9 On August 18, his first tranche of \$28.50 options
10 vest, so he has an additional 2,500,000 vested options at
11 \$28.50, and he's in the money because, as you can see, on
12 August 8, he had exercised some options at \$53.33. Okay.

13 Now I'll tell you some interesting things that he
14 does, this man who they say is lying and cheating and pumping
15 up stock.

16 Here is what he does. On July the 26th, right in
17 here, he gives 90,000 shares of his stock to his children.
18 That stock has a value for gift tax purposes -- it was given at
19 a price of \$48.28. And for gift tax purposes, it was valued at
20 \$4,345,312.50. Mustn't forget about that, because the
21 government won't, and paid gift tax on it.

22 He paid gift tax on it to the United States Government
23 for the privilege of gifting that many shares, 90,000 shares,
24 to his children.

25 And he never sold them throughout the entire time that

1 he was the CEO at Qwest, even when it was going down, even
2 through the terrible year of 2001, even after 9/11, even after
3 everything, even to the day he left the company, those children
4 owned 90,000 shares and lost 3 1/2 or \$3.6 million on them,
5 because the man never sold a share.

6 But he had a problem. I'll tell you what that problem
7 was. You see, all of these options here, 4,187,000, he had to
8 get rid of them. He had no choice.

9 Why? Because when Qwest went public in '97, he had a
10 five-year vest on them. In June of '02, he would lose them,
11 worthless. It was use them or lose them. They made some
12 reference to that. I guess maybe they anticipated I was maybe
13 going to happen to mention it.

14 He had to get rid of those options. Would expect him
15 just to say, I'm not going to exercise them? That was it --
16 was the whole purpose of him undertaking this whole Denver
17 experience.

18 He didn't want to exercise them. He believed in the
19 company. The same mind that gave 90,000 shares to his children
20 and paid taxes, gift taxes on \$4.3 million, did not want to
21 exercise those options to the degree that he would have to.
22 Sure, his financial advisers were telling him, look, don't be
23 crazy, don't keep all of your wealth in one stock. Nobody does
24 that. I don't think anybody does that unless -- I don't think
25 it's a wise thing to do. That's what he was being told. We

1 will put many of the people who advised him of that on the
2 stand. They will say it to you. They were pounding at him,
3 diversify, diversify, diversify. And he did some, but not to
4 the extent that they wanted him to. And he didn't want to get
5 rid of all of these options.

6 You know what he did? He went to the Board of
7 Directors and said, please extend my options. I will put
8 witnesses on the stand from the management of that company who
9 will swear to you under oath, people with no interest
10 whatsoever in this case, that during exactly this period of
11 time he went to the Board of Directors and said, please extend
12 my options. I don't want to exercise and sell.

13 Nobody kind of mentioned that to you. But it is the
14 truth.

15 They said no, and they had a good reason. I don't
16 understand the reason, but apparently for accounting purposes.
17 Maybe some of you would. For accounting purposes, if you
18 extend options in that way, the company has to take a hit to
19 earnings. And they weren't willing to do it. They weren't
20 willing to do it. And they told him, Joe, go sell. Go sell.
21 Try to smooth it out, try not to affect the price of the stock,
22 Joe. Joe, go sell.

23 Now, maybe you think I'm making it up. But I'm
24 telling you, I'm going to put people on the stand to tell you.

25 And what do you know, Joseph Nacchio on October 31 --

1 first of all, he starts selling -- now, mind you, he doesn't
2 even have his note yet, because under these charges, he doesn't
3 get this note until sometime between December 1 and
4 December 14. I think you folks will remember that. And the
5 Indictment says it was around December 4 when he got all of
6 this vital -- what was it, important information from
7 Mr. Mohebbi in the note left on his chair.

8 On October the 31st, Joe Nacchio held a press
9 conference and announced publicly -- sorry, Your Honor.

10 October 31 -- we can actually play this, I think. We
11 could show it to you on video, I believe -- no, can't show it
12 to you on video. You could hear his voice. It's all right.

13 This is the actual transcript of what he said. Can
14 you put that on the screen as well? If you can't, read along
15 with me.

16 Somebody named Tom asks him, "What about this
17 requirement to sell?"

18 Joe Nacchio: "Right now I got two grants. I got a
19 '97 grant in which there is 7.4 million options outstanding."

20 See, he had another tranche coming in, next year, 4.1
21 starting the year, another 2.4, all of which expire, not just
22 mature, most of them are vested.

23 Quite true.

24 Most of them are vested, but they expire in under 30
25 months. And that was true, June of '02 they would expire.

1 "Then I got a 9 million option grant that goes for
2 another nine years." Remember that one, folks? 9 million at
3 28.50, vesting, you know, along.

4 "The problem we have, me and my board have, is that my
5 grants expire. It is use them or lose them, and they have got
6 a big gain in them. So I can't just exercise and hold."

7 What that means, folks -- I think many of you know
8 this. If you exercise the option, you pay income tax on the
9 difference between the option price you exercise and the option
10 price you take it at. So you're -- you've got the stock, but
11 then you've got to write a check to the United States, state of
12 Colorado, and state of New Jersey.

13 "So I have to sell every quarter, and you will see me
14 sell. You will see me sell. Now, I've gone to the board and
15 said they ought to think about a different method because we're
16 running out of quarters and they still have 7.4 million to
17 sell. So you've got to sell about a million a quarter."

18 This man, who they say accelerated the sales because
19 Mr. Mohebbi left him a note on his chair.

20 "So I've got to sell. But right now I'm in this
21 little window, and that's really where the big selling is
22 coming. I am not selling anything that is vested that I've got
23 nine years left."

24 Translation, I think you know what it means. I'm not
25 selling any of the 28.50, because I don't have to. I've got

1 nine years left to go. And he never did, from the time he got
2 it through each vesting period until he left the company, he
3 never exercised, never sold a share of that \$28.50 stock.

4 Well, you can read the rest. He's telling the people,
5 look, watch out. I have to sell. I don't want to. And I will
6 prove to you every word that I have said to you is absolutely
7 true.

8 Remember, folks, Mr. Mohebbi's note is important.
9 Important information, not material, non-public information,
10 but the important information, is somewhere between December 1,
11 December 14 of the year 2000. That's what they say. That's
12 what they've charged.

13 Now, why don't we take a look back at what happens on
14 September 7. That's the public guidance that I started out
15 with, if you'll recall, the one with the warnings. That is the
16 publicly stated financial targets that are an issue in this
17 case, the ones they say that there was important information
18 about.

19 Here it is. And that's Nacchio talking. "Based on
20 the strength of our business and our" -- you know what, I'm not
21 going to start with that. I'll leave it up there for you.

22 I want to give you the background of that first.

23 Qwest became Qwest with U S WEST on June 30, a
24 couple of months before that. And on June the 30th, in
25 Exhibit A-204, it was announced --

1 I don't think you're looking at the same thing I am,
2 but that's okay.

3 I'll read it to you. Trust me, they'll find it and
4 show it to you.

5 On June 30, registrant consummated the merger of U S
6 WEST, a Delaware corporation -- that's when they got together.

7 Then the announcement. Could you highlight the
8 paragraph that begins, "The new Qwest will have" --

9 *THE COURT:* Mr. Stern, I don't mean to interfere, but
10 why don't you enlarge it, rather than highlighting it. At
11 least that would help me, and maybe it --

12 *MR. STERN:* Because I'm not smart enough. I'm not
13 technological.

14 *THE COURT:* You know the difference between big and
15 yellow, don't you?

16 *MR. STERN:* Depends on the hour of the day, Your
17 Honor.

18 *THE COURT:* Proceed.

19 *MR. STERN:* All right.

20 Here is the projection, folks. 18 and a half billion
21 dollars, right. For what year? 2000.

22 Where did that come from? For a year, the investment
23 bankers had studied what the prospects were for these two
24 companies, because it took a year to make -- you know, to make
25 the merger happen. I think even the prosecutor mentioned that

1 in his opening. It took a year for the merger to happen.

2 And two investment banking houses, Donaldson, Lufkin &
3 Jenrette and Lehman Brothers, got together to figure out what
4 the projections would be for this newly merged company for the
5 year 2000 and the year 2001 and continuing thereafter.

6 Would you kindly put on the screen, enlarge, yellow
7 and do everything necessary, Exhibit 502, the top line.

8 It was called Project America. They had these codes,
9 these investment houses, when they do these deals. There was a
10 red, there was a blue and a white, and one company was blue.
11 They used code names.

12 Can you enlarge "revenues," see the word "revenues"?
13 The very top line.

14 I'm spending time on this, folks, because it really is
15 important.

16 They said for -- is it okay?

17 They said for the year 2000 the revenue would be
18 \$18.5 billion for this new company. And they said for the year
19 2001 the revenue would be 21 billion 33. I didn't come -- that
20 didn't come from Nacchio, that came from Lehman Brothers,
21 Donaldson, Lufkin & Jenrette, and that was projection for when
22 this merger would take place.

23 And so when it took place -- when it took place,
24 Nacchio announced, consistent with what he had been told he
25 should announce, that the revenue projection for the year

1 2000 would be 18.5, on July 9, a reasonable projection, based
2 on what he had been told by investment banking houses it should
3 be.

4 Then on July 19, 2000, he reiterated what the
5 investment bankers had said, 18.5 billion for the year 2000.
6 Now, he's pretty deep into 2000, but still far from the end.
7 This -- there is five months or so left to go. But he is
8 sending out the projection. Of course, they have the usual
9 warnings attached thereto, but the company is in good faith,
10 he's in good faith, the numbers are reasonable. If you're
11 going to make projections, what else can you do? You make a
12 projection. That's the projection.

13 He also announced that he expected Qwest's growth rate
14 to be 15 to 17 percent. We have been told how unreasonable
15 that is. The truth of the matter is that that is exactly in
16 the report of the investment bankers, Donaldson, Lufkin &
17 Jenrette and Lehman Brothers, which predicted, prognosticated
18 that the revenue growth of these two companies would be exactly
19 that. He didn't make it up. He was in good faith. He was
20 reasonable. Because if he wasn't reasonable, then you got two
21 investment banking houses that were unreasonable.

22 And then you know what happened, folks? The business
23 was doing better. Isn't that surprising, based on what you
24 heard a little while ago? Throughout July and August, the
25 business was actually doing better than the projections. I

1 don't blame you for being surprised.

2 And so you see on September 7, 2000, in the projection
3 which is the subject matter of this Indictment, Mr. Nacchio
4 raised -- raised the projections from 18.5 to a new projection
5 of 18.8 to \$19.1 billion.

6 I'm going to tell you a secret. I'm going to get
7 ahead. You know, he made it. And because the business was
8 doing better, he raised the projection from 21 billion to 2000,
9 that is to say, the end of 2001, to between 21.3 to
10 \$21.7 billion, replete, of course, with all the warnings and
11 advice that these are projections, best evidence. No one can
12 count on it.

13 I did not hear one word that this was unreasonable,
14 done in bad faith, done as a plot or a scheme to cheat
15 somebody.

16 And these warnings, you read the warnings at the
17 beginning of the 8-K. These warnings are at the end of the
18 8-K. I'm not hiding behind those warnings, folks. But I can't
19 sit silent when somebody said, people counted on these
20 projections. That is unreasonable.

21 So that was the statements to the public.

22 By the way, he made the middle -- you know, I thought
23 I wrote this down.

24 He actually did 18.9 for the year 2000, beating the
25 18.5, and in the middle of the raised estimate which he had

1 given on September 7, 2001.

2 Remember what I told you, I have to deliver on this.
3 But I will.

4 Now, what is this about the budget? What is this
5 about all this important information that is being concealed
6 from the public?

7 Well, we were told that the budget process had not
8 even yet begun, which is true. Do you realize, folks, that at
9 the time these public statements of projected targets were
10 issued, the internal budgets that he was talking about, seems a
11 long time ago in his opening, had not yet even begun in
12 progress.

13 Play his November 9 one, okay. 005A. Play the one he
14 played you. He's got all of that stuff, Nacchio's inside
15 information. This is the inside information he had about this
16 guidance that is out there in the public for two months. The
17 budget meeting, they said.

18 And then on November 16, do you see, the finalization,
19 says the Government, of Nacchio's inside information, which is
20 the 2001 targets. Isn't the word "targets" interesting, ladies
21 and gentlemen? What targets are they talking about? They're
22 not talking about these targets up here on this board, folks.
23 They're talking about the budget targets.

24 Now, what are the budget targets? Maybe you'd like to
25 actually see it. Would you kindly put up Exhibit 814.

1 This is the budget of November 15. We're now a little
2 more than two months after the publicly stated financial
3 targets of Qwest referred to in the Indictment, and which is on
4 that board.

5 Do you got it?

6 Would you blow up, yellow and do anything else you can
7 do with this thing in the bottom that looks like something from
8 a cartoon.

9 I don't know if you folks can see this. It shows --
10 it shows that the internal targets -- that's to say the budget
11 targets -- are 21,991,000,000. And it's bigger, bigger than
12 the publicly stated financial targets of Qwest, the thing that
13 the public is counting on.

14 And the gap, and the growth, and the targets that the
15 prosecution has been talking to you about this morning are the
16 complaints, internal complaints of Qwest's employees who didn't
17 want to have to reach 21,991,000,000. They weren't talking
18 about 21,300,000,000. They were worried about an additional
19 nearly \$700 million over the public guidance, the publicly
20 stated financial projections.

21 And why? Why? Because their salaries depended on it.

22 Why so? Because those internal budgets were imposed
23 on them by a terrible man. And they were imposed upon them by
24 this man to get them to exceed the publicly stated financial
25 targets of Qwest, so that the public that owned the shares of

1 the stock of Qwest would profit and so would he.

2 The Board of Directors met. They adopted this budget,
3 \$21,991,000,000. And all of the internal crying, complaining
4 and very important information that was not publicly revealed
5 was that these executives, worried about their own pocket,
6 didn't like that \$21,991,000,000 number.

7 And you know why? Because Mr. Mohebbi had a
8 100 percent bonus. He made \$600,000 a year and was entitled to
9 100 percent bonus if, but only if, he could meet the internal
10 targets which were set each year by his boss, and, right, he
11 was his boss. And he wanted him to exceed the publicly stated
12 financial targets of the company by imposing on people like
13 Mohebbi and others like Szeliga too, she had a bonus at stake,
14 internal numbers which the public had no right to know, because
15 many businesses do that.

16 Now, they would complain to him, to be sure. We don't
17 like this number. We can't do this number. He'd say, I think
18 you can do it. How do you think he built the company to the
19 point it was? Listening every time when some junior person to
20 him said, I can't make it, I can't do it. The purpose is to
21 get people to exceed what they think they can do.

22 You know what those budgets were called? This is the
23 biggest joke. They were called stretch budgets. It was a term
24 of art within Qwest.

25 I am going to prove to you that when Mr. Mohebbi

1 dropped a note somewhere between December 1 and December 14 on
2 Mr. Nacchio's chair, talking about not a huge stretch, but huge
3 stretch, he was describing a stretch budget. It's what it was
4 called within Qwest.

5 Let's take a look, for example. Here is the May
6 meeting of the audit committee. It's our Exhibit 20, page 4.

7 Budget overview. I think it's the next page. Will
8 you highlight, yellow and make whatever you have to into the
9 title of that page.

10 Will you do something to the words now. They can see
11 them.

12 Want another one? A-37.

13 I'm sorry, Judge, I know I'm deficient in this.
14 That's what happens when life passes you by.

15 I'll just tell you, folks, here is the 2001
16 compensation targets. It's entitled "Compensation targets,"
17 because it's what these folks have to reach to make their
18 bonuses. 2001 compensation targets. Here is the word "stretch
19 budgets." And there is the amounts, \$21,800,000,000, because
20 they had by this time lowered the internal budget because of
21 all the complaining and all the rest of it. They lowered the
22 21-991 to 21-8, which was still comfortably above the high
23 range of the publicly stated financial targets of Qwest. These
24 are all internal numbers.

25 But I'm afraid my friend got us a little confused in

1 his presentation about what growth targets we were talking
2 about.

3 *THE COURT:* All right. Mr. Stern, I have to stop you
4 now. Please stick with the facts. I think you're arguing now.

5 *MR. STERN:* I'll be happy to.

6 I will prove to you that Nacchio did not agree with
7 the critics of the internal budgets. I will prove to you that
8 he had a reason not to agree with the internal budgets, because
9 he was aware of information which was not available to the
10 people who were criticizing the internal budgets.

11 First of all, he knew more about the business than he
12 did. That's why he was brought in there, and that's why he
13 built it.

14 But we'll also prove to you that he had access to
15 classified information about potential work that he believed
16 was available to Qwest within the year 2001 which neither
17 Mr. Mohebbi nor Ms. Szeliga nor any of the people who were
18 worried about reaching the 2.9 or the 2 -- 21.9 or 21.8
19 budgets.

20 So that, from our point of view, is this: We will
21 prove to you that throughout the relative period of time, the
22 employees who you heard about were not complaining inside the
23 company that they could not reach the publicly stated financial
24 targets of Qwest as alleged in the Indictment; that they were
25 complaining about the internal budgets which were higher

1 because of their own pecuniary interest. And we will prove to
2 you that Mr. Nacchio in good faith discounted and disbelieved
3 those higher estimates because he had additional information
4 that they did not have.

5 You wouldn't consider giving a little break to me, a
6 little recess?

7 *THE COURT:* We can do that, yeah.

8 *MR. STERN:* Thank you very much.

9 *THE COURT:* Dare I ask how much longer you have?

10 *MR. STERN:* I would think I can be done in an hour.

11 Thank you. Thank you for your indulgence. I thank the jury.

12 *THE COURT:* We'll take a 15-minute recess.

13 (Recess from 3:22 p.m. to 3:38 p.m.)

14 *THE COURT:* Mr. Stern, you may proceed.

15 *MR. STERN:* Thank you, Your Honor.

16 I am going to try and do like the Muppets used to say,
17 keep moving right along.

18 So the Government says, Mr. Nacchio got a note on
19 December -- somewhere between December 1 and 14th, which, you
20 know, activated him in some way. There is not a single sale
21 during that period of time.

22 They said he was told important information about a
23 huge stretch. Well, this is what the Indictment says, their
24 Indictment.

25 "No later than December 4, 2000, Nacchio was aware of

1 material, non-public information about Qwest's business
2 including that Qwest's publicly stated financial targets were
3 extremely aggressive and a, quote, huge stretch." It's copied
4 from the Mohebbi memo, which isn't talking about this guidance;
5 it's talking about this budget.

6 And here is what Mohebbi actually said. I don't mind
7 reading it to you.

8 "Joe, the purpose of this memo" -- are we going to do
9 this one or not?

10 "The purpose of the" -- better wait.

11 *THE COURT:* Proceed.

12 *MR. STERN:* Thank you, Your Honor.

13 "The purpose of this memo is to share with you some
14 ideas about how we can efficiently run Qwest in 2001. In doing
15 so, I have talked to Drake . . .

16 "As we discussed this week, the revenues and EBITDA
17 numbers for next year are not a huge stretch." It says "huge
18 stretch." He's talking about the stretch budgets, and I
19 believe when he takes the stand in this courtroom on behalf of
20 the United States, he will confirm that this memo is not about
21 the publicly stated financial targets of Qwest, but the
22 \$700 million budget -- I mean, the \$700 million addition in the
23 budget. That's what he was worried about. And I believe he
24 will confirm it.

25 Now, in an effort to persuade you to convict

1 Mr. Nacchio of the first two counts, they began a chain of
2 explanation to you this morning, starting with December 20.
3 They say that on December 20 Mr. Mohebbi wrote another memo.
4 It, too, is not dated. It, too, you were not shown. It, too,
5 was not given to Mr. Nacchio. It, too, Mr. Mohebbi will admit
6 on the witness stand, he didn't give to Mr. Nacchio. It, too,
7 he will say he put on Mr. Nacchio's chair.

8 And then the Government has alleged as a result of
9 receiving that memo, Mr. Nacchio decided that he had to pump up
10 the stock because when AT&T and the other telephone company had
11 a problem, temporarily Qwest stock went down. I don't know if
12 you remember this.

13 First of all, we will prove to you that on
14 December 20 -- that on December 20, 005F, Mr. Nacchio was not
15 in Denver. He was in Appalachia with his now abbot of the
16 Saint Benedictine order distributing food in hovels to
17 underprivileged people. There was absolutely no way he could
18 get this December 20 memo.

19 We will bring into this court, the abbot, the records,
20 the trip, and prove it to you.

21 Moreover, we will show you this memo, which is not
22 about the public stated financial targets of Qwest, but which
23 is about the budget. And we will show you that in the memo,
24 while Mr. Mohebbi is expressing concern, he says, even the
25 budget is doable. That's the word he used, is doable.

1 Now, the Government contends -- show them, please,
2 005F.

3 This I think you will enjoy. All right.

4 Here is the story that the Government has offered.
5 December 1 to 14, Mohebbi memo to Nacchio, we know that's about
6 the budget. We know the budget is being created after the
7 guidance. December 20, Mohebbi memo to Nacchio. December --
8 which he could not have possibly gotten. Even if he got it,
9 was only about the budget, which Mohebbi says is doable.

10 December 21, Nacchio reaffirms guidance. He did. And
11 why shouldn't he? The guidance is not the budget. The budget
12 is a much higher number, and no one is complaining about the
13 guidance.

14 January 2, Nacchio sells \$14 million worth of stock.
15 That's the gross shares, ladies and gentlemen, the shares which
16 he couldn't possibly care about what the price was, because he
17 was going to get \$24 million, roughly, in shares, and if you --
18 the amount of shares would be, you know, dependent on what it
19 took that day to give him \$24 million.

20 And we're going to prove to you that he didn't want
21 the shares, never wanted growth shares, did not want to accept
22 shares and pay income tax on it. And every tranche going back
23 to 1998, he, every year, wrote the company and said, don't give
24 me these growth shares. Give me money. I've got -- he's got
25 enough shares. He doesn't want the shares.

1 And we will prove to you -- yes, because you see with
2 options, he doesn't have to exercise. If he takes these
3 shares, he has to pay income tax on ordinary income rates on
4 every share that he takes.

5 We will put every one of those letters into evidence.

6 Now, he doesn't want the \$24 million in shares. And
7 when he finds out that these too have to be in shares in spite
8 of the letter which says you're going to get \$24 million, his
9 financial advisers pound on him. See if you can defer the
10 money. And so he doesn't even take the full 24 million in
11 shares. \$8 million is put into deferred compensation. Doesn't
12 take the shares. The company is making him take shares, but at
13 least they go along with putting \$8 million into a deferred
14 compensation account.

15 Now, on the year 2001, he had remaining 2,012,902
16 vested shares from the year before. An additional 2,400,000
17 vested at the end of 2000. He began the year, therefore, with
18 4,412,902 vested options.

19 Aside from the growth shares the 1st and 2nd of
20 January, which were sent to him, no stock is sold. He's still
21 carrying 551,000 shares, which includes 90,000 shares that he
22 has given to his children and paid gift tax on and has not sold
23 after the first Mohebbi note or after the second Mohebbi note.

24 Consistent with his public announcement on October 31,
25 remember, I have to sell a million shares a quarter -- by the

1 way, I made a mistake. It's not June of '02. It was June of
2 '03 that his options would vanish, the \$5 and a half options.
3 I'm going to be selling. So he's selling. He's not selling
4 because Mohebbi wrote him a note about the budget which is
5 \$700 million higher than the external target numbers. He's
6 selling because he has to sell. And he told the public that he
7 would be selling and the reason he would be selling, and he
8 told them that on October the 31st, which is six weeks before
9 he got any sort of a note from Mohebbi.

10 And then on the 15th he enters a trading program.
11 The Government told you about that. We will prove to you what
12 your common sense must surely tell you. Any person looking to
13 dump enormous amounts of stock because he has inside material,
14 non-public information that the stock is going to tank, the
15 last thing he would do in all the world would be to enter a
16 trading program in which he is limited to 11,500 shares a day
17 for the remaining life of the options.

18 The reason 11,500 shares a day was selected was that's
19 how many days it would take for him to get rid of the 4 million
20 4 he still had minus these, plus the additional 2 million 4 he
21 was going to get at the end of that year.

22 We will prove to you that the last thing anybody would
23 do would be that the stock was going -- who believed the stock
24 was going to tank would be to enter a program in which it was
25 computed that to get rid of the stock over the next two and a

1 half years, you would sell every day 11,500. The Government
2 says he withdrew from that program. That is true, he did. The
3 Government has not told you why he withdrew.

4 But I will tell you what we will prove, what he
5 publicly stated at the time. He said, I'm going into the
6 trading program here. He said, I am withdrawing from the
7 trading program here.

8 And the reason he said is because the stock is getting
9 too low. He didn't want to sell because the stock was getting
10 too low. Believes, as he did, in the projections in the
11 publicly announced projections, believes, as he did, in his own
12 company and in his own people. He did not want to sell under
13 \$38. And so he withdrew from the program.

14 When the stock came up, he began to sell. He had to
15 catch up to some degree.

16 Did he enter another trading program? Yes, he did.
17 When did he do it? On or about shortly before May 18. What
18 did he do? He entered a program in which he would be selling
19 about 10,000 shares a day for the remaining life of the
20 program. Only this time he rectified the mistake that he made
21 the first time. The first time, we will prove to you, when he
22 entered the trading program, he did not set a floor. In other
23 words, he had to sell 11,500 shares a day, irrespective of the
24 price of the stock. And if you believe that you -- that the
25 stock, you know, is going to go up, that's what you do, because

1 you don't have to worry about it falling down. So he had no
2 floor.

3 He learned from his mistake. When he reentered the
4 trading program, he put a floor and said, do not sell a single
5 share, do not exercise a single option under 38.

6 And this is the man they said had inside information
7 that the stock was going to go down.

8 Now, in that year he had 4,412,902 options available.
9 He exercised 2,172,000, 49 percent. You will recall, not
10 materially different from the percentages in all the years
11 before.

12 How many shares of his own holdings, of his children's
13 holdings did he sell? None.

14 What about the 2 and a quarter million options that
15 had become vested? None. Although he could have, as you can
16 see from the price of the shares. They were over \$28.50
17 throughout the year. None. Not a share. Nothing.

18 By the end of the year, 4 million -- strike that,
19 4,500,000 options at \$28.50 had become available. Throughout
20 the year he was in the money. Could have exercised. Didn't,
21 not a single share. Not a single personal sale, not a single
22 share of his children, not a single one of the 4.5, this man
23 who they say accelerated his trading because Mr. Mohebbi left a
24 note on his chair about the budget.

25 I will prove to you, we will prove to you, for I can't

1 do this by myself, my colleagues will be up there with
2 witnesses, as well as -- as well as I, but we will prove to you
3 an amazing thing. This is going to amaze you based on what you
4 heard before me. He made the budget. He made it for the first
5 quarter, and he made it for the second quarter. That's right.
6 The higher budget, the one higher than the publicly stated
7 financial targets, he made it for the first quarter, and he
8 made it for the second quarter.

9 And for those who don't know what quarters are, the
10 first quarter is January, February, March; the second quarter
11 is April, May, June. He never traded.

12 And when I tell you he made the budget, that means
13 they were performing at \$600 million better, on an annualized
14 basis, than the low end of the publicly stated financial
15 guidance, which is what the public had a right to read and a
16 reasonable right to rely on, given the fact that it is a
17 projection going forward for many, many months, and is
18 obviously dependent, we will prove to you, on what the economic
19 circumstances, not of Qwest alone, are, but of the nation as a
20 whole is.

21 Now, we know what the year 2000 became. But we won't
22 rely on common knowledge. Obviously, we're going to prove to
23 you what happened in a steadily eroding environment.

24 And for those of us who had such wisdom, we will prove
25 to you, to foresee all of these things would happen, they would

1 be right. And for those of us who looked at the glass not half
2 empty but half full and had a different vision for the year, as
3 many of us unfortunately did, we would have been proven wrong.
4 But that doesn't make us cheats, criminals, or to be convicted.

5 We will produce into this courtroom the economic
6 surveys which Mr. Nacchio relied on in continuing to believe
7 and to reaffirm the guidance, the one in May which said,
8 "Although the Qwest in region economy is slowing, it remains
9 the fastest growing region in the nation. Qwest in region
10 territory rate is still below the U.S. average. Qwest in
11 region territory maintains positive demographic patterns."

12 I have one for June. I have one for July. I have one
13 for August. But I don't want to outweigh your patience. Your
14 patience has been unlimited, so has Your Honor's, but I cannot
15 exceed it.

16 He took a rosier view, to be sure.

17 In June, he met the public. He maintained the
18 guidance, but he said, you know, I think maybe we should think
19 about more towards the lower end of the guidance than the
20 higher end of the guidance.

21 Now, I have to tell you something that does not give
22 me pleasure. A while ago the prosecutor stood before you and
23 said, in essence, he was trying to figure a way out. He knew
24 disaster was coming. Well, we unfortunately are going to have
25 to prove to you that he had a way out, that if he were a man

1 possessed of information, that there was trouble, big trouble
2 in store and that he would lose all of these options, millions
3 and millions of options would go under water, he had a way out.

4 At the end of January of '01, one of his sons, the one
5 who had the problem, attempted to commit suicide. He went into
6 a hospital at the University of Pennsylvania. From there he
7 went to a hospital in New Jersey. From there he went to a
8 hospital in Florida. And for over a month, over 30 consecutive
9 days, the boy was confined to the hospital. He was beside
10 himself.

11 He flew to Denver on February 14, and he wanted to
12 resign. He wanted out. He had the perfect excuse. He could
13 have resigned from the company. Nobody could have stopped him
14 from cashing in all of his vested options. Look where they
15 were, \$40 a share. He had millions and millions at 5.50. He
16 had several million at 28.50.

17 Armed with all of this private, important information,
18 he could have walked out and resigned.

19 Members of the Board of Directors importuned him to
20 stay. They felt they needed him. And he did stay. Didn't go.
21 Didn't sell his children's stock. He didn't sell his own
22 stock. He entered trading programs to dribble out his shares,
23 intending to remain with the company all the months it would
24 take him to exhaust the options at \$10 a share with a floor not
25 to sell below \$38 a share.

1 Finally, of course, the economy overcame him. An
2 optimist, someone who believed in this company, we'll prove to
3 you, the realities even with the fact that the Denver area, he
4 felt, based on economic reports that we will put before you was
5 doing better than the rest of the country, it was now -- it
6 could not any longer be withheld. His own feelings were
7 overcome, and he had to publicly take down the numbers, and he
8 did.

9 And we will show you the announcement. He reported in
10 September that the economy had now reached a point where he
11 could no longer endorse the publicly stated financial guidance
12 of Qwest. Now, that's September. Months and months and months
13 after all the trading. He's not interested in trading.

14 Never sold a share of stock after 5/29, because, we'll
15 prove to you, he would not sell under \$38 a share.

16 So he took the numbers back. You know what date he
17 took it down, folks? You're going to be amazed. He took it
18 down on September 10 of 2001. September 10. You know what
19 happened the next day? Of course, you do. 9/11. Planes
20 crashing into buildings, monsters killing our colleagues, stock
21 market closed for seven days. And when it reopened, Qwest
22 stock went up. Go figure.

23 The point of that is nothing, but it's not exactly a
24 science.

25 So he was importuned to stay, and he stayed. And they

1 wanted him to sign a new contract. Because, you see, the first
2 contract was expiring at the end of '01. You'll recall
3 December of '96 was the first contract for five years, expiring
4 in December of '01. And so they got him to sign a new contract
5 in October of '01, after the -- took the guidance down, stock,
6 of course, was lower. Everybody's stock pretty much was lower,
7 by October, it was after 9/11.

8 And they gave him another 7,250,000 options, in
9 addition to the 12 million he had to start with, the 9 million
10 they gave him later, and another 7,250,000 options at \$16.81,
11 because they wanted him to stay.

12 We'll put that contract into evidence as well. And
13 we'll put into evidence in that contract the same provision
14 that he insisted upon, that they have a New Jersey office, that
15 he not be compelled to stay here, because, unfortunately, the
16 things that he had feared back in '96 when he made those
17 demands had come true.

18 He left as chairman in the middle of '02, around June.
19 His record of exercising options, as you can see, was actually
20 less in '01, the year that they have him indicted for, if you
21 just look at the 5.50 options. I think they're putting it on
22 your screen. If you add in all the options that he had in the
23 money, the 28.50 and the others, this man who they say
24 accelerated his trading because he got all of this important
25 information and cheated people, cheated them, stole from

1 them --

2 And when he walked out -- by the way, he ended the
3 year 2001 with 228,000 more \$5.50 options than he began the
4 year with.

5 This acceleration you've heard about, and his personal
6 and family stock, December 1, 570,130, onto June 2 when he
7 left, he had 564,000, I'm including in that the 90,000 that his
8 children had, total sold, none.

9 Now, you may wonder where this other piece was. He
10 gave about 5500 shares to the Saint Benedictines, make --
11 they're going to make an issue, he took a tax deduction, but
12 that accounts for it all.

13 So no personal shares in 2000, 2001 or 2002.

14 Bad things happened to the economy. Bad things
15 happened to companies. And people do get upset about that.
16 Sometimes there is a feeling that somebody has got to pay. And
17 the investigations start, and the drums start banging.

18 And four and a half years after his last trade in May
19 of 2001, they indict him; that is to say, 12 days short of the
20 five years before the first trade that they're prosecuting for,
21 they indicted him.

22 You will hear from the witnesses that they will call
23 how many times they interviewed people and reinterviewed people
24 and kept on interviewing people. We will prove to you from
25 Ms. Szeliga, who eventually they got to plead guilty for

1 something under a promise that nothing really bad will happen
2 to her, that after years of saying that there was nothing
3 wrong, nothing wrong with the company, yes, after years she
4 said she didn't do anything wrong, they finally got her to say,
5 I'm guilty of insider trading.

6 We will prove that.

7 Joseph Paul Nacchio proclaims that he did not. And
8 when we have demonstrated every single thing that I tell you, I
9 will appear before you, if His Honor will let me, and then I'm
10 going to ask you not just for a verdict of not guilty, but for
11 the verdict of innocent. Not just on reasonable doubt, because
12 he didn't do it. He shouldn't be prosecuted.

13 Thank you.

14 *THE COURT:* All right. Is the Government prepared to
15 call its first witness?

16 *MR. WISE:* Yes, we are, Your Honor.

17 *THE COURT:* All right. Let's do some furniture
18 rearrangement. The podium has to go back to the evidence
19 presentation area.

20 *MR. STRICKLIN:* Your Honor, while that happens, may I
21 approach the bench with a brief motion outside the presence of
22 the jury?

23 *THE COURT:* All right. I want somebody on the court
24 staff to take down -- assist in taking down all of these --

25 *MR. STERN:* My colleagues will do that.

Lee Wolfe - Direct

1 Honor.

2 *THE COURT:* Who is speaking for the defense?3 *MR. RICHILANO:* I guess I will.4 *THE COURT:* Mr. Richilano.5 *MR. RICHILANO:* No, Your Honor.6 *THE COURT:* All right. Court will be in recess.

7 (Recess at 5:03 p.m.)

8 **INDEX**

9 Item	9 Page
10 OPENING STATEMENTS	
By Mr. Hearty	4
11 By Mr. Stern	56
12 LEE WOLFE	
Direct Examination By Mr. Wise	112
13 Voir Dire Examination By Mr. Richilano	134
Direct Examination Continued By Mr. Wise	136
14 PLAINTIFF'S EXHIBITS	
15 Exhibit Offered Received Refused Reserved Withdrawn	
16 308 134 135	

17 **REPORTER'S CERTIFICATE**

18

19 I certify that the foregoing is a correct transcript from
20 the record of proceedings in the above-entitled matter.

21

22 Dated at Denver, Colorado, this 20th day of March, 2007.

23 s/Therese Lindblom

24

Therese Lindblom, CSR, RMR, CRR

25

26