IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Criminal Case No. 05-cr-00545-EWN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH P. NACCHIO,

Defendant.

UNITED STATES' RESPONSE TO
DEFENDANT'S MOTION FOR FORTHWITH HEARING

The United States, by its undersigned counsel, respectfully responds to Defendant Joseph P. Nacchio's "Motion for Forthwith Status Hearing Based Upon Recent Prejudicial Pretrial Publicity" filed on March 15, 2007 [hereinafter "Def. Mot."]

Defendant's motion is based on a Rocky Mountain News article of today's date that sets forth a timeline of events. The article explains that this is a "timeline of events as disclosed in Qwest news releases, press interviews, analyst calls, congressional testimony and court documents related to civil and criminal proceedings." *See* Def. Mot., Ex. A.

Defendant claims that "there is at least one fact identified in the timeline that, to our knowledge, has never come up in any filing of transcript in this criminal case, or in

any of the numerous civil cases (we have not had time to do a complete search on this point)." It then refers to statement in the article that in mid-January 2001, Qwest spent "nearly $ 1million to buy back 22 million shares, a move that bolsters the stock price." *See* Def. Mot. at 2. Defendant then claims that "this fact – that Qwest bought back 22 million shares in January — has never been referenced in the media, certainly not in this case and we believe also not in the civil cases." *See id.*

The factual premise for this motion is absolutely wrong. As government counsel determined from a 10-minute search, the fact Defendant refers to was reported in January 2001 in at least the following media sources (which are attached as Exhibit 1): the New York Times, the Wall Street Journal, Canada Stockwatch, the Denver Post, the Associated Press Online, Communications Daily, the Seattle Times, the Miami Herald, the Charlotte Observer (North Carolina), the Palm Beach Post (Florida), the Columbus Ledger-Enquirer (Georgia), the Birmingham News (Alabama), the Washington Telecom Newswire, and the Financial Times.

Also, the suggestion that the government has provided a timeline to the reporter is absolutely false, as defense counsel would have known if he had bothered to call government counsel to ask.

Finally, defense counsel requests, as relief, that he be able to conduct "individual voir dire" on the jury panel. The Court should reject this renewed request. There are

excellent reasons for not allowing counsel to conduct individual voir dire, as it is a well-established technique for coloring jurors' views about the case. *See*, *e.g.*, Herbert Stern, Trying Cases to Win: Voir Dire and Opening Argument, at 473 (1991 ed.) (explaining that one of the purposes of the voir dire is "to color jurors' views about the case, to inoculate them against your difficulties, to enlist them with your strengths," and observing that this practice "is universally condemned in law books as illegitimate even as it is universally practiced in the law courts"); id. at 504 (suggesting that in voir dire, the lawyer should "advocate your cause and begin to influence the panel"). Accordingly, the government submits that no forthwith hearing is necessary.

Respectfully submitted this 15th day of March, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2007, I e-mail this document to the following e-mail addresses:

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