COURT INSTRUCTION NO. 1.4
CONSIDERATION OF THE INDICTMENT

The indictment in this case contains forty-two separate charges against defendant. They are all similar and may thus be summarized together. At all times relevant to the charges, Defendant Joseph P. Nacchio was employed by Qwest Communications International, Incorporated as chief executive officer and member of Qwest's board of directors. The indictment alleges that, on forty-two occasions between January 2, 2001 and May 29, 2001, Defendant knowingly and willfully sold common stock in Qwest while he aware of aware of and on the basis of material, non-public information. I will discuss the elements of the charges in detail in a few minutes. Right now, I simply want to state several general rules which you must constantly remember as you consider these charges.

1.4.1 You will note that defendant has been charged with a number of crimes. The sheer number of charges is no evidence that defendant is guilty of *any* crime. Numbers alone should never influence your decision in any way. It is your duty to separately consider the evidence against defendant on *each* charge and to return a separate verdict for each one of them. For each charge, you must decide whether the Government has presented proof beyond a reasonable doubt that a defendant is guilty of a particular charge. Your decision on any one charge should not influence your decision on any other charge.

1.4.2 Defendant is only on trial for the particular charges alleged against him in the indictment. I instruct you that your job is to determine whether the Government has proved beyond a reasonable doubt the precise charges in the indictment. If it has not proven a precise

charge in the indictment, then you must acquit the defendant on that charge, even if you think that the defendant did commit some other act not charged in the indictment.

1.4.3 You are not here to return a verdict concerning the guilt or innocence of any person who is not specifically charged in the indictment. You are here to determine whether the Government has proven its charges against this defendant beyond a reasonable doubt. The possible guilt of others is simply irrelevant to a criminal charge. Do not let the possible guilt of others influence your decision in any way.

1.4.4 As I told you at the outset, the indictment itself is not any evidence of guilt. It does not even raise any suspicion of guilt. It is nothing more than the formal way that the Government tells a defendant, the court, and you what crime the defendant is accused of committing.

COURT INSTRUCTION NO. 2.4

EVIDENCE RECEIVED IN THE CASE — STIPULATIONS, JUDICIAL NOTICE, AND INFERENCES PERMITTED

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them, all exhibits received in evidence, regardless of who may have produced them, and all facts which have been agreed to or stipulated.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you may accept the stipulation as evidence and regard that fact as proved. You are not required to do so, however, since you are the sole judge of the facts.

Nothing else is evidence. Any proposed testimony or proposed exhibit to which an objection was sustained by the court and any testimony or exhibit ordered stricken by the court, must be entirely disregarded. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath as jurors not to let them influence your decision in any way. Also, if certain testimony was received for a limited purpose, you must remember to follow the limiting instruction which I gave when the evidence was received.

Anything you may have seen or heard outside the courtroom is not proper evidence and must be entirely disregarded. I further instruct you that you should not try to gather any information about the case on your own while you are deliberating. Do not conduct any experiments inside or outside the jury room. Do not bring any books, like a dictionary, or anything else with you (except your notes). Also, if any of you have brought a cellular telephone with you, you must leave the telephone with the deputy clerk for safekeeping; it must not be in the jury room with you. Do not conduct any independent research, reading, or investigation about the case, and do not visit any of the places mentioned during the trial.

You are to base your verdict only on the evidence received in the case. In considering and discussing the evidence received, however, you are permitted to draw, from the facts which you find have been proved, such reasonable inferences as you feel are justified in the light of your experience and common sense — remembering always that the facts and inferences you draw from them must convince you of guilt beyond a reasonable doubt. "Inferences," of course, are simply deductions or conclusions which reason and common sense lead the jury to draw from the evidence received in the case.

COURT INSTRUCTION NO. 2.8
NUMBER OF WITNESSES

Sometimes jurors wonder if the number of witnesses who testified makes any difference.

Do not make any decisions based only on the number of witnesses who testified for or against a certain fact or issue. What is more important is how believable each witness was and how much weight you think the various witnesses' testimony deserves. Concentrate on that, not the numbers. You are perfectly free to find that something is true if you believe and give great weight to the word of a witness who said it was true, even though a greater number of witnesses may have testified to the contrary.

COURT INSTRUCTION NO. 2.9

ALL AVAILABLE EVIDENCE NEED NOT BE PRODUCED

The law does not require the prosecution to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require the prosecution to produce as exhibits all papers and things mentioned in the evidence.

However, in judging the credibility of the witnesses who have testified, and in considering the weight and effect of all evidence that has been produced, the jury may consider the prosecution's failure to call other witnesses or to produce other evidence shown by the evidence in the case to be in existence and available.

Please remember that you cannot apply this rule to a defendant, because the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. No adverse inferences may be drawn from the fact that defendant does not call a particular witness or produce particular evidence.

For purposes of considering whether the prosecution has failed to call a witness who is available, you are instructed that the parties have stipulated that Yash Rana, a person mentioned in Exhibit A–1031 as having made statements to Witness David Weinstein, is *unavailable*. Thus, Mr. Rana should be treated by you as a witness who is not available to either side.

COURT INSTRUCTION NO. 2.16
EVIDENCE RECEIVED FOR A LIMITED PURPOSE:
GUILTY PLEAS OF ACCOMPLICES

During the course of the trial, you have heard evidence tending to show that one or more witnesses have entered pleas of guilty to offenses arising out of the events which form the basis of the charges against this defendant. A guilty plea by such a witness is received for the limited purpose of allowing you to use it, if you see fit, in assessing the credibility of the witness. It may not be considered by you for any other purpose. Specifically, you may not use this evidence to infer that, because the witness entered a guilty plea, the defendant must likewise be guilty of the charge.

United States v. Dunn, 841 F.2d 1026 (10th Cir. 1988).

COURT INSTRUCTION NO. 3.7
TESTIMONY OF IMMUNIZED WITNESS

You have heard the testimony of certain witness to whom the Government has made promises that the testimony they gave will not be used against them, in exchange for their testimony against the defendant.

A person who testifies under a grant of immunity with a promise of favorable treatment from the Government is a competent witness. His or her testimony may be received in evidence and considered by the jury, but you should examine such testimony with greater care than the testimony of an ordinary witness. You should consider whether the testimony may be colored in such a way as to further the witness's own interest, for a witness who realizes that he may procure her or his own freedom by incriminating another has a motive to falsify.

Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his or her testimony beyond a reasonable doubt.

COURT INSTRUCTION NO. 8.5
MOTIVE

Intent and motive are different concepts and should never be confused.

Motive is what prompts a person to act or fail to act. Intent refers only to the state of mind with which the act is done or omitted.

Personal advancement and financial gain, for example, are two well-recognized motives for much of human conduct. These praiseworthy motives, however, may prompt one person to voluntary acts of good while prompting another person to voluntary acts of crime.

Good motive alone is never a defense where the act done or omitted is a crime. The motive of the defendant is, therefore, immaterial except insofar as evidence of motive may aid in the determination of state of mind or the intent of the defendant.

Devitt, Blackmar, Wolff and O'Malley, Federal Jury Practice and Instructions, Fourth Edition, Vol. 1, 1992, § 17.06

FAX TRANSMISSION

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Fax #:	303-893-8055	**Pages:**	10, including this cover sheet.
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