

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Action No. 05-cr-00545-EWN

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSEPH P. NACCHIO,

Defendant.

**UNOPPOSED MOTION BY JOSEPH P. NACCHIO TO STAY PENDING
APPEAL THE FINE ON CONDITION THAT THE FINE AMOUNT BE
DEPOSITED INTO THE DISTRICT COURT'S REGISTRY
PURSUANT TO CRIM.R. 38(c)(1)**

Defendant Joseph P. Nacchio, by and through undersigned counsel, respectfully requests that pursuant to Federal Rule of Criminal Procedure 38(c)(1), the Court stay the fine imposed in the above referenced case on the condition that Mr. Nacchio deposit the full amount of the fine, \$19 million into the district court's registry / interest bearing account pending appeal. The government does not oppose Mr. Nacchio's motion.

Rule 38(c) of the Federal Rules of Criminal Procedure provides in relevant part that:

If the defendant appeals, the district court . . . may stay a sentence to pay a fine or a fine and costs. The court may stay the sentence on any terms considered appropriate and may require the defendant to:

(1) deposit all or part of the fine and costs into the district court's registry pending appeal;

The local criminal rules provide that no deposit into an interest-bearing account shall be permitted without court order. D.C.Colo.LCrR 46.1.

The Court has imposed a fine of \$19 million, and has ordered that it is due and payable within thirty (30) days of the date of sentencing. Judgment in Criminal Case [Document 468, filed August 3, 2007], p. 6. Mr. Nacchio intends to file a notice of appeal within the time required. Mr. Nacchio requests that he be permitted to deposit on or before August 27, 2007 (30 days from the date of sentencing)¹ the full amount of the fine into the registry of the District Court of Colorado in an interest bearing account pending the appeal of this matter, so that in the event he is successful on appeal he will not have lost the interest which would be substantial. If Mr. Nacchio is not successful, the government will not be harmed as it would then receive the interest.

Attorneys for Mr. Nacchio have conferred with Cliff Stricklin, First Assistant U.S. Attorney, representing the government in this matter, and have been advised that the government does not oppose this motion.

It respectfully requested that the Court issue the proposed order by August 15, 2007, in order to ensure that no jurisdictional issues are encountered since Mr. Nacchio intends to file his notice of appeal on August 15 or August 16, 2007.

¹ Thirty days from the July 27, 2007 sentence is August 26, 2007, which is a Sunday.

Respectfully submitted this 23rd day of July, 2007.

s/Herbert J. Stern
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August 2007, a true and correct copy of the foregoing **MOTION BY JOSEPH P. NACCHIO TO STAY PENDING APPEAL THE FINE ON CONDITION THAT THE FINE AMOUNT BE DEPOSITED INTO THE DISTRICT COURT'S REGISTRY PURSUANT TO CRIM.R. 38(c)(1)** was served on the following via the USDC CM/ECF system

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s/Mark Rufolo
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