ANSWER:

Paragraph 128 does not pertain to Mr. Kozlowski and thus no answer is required. To the extent any of the allegations in Paragraph 128 were intended by the SEC to pertain to Mr. Kozlowski, he denies each and every such allegation. Mr. Kozlowski further states that based on the information provided and known to him with respect to IRU transactions, Qwest's accounting for and revenue recognition in connection with, and thus the financial statements including revenue from, the IRU transactions conformed with GAAP during the period prior to his departure in September 2000. Qwest's outside independent auditors confirmed Mr. Kozlowski's understanding and repeatedly represented (and have testified) that Qwest's financial statements conformed with GAAP. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

129) Before Szeliga became CFO she supervised Kozlowski who was responsible for IRU accounting and the immediate recognition of revenue from IRU transactions. When she became CFO, Szeliga was responsible for all of Qwest's accounting. It was her duty to insure that Qwest accounted for revenue, including IRU transactions and reported those financial results according to GAAP. The improper immediate recognition of revenue from IRU transactions continued through 2001. All of Qwest's publicly released financial statements included fraudulently recognized revenue from IRU transactions through 2001. Szeliga was responsible for these fraudulent financial statements distributed to the public by Qwest.

ANSWER:

To the extent any of the allegations in Paragraph 129 were intended by the SEC to impute or suggest wrongdoing by Mr. Kozlowski, Mr. Kozlowski denies each and every such allegation. Mr. Kozlowski further states that based on the information provided and known to him with respect to IRU transactions, Qwest's accounting for and revenue recognition in connection with, and thus the financial statements including revenue from, the IRU transactions conformed with GAAP during the period prior to his departure in September 2000. Qwest's outside independent auditors confirmed Mr. Kozlowski's understanding and repeatedly represented (and have testified) that Qwest's financial statements conformed with GAAP. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein. Mr. Kozlowski further states that he departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001.

ALLEGATION:

130) Kozlowski devised and implemented Qwest's fraudulent immediate recognition of revenue from IRU transactions. He was responsible for authorizing revenue recognition on virtually all of Qwest's IRU transactions until September 2000.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 130. Further answering, Mr. Kozlowski states as follows. Even as recently as March 21, 2002, the SEC acknowledged that "[m]any of the accounting issues surrounding the accounting for telecommunications capacity contracts are complex . . . ." March 21, 2002 Testimony Concerning Telecommunications Accounting Issues Before Subcommittee on Oversight and Investigations Committee on Financial Services by John M. Morrissey, SEC Deputy Chief Accountant; *see also In re e.spire Communs., Inc. Sec. Litig.*, 127 F. Supp.

2d 734, 746-47 (D. Md. 2001). Despite this recognition by the SEC and the courts, and in derogation of its responsibility, the SEC refused when requested in 1999 to provide definitive guidance on whether up-front revenue recognition on IRU transactions conformed with GAAP. As a result, Mr. Kozlowski continued to rely on Qwest's outside independent auditors – the experts on IRU accounting, to assist him in accounting for Qwest's IRU transactions.

Initially, Mr. Kozlowski understands that Qwest preferred to and did account for IRU revenue on a straight-line basis (*i.e.*, ratably) over the life of the IRU agreement. During this period, and with KPMG's help, the IRU transactions were structured as operating leases to allow for this accounting treatment. Around the third quarter of 1998, however, Mr. Kozlowski was asked by his supervisor whether a prior transaction which had been structured as an operating lease and accounted for on a straight-line basis could be amended in order to permit sales-type lease accounting treatment and the recognition of revenue up front. Mr. Kozlowski reviewed potentially applicable accounting literature, and in consultation with KPMG concluded that sales-type lease accounting was permissible for appropriately structured IRU sales. The fact that IRU sales could be accounted for as sales-type leases made sense to Mr. Kozlowski; after all, no one else, including Qwest, could use the IRU during the lease term. Mr. Kozlowski memorialized this analysis, which referenced his consultation with KPMG, in a general way in an October 1998 memorandum.

Generally going forward, as Mr. Kozlowski came to be informed, Qwest preferred to structure IRU transactions as sales-type leases, thereby permitting immediate revenue recognition. Notably following this shift, KPMG, which audited and reviewed Qwest's financial statements (including those related to IRU transactions in 1998 and 1999 with Facilicom, Star, Primus and ELI), attested in Qwest's 1998 10-K that the "financial statements . . . present fairly, in all material respects, the financial position of Qwest . . . as of December 31, 1998 . . . in conformity with

generally accepted accounting principles." KPMG accountants – duty bound to audit and attest to the accuracy of Qwest's books – never suggested to Mr. Kozlowski that Qwest's up-front recognition of revenue or other policies and practices associated with IRU accounting did not conform with GAAP.

During the first half of 1999, Qwest's executive leadership – financial and business leaders well above Mr. Kozlowski in the hierarchy at Qwest – decided to change Qwest's independent accountants as a result of an impending business relationship with KPMG. One of the accounting firms under consideration was Arthur Andersen – a firm considered and ultimately selected because of its expertise in telecommunications and sales-type lease accounting. In June 1999, Mr. Kozlowski's supervisor provided him with a white paper prepared by Arthur Andersen and entitled "Accounting by Providers of Telecommunications Network Capacity" (the "White Paper"). Within the telecommunications industry, the White Paper was considered authoritative – indeed perhaps the lone authority at the time – for issues related to accounting associated with IRU transactions. In the absence of authoritative and explicit direction from the FASB, AICPA, or SEC concerning accounting for revenue from IRU transactions, Mr. Kozlowski considered the White Paper as authoritative accounting literature – *i.e*,, the best accounting guidance available to conform Qwest's accounting to GAAP.

Pursuant to direction from his supervisor, Mr. Kozlowski compared Qwest's IRU accounting policies and practices with the analysis in the White Paper. Mr. Kozlowski did note some differences between Qwest's position and those described in the White Paper. When Qwest shortly thereafter hired Arthur Andersen as its independent auditor, Mr. Kozlowski and others at Qwest thoroughly examined Qwest's accounting policies and practices – in particular as they differed with the White Paper – with Mark Iwan of Arthur Andersen. Neither Mr. Iwan nor anyone

else at Arthur Andersen apprised Mr. Kozlowski that Qwest's positions did not conform with GAAP. Indeed, through the time that Mr. Kozlowski departed Qwest at the end of September 2000, Arthur Andersen routinely was consulted about or reviewed particular IRU transactions and the accounting therefore either before or after consummation of the actual deals, or at least in connection with the annual audit. In connection with its annual audits for 1999 and thereafter, Arthur Andersen repeatedly represented that Qwest's accounting and financial statements were in conformity with GAAP. Moreover, as a member of Arthur Andersen's Professional Standards Group and a leading expert on IRU accounting has testified, while certain of Qwest's positions regarding sales-type lease accounting differed with the White Paper, Arthur Andersen concluded that Qwest's positions were "acceptable" under GAAP, were "not in error," and were "in compliance with GAAP."

Mr. Kozlowski further states that by late 1999 he no longer was principally responsible for reviewing individual IRU transactions. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 132 and 153, as if fully set forth herein.

ALLEGATION:

> 131) Noyes assisted Kozlowski in implementing Qwest's fraudulent immediate recognition of revenue from IRU transactions. Also, he specifically approved and authorized revenue recognition on many IRU transactions from April 1999 until September 2000.

ANSWER:

Mr. Kozlowski denies that he participated in any fraudulent or other scheme to account for IRU transactions. The second sentence of Paragraph 131 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

132) Qwest's recognition of revenue immediately from IRU sales transactions was a violation of the requirements of GAAP because, among other reasons:

a) The lit fiber sold in the IRU transactions was classified as Plant, Property, and Equipment ("PP & E") and not inventory for sale.

b) The earnings process must be complete, including that assets sold must remain fixed and unchanged. Qwest failed to meet these requirements in many IRU sales because Qwest either gave IRU purchasers the ability to port or exchange the fiber, or groomed the fiber it had previously sold.

c) The seller must have firm evidence that it will be able to transfer ownership of the fiber to the buyer. At the time Qwest recognized revenue in IRU transactions it had no such firm evidence, often because of the very nature of the fiber it was selling. This was due to, among other things, the fact that Qwest was required to maintain the network and therefore had a substantial continuing involvement with the fiber it sold.

d) Qwest wrongly treated its IRU sales as having several separate revenue elements for which a fair market value could be determined.

ANSWER:

Mr. Kozlowski denies the lead in sentence to Paragraph 132. Mr. Kozlowski also denies Paragraph 132(a). Mr. Kozlowski understood that the components sold in IRU transactions were held in a ledger account that was not being depreciated. Thus, there was no income statement impact from the fact that IRUs were not listed in inventory. Others, including accountants from Arthur Andersen, have told the SEC the same thing; indeed, representatives from Qwest's outside independent auditor have testified that they understood that IRU components were held in nondepreciating PP&E accounts when the outside independent auditor represented that Qwest's accounting for IRU transactions and Qwest's financial statements conformed with GAAP. Furthermore, as Mr. Kozlowski and others have explained to the SEC, the reason why IRU revenue

could be recognized up front by Qwest resulted from the manner in which Qwest made the determination of what capacity would be available for sale and when.

Capacity IRUs were not produced in a manufacturing-type environment. (A flaw in the SEC's analysis is that it likens IRUs to a manufactured product; if so, then why didn't the SEC offer such guidance when asked during 1999?) Since the projected need and the demand in the marketplace for capacity was uncertain, fiber, rights of way ("ROW"), and conduit were created and kept in either construction-in-process or nondepreciating PP&E accounts until a determination was made to either sell it or keep it for internal use. In 1999 and 2000, capacity IRUs generally were not completed (*i.e.*, lit with electronics) until a customer approached Qwest about buying certain fiber optic capacity. In this regard, the fiber became "available for sale" and was sold as part of a capacity IRU concurrently with the installation of the electronics necessary to light the fiber and make it usable by the customer. Therefore, the IRU that became "available for sale" was sold almost immediately and never actually became an item of inventory. As such, IRU transactions were unique. They were not like manufacturing a car and putting it on a lot for sale. Moreover, Qwest's outside independent auditors never told Mr. Kozlowski that revenue from IRUs could not be recognized up front because IRU components were not kept in an inventory account, and indeed representatives of Qwest's outside independent auditor have testified before the SEC that they did not agree with the SEC's premise. In fact, we understand that Arthur Andersen has said that it continues to believe that Qwest properly accounted for IRUs during the time when Mr. Kozlowski was employed at Qwest as an accountant.

Mr. Kozlowski denies the allegations in Paragraph 132(b). As an initial matter, Mr. Kozlowski notes that the SEC does not identify the IRUs to which it refers in this Paragraph, and thus Mr. Kozlowski could not possibly respond to these allegations on an IRU-by-IRU basis. Even

so, Mr. Kozlowski told Qwest personnel while he was employed at Qwest prior to his departure at the end of September 2000 that IRUs could not be groomed. Mr. Kozlowski was not informed that IRUs had been groomed. If in fact IRUs had been groomed, this was done without Mr. Kozlowski's knowledge (*i.e.*, this information was kept from him), and he certainly cannot be faulted for any accounting determinations he made under these circumstances. Mr. Kozlowski also was not apprised of any agreement giving customers the right to port capacity previously purchased. If customers had been given the right to port, this was done without Mr. Kozlowski's knowledge (*i.e.*, such information was kept from him), and he certainly cannot be faulted for any accounting determinations he made under these circumstances. It also deserves noting that Qwest's outside independent auditors reviewed the IRU transactions that took place prior to Mr. Kozlowski's departure, and these auditors never suggested to Mr. Kozlowski that the accounting for these transactions did not conform with GAAP.

Mr. Kozlowski denies the allegations in Paragraph 132(c), in which the SEC claims that Qwest could not recognize revenue up front on IRU transactions because there was no firm evidence that Qwest could transfer ownership of the fiber to the buyer. As an initial matter, Mr. Kozlowski discussed this and other topics with Arthur Andersen when it was retained as Qwest's outside independent auditor, and Arthur Andersen never told Mr. Kozlowski that Qwest could not recognize revenue up front on IRU transactions because of a transfer of ownership issue. Indeed, Arthur Andersen had been aware of the manner in which Qwest IRUs were structured since Arthur Andersen was hired in mid-1999, and knew that these IRUs had an Operation and Maintenance ("O&M") component to them; not once did Arthur Andersen tell Mr. Kozlowski that this precluded sales-type lease accounting in connection with these transactions (and Arthur Andersen continues to profess publicly that Qwest's IRU accounting prior to Mr. Kozlowski's departure conformed with

GAAP). It also deserves noting that KPMG in 1998 and the first half of 1999, when it was Qwest's outside independent auditor, was aware of the O&M component of Qwest IRUs and did not tell Mr. Kozlowski that this precluded up-front revenue recognition. Furthermore, Mr. Kozlowski is not aware of any instance in which a customer was deprived of use of the fiber it purchased in an IRU transaction for any appreciable period of time because of maintenance issues. In addition, the ability to transfer ownership calls for a legal determination, and Mr. Kozlowski is not a lawyer. That is why an in-house Qwest lawyer was assigned to and worked on each IRU deal.

Mr. Kozlowski denies the allegations in Paragraph 132(d). Mr. Kozlowski further states that the initial model developed for allocating revenue associated with sales-type lease IRUs was premised on the cost of the components (*i.e.,* cost of equipment, fiber, conduit, and ROW). Mr. Kozlowski did not develop this model. The model, which is highly complex and technical, was developed by others within the Finance Group to ensure that Qwest enjoyed a net profit over the long term in connection with the development and use of its long haul network. Cost information used to develop the model was obtained from those in the Construction Group, and reflected the actual amounts spent to construct the network. The model is quite complicated, and costs per mile were calculated based on the actual and estimated capacity over the life of the network.

After Qwest retained Arthur Andersen as its outside independent auditor, and after the enactment of FIN 43 in June 1999, Arthur Andersen advised Qwest that it should change the model to base the allocation of revenue on fair market value. Qwest did. Nevertheless, as we understand it, the SEC complains that the changed model reached essentially the same result as the cost-based model: the SEC complains that Qwest attributed approximately 90% of capacity IRU revenue to equipment and fiber components of the sale, and roughly 10% to the conduit and ROW components. Of course, Arthur Andersen reviewed the new model and its application to individual

IRUs (this fact is well documented in the Arthur Andersen work papers), and never once told Mr. Kozlowski that the model did not conform with GAAP. Indeed, had Arthur Andersen believed this to be the case, it would not have given an unqualified opinion with respect to Qwest's financial statements in 1999, 2000, and 2001 (remember that Mr. Kozlowski departed Qwest at the end of September 2000).

The SEC overlooks (or significantly undervalues) the market advantage Qwest enjoyed at the time. Lit capacity IRUs were not readily available. Up-start telecommunications companies, banking on a continued demand for lit fiber, lacked the time or money to construct their own networks. It is overly simplistic and intuitively illogical (as well as flawed from a microeconomic point of view) to say that the fair market value of the equipment in a situation such as this is simply the price Qwest paid equipment manufacturers. Such an approach completely ignores the business reality that Qwest was in a position to sell a valuable lit network. Because of the lit nature of Qwest's network, which no one else was in a position to provide (certainly not on such a scale and geographic scope), Qwest was correct to place the highest value on the equipment and fiber – a decision with which Arthur Andersen did not object.

To utilize the new model to allocate revenue among the IRU piece parts, Mr. Noyes primarily first would determine whether the price per DS-0 mile under the IRU in total was reasonable. They did this by comparing the price per DS-0 mile against that paid in connection with previous transactions. Once comfortable with the overall price, the model was employed to value the individual components of the capacity IRU. Again, the underlying premise of the new model was the fact that Qwest enjoyed a tremendous first-to-market advantage in connection with its ability to provide lit fiber. Qwest was the first to light fiber from coast-to-coast (and with the

foresight to have laid enough fiber to be able to sell substantial portions thereof), and was the first to offer OC-48 capacity.

The fair market value model was based on a relative value approach. The ROW and conduit comprised a "conduit" product. Add fiber and a "dark fiber" IRU existed. Only when equipment/electronics were added was a "lit" IRU created. With respect to ROW and conduit, Qwest valued the revenue related to those at cost after Mr. Kozlowski and Mr. Noyes consulted with Mark Iwan of Arthur Andersen. Mr. Iwan indicated that ROW and conduit were analogous to real estate in lease accounting literature. The fair value of real estate in a lease should just be the pass through of the cost of the real estate. It was Mr. Iwan who advised that the ROW and conduit components be valued in this fashion. (ROW costs were aggregated for the network in total. ROW cost was then averaged over total planned capacity of the network at the time. This cost was expressed in cost per DS-0 mile. The same was true for conduit.) Fiber received the relative value (determined using the average margin from previous dark fiber deals and comparing that to the total gross margin on the specific lit capacity IRU in question) of the dark fiber portion of the IRU. The equipment portion of the IRU then received the remainder of the revenue for the reasons explained above. In short, Qwest's fair market value model was reasonable as well as justifiable from a business, economic and accounting point of view, and supported Qwest's up-front recognition of revenue from its lit capacity IRU transactions.

The SEC also neglects to mention that a representative of Qwest's outside independent auditor already testified that the auditor "always . . . kept a pretty close eye on fair value," and determined that the value Qwest assigned to IRUs "was reasonable."

ALLEGATION:

133) In late 1998, Woodruff directed Kozlowski to determine if immediate revenue recognition on IRU sales was proper. Kozlowski determined, without reasonable basis, that Qwest could recognize revenue immediately from IRU sales.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 133. Further answering, Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

134) In late 1999, Qwest's outside auditor advised Woodruff to ask the SEC about whether Qwest's accounting for IRU transactions was proper. Woodruff refused.

ANSWER:

Paragraph 134 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski further states that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 134.

ALLEGATION:

135) Woodruff, Szeliga, Kozlowski, and Noyes all knew that Qwest had no lit fiber designated as inventory. As a consequence, they each knew that Qwest sold lit fiber designated as PP&E, and therefore, that Qwest improperly recognized revenue immediately.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 135 as they relate to him. Further answering, Mr. Kozlowski incorporates the Overview section of this Answer, and his Answer to Paragraph 132, as if fully set forth herein.

ALLEGATION:

136) Woodruff, Szeliga, Kozlowski, and Noyes decided, without adequate factual support, that the IRU revenue was recorded using fair market value.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 136 as they relate to him. Further answering, Mr. Kozlowski incorporates the Overview section of this Answer, and his Answer to Paragraph 132, as if fully set forth herein.

ALLEGATION:

137) Szeliga, Kozlowski, and Noyes learned of Qwest's practice of porting, which they knew prohibited immediate revenue recognition. For example:

a) In February 2000, Szeliga, Kozlowski, and Noyes received an e-mail alerting them that a Qwest executive committed to port an IRU. The e-mail referred to a $140 million fourth quarter 1999 IRU sale where Qwest committed to buy back $104 million of fiber sold and re-sell to the customer an additional $162 million. Specifically, the e-mail stated, "I want everyone to be aware of the outstanding commitment that requires us to buyback circuits for upgrade purposes."

b) By mid-2001, Szeliga and Noyes knew that Qwest allowed customers to port at least ten percent of their IRU purchases. Concerned that this level of porting prevented immediate revenue recognition, Szeliga twice warned Qwest executives involved in IRU transactions that porting "jeopardized" immediate revenue recognition. She stated in a voice mail that IRUs that allowed porting, "[i]f reviewed by the SEC, that would be overturned as inappropriate revenue recognition. We would be forced to restate our financial statements, and it would be made public. And we're not going there."

c) From September 2001 through November 2001, Noyes received several emails alerting him that in past IRU sales, Qwest had told customers they would be allowed to port.

ANSWER:

The allegations against Mr. Kozlowski in this Paragraph are astounding, in part because the SEC previously said that it did not consider porting to be a significant issue as it relates to Mr. Kozlowski, because the SEC admits that porting of capacity IRUs became an issue after Mr. Kozlowski departed Qwest, and because Mr. Kozlowski departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001. Mr. Kozlowski denies the first sentence of Paragraph 137. Mr. Kozlowski admits receipt of the email referenced in Paragraph 137(a), and states that the document speaks for itself; he denies any allegation in Paragraph 137(a) inconsistent therewith.

Further answering, Mr. Kozlowski states that he previously had been informed by Arthur Andersen that inclusion of a "mutual consent" to upgrade or port clause in an IRU (to be distinguished from an agreement providing a customer with the right to upgrade or port) would not prevent up-front revenue recognition. (Indeed, the former Arthur Andersen partner on the Qwest engagement testified consistent therewith.) Mr. Kozlowski understood that it was for this reason that Qwest in-house lawyers, assigned to each IRU transaction, drafted IRU agreements to include the "mutual consent" clause.

The single email referenced in Paragraph 137(a) pertaining to one particular transaction is the only effort made by the SEC in an attempt to support its suggestion that Mr. Kozlowski was aware of "Qwest's practice of porting." In addition to the fact that there is no "outstanding commitment" or obligation on Qwest's part noted in the actual IRU contract to permit the customer to "port" fiber sold by Qwest in the fourth quarter of 1999, the SEC neglects to mention that the actual IRU contract regarding this transaction refers to the possibility of a future agreement to be "reflected in a mutually agreeable written amendment," and neglects to state that the contract

itself contained a mutual consent clause. Moreover, the email referenced in Paragraph 137(a) – the only attempt made by the SEC to suggest that Mr. Kozlowski was aware of some alleged "practice" at Qwest to permit customers to "port" – refers to an "upgrade" and not a "port." ***Either the SEC intentionally seeks to mislead the Court and the public, or the SEC was incredibly sloppy in attempting to fabricate a case against Mr. Kozlowski.*** Furthermore, the SEC in its Complaint and elsewhere says that alleged side agreements permitting customers to port were concealed from internal accountants such as Mr. Kozlowski because the accountants would deny immediate revenue recognition with respect to such transactions.

Paragraph 137(b) through 137(c) does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answer to Paragraph 132, as if fully set forth herein.

ALLEGATION:

138) In August or September 2001, Qwest's outside auditor told Szeliga that she should ask the SEC about the propriety of Qwest's accounting for IRU transactions. Szeliga refused stating "f_ no. Last time I went to the SEC - I ended up writing off $3 billion [of assets]."

ANSWER:

Paragraph 138 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski further states that he departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001.

ALLEGATION:

139) In October 2001, a senior Qwest accounting executive told Szeliga that Qwest should re-examine its immediate revenue recognition on past IRU sales transactions. Szeliga refused.

ANSWER:

Paragraph 139 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski further states that he departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001.

ALLEGATION:

140) In October 2001, Szeliga and Noyes learned of the existence of the secret side agreement in which Qwest gave Cable & Wireless the ability to port an IRU purchased in the fourth quarter 2000. When Cable & Wireless threatened legal action concerning porting in first quarter 2002, Szeliga again became involved.

ANSWER:

Paragraph 140 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski further states that he departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001.

ALLEGATION:

141) In March 2002, Qwest's outside counsel advised that Cable & Wireless would likely win if the parties litigated the enforceability of the side agreement to port. Szeliga withheld this information from Qwest's outside auditors. Szeliga knew that Qwest then settled the dispute with Cable and Wireless on the eve of the filing of Qwest's 2001 10-K annual report with the SEC.

ANSWER:

Paragraph 141 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski further states that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 141.

ALLEGATION:

142) In December 2001, Szeliga learned that Flag told Qwest's outside auditors about the secret verbal agreement where Qwest gave Flag portability of an IRU.

ANSWER:

Paragraph 142 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski further states that he departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001.

ALLEGATION:

143) Qwest investigated the issue and obtained legal advice from outside counsel that if Qwest denied Flag's demand to port, Qwest might be found to have withheld its consent to port in bad faith.

ANSWER:

Paragraph 143 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski further states that he departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001.

ALLEGATION:

144) On April 1, 2002, Szeliga signed and filed with the SEC Qwest's 2001 10-K annual report, which, among other things, included materially false claims that its immediate revenue recognition of IRU revenue was in conformity with GAAP.

ANSWER:

Paragraph 144 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

145) By the third quarter of 2001, Szeliga became aware of Qwest's grooming of IRUs it had previously sold. Qwest employees informed Szeliga that the IRUs could not be restored to their original routes and advised her to reverse the revenue recognized from the IRU sales. Szeliga refused.

ANSWER:

Paragraph 145 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski further states that he departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001.

ALLEGATION:

146) On March 31, 2000, Qwest sold a $9.6 million IRU to Cable & Wireless in which Qwest included a contract clause preventing the assignment, sale, or transfer without Qwest's consent. Notwithstanding this contingency that called into question the GAAP requirement that Qwest be able to transfer ownership, Kozlowski and Noyes approved this transaction for immediate revenue recognition. Additional IRU sales to Cable & Wireless in later quarters totaling $29 million were subject to the same contingency.

ANSWER:

Mr. Kozlowski lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 146. Mr. Kozlowski further states that had he been presented with an agreement on which he had questions in terms of the effect on revenue recognition, he would have discussed the issue with Arthur Andersen. As representatives of Arthur Andersen have testified during SEC depositions, they also reviewed Qwest's IRU contracts in connection with their quarterly and annual reviews and audits (that work is well documented in the Arthur Andersen work papers), and they believed that Qwest's accounting for IRU transactions conformed with GAAP. Mr. Kozlowski departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001.

ALLEGATION:

147) By late 2001, Szeliga knew there were serious concerns by Qwest's outside auditors regarding Qwest's ability to transfer ownership of IRUs. Unlike prior quarters in 2001, Szeliga refused to provide the auditors with a written representation that Qwest could transfer title. As a consequence, in early 2002, Qwest's auditors asked Qwest to obtain an outside legal opinion that Qwest had the ability to transfer title to the IRUs it sold over the past three years. Qwest's outside legal counsel did not find that Qwest had the ability to transfer title.

ANSWER:

Paragraph 147 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski further states that he departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001. In addition, Mr. Kozlowski states that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 147.

ALLEGATION:

148) On April 1, 2002, Szeliga signed and filed with the SEC Qwest's 2001 10-K, which, among other things, falsely stated Qwest's IRU sales met the ownership transfer requirements of GAAP.

ANSWER:

Paragraph 148 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

149) Woodruff, Szeliga, Kozlowski, and Noyes failed to devise and implement a system of internal controls at Qwest that reasonably assured that Qwest properly recognized revenue from its IRU sales.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 149 as they relate to him. Mr. Kozlowski also incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

> 150) From 1999 until December 2001, Qwest fraudulently recognized about $3 billion in revenue from IRU transactions. Over time, Qwest found it increasingly difficult to sell IRUs to customers unless, at the same time, Qwest purchased lit or dark fiber from those same customers. Qwest started using IRU swaps in 1999, and during 2000 and 2001, the frequency, dollar amount, and number of swap transactions grew as Qwest's dependence on these gap-fillers increased.

ANSWER:

Mr. Kozlowski denies the first sentence of Paragraph 150 as it relates to him. Mr. Kozlowski lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of Paragraph 150. Mr. Kozlowski further states that he departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

> 151) Woodruff, Szeliga, Kozlowski, and Noyes found IRU swaps especially attractive because of their effect on the company's financial statements. Qwest fraudulently recognized large amounts of revenue immediately on the sale, but did not recognize any significant expense from its purchases immediately.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 151 as they relate to him. Mr. Kozlowski further states that he was never involved in the negotiation of any IRU transaction. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

152) Woodruff, Szeliga, Kozlowski, and Noyes fraudulently recognized revenue immediately in all of Qwest's IRU swap transactions. This was fraudulent and material. It also violated the requirements of GAAP.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 152 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

153) Immediate revenue recognition on Qwest's IRU swap transactions violated at least the following GAAP requirements:

a) The assets exchanged must be dissimilar.

b) The purchase must have a legitimate business purpose.

c) There must be adequate evidence of the fair market value of the fiber exchanged.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 153. Mr. Kozlowski further states that Qwest's outside independent auditors reviewed Qwest's IRU transactions when Mr. Kozlowski was at Qwest (he departed at the end of September 2000), a fact well documented in the auditor work papers, and never told Mr. Kozlowski that such transactions did not conform with GAAP.

With respect to the allegation in Paragraph 153(a), and for any contemporaneous transactions that occurred prior to Mr. Kozlowski's departure from Qwest at the end of September 2000, Mr. Kozlowski believed that Qwest was exchanging assets held for sale for assets to be held for use by Qwest in the ordinary course of its business to serve its own customers. Mr. Kozlowski obtained this information from the Finance Group. Thus, Mr. Kozlowski believed that revenue associated with the IRUs sold by Qwest in these so-called contemporaneous transactions could be recorded consistent with sales-type accounting. Arthur Andersen agreed (and still does) with this assessment.

Regarding the allegation in Paragraph 153(b), Mr. Kozlowski believed that there was a legitimate business purpose for the contemporaneous transactions. Indeed, no one from any business or other unit within Qwest ever told him otherwise. Moreover, Qwest's outside independent auditors reviewed these transactions in connection with their audits and never suggested to Mr. Kozlowski that they could not determine a legitimate business rationale for any such transaction. In fact, representatives from Arthur Andersen already have testified that they reviewed and were comfortable with the stated business purposes for such transactions.

In response to the allegation in Paragraph 153(c), Mr. Kozlowski incorporates his Answer to Paragraph 132 as if fully set forth herein. Mr. Kozlowski also incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128 and 130, as if fully set forth herein.

ALLEGATION:

154) Qwest improperly recognized revenue from undisclosed, material swap transactions during 1999 of $312 million, $506 million in 2000, and $674 million in 2001.

ANSWER:

Based on the information presented to and known by him regarding IRU transactions, Mr. Kozlowski denies that Qwest improperly recognized revenue in connection with IRU transactions between 1999 and the first three quarters of 2000. Mr. Kozlowski further states that by late 1999, he no longer was principally responsible for reviewing individual IRU transactions. My Kozlowski further states that he departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001; accordingly, the allegations in Paragraph 154 pertaining to the fourth quarter of 2000 and 2001 do not pertain to Mr. Kozlowski and no answer is required thereto. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

155) In its 2001 10-K annual report, Qwest falsely claimed that its swap transactions met the immediate revenue recognition requirements under GAAP.

ANSWER:

Paragraph 155 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski had departed Qwest at the end of September 2000 and thus was not at Qwest during the fourth quarter of 2000 or during 2001.

ALLEGATION:

156) Kozlowski and Noyes as alleged above in paragraphs 64-71 fraudulently removed material disclosure concerning IRU transactions from Qwest's 1999 10-K annual report filed with the SEC.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 156. Mr. Kozlowski incorporates the Overview section of this Answer as if fully set forth herein.

ALLEGATION:

157) Nacchio, Woodruff, and Szeliga, while orchestrating the fraudulent scheme as detailed above in this complaint, sold Qwest stock while they were in possession of, and based on material non-public information.

ANSWER:

Paragraph 157 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski denies that he participated in any fraudulent or other scheme, and denies that he engaged in wrongdoing of any type or nature.

ALLEGATION:

158) Nacchio made profits on such stock sales of about $176.5 million.

ANSWER:

Paragraph 158 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

159) Woodruff made profits on such stock sales of about $36.8 million.

ANSWER:

Paragraph 159 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

160) Szeliga made profits on such stock sales of about $267,000.

ANSWER:

Paragraph 160 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

161) In 1999, Qwest stock traded between about $23 per share and $43 per share. In 2000, the stock started trading around $43 per share and reached a high price during the year of $64 per share, closing the year at about $41 per share. In 2001, the stock reached a high during the year of around $47, and closed at the end of the year at $14 per share. In 2002, the stock continued to drop, ending the year at $5, but with a low during the year of around $1.10 per share. Between July 2000 and August 2002 Qwest's market capitalization plunged from a high of $91 billion to a low of $1.9 billion, a 98 percent decline.

ANSWER:

Mr. Kozlowski lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 161.

FIRST CLAIM FOR RELIEF
Alleged Violations of Securities Act Section 17(a)(1)
[15 U.S.C. § 77q(a)(1)]

ALLEGATION:

162) The SEC realleges paragraphs 1 through 161 above.

ANSWER:

Mr. Kozlowski realleges and incorporates by reference herein the Overview section of this Answer and his Answers to Paragraphs 1 through 161.[6]

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[6] Mr. Kozlowski Answers the SEC's Claims for Relief without prejudice to any future motion for judgment on the entire Complaint, or portions thereof, on the grounds, *inter alia*, that the SEC

ALLEGATION:

163) Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mobebbi, and Casey, directly and indirectly, with scienter, in the offer or sale of Qwest securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme, or artifice to defraud.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 163 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

164) Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mobebbi, and Casey violated and unless restrained and enjoined will in the future violate Securities Act Section 17(a)(l).

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 164 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

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conducted an unlawful and improper investigation and engaged in abuse of process vis-à-vis its action against Mr. Kozlowski.

SECOND CLAIM FOR RELIEF
Alleged Violations of Securities Act Sections 17(a)(2) and 17(a)(3)
[15 U.S.C. § 77q(a)(2) and (3)]

ALLEGATION:

165) The SEC realleges paragraphs 1 through 161 above.

ANSWER:

Mr. Kozlowski realleges and incorporates by reference herein the Overview section of this Answer and his Answers to Paragraphs 1 through 161.

ALLEGATION:

166) Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mobebbi, and Casey, directly and indirectly, in the offer or sale of Qwest securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of Qwest securities.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 166 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

167) Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mobebbi, and Casey violated and unless restrained and enjoined will in the future violate Securities Act Section 17(a)(2) and (3).

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 167 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answer to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

THIRD CLAIM FOR RELIEF
Alleged Violations of Exchange Act Section 10(b) and Rule 10b-5
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

ALLEGATION:

168) The SEC realleges paragraphs 1 through 161 above.

ANSWER:

Mr. Kozlowski realleges and incorporates by reference herein the Overview section of this Answer and his Answers to Paragraphs 1 through 161.

ALLEGATION:

169) Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mohebbi, and Casey, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, the mails, or any facility of a national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; in violation of Exchange Act Section 10(b) and Rule 10b-5.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 169 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

> 170) Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mohebbi, and Casey violated and unless restrained and enjoined will in the future violate Exchange Act Section10(b) and Rule 10b-5.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 170 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

> 171) Alternatively, by reason of the conduct alleged in paragraphs 1-161, Qwest violated Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Mobebbi and Casey aided and abetted Qwest's violations by knowingly and substantially assisting those violations. Unless restrained and enjoined, Mohebbi and Casey will in the future aid and abet violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder.

ANSWER:

Paragraph 171 does not pertain to Mr. Kozlowski and thus no answer is required.

FOURTH CLAIM FOR RELIEF
Alleged Falsified Books and Records - Exchange Act Section 13(b)(5) and Rule 13b2-1 [15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1]

ALLEGATION:

> 172) The SEC realleges paragraphs 1 through 161 above.

ANSWER:

Mr. Kozlowski realleges and incorporates by reference herein the Overview section of this Answer and his Answers to Paragraphs 1 through 161.

ALLEGATION:

173) Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mohebbi, and Casey, knowingly circumvented or knowingly failed to implement a system of internal accounting controls, knowingly falsified books, records, or accounts and directly or indirectly falsified or caused to be falsified books, records or accounts described in Section 13(b)(2) of the Exchange Act.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 173 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

174) Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mohebbi, and Casey, violated, and unless restrained and enjoined will in the future violate Section 13(b)(5) of the Exchange and Rule 13b2-1.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 174 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

FIFTH CLAIM FOR RELIEF
Alleged Deceit of Auditors - Exchange Act Rule 13b2-2
[17 C.F.R. § 240.13b2-2]

ALLEGATION:

175) The SEC realleges paragraphs 1 through 161 above.

ANSWER:

This Claim does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

176) Defendants Nacchio, Woodruff, Szeliga, Mohebbi, and Casey made materially false or misleading statements, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to Qwest's accountants and independent auditors in connection with an audit or examination of Qwest's financial statements or in the preparation or filing of Qwest's documents or reports filed with the SEC.

ANSWER:

This Claim does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

177) By reason of the foregoing, defendants Nacchio, Woodruff, Szeliga, Mohebbi, and Casey violated, and unless restrained and enjoined will in the future violate Exchange Act Rule 13b2-2.

ANSWER:

This Claim does not pertain to Mr. Kozlowski and thus no answer is required.

SIXTH CLAIM FOR RELIEF
Alleged False SEC Filings - Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13
[15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]

ALLEGATION:

178) The SEC realleges paragraphs 1 through 161 above.

ANSWER:

Mr. Kozlowski realleges and incorporates by reference herein the Overview section of this Answer and his Answers to Paragraphs 1 through 161.

ALLEGATION:

179) Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mohebbi, and Casey, aided and abetted Qwest, in that they provided knowing and substantial assistance to Qwest, which as an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed materially misleading annual and quarterly reports with the SEC and failed to file with the SEC, in accordance with rules and regulations the SEC has prescribed, information and documents required by the SEC to keep current information and documents required in or with an application or registration statement filed pursuant to Section 12 of the Exchange Act and annual reports and quarterly reports as the SEC has prescribed in violation of Exchange Act Section 13(a) and Rules 12b-20, 13a-l, 13a-11, and 13a-13 thereunder.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 179 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

180) Unless restrained and enjoined, Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mohebbi, and Casey will in the future aid and abet violations of Exchange Act Section 13(a) and Rules 12b-20, l3a-1, 13a-ll, and 13a-13.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 180 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

SEVENTH CLAIM FOR RELIEF
Alleged False Books and Records - Exchange Act Section 13(b)(2)
[15 U.S.C. § 78m(b)(2)]

ALLEGATION:

181) The SEC realleges paragraphs 1 through 161 above.

ANSWER:

Mr. Kozlowski realleges and incorporates by reference herein the Overview section of this Answer and his Answers to Paragraphs 1 through 161.

ALLEGATION:

182) Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mohebbi, and Casey aided and abetted Qwest's failure to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets and failure to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 182 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

ALLEGATION:

183) By reason of the foregoing, Qwest violated Exchange Act Section 13 (b)(2), and Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mohebbi, and Casey aided and abetted Qwest's violations. Unless restrained and enjoined, Defendants Nacchio, Woodruff; Szeliga, Kozlowski, Noyes, Mobebbi, and Casey will in the future aid and abet violations of Section 13(b)(2) of the Exchange Act.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 183 as they relate to him. Mr. Kozlowski incorporates the Overview section of this Answer, and his Answers to Paragraphs 127, 128, 130, 132 and 153, as if fully set forth herein.

GENERAL DENIAL

To the extent not expressly admitted, Mr. Kozlowski denies each of the allegations against him in the prefatory sections, as well as in the First, Second, Third, Fourth, Sixth and Seventh Claims for Relief, of the SEC's "Amended" Complaint and demands strict proof thereof. As previously noted, the Fifth Claim for Relief does not purport to assert a cause of action against Mr. Kozlowski.

AFFIRMATIVE AND OTHER DEFENSES

1. The "Amended" Complaint fails to state a claim against Mr. Kozlowski upon which relief can be granted.

2. Mr. Kozlowski did not act with scienter.

3. Mr. Kozlowski did not act with an "extreme departure from reasonable accounting practices" necessary to constitute alleged securities law violations.

4. A reasonable accountant reviewing the facts, figures, and information known by Mr. Kozlowski while employed by Qwest could determine that Qwest's financial statements conformed with GAAP and would not mislead the public.

5. Qwest's outside independent auditors repeatedly approved of Qwest's financial statements prepared prior to Mr. Kozlowski's departure from Qwest in September 2000, and have testified that they conformed with GAAP.

6. Mr. Kozlowski did not intentionally withhold facts from the public in order to deceive, manipulate, or defraud.

7. Mr. Kozlowski did not recklessly disregard the importance of facts to the public in order to deceive, manipulate, or defraud.

8. Mr. Kozlowski did not possess a motive to deceive, manipulate, or defraud the public.

9. Qwest's outside independent auditors concluded (as so documented in their work papers) that Qwest could treat IRU transactions as sales-type leases and account for the revenue therefrom up front.

10. Qwest's outside independent auditors reviewed (as so documented in their work papers) Qwest's IRU sales and equipment transactions during the period of Mr. Kozlowski's employment at Qwest, and concluded that Qwest properly accounted for IRUs as sales-type leases and properly recognized revenue up front on those transactions, and properly accounted for equipment transactions.

11. Qwest's outside independent auditor was consulted by Mr. Kozlowski prior to the removal of the IRU disclosure language in the draft 1999 10-K; the auditor did not tell Mr. Kozlowski that a disclosure was necessary under GAAP. Qwest's outside independent auditor also discussed the question of disclosure with the Audit Committee of Qwest's Board of Directors, during which he was told by the Audit Committee that the Audit Committee would rely on Mr. Woodruff.

12. Qwest's outside independent auditor specifically considered and determined that Qwest's 1999 financial statements were not misleading and complied with disclosure requirements.

13. The Audit Committee of Qwest's Board of Directors and Qwest's senior management determined that the IRU disclosure drafted by Messrs. Kozlowski and Noyes was not required under GAAP. Mr. Kozlowski did not act inappropriately therefore in following the directive from senior management to remove the IRU disclosure language from Qwest's 1999 10-K.

14. Mr. Kozlowski did not know of any alleged violation of securities law by Qwest or any employee thereof.

15. Mr. Kozlowski did not provide substantial assistance to Qwest or any employee thereof in achieving any alleged violation of securities law.

16. Mr. Kozlowski was unaware that any conduct on his part constituted an alleged violation of securities law.

17. Mr. Kozlowski did not act with "extreme" or "severe recklessness" necessary to constitute alleged violations of securities laws.

18. To Mr. Kozlowski's knowledge, fiber sold in IRU transactions was being held in a nondepreciating account. Thus, a reasonable accountant could conclude that it was appropriate to treat such IRU transactions as sales-type leases and to recognize the revenue associated therewith up front. Indeed, Qwest's outside independent auditors so concluded during Mr. Kozlowski's employment at Qwest.

19. A reasonable accountant could conclude that the fact Qwest was required to maintain its network and that there was, as a result, an operations and maintenance component to IRU transactions did not prohibit treatment of IRUs as sales-type leases or the recognition of revenue therefrom up front. Indeed, Qwest's outside independent auditors so concluded during Mr. Kozlowski's employment at Qwest.

20. A reasonable accountant could conclude that Qwest's cost model appropriately allocated fair market value to the various IRU components. Indeed, Qwest's outside independent auditors routinely audited the fair market value allocation to Qwest's IRU components and so concluded during Mr. Kozlowski's employment at Qwest.

21. A reasonable accountant could conclude based on the information known to Mr. Kozlowski during his employment at Qwest that the earnings process was complete in connection with Qwest's IRU transactions, such that Qwest's IRUs could be treated as sales-type leases and revenue therefrom could be recognized up front. Indeed, Qwest's outside independent auditors so concluded during Mr. Kozlowski's employment. Moreover, Qwest's outside independent auditor apprised Qwest during Mr. Kozlowski's employment that mutual consent to upgrade or port did not destroy up front revenue recognition.

22. A reasonable accountant could conclude based on the information known to Mr. Kozlowski during his employment at Qwest that contemporaneous IRU transactions ("swaps") could be treated as sales-type leases and that revenue therefrom could be recognized up front. Indeed, Qwest's outside independent auditors so concluded during Mr. Kozlowski's employment at Qwest.

23. Mr. Kozlowski was not informed that Qwest groomed IRUs.

24. Mr. Kozlowski was not informed that Qwest had permitted customers to port purchased capacity.

25. Mr. Kozlowski was not informed of any alleged side or secret agreement with any IRU purchaser.

26. Claims for civil penalties that are premised on conduct that occurred prior to March 15, 2000 are barred by the statute of limitations.

27. The SEC is precluded from pursuing any action against Mr. Kozlowski on the ground that the SEC conducted an unlawful and improper investigation.

28. The SEC is precluded from pursuing equitable relief against Mr. Kozlowski due to its unclean hands.

29. The Claims for Relief against Mr. Kozlowski should be dismissed as a result of the SEC's abuse of process vis-à-vis this case against Mr. Kozlowski. Given the nature of this defense, and to provide the SEC with notice of the facts on which it is based, Mr. Kozlowski states as follows:

a. The evidence uncovered to date by Mr. Kozlowski from review of a portion of the 13 million pages of material from the SEC, and some of the discovery in the consolidated shareholder action – some of which is referenced in the Overview section, demonstrates that the SEC had no basis to accuse Mr. Kozlowski of scienter. To demonstrate fraud in this case against Mr. Kozlowski, the SEC has to prove that no reasonable accountant would have made the same accounting determinations. We already have seen from the testimony of several accountants that they agreed with the IRU accounting decisions made by Mr. Kozlowski.

b. To be considered in conjunction with such evidence are various comments made by SEC officers prior to filing this case against Mr. Kozlowski.

i. During the Summer of 2004, Mary Brady, who was then Assistant Regional Director of the SEC, said that if Mr. Kozlowski could offer significant testimony against Mr. Nacchio, Mr. Woodruff and Ms. Szeliga, the SEC staff would not recommend fraud charges against Mr. Kozlowski. Ms. Brady then identified several areas of interest to the SEC. When Ms. Brady was informed that Mr. Kozlowski had

disclosed everything he knew and could recall during his five (5) days of testimony by the SEC a year earlier, Ms. Brady said that the SEC staff would recommend suit, including allegations of fraud, against Mr. Kozlowski.

ii. During December 2004, Mr. Kozlowski's counsel met with Randall Fons, the Regional Director of the SEC (we understand that Mr. Fons either has or soon will depart the SEC for a position with the Denver office of a large law firm), Ms. Brady and SEC accountant Michael D'Angelo. During that meeting Mr. Fons stated that Mr. Kozlowski's Wells Submission (which in large measure tracks the assertions made by Mr. Kozlowski in this Amended Answer) put forth a persuasive argument against fraud charges.

iii. Later in December 2004, Mr. Kozlowski's counsel met with Stephen Cutler, who at the time was the SEC Enforcement Director in Washington, D.C. Also in attendance were four (4) representatives from the SEC Denver office. During that meeting, Mr. Cutler said that the SEC had several ongoing investigations in which accountants were pointing fingers at each other, and the SEC needed to send a message to the accounting community.[7]

c. The gist of the affirmative defense of abuse of process is the presence of an ulterior purpose for the use of a judicial proceeding and use of a legal proceeding in an improper manner. The ulterior purpose is evident here from the prefiling comments by the SEC: i) give us the goods on Nacchio et al. or we will sue you for fraud; and ii) we need to sue Mr. Kozlowski to send a message to the accounting community. The evidence also reveals that

[7] The SEC has suggested in the past that the above comments were made in the context of settlement discussions. They were not. These comments were made during the Wells process, when Mr. Kozlowski was attempting to demonstrate why the SEC should not sue him.

the SEC then accused Mr. Kozlowski of sensational and insupportable allegations in the hopes that Mr. Kozlowski would settle, cooperate, and "spill the beans" (unlike Jack, however, Mr. Kozlowski, a mid-level employee, had no magic beans to offer). Indeed, virtually from the inception of this case the SEC has tried (and on more than one occasion) to persuade the Court to hold a settlement conference involving the SEC and Mr. Kozlowski (after reviewing the parties' submissions, the Court decided that a settlement conference would not be productive). The fact that the evidence already uncovered by Mr. Kozlowski convincingly demonstrates that the SEC did not have a legitimate basis to accuse him of fraud and other wrongdoing, together with the comments of the SEC noted above and the efforts made by the SEC to try to convince Mr. Kozlowski to settle immediately after suing him, demonstrate the improper motive behind the SEC action against Mr. Kozlowski.

Mr. Kozlowski reserves the right to amend these Affirmative and Other Defenses and to raise additional defenses that become known to him during this case.[8]

[8] On March 30, 2006, the Court struck Mr. Kozlowski's Affirmative Defense of laches against the SEC. Accordingly, Mr. Kozlowski does not include that Affirmative Defense in this Amended Answer. The exclusion of the Affirmative Defense of laches from this Amended Answer is not intended to, and shall not, be construed as a waiver by Mr. Kozlowski of that defense. Particularly under the facts and circumstances here, including the facts that i) the claims against Mr. Kozlowski predate 2001, ii) an important witness who was on the Qwest Audit Committee recently passed away, and iii) this case was filed over one year ago and Mr. Kozlowski's request to commence deposition discovery has been denied on the ground that it could prejudice the Government's criminal case against Mr. Nacchio (the Government already has conceded that its criminal investigation and the SEC investigation were "jointly" conducted), the Affirmative Defense of laches should be available to Mr. Kozlowski.

WHEREFORE, Mr. Kozlowski respectfully requests that judgment in his favor be entered on the First, Second, Third, Fourth, Sixth and Seventh Claims for Relief in the SEC's "Amended" Complaint, that those Claims for Relief against him be dismissed, and that he be awarded such other and further relief as the Court deems appropriate.

MR. KOZLOWSKI DEMANDS A TRIAL BY JURY ON EACH OF THE CLAIMS AGAINST HIM

Dated: April 13, 2006.

STEESE & EVANS, P.C.

s/ Kevin D. Evans

By: ______________________________

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Attorneys for Defendant
JAMES J. KOZLOWSKI

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2006, I electronically filed the foregoing **ANSWER OF JAMES J. KOZLOWSKI TO SEC's APRIL 12, 2006 "AMENDED" COMPLAINT, AND DEMAND FOR JURY TRIAL** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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