

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-cv-00480-MSK-CBS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOSEPH P. NACCHIO,
ROBERT S. WOODRUFF,
ROBIN R. SZELIGA,
AFSHIN MOHEBBI,
JAMES J. KOZLOWSKI,
FRANK T. NOYES,

**DEFENDANT JOSEPH P. NACCHIO'S ANSWER TO THE SECURITIES AND
EXCHANGE COMMISSION'S COMPLAINT**

Defendant Joseph P. Nacchio ("Nacchio") responds to the Securities and Exchange Commission's Amended Complaint ("Amended Complaint") filed on April 12, 2006 by his undersigned attorney's as follows:

I. SUMMARY

- 1) The allegations in Paragraph 1 are denied.
- 2) The allegations in Paragraph 2 are denied.
- 3) The allegations in Paragraph 3 are denied.
- 4) Nacchio admits that Qwest Dex was a wholly-owned subsidiary of Qwest. Nacchio further states that he is without sufficient knowledge or information to form a belief as to the truth of the allegations that Szeliga "also lowered liabilities related to employee vacations to artificially increase Qwest earnings to meet revenue and growth targets" and denies the remaining allegations in Paragraph 4.

- 5) Nacchio denies the allegations in Paragraph 5 that are directed at him, and is without sufficient knowledge or information to form a belief as to truth of the allegations which are directed at the other defendants.
- 6) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 6.
- 7) Nacchio is without knowledge or sufficient information to form a belief as to the truth of the allegations concerning terms used by Qwest management or employees when referring to IRU's or "swaps" and denies the remaining allegations in Paragraph 7.
- 8) Nacchio denies the allegations in Paragraph 8 that are directed at him, and is without sufficient knowledge or information to form a belief as to the truth of the allegations that are directed at other defendants.
- 9) Nacchio denies the allegations in paragraph 9 that are directed at him, and is without sufficient knowledge or information to form a belief as to the truth of the allegations directed at the other defendants.
- 10) Nacchio is without sufficient knowledge or information to form a belief about the price of Qwest stock on a particular day and denies the remaining allegations in Paragraph 10.

II. DEFINITIONS

- 11) The definition in Paragraph 11 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 11.
- 12) The definition in Paragraph 12 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 12.

- 13) The definition in Paragraph 13 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 13.
- 14) The definition in Paragraph 14 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 14.
- 15) The definition in Paragraph 15 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 15.
- 16) The definition in Paragraph 16 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 16.
- 17) The definition in Paragraph 17 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 17.
- 18) The definition in Paragraph 18 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 18.
- 19) The definition in Paragraph 19 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 19.
- 20) The definition in Paragraph 20 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 20.
- 21) The definition in Paragraph 21 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 21.
- 22) The definition in Paragraph 22 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 22.
- 23) The definition in Paragraph 23 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 23.
- 24) The definition in Paragraph 24 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 24.

- 25) The definition in Paragraph 25 does not require a response. To the extent that a response is required, Nacchio denies the allegations in Paragraph 25.

III. JURISDICTION AND VENUE

- 26) The allegations in Paragraph 26 call for legal conclusions which are respectfully referred to the Court for adjudication. To the extent a response is required, the allegations in Paragraph 26 are denied.
- 27) The allegations in Paragraph 27 call for legal conclusions which are respectfully referred to the Court for adjudication. To the extent a response is required, the allegations in Paragraph 27 are denied.
- 28) Nacchio denies the allegations in Paragraph 28 that are directed at him, and is without sufficient knowledge or information to form a belief as to the truth of the allegations with regard to the allegations directed at other defendants.
- 29) Nacchio denies the allegations in Paragraph 29 directed at him, and is without sufficient information to form a belief as to the truth of the allegations as to the directed at other defendants.

IV. SUMMARY OF VIOLATIONS AND MATERIALLY FALSE STATEMENTS

- 30) Nacchio denies the allegations in Paragraph 30 directed at him, and is without sufficient knowledge or information to form a belief as to the truth of the allegations directed at other defendants.
- 31) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 31.
- 32) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 32.

- 33) Nacchio denies the allegations in Paragraph 33 directed at him and is without knowledge or information to form a belief as to the truth of the allegations directed at other defendants.

V. DEFENDANTS

A. Senior Executives

- 34) Defendant admits that he is 57 years of age, that he resides in Mendham, New Jersey, and was Qwest's chief executive officer, or "CEO" and co-chairman of the Board of Directors from January 1997 until June 2002. The remaining allegations in Paragraph 34 are denied.
- 35) Defendant admits that Robert Woodruff was Qwest's chief financial officer, or "CFO" and its executive vice-president ("EVP") beginning some time before January 1997 until March 2001. Nacchio does not have sufficient information or knowledge to form a belief as to truth of the remaining allegations in Paragraph 35.
- 36) Nacchio admits that Robin R. Szeliga was Qwest's CFO and EVP of finance beginning in March 2001, that prior to March 2001 she held accounting positions and is without sufficient knowledge or information to form a belief as to truth of the remaining allegations in Paragraph 36.

B. Accounting

- 37) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 37.
- 38) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 38.

C. IRU Sales

- 39) Nacchio admits that Afshin Mohebbi held various positions while employed at Qwest, including President and Chief Operating Officer and President of Network Services and World Wide Operations. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 39.
- 40) Nacchio admits that Gregory M. Casey was Qwest EVP of the Wholesale Business Unit from 1998 through November 2001 when he left Qwest. Nacchio is without knowledge or information as to form a belief as to the truth of the remaining allegations in Paragraph 40.

VI. RELATED PARTY

- 41) Nacchio admits that Qwest, based in Denver, Colorado, is a telephone and internet service company in the United States, that its common stock is registered with the SEC, that it makes filings with the SEC and that Qwest's common stock trades on the New York Stock Exchange, and that stock was issued in connection with the merger with U.S. West. The remaining allegations in Paragraph 41 are denied.

VII. COMPENSATION OF DEFENDANTS

- 42) Nacchio admits that the SEC seeks an order requiring each defendant to disgorge all salary and other compensation and denies the remaining allegations in Paragraph 42 .
- 42a. Nacchio admits that from 1999 until 2001 he received compensation from Qwest which included salary; bonus and that he exercised stock options. Nacchio denies the remaining allegations in Paragraph 42a.

42b. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42b.

42c. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42c.

42d. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42d.

42e. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42e.

42f. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42f.

42g. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42g.

43) The allegations of paragraph 43 directed against Nacchio are denied. With regard to the allegations directed against the other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of these allegations.

VIII. NACCHIO, WOODRUFF, AND SZELIGA HID THE TRUE SOURCE OF QWEST'S REVENUE AND EARNING GROWTH

A. Summary

44) Nacchio denies the allegations in paragraph 44 that are directed at him, and is without sufficient knowledge or information to form a belief as to the truth of the allegations directed at other defendants.

45) Nacchio relies on filings made by Qwest with the SEC regarding revenue to speak for themselves and respectfully refers the Court to the full documents for

their contents and context. The remaining allegations in paragraph 45 and its subparagraphs are denied.

B. The Significance of Non-Recurring Revenue

46) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 46.

47) Nacchio admits that he joined Qwest as CEO in January of 1997 and that Qwest marketed and sold “dark” fiber and “lit” fiber to customers and that these products generated revenue. The remaining allegations in paragraph 47 are denied.

48) Nacchio admits that Qwest announced substantial completion of Qwest’s network construction and that this network would be used by Qwest to generate revenues from customers. Nacchio denies the remaining allegations directed at him. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations as directed at other defendants.

49) Nacchio relies on Qwest’s earnings releases to speak for themselves and respectfully refers the Court to the full documents for their contents and context. Nacchio denies the remaining allegations in Paragraph 49 and the subparagraphs thereof.

50) Nacchio relies on the earnings releases to speak for themselves and respectfully refers the Court to the full documents for their contents and context. Nacchio denies the remaining allegations in Paragraph 50 and the subparagraphs thereof.

51) Nacchio denies the allegations in Paragraph 51 directed at him and is without sufficient knowledge or information to form a belief as to the truth of the allegations directed at other defendants.

52) Nacchio admits that in 1998 and 1999 Qwest sold lit fiber IRUs and recognized revenues and that it also sold equipment. The remaining allegations in Paragraph 52 are denied. With regard to the allegations directed at other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations.

C. Hiding Qwest's Non-Recurring Revenue

53) Nacchio admits that he received financial information regarding the performance of Qwest's business units, that the information included a breakdown of revenue from various sources and that he met with Qwest executives to review Qwest's financial performance. The remaining allegations directed at him in Paragraph 53 are denied. With regard to allegations directed at other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations.

53a) Nacchio denies the allegations in Paragraph 53a directed against him. With regard to allegations directed at other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations.

54) Nacchio admits that at the end of each quarter, Qwest released its financial results in earnings releases and in SEC 10-Q filings and in SEC 8-K filings. Nacchio further admits that he and other Qwest executives participated in telephone calls with analysts in which Qwest's financial performance was discussed. The remaining allegations in Paragraph 54 directed at Nacchio are denied. With regard to allegations directed at other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations.

D. Nacchio, Woodruff and Szeliga Continued to Misrepresent Qwest's Revenue Sources to Merge With US West

55) Defendant denies the allegations directed at him in Paragraph 55. With regard to allegations directed at other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations.

56) Nacchio admits the allegations in Paragraph 56.

57) Nacchio relies on the merger agreement documents to speak for themselves. Nacchio is without sufficient knowledge or information to form a belief about the price of Qwest stock on any particular day and denies the remaining allegations directed against him.

58) Nacchio denies the allegations in Paragraph 58 directed at him and is without knowledge or sufficient information to form a belief as to the truth of the allegations directed at other defendants.

59) Nacchio relies on the earning releases and statements to speak for themselves and denies the remaining allegations in Paragraph 59 directed at him. He is without sufficient knowledge or information to form a belief as to the truth of the allegations directed at other defendants.

E. Obsession With Meeting Earnings, Revenue and Growth Targets

60) Nacchio denies the allegations directed at him in Paragraph 60, and is without sufficient knowledge or information to form a belief as to the truth of the allegations directed at other defendants.

61) Nacchio denies the allegations directed at him in Paragraph 61 and is without sufficient knowledge or information to form a belief as to the truth of the allegations directed at other defendants.

62) To the extent the allegations in Paragraph 62 are directed at him, Nacchio denies them. With regard to allegations directed at other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations

63) Nacchio denies the allegations in Paragraph 63.

63a. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 63a.

63b. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 63b.

63c. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 63c.

63d. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 63d.

63e. Nacchio is without sufficient knowledge or information in to form a belief as to the truth of the allegations in Paragraph 63e.

F. Nacchio, Woodruff and Szeliga Removed disclosure in Qwest's 1999 Annual Report

64) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 64.

65) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 65.

66) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 66.

67) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 67.

- 68) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 68
- 69) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 69.
- 70) To the extent the allegations in Paragraph 70 are directed at him, Nacchio denies them. With regard to allegations directed at other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations
- 71) Nacchio is without sufficient knowledge or information to form a belief as to the truth of this allegation in Paragraph 71.

G. Qwest's Addiction to Non-recurring Revenue Grew After the June 2000 Merger With US West

- 72) It is admitted that Qwest stock was probably being traded at above \$50.00 per share in June 2000. The remaining allegations in Paragraph 72 are denied.
- 73) To the extent the allegations in Paragraph 73 are directed at him, Nacchio denies them. With regard to allegations directed at other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations.
- 74) To the extent the allegations in Paragraph 74 are directed at him, Nacchio denies them. With regard to allegations directed at other defendant, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations.

74a. Nacchio denies the allegations of paragraph 74a, except admits that Qwest's earnings release for the second quarter of 2000 was issued on July 19,

2000, relies on the document to speak for itself, and respectfully refers the Court to the full document for its contents and context.

74b-o. Nacchio denies the allegations of paragraphs 74b-o, except admits that Qwest issued earnings releases in the second, third and fourth quarters of 2000 and in the first and second quarters of 2001, but relies on those earnings releases to speak for themselves and respectfully refers the Court to the full documents for their full contents and context.

H. The Pressure To Do Whatever Necessary To Meet Projections Continued

75) Nacchio denies the allegations in Paragraph 75.

76) To the extent that the allegations in Paragraph 76 are directed at him, Nacchio denies them. With regard to allegations directed at other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations.

77) The allegations in Paragraph 77 are denied.

77a. Nacchio denies the allegations of paragraph 77a, except admits that he spoke at a 2001 all-employee meeting, and respectfully refers the Court to full transcript of the meeting for its contents and context.

77b. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 77b.

77c. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 77c.

77d. Nacchio denies the allegations in Paragraph 77d.

77e. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 77e.

- 77f. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 77f.
- 78) To the extent that the allegations in Paragraph 78 are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of those allegations.
- 79) Nacchio admits that Qwest filed a 2000 10-K and that the document speaks for itself. Nacchio respectfully refers the Court to the full document for its content and context. Nacchio denies the remaining allegations in Paragraph 79.
- 80) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 80.
- 81) Nacchio admits that Qwest issued 2001 first quarter earnings release on Aril 24, 2001 and that the document speaks for itself. Nacchio respectfully refers the Court to the full document for its content and context. Nacchio denies the remaining allegations in Paragraph 81.
- 82) Nacchio denies the allegations directed at him in Paragraph 82 and is without sufficient knowledge or information to form a belief as to the truth of the allegations directed at other defendants.
- 83) Nacchio admits that he appeared on a Fox news show, and relies on the complete transcript to speak for itself. Nacchio respectfully refers the Court to the full document for its content and context. Nacchio denies the remaining allegations in Paragraph 83.

- 84) Nacchio admits that on May 15, 2001, Qwest filed its 10-Q for the first quarter. Nacchio is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 84.
- 85) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 85.
- 86) Nacchio denies the allegations directed at him in Paragraph 86 and is without sufficient knowledge or information to form a belief as to the truth of the allegations directed at other defendants.
- 87) Nacchio denies the allegations of paragraph 87, except admits that he spoke with analysts on various dates, and relies on the transcripts to speak for themselves. Nacchio respectfully refers the Court to the full documents for their context and contents.
- 88) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 88.
- 89) To the extent that any documents were provided to Nacchio, he relies on the documents to speak for themselves. Nacchio respectfully refers the Court to the full documents for their context and contents. Nacchio denies the remaining allegations directed at him in Paragraph 89.
- 90) Nacchio admits there was an earnings release on July 24, 2001. He relies on the document to speak for itself. Nacchio respectfully refers the Court to the full document for its full context and content and denies the remaining allegations in Paragraph 90.
- 91) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegation in Paragraph 91.

- 92) Nacchio admits that he spoke with analysts on August 7, 2001, and relies on the transcript of that meeting to speak for itself. Nacchio respectfully refers the Court to the full document for its context and content and denies the remaining allegations in Paragraph 92.
- 93) Nacchio denies the allegations in Paragraph 93.
- 94) Nacchio denies the allegations in Paragraph 94.
- 95) Nacchio denies the allegations in Paragraph 95.
- 96) Nacchio denies the allegations in Paragraph 96.

**IX. MOHEBBI, CASEY, AND NOYES MANIPULATED IRU
TRANSACTIONS TO MEET REVENUE TARGETS**

A. Summary

- 97) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 97.
- 98) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 98.
- 99) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 99
- 100) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 100.
- 101) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 101.
- 102) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 102.
- 103) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 103.

- 104) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 104.
- 105) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105.
 - 105a. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105a.
 - 105b. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105b.
 - 105c. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105c.
 - 105d. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105d.
 - 105e. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105e.
 - 105f. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105f.
 - 105g. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105g.

C. Mohebbi, Casey and Noyes Backdated Contracts

- 106) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 106.
 - 106a. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 106a.

106b. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 106b.

106c. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 106c.

D. Mohebbi, Casey and Noyes Purchased Lit Fiber Qwest Did Not Need To Close IRU Swap Transactions

107) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 107.

108) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 108.

108a. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 108a.

108b. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 108b.

108c. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 108c.

109) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 109.

110) To the extent that the allegations in Paragraph 110 are directed at him, Nacchio denies them. To the extent that they are directed at others, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegation.

111) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 111.

112) Nacchio admits that Dex executives discussed with him publishing Dex Colorado Springs, Colorado directory in December 2000 , rather than in January 2001. To the

extent that the remaining allegations in Paragraph 112 are directed at him, Nacchio denies them. To the extent that they are directed at other Defendants, Nacchio lacks sufficient information and knowledge to form belief as to the truth of those allegations.

- 113) Nacchio denies the allegations in Paragraph 113.
- 114) Nacchio denies the allegations in Paragraph 114.
- 115) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 115.
- 116) Nacchio admits that Qwest filed a 2000 10-K annual report with the SEC and relies on the document to speak for itself. Nacchio respectfully refers the Court to the full document for content and context and Nacchio denies the remaining allegations in Paragraph 116.
- 117) To the extent that the allegations in Paragraph 117 are directed at him, Nacchio denies them. To the extent that they are directed at others, Nacchio lacks sufficient information or knowledge to form belief as to the truth of those allegations.
- 118) Nacchio denies that for 2001 he established an unrealistic EBITDA target for Dex and is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 118.
- 119) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 119.
- 120) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 120.

- 121) Nacchio admits that Qwest filed 10-Q quarterly reports with the SEC for the first three quarters of 2001. Nacchio respectfully refers the Court to the full documents for their context and content and denies the remaining allegations in Paragraph 121.

XI. SZELIGA FRAUDULENTLY LOWERED VACATION LIABILITIES TO MEET EARNING TARGETS

- 122) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 122.
- 123) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 123.
- 124) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 124.
- 125) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 125.
- 126) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 126.

XII. WOODRUFF, SZELIGA, KOZLOWSKI AND NOTS WRONGLY RECOGNIZED REVENUE FRON IRU SALES

A. Summary

- 127) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 127.
- 128) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 128.
- 129) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 129.

130) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 130.

131) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 131.

132) The allegations in Paragraph 132 are denied.

B. Woodruff, Szeliga and Noyes Fraudulently Recognized Revenue Immediately From IRU Transactions

133) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 133.

134) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 134.

135) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 135.

136) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 136.

137) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 137.

137a. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 137a.

137b. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 137b.

137c. Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 137c.

- 138) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 138.
- 139) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 139.
- 140) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 140.
- 141) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 141.
- 142) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 142.
- 143) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 143.
- 144) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 144.
- 145) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 145.
- 146) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 146.
- 147) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 147.
- 148) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 148.
- 149) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 149.

C. Woodruff, Szeliga and Noyes Fraudulently Recognized Revenue Immediately From IRU Swaps

- 150) No response is required as the allegations are not directed at Nacchio. If allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio is without sufficient knowledge or information to form a belief as to the truth of those allegations.
- 151) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 151.
- 152) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 152.
- 153) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 153.
- 154) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 154.
- 155) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 155.

XIII. KOLZWOWSKI AND NOYES REMOVED IRI DISCLOURE FROM QWEST'S 1999 ANNUAL REPORT

- 156) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 154.

XIV. INSIDER TRADING BY NACCHIO, WOODRUFF AND SZELIGA

- 157) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information and knowledge to form belief as to the truth of those allegations.
- 158) Nacchio denies the allegations in Paragraph 158.

- 159) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 159.
- 160) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 160.

XV. QWEST STOCK PRICE

- 161) Nacchio is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 161.

**FIRST CLAIM FOR RELIEF
Fraud- Violations of Securities Act 17(a)(1)
[15 U.S.C. 77q(a)(1)]**

- 162) Nacchio repeats and re-alleges his answers to Paragraphs 1 through 161 as if set forth at length herein.
- 163) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 163.
- 164) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 164.

SECOND CLAIM FOR RELIEF

**Fraud- Violations of Securities Act Sections 17 (a)(2) and 17(a)(3)
[15 U.S. C. § 77q (a)(2) and (3)]**

- 165) Nacchio repeats and re-alleges his answers to Paragraphs 1 through 164 as if set forth at length herein.
- 166) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 166.
- 167) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 167.

THIRD CLAIM FOR RELIEF

**Fraud- Violations of Exchange Act Sections 10 (b) and Rule 10b-5
[15 U.S. C. § 78j (b) and 17 C.F.R. 240.10b-5]**

- 168) Nacchio repeats and re-alleges his answers to Paragraphs 1 through 167 as if set forth at length herein.
- 169) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 169.
- 170) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 170.

171) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 171.

FOURTH CLAIM FOR RELIEF
Falsified Books and Records- Exchange Act Sections 10 (b) and Rule 10b-5
[15 U.S. C. § 78m (b)5 and 17 C.F.R. 240.13b2-1]

172) Nacchio repeats and re-alleges his answers to Paragraphs 1 through 171 as if set forth at length herein.

173) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 173.

174) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 174.

FIFTH CLAIM FOR RELIEF
Deceit of Auditors- Exchange Act Sections 10 (b) and Rule 13b-2
[17 C.F.R. § 240.13b2-2]

175) Nacchio repeats and re-alleges his answers to Paragraphs 1 through 174 as if set forth at length herein.

176) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient

information or knowledge to form belief as to the truth of the allegations in Paragraph 176.

- 177) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 177.

SIXTH CLAIM FOR RELIEF

False SEC Filings- Exchange Act Sections 13 (a) and Exchange Act Rules 12b- 20, 13a-1, 13a-11 and 13a-13

[17 U.S.C. § 78m (a) and 17 C.F.R. 240.12b-20, 240.13a-1,240.13a-11 and 240.13a-13]

- 178) Nacchio repeats and re-alleges his answers to Paragraphs 1 through 177 as if set forth at length herein.
- 179) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 179.
- 180) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 180.

SEVENTH CLAIM FOR RELIEF

Falsified books and records- Exchange Act Sections 13 (b) (2)

[15 U.S.C. § 78m(b)(2)]

- 181) Nacchio repeats and re-alleges his answers to Paragraphs 1 through 180 as if set forth at length herein.

182) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 182.

183) To the extent that the allegations are directed at him, Nacchio denies them. To the extent that they are directed at other defendants, Nacchio lacks sufficient information or knowledge to form belief as to the truth of the allegations in Paragraph 183.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief is granted.
2. Some or all of the alleged untrue statements of material fact, omissions of material fact, misleading statements, or other challenged statements made by Defendants consist only of non-actionable general statements of optimism and/or indefinite opinions or puffery, and thus non-actionable.
3. Every act or omission alleged in the Complaint was done or omitted in good faith conformity with the rules and regulations of the Securities and Exchange commission and, therefore, pursuant to Section 23(a) of the Securities and Exchange Act of 1934, there is no liability for any such act or omission alleged.
4. The matters alleged to be the subject of misrepresentations or omissions were publicly and prominently disclosed and were available to the investors and the security market.
5. The acts and practices of persons or entities not associated with Qwest, and ongoing economic events, constitute intervening and superseding causes of the alleged harm, if any, and some or all of the decline in the value of Qwest securities was the result

not of any omission or misstatement on the part of Qwest, but rather of the general decline in the market, especially among securities in the telecommunications sector.

The liability, penalties, and other sanctions plaintiffs seek to impose should be eliminated, abated, or reduced accordingly. See 15 U.S.C. § 77k (e).

6. Plaintiff is barred from recovery, in whole or in part, because Nacchio acted in good faith reliance on the advice of other persons, including outside counsel, the Audit Committee of the Board of Directors, internal auditors, as well as Qwest's general counsel.
7. Plaintiff is barred from any recovery, in whole or in part, because with respect to all alleged untrue statements, Nacchio had, after reasonable investigation, reasonable grounds to believe, at the time those statements were made and at all relevant times, that the statements were true and not misleading and that there were no omissions of material fact required to be stated necessary to make the statements not misleading.
8. Some or all of the alleged untrue statements of material fact, omissions of material fact, misleading statements, or other challenged statements contained sufficient cautionary language or risk disclosure to protect Nacchio against claims of securities fraud, and are thus non-actionable under the "bespeaks caution" doctrine.
9. Any damages suffered were proximately caused by and contributed to by persons other than Nacchio. Any liability of all defendants and responsible parties, named or unnamed, should be apportioned to the relative degrees of fault, and any liability of Nacchio should be reduced accordingly.
10. Without admitting that any Registration Statement identified in the complaint contained an untrue statement of material fact or omitted to state a material fact required to be stated therein or necessary to make statements therein not misleading,

with respect to every part of each Registration Statement not purporting to be made on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, Nacchio had, after reasonable investigation, reasonable grounds to believe and did believe, at the time such part of the Registration Statement became effective, that the statements therein were true and that there was no omission to state material fact required to be stated therein or necessary to make the statements therein not misleading.

11. Without admitting that any Registration Statement identified in the Complaint contained an untrue statement of material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to every part of each Registration Statement purporting to be made on the authority of an expert or purporting to be a copy of or extract from a report or valuation of an expert, Nacchio had no reasonable ground to believe and did not believe, at the time such part of the Registration Statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the Registration Statement did not fairly represent the statement of the expert or was not a fair copy or extract from the report or valuation of the expert.

12. Without admitting that any Registration Statement identified in the Complaint contained an untrue statement of material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to every part of each Registration Statement purporting to

- be a statement made by an official person or purporting to be a copy of or extract from a public official document, Nacchio had no reasonable ground to believe and did not believe, at the time such part of the Registration Statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make statements therein not misleading, or that such part of the Registration Statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document.
13. Without admitting that Qwest or any Individual Defendant is liable under the Securities Exchange Act of 1934 (“Securities Exchange Act”) and without admitting that Nacchio controls either Qwest or any Individual Defendant, Nacchio acted in good faith and did not directly or indirectly induce the act or acts constituting the violation of the Securities Exchange Act, or any rule or regulation thereunder, or the cause of action.
 14. Nacchio did not act with scienter.
 15. Nacchio did not act with “extreme departure from reasonable accounting practices,” necessary to constitute alleged securities law violations.
 16. A reasonable accountant reviewing the facts, figures and information known by Nacchio while employed by Qwest could determine that Qwest’s financial statements conformed with GAAP and would not mislead the public.
 17. Qwest’s outside independent auditors repeatedly approved of Qwest’s financial statements prepared during the period of Nacchio’s employment at Qwest.
 18. Nacchio did not intentionally withhold fact from the public in order to deceive, manipulate or defraud.

19. Nacchio did not recklessly disregard the importance of facts to the public in order to deceive, manipulate or defraud.
20. Nacchio did not possess a motive to deceive, manipulate or defraud the public.
21. Qwest's outside independent auditors concluded that Qwest could treat IRU transactions as sales-type leases and account for revenue therefrom up front.
22. Qwest's outside independent auditors reviewed Qwest's IRU transactions during the period of Nacchio'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.
23. Qwest's outside independent auditor also discussed the question of disclosure with the Audit Committee of Qwest's Board of Directors, during which the auditor was told by the Audit Committee that the Audit Committee agreed that disclosure was not required under GAAP.
24. Qwest's outside independent auditor specifically considered and determined that Qwest's financial statements were not misleading and complied with disclosure requirements.
25. Nacchio did not know of any alleged violation of securities law by Qwest or any employee thereof.
26. Nacchio did not provide substantial assistance to Qwest or any other employee thereof in achieving any alleged violation of securities law.
27. Nacchio was unaware that any conduct on his part constituted an alleged violation of securities law.
28. Nacchio did not act with "extreme" or "severe recklessness" necessary to constitute alleged violations of securities law.

29. Fiber sold in IRU's transactions was being held in a non-depreciating 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 Nacchio's employment at Qwest.
30. 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 Nacchio's employment at Qwest.
31. 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 Nacchio's employment at Qwest.
32. A reasonable accountant could conclude 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.
33. A reasonable account could conclude that contemporaneous IRU transactions ("swaps") could be treated as sales type leases and revenue therefrom could be recognized up front. Indeed, Qwest's outside independent auditors so concluded during Nacchio's employment at Qwest.
34. Nacchio was not informed that Qwest groomed IRUs.
35. Nacchio was not informed that Qwest permitted customers to port purchased capacity.

36. Nacchio was not informed of any alleged side or secret agreement with any IRU purchaser.
37. Claims for civil penalties that are premised on conduct that occurred prior to March 15, 2000 are barred by the statute of limitations.
38. The SEC is precluded from pursuing any action on the ground that the SEC conducted an unlawful and improper investigation.
39. The SEC is precluded from pursuing relief by the doctrines of unclean hands and/or ratification and/or in pari delecto.
40. At all times, Nacchio acted in good faith.
41. At no time did Nacchio trade stock on the basis of material non-public information.
42. A reasonable accountant reviewing the facts, figures and information known by Nacchio while employed by Qwest could determine that Qwest's financial statements conformed with GAAP and would not mislead the public.
43. Qwest's outside independent auditors concluded that Qwest could treat IRU transactions as sales-type leases and account for the revenue therefrom up front.
44. Nacchio appropriately relied on (i) his employment contract; (ii) the established process at Qwest for reviewing and approving purchases of stock in companies with a business relationship with Qwest, and (iii) Qwest's legal department's approval of such purchases.
45. Nacchio appropriately relied on the established process at Qwest for reviewing and approving Qwest's public filings and the manner in which the information therein was presented.
46. The claims alleged in the Amended Complaint are barred, in whole or in part, by the application of one or more statutes of limitations.

47. Nacchio did not know of any inaccurate or misleading filing with the SEC by Qwest and did not lend substantial assistance to Qwest in filing any inaccurate or misleading filing, if any was filed.

48. Beginning in or around 1997 and continuously thereafter throughout his tenure as CEO of Qwest, Nacchio was privy to top secret information regarding the prospects for the award of classified government contracts to Qwest by, or for the benefit of, at least four different clandestine United States intelligence agencies. This information was restricted to persons having not just top secret clearance but also the requisite "need to know," and Nacchio was the sole Qwest senior executive having such top secret clearance and need to know. This information was not known to anyone else who participated in the creation of Qwest's annual internal budget or its annual publicly stated financial guidance. Over the years these prospects culminated in the award of hundreds upon hundreds of millions of dollars in classified contracts to Qwest, with the continuing prospect of substantial additional business under either existing or new contracts. At all such times, this top secret information was part of the mix of information which allowed Nacchio to have a reasonable, good faith, belief that Qwest would be able to achieve its annual publicly stated financial guidance, even when those not privy to the classified information might have questioned Qwest's ability to achieve said guidance.

Nacchio reserves the right to amend these Affirmative Defenses and to raise additional defenses that become known to him during this case.

JURY DEMAND

A trial by jury is demanded on all issues and claims alleged herein which are so triable.

PRAYER FOR RELIEF

WHEREFORE, Nacchio requests this Court to enter a judgment in his favor and against Plaintiff, and that the Amended Complaint be dismissed with prejudice, and that Nacchio be awarded attorneys' fees and costs.

Dated: June 5, 2007

s/Herbert J. Stern _____
Herbert J. Stern
Jeffrey Speiser
Joel M. Silverstein
Edward S. Nathan
Terry L. Trantina
Mark W. Ruffolo
Stern & Kilcullen
75 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-2600
(973) 535-9664 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June 2007, I electronically filed the foregoing DEFENDANT JOSEPH P. NACCHIO'S ANSWER TO THE SECURITIES AND EXCHANGE COMMISSION'S COMPLAINT with the clerk of the Court using the CMECF system, which will send notification of such filing to the following e-mail addresses:

Polly A. Atkinson
Thomas J. Krysa
Christopher P. Friedman
Securities and Exchange Commission
1801 California Street, Suite 1500
Denver, CO 80202

atkinsonp@sec.gov
krysat@sec.gov
friedmanc@sec.gov

Counsel for Robert S. Woodruff
david.deister@cliffordchance.com
james.miller@cliffordchance.com
david.cook@cliffordchance.com
rcaschette@starrslaw.com

Counsel for Afshin Mohebbi
pgrand@maglaw.com
kmilkov@maglaw.com
Patrick-J-Burke@msn.com
deanneuwirth@comcast.net

Counsel for Mr. Noyes

flewispc@aol.com

Kevin Traskos
United States Attorney's Office
1225 17th Street, Suite 700
Denver, CO 80202

Kevin.Traskos@usdoj.gov

Counsel for Mr. Kozlowski:
kdevans@s-elaw.com
pdouglass@s-elaw.com

s/ Joel M. Silverstein
Joel M. Silverstein

