IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

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,

Defendants.

ANSWER OF JAMES J. KOZLOWSKI TO SEC's APRIL 12, 2006 "AMENDED" COMPLAINT[1], AND DEMAND FOR JURY TRIAL

James J. Kozlowski, through his attorneys, Kevin D. Evans and Phillip L. Douglass of STEESE & EVANS, P.C., submits his Answer to the SEC's April 12, 2006 "Amended" Complaint. Mr. Kozlowski denies the allegations of wrongdoing against him in the prefatory sections and in the First, Second, Third, Fourth, Sixth, and Seventh Claims for Relief in the SEC's "Amended" Complaint (the SEC does not allege a cause of action against Mr. Kozlowski in the Fifth Claim for

[1] Pursuant to the Court's March 30, 2006 Order, the SEC, on April 12, 2006, filed its "Amended" Complaint, although the SEC does not call it an "Amended" pleading. Furthermore, while the SEC did more than add allegations against Mr. Nacchio, and in fact improperly changed certain allegations made against Mr. Kozlowski without leave of Court, we do not intend to burden the Court with this issue. In addition, despite the Court's October 5, 2005 Order, the SEC includes Mr. Casey in the case caption, the body of the "Amended" Complaint, the Claims for Relief, and the Prayer for Relief (in so doing, the SEC technically resues Mr. Casey).

Relief), and requests that judgment be entered thereon in his favor. More specifically, Mr. Kozlowski states as follows:

OVERVIEW

Mr. Kozlowski joined Qwest in April 1998 as an accountant. Mr. Kozlowski was 29 years of age at the time. Mr. Kozlowski worked as an accountant at Qwest from April 1998 through September 2000, at which time he took a position with KPNQwest in Amsterdam.[2] The inclusion of Mr. Kozlowski in this action brought by the SEC against Qwest's former CEO, President and COO, CFOs, and Executive Vice President in charge of the Wholesale Business Unit leaves us "astonished with great astonishment." (Mark 5:42). As explained herein, Mr. Kozlowski acted at all times with the highest degree of integrity and honesty. Indeed, Mr. Kozlowski along with others in the industry specifically asked the SEC in 1999 for guidance on IRU accounting. Despite the SEC's recognition 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 the Subcommittee on Oversight and Investigations Committee on Financial Services by John M. Morrissey, SEC Deputy Chief Accountant), and despite the SEC's role as it relates to pronouncements on issues of accounting complexity, the SEC refused to provide definitive guidance on whether up-front revenue recognition on IRU transactions conformed with Generally Accepted Accounting Principles ("GAAP").

As a result, Mr. Kozlowski continued to rely in large measure on Qwest's outside independent auditors, widely recognized at the time as the experts on sales-type lease (*i.e.,* IRU)

[2] Mr. Kozlowski returned to Qwest in January 2002, albeit in a different role and position; he was not in accounting, nor did his responsibilities include preparation of Qwest's public filings. Moreover, the SEC does not accuse Mr. Kozlowski of wrongdoing following his return in January 2002.

accounting, to help ensure that Qwest's accounting conformed with GAAP. These auditors agreed with and blessed Qwest's IRU accounting. ***For the SEC now to sue Mr. Kozlowski claiming that he and other accountants at Qwest got it wrong, and in effect attempt to irreparably damage if not destroy this young man's career, is inexcusable, particularly when the SEC itself refused to fulfill its responsibility as it related to IRU accounting guidance.***

GAAP ALLEGATIONS

At the time he joined Qwest in April 1998, Mr. Kozlowski had no previous experience with telecommunications companies, and had never heard of an IRU. Consequently, he had no experience in accounting for IRU transactions. For this reason, Mr. Kozlowski relied in large measure on Qwest's outside independent auditors – first KPMG and then Arthur Andersen – in both a macro- and a micro-sense. Mr. Kozlowski, for instance, relied on KPMG and Arthur Andersen to assist him in understanding under what circumstances Qwest could recognize revenue from IRU transactions "up front" (as opposed to ratably over the life of the contract). With full appreciation for Qwest's balance sheet and ledger reporting, and other issues of relevance to such determination, both outside independent auditing firms determined that Qwest IRUs could qualify for up-front revenue recognition (a fact well documented in the auditors' work papers).

From April 1998 until late 1999 (Mr. Noyes has testified that beginning in September 1999 he became responsible for determining the accounting on specific IRU transactions), Mr. Kozlowski participated in the review of various IRU transactions. In connection with his review of specific IRU deals, Mr. Kozlowski frequently consulted with and relied on KPMG and then Arthur Andersen (which maintained an office on the very floor at Qwest on which Mr. Kozlowski was located) to advise him regarding questions as they arose (Mr. Noyes also consulted with and relied on Arthur Andersen when he assumed this responsibility). Indeed, Qwest's outside independent auditors reviewed individual IRU transactions at the time of the specific deals, at the end of each quarter, and/or by the year end filing to ensure that the accounting treatment for these deals conformed with GAAP. At no time did either KPMG or Arthur Andersen inform Mr. Kozlowski that Qwest was accounting improperly for IRU transactions, or that Qwest's accounting on any particular IRU transaction was not in conformity with GAAP; had they done so, Mr. Kozlowski would have insisted that Qwest account for these transactions consistent with the advice of its independent auditors. Moreover, representatives of KPMG and Arthur Andersen have testified during SEC and consolidated shareholder depositions that they believed that Qwest properly accounted for IRU transactions. For instance:

- Farrell Malone, the KPMG audit partner on the Qwest engagement during 1998 and the first part of 1999, testified that "KPMG was comfortable with the presentation of the financial statements as a whole, including the basic financial statements and the footnote." The financial statements referred to by Mr. Malone were the financial statements for the period in which Qwest first started recognizing revenue up-front on IRU transactions.

- Mark Iwan, one of the Arthur Andersen audit partners on the Qwest engagement, testified that he told Mr. Kozlowski and others that "given the guidance in the white paper, that we were attempting to follow and given the technical position, I thought that they had a very defensible position on IRUs . . . . We had cleared this internally. We had cleared this with the concurring partner. We had cleared this with our PSG. . . . I never would have signed the opinion if I didn't think that we had a sustainable argument that we would prevail in front of the – in the office of chief accountant."

- During a meeting with Mr. Nacchio in February 2001, Mr. Iwan said that he believed that Qwest's IRU accounting was "sustainable from a GAAP basis . . . . I thought it complied with GAAP . . . [and] was in accordance with GAAP. . . . We wouldn't have signed the financials if we didn't think these were GAAP . . . ."

- During the January 22, 2001 Audit Committee meeting, Mr. Iwan testified he told the Audit Committee that Arthur Andersen "continued to believe [Qwest's IRU accounting] complied with GAAP . . . . I still believed that it was GAAP, that I still believed that it was defensible as GAAP . . . ."

- During a conversation with Richard Howell, the Arthur Andersen practice director, around September 19, 2001, Mr. Iwan stated that he "still believed the accounting, although being aggressive, was in compliance with GAAP. . . . And I pointed out to Mr. Howell that we had communicated in the past at Qwest that we believed the accounting was in accordance with GAAP and that nothing has come to our attention that would change that view. . . . I said that nothing had changed in terms of the fact that we still believed this was GAAP . . . ."

- Mr. Iwan also discussed Qwest's IRU accounting with Richard Petersen, a member of the Arthur Andersen Professional Standards Group and an expert on IRU accounting. Mr. Iwan testified that after "a comprehensive revisiting of the accounting to ensure that Andersen was still comfortable[,] . . . Mr. Petersen agreed that the accounting was still valid. That it was still in compliance with GAAP."

- Daniel Mutzig, the Arthur Andersen senior manager on the Qwest engagement during a portion of 1999, testified that Arthur Andersen "knew that IRUs were a significant accounting area and focused on it accordingly. . . . The accounting that they had for IRUs, there is certainly a spectrum of accounting guidance that applied. This was a highly evolving area. And they were within that spectrum of accounting guidance that was allowable. . . . [I]n terms of the accounting that they took at the time, it followed the accounting guidance [GAAP] at that time."

- Mr. Petersen testified that he discussed with Mr. Iwan revenue recognition issues, and issues related to nonmonetary exchanges and assets held for sale. He was aware that Qwest's position regarding assets held for sale differed from the Arthur Andersen White Paper. Following discussions with Mr. Iwan, he agreed that Qwest's characterization of assets held for sale "was not an error under GAAP, i.e., it was an acceptable interpretation . . . ." "The ultimate resolution . . . was that the, myself, the Professional Standards Group, we ended up concluding that the company's analysis, their accounting process, thought process here that these were assets, real estate assets subject to Statement 67, we concluded that that was an acceptable analysis under GAAP . . . ." "Qwest was of the view that they were under Statement 67. In the end, ultimately, Arthur Andersen accepted that as being an acceptable interpretation of GAAP." "[U]ltimately at the end of the day, [Arthur Andersen . . . came to the position that the company position with respect to these issues was not in error and was in compliance with GAAP . . . ." "[T]he ultimate resolution was that Andersen did conclude that the accounting that Qwest was doing was acceptable under GAAP and was not in error."

- Peter Hellman, a member of the Audit Committee of the Qwest Board of Directors, testified that Mr. Iwan "was assertive in his representation that [Qwest's IRU accounting] was GAAP, he did not equivocate in any way."

The fact that KPMG and Arthur Andersen approved of Qwest's accounting for IRU transactions is confirmed by their repeated pronouncements in Qwest's SEC filings. For instance, KPMG, which audited Qwest's 1998 financial statements, 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." Arthur Andersen made the same representations when it became Qwest's independent auditor. In Qwest's 1999 10-K, filed in March 2000, Arthur Andersen said:

> To the Board of Directors and Stockholders of Qwest Communications International Inc.:
>
> We have audited the accompanying consolidated balance sheet of Qwest Communications International Inc. . . . as of December 31, 1999, and the related consolidated statements of operations, stockholders' equity and cash flows for the year then ended. . . .
>
> We conducted our audits in accordance with auditing standards generally accepted in the United States. . . .
>
> In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Qwest Communications International Inc. and subsidiaries as of December 31, 1999, and the results of their operations and their cash flows for the year then ended in conformity with accounting principles generally accepted in the United States.

Arthur Andersen also made this identical representation regarding Qwest's 1999 financial statements in connection with Qwest's 2000 and 2001 10-Ks, as well as interim filings by Qwest with the SEC (remember that Mr. Kozlowski departed Qwest for KPNQwest in September 2000).

As the SEC knows, GAAP is not an exact science. "GAAP is a term of art that encompasses a wide range of acceptable procedures." *In re IKON Office Solutions, Inc. Sec. Litig.*, 277 F.3d 658, 675 n.22 (3rd Cir. 2002). Indeed, the United States Supreme Court has observed that GAAP "are far from being a canonical set of rules that will ensure identical accounting treatment of identical transactions . . . . Rather, [they] tolerate a range of 'reasonable' treatments, leaving the choice among alternatives to management." *Thor Power Tool Co. v. Comm'r*, 439 U.S. 522, 544 (1979). *See also In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1549 (9th Cir. 1994) (en banc) (As accounting concepts are flexible, circumstances will give rise to fraud only where differences in calculations are the result of a falsehood, "not merely the difference between two permissible judgments."); *Godchaux v. Converging Techniques, Inc.*, 846 F.2d 306, 315 (5th Cir. 1988) (A reasonable accountant may choose to apply any of a variety of acceptable procedures when preparing a financial statement.).

Because GAAP is not an exact science and because there was precious little in the way of authoritative literature on how to account for IRU transactions, the telecommunications industry, including Qwest (indeed, Mr. Kozlowski), asked the SEC in 1999 for guidance on IRU accounting. ***The SEC declined to provide definitive guidance on whether up-front revenue recognition on IRU transactions conformed with GAAP.*** As a result, Mr. Kozlowski relied in large measure on KPMG and Arthur Andersen (which was widely considered to be the expert on IRU accounting) on these issues. Again, not once did KPMG or Arthur Andersen inform Mr. Kozlowski that Qwest's IRU accounting was improper; in fact, these independent auditors repeatedly represented that Qwest's IRU accounting conformed with GAAP. We also understand from the testimony of Qwest's former Controller that the SEC has been informed that the Audit Committee of Qwest's Board of Directors was apprised as early as 1998 of Qwest's accounting for IRUs. Yet the SEC sues Mr. Kozlowski (who was a mid-level accountant) accusing him of GAAP violations. The theories advanced by the SEC on this score are debunked below in the specific paragraphs devoted to this assertion.

1999 10-K Disclosure Allegations

The SEC also accuses Mr. Kozlowski of wrongdoing in connection with removal of draft disclosure language from the 1999 10-K. Here too the SEC is factually and legally adrift.

Around the end of 1999, Mr. Kozlowski and Mr. Noyes discussed calculation of IRU revenue for the year. Mr. Noyes performed such a calculation and informed Mr. Kozlowski that IRU revenue was close to (but did not exceed) 10% of Qwest's total revenue. Mr. Kozlowski and Mr. Noyes then discussed whether consideration should be given to including specific disclosure of Qwest lit capacity IRU transactions in Qwest's 1999 10-K. Since neither Mr. Kozlowski nor Mr. Noyes had the authority to make such a decision, Mr. Kozlowski agreed to discuss the issue with Mr. Woodruff – Qwest's Chief Financial Officer (Mr. Woodruff also was a CPA and Qwest's principal accounting officer).

Mr. Kozlowski did discuss the issue with Mr. Woodruff, and Mr. Woodruff requested that Mr. Kozlowski provide him with possible disclosure language. As a result, Mr. Kozlowski asked Mr. Noyes to work with Mark Iwan at Arthur Andersen to prepare options for potential disclosure. After Mr. Noyes had done so, Mr. Kozlowski and Mr. Noyes included possible disclosure language in Qwest's draft 1999 10-K, which was provided to Mr. Woodruff and others. In a subsequent conversation, Mr. Woodruff informed Mr. Kozlowski that he (Mr. Woodruff) would discuss the issue of disclosure with Mr. Nacchio and get back to Mr. Kozlowski.

Some time passed and Mr. Kozlowski had not heard back from Mr. Woodruff. As a result, Mr. Kozlowski also had potential disclosure language inserted into the draft of Qwest's Annual Report to Shareholders, which was at the printer. Mr. Kozlowski then had a conversation with Mr. Iwan from Arthur Andersen. Mr. Kozlowski told Mr. Iwan that he was awaiting direction from Mr. Woodruff. Because the time for final printing was at hand, Mr. Kozlowski asked Mr. Iwan if Arthur

Andersen would object should Mr. Woodruff direct that the disclosure language be removed from the draft 1999 10-K. Mr. Iwan pointedly informed Mr. Kozlowski that Arthur Andersen would not insist on the IRU disclosure.

Mr. Kozlowski then approached Mr. Woodruff and said that he needed an answer regarding the disclosure. Mr. Woodruff directed Mr. Kozlowski to remove the disclosure from the draft 10-K. Because Mr. Kozlowski already had discussed the issue with Mr. Iwan and had been informed that Arthur Andersen would not insist on inclusion of the disclosure, Mr. Kozlowski did not question the order from Mr. Woodruff – Qwest's CFO.

We read with amazement Mr. Iwan's SEC testimony that he was not consulted about the removal of the disclosure language, and that he supposedly first learned of the March 2000 removal during his SEC testimony in 2004. We find even greater amazement in the fact that the SEC appears to buy this blarney (particularly since Arthur Andersen work papers reflect that Arthur Andersen noted the removal of the draft disclosure during referencing work in March 2000). Such a suggestion, and the SEC's theory in reliance thereon, not only defy reason: they defy logic.

For one thing, Mr. Iwan testified under oath during his SEC deposition that Arthur Andersen discussed the issue of disclosure with Mr. Woodruff and the Audit Committee of Qwest's Board of Directors, and that the Audit Committee apprised Mr. Iwan that it would rely on Mr. Woodruff's judgment. (Mr. Kozlowski was not involved in these discussions.) Moreover, are we to believe that Qwest's outside independent auditor never read the filed 10-K? Are we to believe that Qwest's outside independent auditor never read Qwest's Annual Report to Shareholders? Of course not (as evident from the referencing work in the Arthur Andersen work papers). If any one from Arthur Andersen at any time truly did find the absence of the IRU disclosure objectionable, where is the contemporaneous or any other documentation noting such objection? Where is the public recanting of the Arthur Andersen auditor statement or a demand that Qwest amend its 10-K, file an 8-K, issue a press release – do something? The answer is ***nowhere***, because Arthur Andersen had concluded that the draft disclosure was not necessary. Indeed, in ***subsequently filed*** 10-Ks and other public filings, Arthur Andersen and Mr. Iwan repeated their representation that:

> We have audited the accompanying consolidated balance sheets of Qwest Communications International Inc. and subsidiaries as of December 31, 2000 and 1999, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2000. . . . ¶ In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Qwest Communications International Inc. and subsidiaries as of December 31, 2000 and 1999, and their results of their operations and their cash flows for each of the three years in the period ended December 31, 2000, in conformity with accounting principles generally accepted in the United States.

In short, Mr. Kozlowski relied in large measure on Qwest's outside independent auditors (the experts in the field) to help ensure that Qwest's accounting for IRU transactions and its up-front recognition of revenue conformed with GAAP. (For its part, and despite its responsibility to do so, the SEC had refused to provide definitive guidance on such issues.) These outside auditors reviewed Qwest's IRU accounting policy and the accounting for the individual IRU deals and never told Mr. Kozlowski that Qwest's accounting did not conform with GAAP. Indeed, based on the information they were provided, Mr. Kozlowski and Qwest's outside independent auditors, as they repeatedly have testified, believed that Qwest's accounting did conform with GAAP. Moreover, Mr. Kozlowski consulted with Qwest's outside independent auditor regarding the issue of disclosure in the 1999 10-K, and based on that consultation understood that a disclosure was not required. Had Qwest's outside independent auditors ever apprised Mr. Kozlowski that a disclosure was necessary or that Qwest's IRU accounting was not in conformity with GAAP, Mr. Kozlowski would have insisted on a change, for he had no motivation to do otherwise.

As Mr. Kozlowski has said before, the accusations against him in the SEC's Complaint are as sensational as they are insupportable.

ANSWER TO SPECIFIC ALLEGATIONS[3]

ALLEGATION:

1) From at least April 1, 1999, through March 31, 2002, senior executives and others at Qwest Communications International Inc. engaged in a massive financial fraud that hid from the investing public the true source of the company's revenue and earnings growth, caused the company to fraudulently report approximately $3 billion of revenue, and facilitated the company's June 2000 merger with US West.

ANSWER:

Mr. Kozlowski states that he was not a senior executive of Qwest. Mr. Kozlowski further denies the allegations in Paragraph 1 to the extent they are intended by the SEC to apply to him.

ALLEGATION:

2) Joseph P. Nacchio, Qwest's former chief executive officer, and the company's two former chief financial officers, Robert S. Woodruff, and Robin R. Szeliga, caused, directed, and implemented the fraudulent scheme. The massive financial fraud directly resulted from aggressive and rigid targets for Qwest's revenue and earnings growth set by Nacchio, Woodruff, and Szeliga, which they constantly touted to the investing public and Wall Street. Extreme pressure was placed on subordinate Qwest executives to meet these aggressive targets at all costs and the pressure spread throughout the company, causing a "culture of fear." For example, at a January 2001 all-employee meeting, Nacchio stated that, "[T]he most important thing we do is meet our numbers. It's more important than any individual product, it's more important than any individual philosophy, it's more important than any individual cultural change we're making. We stop everything else when we don't make the numbers."

[3] Mr. Kozlowski's Answer omits reference to the various gratuitous and "scandalous" (FED. R. CIV. P. 12(f)) headings throughout the SEC's Complaint.

ANSWER:

Paragraph 2 does not relate to Mr. Kozlowski and thus no answer is required. To the extent any of the allegations in Paragraph 2 were intended by the SEC to pertain to Mr. Kozlowski, Mr. Kozlowski denies each and every such allegation. 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 further notes his bewilderment at having been named as a Defendant in this case in light of the allegations in Paragraph 2.

ALLEGATION:

3) To meet the aggressive targets, Qwest fraudulently and repeatedly relied on immediate revenue recognition from one-time sales of assets known as "IRUs" and certain equipment while falsely claiming to the investing public that the revenue was recurring. By hiding non-recurring revenue and making false and misleading public statements, Nacchio, Woodruff, and Szeliga fraudulently and materially misrepresented Qwest's performance and growth to the investing public.

ANSWER:

Paragraph 3 does not relate to Mr. Kozlowski and thus no answer is required. To the extent any of the allegations in Paragraph 3 were intended by the SEC to pertain to Mr. Kozlowski, Mr. Kozlowski denies each and every such allegation. 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 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 further notes his bewilderment at having been named as a Defendant in this case in light of the allegations in Paragraph 3.

ALLEGATION:

4) In addition, to meet revenue targets, Nacchio, Woodruff, and Szeliga caused the manipulation of revenue associated with Qwest Dex, a wholly-owned subsidiary of Qwest. Szeliga also fraudulently lowered liabilities related to employee vacations to artificially increase Qwest's earnings to meet revenue and growth targets.

ANSWER:

Paragraph 4 does not relate to Mr. Kozlowski and thus no answer is required. 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 further notes his bewilderment at having been named as a Defendant in this case in light of the allegations in Paragraph 4.

ALLEGATION:

5) Due to extreme pressure to meet the targets, Nacchio, Woodruff, Szeliga, and their subordinates, certified public accountants James J. Kozlowski and Frank T. Noyes, failed to properly record IRU sales and equipment transactions in Qwest's financial statements, causing the company to fraudulently report revenue. Moreover, Nacchio, Woodruff, Szeliga, Kozlowski, and Noyes failed to make required accounting disclosures about IRUs to the investing public.[4]

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 5 that pertain to him, and notes that he departed Qwest at the end of September 2000. Mr. Kozlowski further states that at no time did Qwest's outside independent auditors suggest to him that Qwest failed to account properly for IRU sales or equipment transactions or that Qwest's accounting policy regarding such transactions did not conform with GAAP. Furthermore, Mr. Kozlowski did not have the authority to determine what to include in Qwest's public filings and statements regarding IRU transactions. Mr. Kozlowski further states that he discussed with Mark Iwan of Arthur Andersen the issue of disclosure in

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[4] This is one of the Paragraphs in which the SEC improperly made substantive changes in its allegations against Mr. Kozlowski without leave of Court.

Qwest's 1999 10-K regarding lit capacity IRU transactions. Because Mr. Iwan did not insist on a disclosure, and because Mr. Woodruff (Qwest's CFO and principal accounting officer) told Mr. Kozlowski to remove the disclosure, Mr. Kozlowski did not believe such disclosure to be 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:

6) Also as a result of the aggressive targets, others at Qwest, including former chief operating officer Afshin Mohebbi, senior executive Gregory M. Casey, and Noyes fraudulently manipulated IRU transactions to meet revenue targets by backdating contracts, hiding side agreements, and purchasing IRUs that Qwest did not need.

ANSWER:

Paragraph 6 does not relate to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

7) Qwest relied so heavily on the immediate revenue recognition from one-time IRU and equipment sales transactions to meet the aggressive revenue and growth targets that Qwest management and employees referred to the practice as a "drug," an "addiction," "heroin," and "cocaine on steroids." Moreover, Qwest's reliance on so-called IRU "swap" transactions to meet revenue targets led some in the company to refer sarcastically to those transactions as "SLUTs" (short for Simultaneous Legally Unrelated Transactions).

ANSWER:

Mr. Kozlowski lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7. Further answering, Mr. Kozlowski had heard others refer to IRUs as a "drug," but not the other terms referenced in Paragraph 7.

ALLEGATION:

8) Nacchio, Woodruff, and Szeliga sold Qwest stock and made significant profits, knowing that Qwest had issued materially false information to the investing public in violation of the insider trading prohibition of the securities laws.

ANSWER:

Paragraph 8 does not relate to Mr. Kozlowski and thus no answer in required.

ALLEGATION:

9) During the fraudulent scheme, the defendants profited by approximately $300,000,000 through salary, bonuses, stock sales, and other compensation. Nacchio alone reaped an estimated $216,000,000.

ANSWER:

To the extent that Paragraph 9 relates to Mr. Kozlowski, Mr. Kozlowski denies that he participated in any fraudulent or other scheme, and that he profited in any way from participation in any fraudulent or other scheme. Moreover, the allegations in Paragraph 9 are sensational and scandalous as they relate to Mr. Kozlowski, and thus should be stricken. 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:

10) Qwest's stock had traded as high as $64 per share in 2000. The fraudulent scheme unraveled beginning in late August 2001. Qwest's stock price steadily declined to a low of $1.11 per share in August 2002 after the company announced it was going to restate its previous financial results. Qwest's-market capitalization dropped by $91,000,000,000.

ANSWER:

Mr. Kozlowski denies that he participated in any fraudulent or other scheme, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10. 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.

ALLEGATIONS:

11) Analyst - professionals who evaluate public companies and their stock.

12) Dark fiber - raw glass fiber cable that has been installed, but does not have equipment connected to it to allow for transmission of data.

13) Earnings release - a press release issued by Qwest that publicly announced its quarterly and annual financial results.

14) EBITDA (Earnings Before Interest, Taxation, Depreciation, and Amortization) - a method of analyzing corporate earnings that was touted by Qwest.

15) Fiber network - cables containing strands of glass fiber cable and related equipment for the transmission of data between any two points using beams of light.

16) GAAP (Generally Accepted Accounting Principles) - rules that public companies like Qwest must use in accounting for business transactions and reporting financial results to the SEC and the public.

17) Grooming - altering lit fiber Qwest sold in IRU transactions which makes immediate revenue recognition on the transactions improper under GAAP.

18) IRU (Indefeasible Right of Use) - an irrevocable right to use a specific amount of dark or lit fiber for a specified time period.

19) Lit fiber - installed glass fiber cable that is connected to equipment necessary for the transmission of data.

20) Management Representation Letter - a letter to a company's outside auditors that they rely on.

21) MD&A (Management's Discussion and Analysis) - a section in a public company's SEC filings that is required, and contains management's explanation and discussion of the company's business operations.

22) Outside Auditor - an independent certified public accountant who examines the financial statements of public companies, like Qwest, and issues an opinion about whether the company's financial statements comply with GAAP. Public companies are required by SEC rules to have audits of their year-end financial statements.

23) Porting - allowing IRU purchasers the ability to exchange the lit or dark fiber purchased for different fiber at a later date. Porting makes immediate revenue recognition on the transaction improper under GAAP.

24) SEC filings - quarterly reports on Form 10-Q, annual reports on Form 10-K, and other reports on Form 8-K, filed with the SEC as required by law, that are available to the public.

25) Swap - an IRU transaction where Qwest was able to sell all IRU to another company in exchange for Qwest's buying an IRU from the same company.

ANSWER:

Paragraphs 11 through 25 do not contain allegations against Mr. Kozlowski, and thus no answer is required to the SEC's asserted "definitions."

ALLEGATION:

26) The SEC brings this action pursuant to the authority conferred upon it by Securities Act of 1933 Section 20(b) [15 U.S.C. § 77t(b)] and Securities Exchange Act of 1934 Sections 21(d) and (e) [15 U.S.C. §§ 78u(d) and (e)].

ANSWER:

Mr. Kozlowski admits that the SEC purports to bring this action against him based on the statutory provisions cited in Paragraph 26, but denies that he engaged in wrongdoing of any type or nature.

ALLEGATION:

27) This Court has jurisdiction over this action pursuant to Securities Act Section 22(a) [15 U.S.C. § 77v(a)] and Exchange Act Sections 21(e) and 27 [15 U.S.C. §§ 78u(e) and 78aa]. Venue lies in this Court pursuant to Securities Act Section 22(a) and Exchange Act Section 27 [15 U.S.C. §§ 77v(a) and 78aa].

ANSWER:

Mr. Kozlowski admits that the Court has jurisdiction over this action. Mr. Kozlowski denies that he engaged in wrongdoing of any type or nature.

ALLEGATION:

28) In connection with the transactions, acts, practices, and courses of business described in this Complaint, the Defendants, directly and indirectly, have made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 28 to the extent they pertain to him.

ALLEGATION:

29) Certain of the transactions, acts, practices, and courses of business constituting the violations of law alleged herein occurred within this district. Moreover, Woodruff, Szeliga, and Kozlowski reside in this district.

ANSWER:

Mr. Kozlowski admits that he resides in this district. Mr. Kozlowski denies the remaining allegations in Paragraph 29 to the extent they pertain 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:

30) Nacchio, Woodruff, and Szeliga violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, and 240.13b2-2] thereunder, and aided and abetted violations of Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-l, 240.13a-11, and 240.13a-13] thereunder, and unless restrained and enjoined will in the future violate or aid and abet violations of such provisions.

ANSWER:

Paragraph 30 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

31) Kozlowski and Noyes violated Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder, and aided and abetted violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b.20, 13a-l, 13a-11, and 13a-13 thereunder, and unless restrained and enjoined will in the future violate or aid and abet violations of such provisions.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 31 that pertain 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:

32) Mohebbi and Casey violated Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, l3b2-1, and 13b2-2 thereunder, or alternatively aided and abetted violations of Exchange Act Sections 10(b) and Rule 10b-5 and aided and abetted violations of Exchange Act Sections 13(a) and 13(b)(2) of the Exchange Act and Rules, 12b-20, 13a-l, 13a-11, and 13a-13 thereunder, and unless restrained and enjoined will in the future violate or aid and abet violations of such provisions.

ANSWER:

Paragraph 32 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

33) The defendants' violations resulted in various materially false statements contained in: Qwest SEC Forms 10-K - for the periods ending December 31, 1999, December 31, 2000, and December 31, 2001; Qwest SEC Forms 10-Q - for the periods ended March 31, 1999, June 30, 1999, September 30, 1999, March 31, 2000, June 30, 2000, September 30, 2000, March 31, 2001, June 30, 2001, September 30, 2001 and March 31, 2002; Qwest SEC Forms 8-K - dated June 30, 2000, July 6, 2000, September 7, 2000, October 31, 2000, December 21, 2000, February 26, 2001, March 22, 2001, June 5, 2001, June 19, 2001, June 20, 2001, July 24, 2001 (amended), August 7, 2001, August 7, 2001 (amended), and 8-Ks incorporating earnings releases; Qwest Earnings Releases - issued April 21, 1999, July 27, 1999, October 27, 1999, February 2, 2000, April 19, 2000, July 19, 2000, October 24, 2000, January 24, 2001, April 24, 2001, and July 24, 2001; all SEC filings and statements, including registration statements filed with the SEC that incorporated the above documents; Management Representation Letters - dated in 1999, March 15, 2000, March 17, 2000, August 11, 2000, November 14, 2000, January 24,2001, March 16, 2001, April 25, 2001, May 15, 2001, August 14, 2001, November 14, 2001 and March 31, 2002; Analyst conference calls - on April 21, 1999, July 27, 1999, October 27, 1999, February 2, 2000, April 19, 2000, July 19, 2000, October 24, 2000, January 24, 2001, April 24, 2001, June 19, 2001, June 20, 2001, July 24, 2001, and September 10, 2001; Conference presentations - on October 31, 2000, March 5, 2001, and August 7, 2001; and Television appearances - on April 26, 2001, May 25, 2001, and June 19, 2001.

ANSWER:

Mr. Kozlowski denies the allegations in Paragraph 33 to the extent they pertain to him. Further answering, Mr. Kozlowski states that he departed Qwest at the end of September 2000, and had no involvement in preparation of public filings and statements by Qwest after that point. Moreover, Mr. Kozlowski did not have the authority to determine what to include in Qwest's public filings and statements regarding IRU transactions. 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:

34) Joseph P. Nacchio, 55, of Mendham, New Jersey, was Qwest's chief executive officer, or CEO, and chairman of the board of directors from January 1997 to June 2002. He signed Qwest's materially false and misleading 1999, 2000, and 2001 10-K annual reports filed with the SEC, and false management representation letters to Qwest's outside auditors. He reviewed and approved all 10-Q quarterly reports to the SEC. He drafted and approved all of Qwest's earnings releases discussed in this complaint. Nacchio spoke at all analyst calls and conferences and made various television appearances.

ANSWER:

Paragraph 34 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

35) Robert S. Woodruff, 56, of Englewood, Colorado, was Qwest's chief financial officer, or CFO, and executive vice president ("EVP") of finance from August 1994 to March 2001. While CFO, Woodruff signed all Qwest's materially false 10-Q quarterly reports filed with the SEC and Qwest's materially false 1999 10-K annual report. He drafted the materially false 2000 10-K. He also signed false management representation letters to Qwest's outside auditors. Woodruff drafted and approved for public release all earnings releases while he was CFO. He spoke at all relevant analyst calls and certain conferences.

ANSWER:

Paragraph 35 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

36) Robin R. Szeliga, 44, of Littleton, Colorado, was Qwest's CFO and EVP of finance from March 2001 to July 2002. Before that, from 1998 until March 2001, she held various accounting positions, including Qwest's senior vice president ("SVP") of financial planning and analysis and reporting. While CFO, Szeliga signed all of Qwest's materially false 10-Q quarterly reports filed with the SEC, and its materially false 10-K annual reports for 2000 and 2001. She signed false management representation letters to Qwest's outside auditors. Szeliga drafted and reviewed all earnings releases. As CFO, she spoke at analyst calls.

ANSWER:

Paragraph 36 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

37) James J. Kozlowski, 35, of Denver, Colorado, was Qwest's director of financial reporting from April 1998 through October 1999, and Qwest's senior director of financial reporting from November 1999 through September 2000. Kozlowski drafted all fraudulent 10-Q quarterly reports and 10-K annual [sic] from January 1999 through September 2000.

ANSWER:

Mr. Kozlowski denies that he is 35 years of age, but admits the remaining allegation of the first sentence of Paragraph 37. Mr. Kozlowski denies the second sentence of Paragraph 37, and denies that he engaged in any fraudulent activity. 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:

38) Frank T. Noyes, 35, of Phoenix, Arizona, was a senior manager and then director of financial reporting between April 1999 and September 2000. In September 2000, he left Qwest, but returned as a senior director of finance in April 2001. From April 1999 until September 2000 Noyes assisted in drafting Qwest's 1999 10-Qs and its 1999 10-K.

ANSWER:

Paragraph 38 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

39) Afshin Mohebbi, 41, of Danville, California, was Qwest's president and chief operating officer, or COO from May 1999 until June 30, 2000. As a result of the merger, Qwest eliminated the COO position, and between June 30, 2000 and April 2001, Mohebbi was Qwest's president of Network Services and World Wide Operations. In April 2001, Qwest reinstituted the COO position and re-designated Mohebbi as president and COO. He remained in that position until December 2002.

ANSWER:

Paragraph 39 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

40) Gregory M. Casey, 46, of Houston, Texas, was Qwest's EVP of the Wholesale Business Unit from 1998 through November 2001, when he left Qwest. Casey was responsible for virtually all of Qwest's IRU sales.

ANSWER:

Paragraph 40 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

41) Qwest Communications International Inc., based in Denver, Colorado, is one of the largest telephone and Internet service companies in the United States. Qwest's common stock is registered with the SEC pursuant to Exchange Act Section 12(b) and the company is required by law to make filings with the SEC. Qwest's common stock trades on the New York Stock Exchange. During 2000 and 2001, Qwest made public offerings of approximately $49 billion of securities through registration statements filed with the SEC between April 1999 and March 2002 during the fraudulent scheme. Approximately $40 billion of that was issued in connection with the merger with US West.

ANSWER:

Paragraph 41 does not pertain to Mr. Kozlowski and thus no answer is required. Mr. Kozlowski denies having participated in any fraudulent or other scheme, and denies having engaged in wrongdoing of any type or nature. 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:

42) The SEC seeks an order requiring each defendant to disgorge all salary and other compensation of any kind received while they committed the violations alleged during their employment at Qwest. The defendants received the following estimated amounts of compensation:

a) Nacchio from 1999 through 2001 received total compensation from Qwest of at least $216.4 million. This includes his salary, bonus, incentive plan payments, profits from the sale of Qwest stock, and the value of stock he received from companies seeking to do business with Qwest.

b) Woodruff from 1999 through 2000 received total compensation from Qwest of at least $41 million. This includes his salary, bonus, profits from the sale of Qwest stock, and the value of stock he received from companies seeking to do business with Qwest.

c) Szeliga from 1999 through 2001 received total compensation from Qwest of at least $1.6 million. This includes her salary, bonus, profits from the sale of Qwest stock, and the value of stock he [sic] received from companies seeking to do business with Qwest.

d) Mobebbi from 1999 through 2001 received total compensation from Qwest of at least $5.9 million. This includes his salary, bonus, and the value of stock he received from companies seeking to do business with Qwest.

e) Casey from 1999 through 2001 received total compensation from Qwest of at least $34.9 million. This includes his salary, bonus, and profits from the sale of Qwest stock.

f) Kozlowski from 1999 through 2000 received total compensation from Qwest of at least $472,000. This includes his salary, bonus, and profits from the sale of Qwest stock.

g) Noyes between 1999 and 2001 received total compensation from Qwest of at least $291,000. This includes his salary and bonus.

ANSWER:

Paragraphs 42(a) through 42(e) and 42(g) do not pertain to Mr. Kozlowski and thus no answer is required. Mr Kozlowski denies subparagraph 42(f). Further answering, Mr. Kozlowski denies having engaged in wrongdoing of any type or nature, denies having committed the violations alleged in the "Amended" Complaint, and denies that the SEC is entitled to any order requiring Mr. Kozlowski to disgorge or pay any amount of money. 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:

43) In addition to more traditional forms of compensation, such as salary, bonus, and Qwest stock and options, Nacchio, Woodruff, and Szeliga, received secret compensation in the form of the ability to buy newly issued stock of companies that did business with Qwest or sought to do business with Qwest. This stock was referred to as "vendor stock." The ability to obtain this stock was a special investment opportunity offered to senior Qwest executives as an inducement for them to stay with the company. Qwest senior executives were given opportunities to purchase vendor stock shortly before or at the time that companies became publicly traded. During 1999 to 2001, these vendor stock investment opportunities were valuable because stock share prices of companies doing business with Qwest often rose significantly when public trading of the stock started. This was during the period of a hot Initial Public Offering market. This compensation was not publicly disclosed.

ANSWER:

Paragraph 43 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

44) Nacchio, Woodruff, and Szeliga constantly touted to the public and Wall Street that Qwest, unlike its competition, in the future would grow extremely quickly. They further claimed that such growth was the result of Qwest's increase in its recurring revenue from Internet and telephone services. In fact, the growth was largely the result of one-time sales of IRUs and equipment.

ANSWER:

Paragraph 44 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

45) Nacchio, Woodruff, and Szeliga failed to disclose that Qwest was dependant on non-recurring IRU and equipment sales to meet their inflated revenue and growth predictions for the company. In fact, non-recurring IRU and equipment sales comprised a material amount of Qwest's revenues. For example:

a) In 1999, Qwest had total revenue of $3.9 billion. Hidden non-recurring IRU and equipment sales accounted for over $1 billion, or 26 percent of that amount.

b) In the first two quarters of 2000, before Qwest merged with US West, Qwest had total revenue of almost $2.5 billion. Hidden non-recurring IRU and equipment sales accounted for $731 million, or almost 30 percent of the $2.5 billion total.

c) After the merger with US West, for the first two quarters of 2001, Qwest reported total revenue of $10.25 billion. Of that, almost $1.2 billion, over 10 percent, was revenue from hidden non-recurring IRU and equipment sales.

ANSWER:

Paragraph 45 does not pertain to Mr. Kozlowski and thus no answer is required. To the extent any of the allegations in Paragraph 45 were intended by the SEC to pertain to Mr. Kozlowski, Mr. Kozlowski denies each and every such allegation, denies that he participated in any fraudulent or other scheme, and denies that he engaged in wrongdoing of any type or nature. Mr. Kozlowski further states that he did not intend to, and did not, hide revenue of any type. Moreover, because

Mr. Iwan did not insist on an IRU disclosure, and because Mr. Woodruff (Qwest's CFO and principal accounting officer) told Mr. Kozlowski to remove the disclosure from the draft 1999 10-K, Mr. Kozlowski did not believe such disclosure to be required. Mr. Kozlowski lacks knowledge or information sufficient to form a belief as to the truth of the specific revenue and percentage figures referred to in Paragraph 45. Mr. Kozlowski further notes 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:

> 46) In the early 1990s, Qwest was a construction company building a fiber network connecting major cities within the United States. The original business plan was to create the network and then sell the company shortly thereafter.

ANSWER:

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

ALLEGATION:

> 47) After Nacchio joined Qwest as CEO in January 1997, he changed the direction of the company and decided that Qwest would use the network to become a major telecommunications company. Qwest planned to sell all but 48 of the dark fiber strands in each cable of the network in the form of IRUs. Qwest intended to keep the remaining fiber strands and "light" them in order to generate revenue for itself by selling communications services.

ANSWER:

Mr. Kozlowski is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47.

ALLEGATION:

48) Nacchio, Woodruff, and Szeliga publicly heralded the completion of Qwest's network construction and emphasized in public statements its communications services from which Qwest predicted it would receive substantial recurring revenue.

ANSWER:

Paragraph 48 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

49) Beginning in 1998, Qwest publicly stated that its dark fiber sales were diminishing, that its network was nearly complete, and that its recurring communications services revenue was increasing. For example:

a) Qwest's earnings release for the third quarter 1998 touted an "eighteen-fold" growth in communications services business with a 780 percent growth in data services (meaning Internet-related services).

b) In Qwest's earnings release for year-end 1998, Nacchio was quoted announcing Qwest's successful transition from a construction company to a communications services provider saying "we successfully transitioned Qwest from building a state-of-the-art network into a leading, Internet protocol-based multimedia company focused on the convergence of data, video and voice services."

c) In the earnings release for year-end 1998, Woodruff was quoted stating that Qwest had "momentum in our effort to promote wide-spread use of Internet and web-based communication services."

d) The earnings release for the first quarter 1999 stated that, while total revenue had increased, construction revenue (dark fiber sales) had declined "reflecting Qwest's successful transition to a leading-edge provider of communications services."

ANSWER:

Mr. Kozlowski states that the documents referred to in Paragraph 49 speak for themselves, and he denies each and every allegation in Paragraph 49 that is inconsistent therewith.

ALLEGATION:

50) In 1998 and 1999, Nacchio, Woodruff, and Szeliga publicly touted the growth of Qwest's data and Internet services revenue, which utilized Qwest's fiber network. For example:

a) In the earnings release for the third quarter 1999, Nacchio was quoted saying "[w]e've said from the beginning that we are creating a growth company and our results clearly show the steps we've taken. . . and rapidly growing our Internet and data business segment."

b) In the same release, Woodruff was quoted stating that "we are committing more resources to the expansion of the Qwest Internet and data services portfolio."

ANSWER:

Paragraph 50 does not pertain to Mr. Kozlowski and thus no answer is required. Moreover, Mr. Kozlowski states that the documents referred to in Paragraph 50 speak for themselves, and he denies each and every allegation in Paragraph 50 that is inconsistent therewith.

ALLEGATION:

51) Nacchio, Woodruff, and Szeliga knew that data and Internet services were particularly valued by investors and stock analysts who believed such data services were a major part of the company's potential future revenue growth because it was recurring and predictable. They also knew that investors and analysts discounted non-recurring one-time revenue events like IRU and equipment sales when valuing the company and its stock.

ANSWER:

Paragraph 51 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

52) In 1998 and 1999, Qwest began selling lit fiber IRUs and recognizing the revenue immediately to meet revenue and growth targets. Further, beginning in 1999, Qwest also sold equipment to generate additional immediate revenue. Although these were one-time dark and lit fiber and equipment sales, Qwest fraudulently included the revenue in its reported recurring data and Internet services revenue starting in July 1999. Nacchio, Woodruff, and Szeliga made no meaningful public disclosure of this materially fraudulent practice until August 2001 about IRU sales and December 2001 about equipment sales.

ANSWER:

Mr. Kozlowski admits that Qwest sold lit fiber IRUs during 1998 and 1999, and sold equipment during 1999, but lacks knowledge or information sufficient to form a belief as to the truth of the suggestion in Paragraph 52 that these sales were made for the purpose of meeting revenue and growth targets (Mr. Kozlowski was in accounting, not the sales organization). Mr. Kozlowski denies the allegations in the third sentence of Paragraph 52, and further notes that Qwest's outside independent auditors represented that Qwest's financial statements conformed with GAAP. The fourth sentence in Paragraph 52 does not pertain to Mr. Kozlowski and thus no answer thereto 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. 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:

53) Each quarter, prior to releasing Qwest's financial results to the investing public, Nacchio, Woodruff, and Szeliga received detailed financial information regarding the performance of Qwest's business units. This information contained detailed breakdowns of revenue from IRU and equipment sales, and detailed breakdowns of recurring and non-recurring sources of revenue within Qwest's business units. Additionally, Nacchio, Woodruff, and Szeliga met with executives operating Qwest's business units at the end of every quarter to review Qwest's financial performance. As a result, Nacchio, Woodruff and Szeliga knew and were fully aware of Qwest's revenues from IRU and equipment sales, and Qwest's sources of recurring and non-recurring revenue.

53a) Nacchio, Woodruff, and Szeliga knew that Qwest's books and records fraudulently included revenue from one-time IRU and equipment sales in its [sic] recurring data and Internet services revenue. Nacchio, Woodruff, and Szeliga knew that because Qwest's books and records fraudulently included revenue from one-time IRU and equipment sales in its [sic] recurring data and Internet services revenue, Qwest's books and records were materially inaccurate.

ANSWER:

Paragraph 53 and the new Paragraph 53(a) do not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

54) At the end of each quarter, Qwest released its financial results in earnings releases and SEC 8-K filings and later in SEC 10-Q filings. Additionally, Nacchio, Woodruff, Szeliga, and other Qwest executives routinely participated every quarter in calls with analysts covering the telecommunications industry to discuss Qwest's financial performance in detail. Nacchio, Woodruff, and Szeliga completely controlled the earnings release process and solely determined what information to release to the investing public.

ANSWER:

Mr. Kozlowski admits the first sentence in Paragraph 54. The remainder of Paragraph 54 does not pertain to Mr. Kozlowski and thus no answer is required thereto.

ALLEGATION:

55) Nacchio, Woodruff, and Szeliga knew of Qwest's one-time IRU and equipment sales and approved the fraudulent public reporting of such sales as recurring revenue.

ANSWER:

Paragraph 55 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:

56) In July 1999, Qwest announced a merger agreement with US West, a regional "Baby Bell" telephone company. The merger was completed on June 30, 2000.

ANSWER:

Mr. Kozlowski admits the allegations in Paragraph 56.

ALLEGATION:

57) The merger agreement required Qwest to issue $69 worth of its common stock for each share of US West stock. US West had the option to terminate the merger agreement if, among other things, Qwest stock was below $22 per share for 20 consecutive trading days. By August 9, 1999, shortly after the merger announcement, Qwest's stock price had dropped from $34 per share to only $26 per share.

ANSWER:

Mr. Kozlowski lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57.

ALLEGATION:

58) Nacchio, Woodruff, and Szeliga continued the fraudulent scheme to keep Qwest's stock price high to complete the announced merger with US West.

ANSWER:

Paragraph 58 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:

59) Nacchio, Woodruff, and Szeliga continued to make public predictions of double-digit growth in recurring communication services revenue, which included data and Internet services, and EBITDA. For example:

a) In the earnings release for the third quarter 1999, Nacchio is quoted saying, "[w]e've said from the beginning that we are creating a growth company and our results clearly show the steps we've taken . . . and rapidly growing our Internet and data business segment."

b) In the same release, Woodruff is quoted stating "we are committing more resources to the expansion of the Qwest Internet and data services portfolio."

c) In the fourth quarter and year-end 1999 earnings release, Woodruff is quoted saying, "In 2000, we anticipate revenue will continue to grow in the range of 30-35 percent, with EBITDA growth of approximately 40-50 percent."

d) The first quarter 2000 earnings release announced, "strong Internet and data services drove record first quarter revenue of $ 1.22 billion . . ."

e) In the first quarter 2000 earnings release, Nacchio was quoted stating, "[w]e continue to drive strong demand for our industry-leading portfolio of Internet and data services in the business marketplace."

f) In the same release, Woodruff was quoted claiming, "[w]e . . . expect continued strong revenue and EBITDA growth led by the demand for Qwest's Internet-based broadband applications and services."

ANSWER:

Paragraph 59 does not pertain to Mr. Kozlowski and thus no answer is required. Moreover, Mr. Kozlowski states that the documents referred to in Paragraph 59 speak for themselves, and he denies each and every allegation in Paragraph 59 that is inconsistent therewith.

ALLEGATION:

60) Nacchio, Woodruff, and Szeliga set required internal revenue targets based on the numbers necessary for Qwest to meet the public growth predictions rather than on revenues that a particular business unit could reasonably expect to achieve.

ANSWER:

Paragraph 60 does not pertain to Mr. Kozlowski and thus no answer is required.

ALLEGATION:

61) Nacchio then exerted extreme pressure on subordinate executives who managed business units to achieve the targets. In turn, the business unit executives exerted extraordinary pressure on their managers and employees to meet or exceed the revenue targets at all costs. For example:

a) Qwest insured that company and business unit targets were met by paying bonuses to management and employees for periods when they achieved the targeted revenue and threatening consequences if targets were not met.

b) Nacchio had an explosive temper. One senior executive, in describing Nacchio's interaction with subordinates, explained that "people [were] just afraid of the man."

c) Another executive who worked on IRU transactions stated that Qwest management "had a culture of fear." No one wanted to find out the consequences for "not getting IRUs done."

ANSWER:

Paragraph 61 does not pertain to Mr. Kozlowski and thus no answer is required. Furthermore, like so many of the other allegations in the SEC's "Amended" Complaint, Mr. Kozlowski simply has no knowledge or information sufficient to form a belief as to the truth of those assertions.

ALLEGATION:

> 62) Nacchio, Woodruff, and Szeliga knew that Qwest's publicly announced growth and revenue targets and growth rates were highly overstated and could not be met through increases in recurring communications services revenue. Rather than lowering revenue projections and risking a decline in the stock price in light of the pending US West merger, Nacchio, Woodruff, and Szeliga turned to the fraudulent scheme of using non-recurring revenue, specifically IRU and equipment sales, to fill the gap and meet the revenue targets.

ANSWER:

Paragraph 62 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:

> 63) Over time, Qwest's dependence on IRUs grew so large that it became a major part of Qwest's culture. For example:
>
> a) In September 1999, an internal e-mail explained that, "[w]e are closing in on the end of the quarter and once again IRUs must be a top priority to Qwest making our revenue targets."