

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.

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**ANSWER OF DEFENDANT FRANK T. NOYES TO AMENDED COMPLAINT  
AND JURY DEMAND**

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Frank T. Noyes, by and through counsel, submits the following in answer to Plaintiff's amended complaint:

**PRELIMINARY STATEMENT**

Frank T. Noyes is a 35-year-old CPA who worked in Qwest's Technical Accounting unit from April 1999 to September 2000. In that capacity, he assisted in drafting Qwest's 1999 10-Q's and its 1999 10K. He returned to Qwest in April 2001 where he worked in the finance unit. In that role, he had no authority or responsibility for financial reporting or revenue recognition.

The SEC does not allege that Mr. Noyes had any authority to make or implement company policy. In fact, he was far below that level. The essence of the SEC's claims is a plot,

at the highest levels, to inflate the price of Qwest stock. The SEC does not allege that Mr. Noyes made one penny from the sale of Qwest stock or that he benefitted from vendor stock deals.

The amended complaint accuses him of fraud because executives above him ordered him to remove the IRU disclosure *he had put in* the draft 1999 10-K. The SEC accuses him of fraud for accounting decisions which were approved by Qwest's auditors, who were, at that time, the leading authority on IRU revenue recognition. The initial discovery reveals widespread support for the accounting decisions in which Mr. Noyes participated. The SEC's allegations of improper accounting are contradicted by many SEC investigative depositions, countless pages of documentary evidence and all of the accounting literature available during the relevant time period. They accuse him of fraud by secret side agreements while admitting that any such agreements were intentionally hidden from him because executives involved in the agreements *knew he would* apply GAAP and not approve revenue recognition on such deals. He is accused of buying millions of dollars worth of IRUs when in fact, he had no authority to buy anything other than his office supplies. The amended complaint is particularly disingenuous as to Mr. Noyes.

Mr. Noyes objects to the SEC's amended complaint to the extent it makes substantive changes without Court approval. Mr. Noyes filed an answer to all claims against him in the original complaint which he incorporates by reference. Mr. Noyes denies any and all allegations in the amended complaint which are not specifically admitted herein.

**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. Noyes was never a senior executive at Qwest. He denies that he participated in or was aware of any fraud of any kind.

**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."

**ANSWER**

These allegations do not appear to be directed to Mr. Noyes. To the extent that they do, by implication or otherwise, he is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them. Mr. Noyes states that revenue recognition was a goal at Qwest, as it is with all companies, but he was neither told nor under the impression that fraudulent or illegal means were used to meet any revenue "targets" which may have existed.

**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:**

If these allegations apply to Mr. Noyes, he denies them.

**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:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**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 revenue from IRU and equipment sales 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.

**ANSWER:**

Mr. Noyes denies the allegations in this paragraph. Prior to Mr. Noyes' arrival at Qwest, the company had concluded, in conjunction with its auditor KPMG, that sales-type lease accounting was permissible for appropriately structured IRU sales. This accounting analysis included the recognition of up-front revenue for IRU sales. This position was discussed and

approved by Mr. Kozlowski, accountants at KPMG and Qwest's financial management. It was significant to Mr. Noyes that KPMG had approved this accounting. Mr. Noyes' first position as a CPA was as an audit manager with KPMG in Phoenix from 1992 through 1996. He had great respect for them.

Qwest's upper management decided to change auditors in 1999. Arthur Andersen was emerging as a leader in telecommunications accounting. At that time, Arthur Andersen was a highly respected "Big-5" international accounting firm. The now famous "White Paper" was published in the early fall of 1999. The White Paper was not discredited by the SEC or the FASB when it was issued. The White Paper created "applied GAAP" for IRU accounting.

The introduction to the White Paper demonstrates an awareness that accounting for network capacity was sailing in uncharted waters. Arthur Andersen was carefully monitoring the evolving positions of SEC staff and FASB staff:

This paper represents our views as of September 30, 1999. However, the financial reporting for certain contractual agreements covered in this paper *continues to evolve* and our views may be subject to change. In particular, the impact of FASB interpretation No. 43 on transactions entered into by network capacity providers is still being considered by accounting firms, the SEC staff and FASB staff. Some of these issues may need to be addressed by the emerging issues task force to be resolved . . . (emphasis added).

Based on the 1998 Kozlowski memo and the White Paper, Frank Noyes drafted Qwest Issue Paper 99-18. This was a serious analysis to show that Qwest's policies were consistent with the issues reviewed in the White Paper.

The White Paper was updated as of February 29, 2000. In the introduction to the update, Arthur Andersen again stated that "the financial reporting for certain contractual agreements covered in this paper *continues to evolve* . . . some issues are being, and other issues may need to

be, addressed by the Emerging Issues Task Force.” (Emphasis added.) It is clear that there were no generally accepted accounting principles on these issues other than the White Paper as of February 29, 2000. Qwest’s up-front revenue recognition on IRU transactions during the time periods when Mr. Noyes was involved in accounting for these transactions was appropriate and reasonable.

The allegations regarding “accounting disclosures about IRUs to the investing public” are vague and unclear. However, if these allegations relate to the 1999 10-K issue (see Paragraphs 64-71), Mr. Noyes states that he drafted a disclosure regarding IRU transactions and put it in the final draft for management approval. It was taken out at the direction of senior executives, as the SEC admits in Paragraphs 64-71 of the complaint. Mr. Noyes does not understand how he can be accused of any wrongdoing in this transaction.

**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:**

Mr. Noyes denies these allegations. Mr. Noyes states that he was a constant and consistent advocate against portability in IRU contracts. He was not personally aware of any side agreements when these transactions were booked. The SEC admits, later in the complaint that any such side agreements were hidden from Mr. Noyes and the other accountants.

The position of Frank Noyes on portability and his honest efforts to promote Qwest’s compliance with GAAP are evident in the August 2, 2001 memo he drafted. The now famous

“IRU Accounting - Some Rules of Engagement” memo was the work of Frank Noyes. It was disseminated under the authority of the CFO, Robin Szeliga. Mr. Noyes had no authority to buy or sell IRUs. He did not sign the contracts. He did not backdate any contracts. He did not purchase any IRUs needed, unneeded or otherwise.

**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. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**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:**

These allegations do not apply to Mr. Noyes. To the extent that a response from him is required, he is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**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:**

These allegations do not apply to Mr. Noyes. To the extent that a response from him is required, he is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**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:**

These allegations do not apply to Mr. Noyes. To the extent that a response from him is required, he is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATIONS #11-25:**

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 an 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. Noyes, 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. Noyes 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 #28:**

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. Noyes admits that the Court has jurisdiction over this action. Mr. Noyes 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. Noyes 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. Noyes denies that there were any violations of law. He admits that some of the transactions alleged in the complaint occurred in Colorado. He does not have knowledge or information regarding the residence of the other defendants.

**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-1, 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. Noyes and thus no answer is required. To the extent that these allegations relate to him, even indirectly, he denies them.

**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-1, 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. Noyes denies the allegations in Paragraph 31.

**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, 13b2-1, 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-1, 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. Noyes and thus no answer is required. He incorporates, by reference, his answer to Paragraph 30.

**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. Noyes denies the allegations in Paragraph 33 that relate to him. As to subjects and time periods for which he was not involved or not at Qwest, he is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**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. Noyes 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. Noyes 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. Noyes 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:**

Paragraph 37 does not pertain to Mr. Noyes and thus no answer is required.

**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:**

Mr. Noyes admits the allegations in Paragraph 38.

**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 reinstated 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. Noyes 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. Noyes 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. Noyes and thus no answer is required. He has no direct knowledge regarding these issues, except that Qwest is required to make filings with the SEC.

**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(f) do not pertain to Mr. Noyes and thus no answer is required. Mr. Noyes admits subparagraph 42(g).

**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:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43.

**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:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44.

**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:**

The allegations in this paragraph do not appear to be directed to Mr. Noyes. To the extent an answer is required from him, he denies those allegations. Mr. Noyes denies that he participated in any fraudulent actions or wrongdoing of any kind. He did not participate in hiding any revenue. In fact, Mr. Noyes included an IRU disclosure section in the 1999 10-K, recommending its inclusion, as admitted by the SEC in Paragraphs 64-71 of the complaint.

**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. Noyes 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. Noyes 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:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48.

**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. Noyes 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. Noyes and thus no answer is required. Moreover, Mr. Noyes 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:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51.

**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. Noyes was not with Qwest in 1998. Mr. Noyes admits that Qwest sold lit fiber IRUs during 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. Noyes 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. Noyes but, he denies that he was part of any fraudulent practices or that he was aware of fraudulent practices on the part of anyone at Qwest.

**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.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53.

**ALLEGATION #53(a):**

Nacchio, Woodruff and Szeliga knew that Qwest's books and records fraudulently include revenue from one-time IRU and equipment sales in its recurring data and Internet services revenues. Nacchio, Woodruff, and Szeliga knew that because Qwest's books and records fraudulently included revenue from one-time IRU and equipment sales in its

recurring data and Internet services revenues, Qwest's books and records were materially inaccurate.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53(a) and therefore denies these allegations. Mr. Noyes states that he was not aware of any fraudulent entries in Qwest's books and records.

**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. Noyes admits the first sentence in this paragraph. Mr. Noyes admits that there were calls with senior executives and analysts. Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in this paragraph.

**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. Noyes and thus no answer is required. Mr. Noyes denies, however, that there was "fraudulent public reporting" while he was at Qwest.

**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. Noyes admits the allegations in this paragraph.

**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. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**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. Noyes and thus no answer is required. Mr. Noyes states, however, that he was never aware of any fraudulent scheme.

**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. Noyes and thus no answer is required. Moreover, Mr. Noyes 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:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60.

**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. Noyes and thus no answer is required. Furthermore, like so many of the other allegations in the SEC's Complaint, Mr. Noyes 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:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62.

**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."
- b. 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).
- c. Mobebbi recognized Qwest's reliance on IRU sales to meet revenue targets early on, and stated in a July 21, 1999 e-mail that "[our] revenues are way too flat and we can't mortgage our future every damn quarter by selling stupid IRUs."
- d. One of the vice presidents reporting to Casey responded to Qwest's bonus plan by telling his sales team, "[L]eave no stone unturned." "We will drop everything to close an IRU this quarter. It is that important."
- e. Mobebbi praised Casey in a June 2001 e-mail as "the guy who made [the merger with US West] happen" because of his closing of IRU deals to meet revenue projections. Mohebbi said that if Casey had not "pulled the quarters" that he did in 1999, "there would not have been a [merger with US West] . . . ."

**ANSWER:**

Mr. Noyes lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63. Moreover, Mr. Noyes states that the documents referred to in Paragraph 63 speak for themselves, and he denies each and every allegation in Paragraph 63 that is inconsistent therewith.

**ALLEGATION #64:**

Kozlowski in early 2000 determined that IRU revenue was material to Qwest's financial statements and should be disclosed.

**ANSWER:**

Mr. Noyes denies the allegations in this paragraph. Mr. Noyes is not in a position to know what Mr. Kozlowski was thinking when the disclosure issue was under consideration. To that extent, he is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

Mr. Noyes states affirmatively, however, that in late 1999 he and Mr. Kozlowski discussed whether consideration should be given to disclosure of lit capacity IRU transactions in the 1999 10-K. Mr. Noyes drafted the disclosures and sent them, through Mr. Kozlowski, to Mr. Woodruff and others in senior management. A disclosure paragraph, as drafted by Mr. Noyes, was included in the final draft (from the printer). Before the final printing, Mr. Noyes was instructed, through Mr. Kozlowski, to tell the printer to take the disclosure out of the final printing. This was not Mr. Noyes' decision, nor Mr. Kozlowski's, but the decision of someone far above them. Mr. Noyes felt the disclosure was appropriate because it was a significant product offering, contributing to profits. Mr. Noyes had very little, if any, interaction with top-

level management and they did not discuss the removal of the disclosure with him. He was simply told to do it. The final version, without disclosure was approved by the independent auditor.

**ALLEGATION #65:**

Kozlowski then told Woodruff that the scope and extent of reliance on IRU transactions should be disclosed in Qwest's 1999 10-K. In response, Woodruff asked Kozlowski to draft proposed language.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them. Mr. Noyes incorporates by reference his answer to Paragraph 64 as if fully set forth herein.

**ALLEGATION #66:**

Kozlowski also discussed IRU disclosure with Qwest's outside auditor who told him Qwest should provide disclosure in the footnotes to the financial statements detailing not only Qwest's IRU accounting policy, but also the amount of revenue and gross margins from IRU transactions.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them. Mr. Noyes incorporates by reference his answer to Paragraph 64 as if fully set forth herein.

**ALLEGATION #67:**

Qwest's outside auditor also told Woodruff that Qwest should make disclosure of the IRU transactions.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them. Mr. Noyes incorporates by reference his answer to Paragraph 64 as if fully set forth herein.

**ALLEGATION #68:**

Kozlowski and Noyes then drafted IRU disclosure [sic] for inclusion in the 10-K annual report. At Kozlowski's direction, Noyes inserted this draft IRU disclosure in the draft 10-K. Noyes circulated the draft 10-K with the disclosure to Woodruff and Szeliga for review.

**ANSWER:**

Mr. Noyes admits the allegations in Paragraph 68, except that he is without knowledge or information to know with certainty the specific Qwest executives who reviewed the draft. Based on Mr. Kozlowski's answer to this paragraph, Mr. Noyes believes that the draft was sent to Mr. Woodruff. Further, Mr. Noyes incorporates by reference his answer to Paragraph 64 as if fully set forth herein.

**ALLEGATION #69:**

Before filing the 1999 10-K annual report with the SEC on March 17, 2000, Woodruff told Kozlowski that he needed to discuss the IRU disclosure with Nacchio. Immediately before the 10-K was filed with the SEC, Woodruff told Kozlowski to remove the IRU disclosure language. As a result Kozlowski told Noyes to "take it out" and the IRU disclosure language was removed from Qwest's 1999 10-K filed with the SEC. Szeliga knew the IRU disclosure had been removed from the 10-K.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them, except that Mr. Noyes admits that he was instructed, by Mr. Kozlowski, to take the disclosure out of the final 10-K.

**ALLEGATION #70:**

Nacchio, Woodruff, and Szeliga each signed false management representation letters to Qwest's outside auditors falsely stating, among other things, that the financial statements in the 1999 10-K were not materially misleading and complied with GAAP.

**ANSWER:**

Mr. Noyes denies the allegations in this paragraph.

**ALLEGATION #71:**

Qwest's outside auditor who had approved the filing of the 10-K with the IRU disclosure language was never consulted about the removal of that language from the filed annual report and had no knowledge that the 10-K was filed without the IRU disclosure language.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71. He states, however, that it is difficult to believe the outside auditor did not review the final 10-K (without disclosure) prior to approving it.

**ALLEGATION #72:**

By June 2000, Qwest stock was trading above \$50 per share and Qwest was able to merge with US West by using Qwest's common stock, a currency that was significantly inflated by the fraudulent scheme.

**ANSWER:**

Mr. Noyes admits that Qwest merged with US West. Mr. Noyes denies that he participated in any fraudulent or other scheme, and denies that he engaged in wrongdoing of any type or nature.

**ALLEGATION #73:**

Following the merger, Qwest, along with other telecommunications companies, experienced declines in demand for Internet and other services. Nevertheless, despite pleas from senior Qwest executives to reduce public revenue and growth projections, Nacchio, Woodruff, and Szeliga continued to predict double-digit growth for the company without disclosing that the growth was fueled by one-time IRU and equipment sales.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #74:**

Nacchio, Woodruff, and Szeliga publicly touted Qwest's state-of-the-art network and boasted that Qwest was different from stodgy, old-style telephone companies like US West. They continually emphasized the company's future revenue growth from recurring Internet and telecommunications services in public statements. These statements were materially false because, among other reasons, Nacchio, Woodruff, and Szeliga failed to disclose either the existence of, or significance of, one-time IRU and equipment sales to Qwest's reported data and Internet services revenue. For example:

- a. In Qwest's July 19, 2000 earnings release for the second quarter 2000, Nacchio was quoted saying, Qwest would "generate compound annual growth rates of 15-17 percent revenue and 20 percent EBITDA through 2005."
- b. Qwest's second quarter 2000 earnings release stated, "Internet and data services grew more than 150 percent over the second quarter of 1999 and now comprise more than 33 percent of total revenue."

- c. In that same release, Woodruff was quoted saying, "Internet and data services continued to drive revenue growth."
- d. Qwest's third quarter 2000 earnings release continued to tout future revenue growth including the growth of its recurring telecommunications services revenue.
- e. Qwest's fourth quarter 2000 earnings release stated, "Internet and data services, a high-growth segment for Qwest, grew more than 60 percent in 2000."
- f. In that same release, Nacchio was quoted saying, "With the initial integration of the merger successfully complete, we are on track to meet our expected growth rates."
- g. The fourth quarter 2000 earnings release emphasized data and Internet services revenue growth, stating that such services had increased some 40 percent and represented 70 percent of Qwest's total revenue growth in the quarter.
- h. In Qwest's first quarter 2001 earnings release, Nacchio was quoted stating, "We believe the industry will continue to provide solid growth opportunities in 2001, especially for our broadband Internet and data services."
- i. In that same release Szeliga was quoted saying, "For the second quarter of 2001 we expect revenue to increase between 12 percent and 13 percent compared to pro forma second quarter 2000."
- j. In the first quarter 2001 earnings call with analysts, Nacchio stated, "We have 12 percent revenue growth our first quarter [2001] over first quarter [2000] - it is 2 to 3 times the rate of anyone else in the industry."
- k. In the same call, Nacchio continued, "Nothing you hear positively or negatively will change our view of [2001 revenue targets] which we have been holding steadfast now for the better part of a year since we announced it."
- l. In that call, Nacchio, also claimed, in commenting on the economy, "[W]e believe that it may be a little harder, we may have to work a little harder, but we will meet our numbers. And I think that is what we get paid to do."

- m. Szeliga stated in the same call, “Although this is my first opportunity to speak with you . . . it is in fact my 15th consecutive quarter of participation with this management team in achieving our quarterly objectives.”
- n. Qwest’s second quarter 2001 earnings release stated, “Qwest has met or exceeded the consensus of analysts’ estimates for the 17th consecutive quarter.”
- o. That same release also stated that, “Second quarter Internet, data and IP services revenues grew about 41 percent over the second quarter 2000. Internet and data revenues represent more than 27 percent of total revenue.”

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #75:**

Even after merging with US West and increasing revenue five-fold, Qwest’s dependence on non-recurring revenue to meet its public revenue and growth targets increased dramatically.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #76:**

In January 2001, a senior Qwest executive warned Nacchio, Woodruff, and Szeliga that given the general downturn in the telecommunications industry, the investment community was growing concerned about how Qwest could continue to meet its aggressive public revenue projections.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #77:**

Pressure by Nacchio and other senior executives on lower level executives and Qwest employees, to do whatever was necessary to meet public revenue projections continued after the merger with US West. For example:

- a. At a January 2001 all-employee meeting, Nacchio stated, “[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.”
- b. A Qwest executive characterized the budget process in which Nacchio set revenue targets as one in which Nacchio “strong-armed” the business unit heads into “following his view of where the targets should be.”
- c. A Qwest executive noted that Qwest employees were afraid of the consequences of standing up to Nacchio and disputing revenue targets because the consequence was “potentially losing your job.”
- d. Nacchio told one executive concerning revenue targets, “you do this or I’ll find someone who will.”
- e. In February 2001, Casey complained to Mohebbi about his target revenue, saying “Remember I had to sign in blood for my budget.”
- f. In July 2001, Casey complained to Mohebbi that Nacchio had overlooked in determining bonuses the “extraordinary effort” of his unit in the second quarter 2001, not only in exceeding their target number by \$50 million but also in engineering an IRU deal that enabled another business unit to make its revenue targets. In response to Mohebbi’s explanation of Nacchio’s view that Casey’s “margins were below business plan expectations”, Casey said “So he was fully informed, he knows what we did, he made a conscious

choice to compensate us this way . . . . You guys have just gotten used to us pulling it off.”

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #78:**

By at least mid-January 2001, Nacchio, Woodruff, and Szeliga knew that Qwest was already significantly behind in meeting revenue targets and various business units were predicting target misses. They knew that to meet the revenue targets, Qwest would have to again increase its one-time sales of IRUs and equipment. Yet, Nacchio, Woodruff, and Szeliga continued to hide the existence and significance of the non-recurring revenue, even though analysts were beginning to question Qwest’s purported data and Internet services growth. For example, in a late January 2001 earnings call Nacchio responded to a specific question about how revenues were derived with a lengthy answer that never once mentioned non-recurring IRU and equipment sales. A senior Qwest executive characterized Nacchio’s skill at not answering such questions as dodging “the elephant in the room.”

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #79:**

In early 2001, Qwest’s auditor insisted to Woodruff that Qwest include in the 2000 10-K annual report disclosure about the significance of IRUs to the company. Woodruff caused the following materially false and misleading language to be included in the 2000 10-K annual report in the MD & A discussion: “To a lesser extent, the Company sells capacity under [IRU] contracts. Revenues from these contracts are included in commercial services and were not significant in either fiscal 2000 or 1999.” Among other things, the statement was materially false and misleading because it grossly minimized Qwest’s use of IRUs, and stated falsely that they were insignificant. Moreover, it was materially false and misleading because there was no disclosure concerning one-time equipment sales.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #80:**

On April 5, 2001, a senior Qwest executive sent an e-mail to Szeliga proposing IRU disclosure for Qwest's first quarter 10-Q "given the materiality of IRUs to our results, and the SEC scrutiny on revenue recognition." The proposed disclosure included, among other things, the dollar amount of IRU transactions. The executive also told Szeliga that because IRU sales were significant to Qwest's financial results, the amount should be disclosed in the first quarter earnings release scheduled for late April 2001. Szeliga rejected the disclosure.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #81:**

On April 24, 2001, Nacchio and Szeliga issued Qwest's first quarter 2001 earnings release and again highlighted the company's remarkable data and Internet services and overall growth without mentioning the one-time, non-recurring revenue from IRU and equipment sales. Nacchio and Szeliga also falsely claimed in the release that Qwest's growth stemmed from various recurring revenue products. As a result, the release was materially false and misleading.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #82:**

Nacchio and Szeliga knew that Qwest could meet its growth targets only through continued dependence on non-recurring revenue. They fraudulently reconfirmed in the first quarter 2001 earnings release Qwest's financial targets for 2001 and predicted revenue growth of between 12 and 13 percent for the second quarter.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION:**

On April 29, 2001, Nacchio appeared on the Fox News Channel and, when questioned about Qwest achieving its projected targets in light of a weakening telecommunications economy, Nacchio stated fraudulently that, “[m]ost of our growth comes from development of new products and, quite frankly, the taking of market share from the larger incumbents on the long distance side.”

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #84:**

On May 15, 2001, Qwest filed its 10-Q for the first quarter. Szeliga wrote a materially false statement that minimized Qwest’s use of IRU transactions and the significance of IRU revenue to meet Qwest’s targets.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #85:**

In mid-May 2001, Casey, who reported to Mohebbi and was responsible for reviewing IRU sales, advised Szeliga and Mohebbi that IRU sales were becoming increasingly difficult to generate and that as a result “the quarter is in significant jeopardy.” Casey also stated that, “[p]ersonally, my advice would be to reset expectations and put the best face on to Wall Street that we can. You have an opportunity . . . to reposition this as a recurring revenue business and if you don’t take it now and make it succinct, I think you run the risk of a feeding frenzy on the street.” In a separate e-mail from Mohebbi to Casey, Mohebbi stated, “Business is in bad shape . . . need a ton of one-time items to make the quarter.”

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #86:**

At this time, most of the company's business units had reported to Nacchio and Szeliga that they anticipated target shortfalls that could only be made up with more IRU sales. Despite this, Nacchio and Szeliga continued publicly to paint a completely different picture of the company and its prospects.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #87:**

For example, on May 25, 2001, Nacchio told analysts he would not reduce public growth and revenue targets and that "our overall growth rate for the next several years is - we estimate to be between 15 and 17 percent for the company as a whole."

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #88:**

In early June 2001, Qwest's outside auditor told Szeliga that the audit firm could no longer be associated with Qwest's financial statements without better disclosure of the IRU sales transactions. Szeliga told Qwest's auditor that she and Nacchio would inform investors that IRU disclosure would be forthcoming before Qwest filed its 10-Q for the second quarter.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #89:**

In mid-July 2001, documents provided to Nacchio and Szeliga for Qwest's second quarter earnings call with analysts highlighted that Qwest was entirely dependent on IRU sales to meet its publicly announced revenue targets. One document stated, "Shortfalls to be offset by increased IRUs . . ." and, "Over two thirds of the \$2.5B full year over year revenue growth is driven by data and Internet products. Over one-third of total growth and almost three-fourths of data growth is related to IRUs."

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #90:**

Nacchio and Szeliga, however, released earnings on July 24, 2001, without disclosing the amount of IRU and equipment sales and Qwest's dependence on those one-time sales to meet public revenue, earnings, and growth projections. Instead, the release stated that Qwest's second quarter revenue, as Qwest had predicted, increased 12.2 percent and its EBITDA increased 13.1 percent. Moreover, the release once again highlighted data and Internet services revenue, stating that data and Internet grew 41 percent and represented more than 27 percent of total revenue. Additionally, Nacchio and Szeliga reconfirmed Qwest's double-digit growth projections for the future. The release was materially false.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #91:**

After the July earnings release, a senior Qwest executive was barraged with e-mails from stock analysts asking for disclosure of Qwest's revenue breakdown and questioning the credibility of Nacchio and Szeliga. One analyst stated that "the lack of transparency is going to hurt you because investors don't know how many cockroaches you still have in your bag." Another analyst wrote that "Joe [Nacchio] is developing a reputation for just not being candid with investors."

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #92:**

On August 7, 2001, Nacchio told analysts at a conference that Qwest had generated \$540 million of revenue from certain IRU swaps in the first two quarters of 2001 alone. This statement was materially false because, among other things, Nacchio failed to inform the analysts that, in total, Qwest had actually booked approximately \$857 million of revenue from IRUs in the first half of 2001.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #93:**

On August 7, 2001, Qwest filed an 8-K with the SEC that included the same false information Nacchio had told analysts that day.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #94:**

In Qwest's 10-Q for the second quarter of 2001, filed in mid-August 2001, shortly after the August 7, 2001 discussion with analysts, Qwest for the first time disclosed IRU revenue amounts.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #95:**

Qwest first disclosed revenue amounts from its one-time equipment sales in a conference with analysts in December 2001.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #96:**

The charade was over and Qwest's stock declined steeply.

**ANSWER:**

Mr. Noyes denies the editorial allegations in Paragraph 96. At some point, Qwest's stock did, indeed, decline steeply.

**ALLEGATION #97:**

In a scheme to fraudulently record revenue to meet unrealistic revenue targets, Mohebbi, Casey, and Noyes entered into secret side agreements and falsified documents to hide from Qwest's internal accountants and outside auditors facts that would have prevented immediate revenue recognition for IRU swaps as a violation of GAAP requirements.

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 97.

**ALLEGATION #98:**

Mobebbi directed and managed the IRU sales unit which sold most of Qwest's lit fiber IRUs. Further, Mobebbi controlled Qwest's capital expenditure budget for IRU transactions, and was responsible for all purchases of lit fiber in swap transactions between 1999 and 2001.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #99:**

Casey negotiated and executed most of Qwest's lit fiber IRU transactions from 1999 through third quarter 2001, and with Mohebbi's approval, purchased lit fiber in IRU swap transactions.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #100:**

Noyes directed that the IRU contract with Enron Broadband Services, Inc. be backdated to immediately recognize revenue.

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 100.

**ALLEGATION #101:**

Casey complained to Mobebbi frequently about having to fill Qwest's revenue gap with IRU sales, including swaps.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #102:**

Mohebbi, Casey, and Noyes knew the accounting rules for immediate revenue recognition from IRUs. Additionally, Mohebbi, Casey, and Noyes also knew that porting prohibited immediate revenue recognition on IRU sales. In June 2001, Szeliga reiterated the accounting rules for IRU transactions, including the effect of porting, in a voice-mail to Mohebbi and Casey which was forwarded to Noyes.

**ANSWER:**

Mr. Noyes admits that he knew the accounting rules for immediate revenue recognition from IRUs. He admits that he knew that porting prohibited immediate revenue recognition on IRU sales. He consistently advised everyone at Qwest that IRU contracts could not allow porting. Mr. Noyes was not working in the accounting department in 2001 and was not responsible for booking revenue on any transaction. Mr. Noyes admits the allegation regarding the voice mail from Ms. Szeliga in June 2001. He denies all other allegations in this paragraph.

**ALLEGATION #103:**

Mohebbi and Casey knew that many customers would only purchase IRUs if portability was part of the deal. They also knew that Qwest's internal accountants would deny immediate revenue recognition if Qwest provided for the buyer's ability to port. Further, Mohebbi and Casey knew that unless all aspects of each IRU agreement were fully communicated to Qwest's internal accountants they could not properly review the agreement.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them. Mr. Noyes admits, however, that unless all

aspects of each IRU agreement were fully communicated to Qwest's internal accountants they could not properly review the agreement. He also admits that immediate revenue recognition *should* be denied if the buyer had the unilateral ability to port.

**ALLEGATION #104:**

Therefore, to recognize revenue immediately, Mobebbi and Casey granted secret portability to IRU purchasers which they concealed from Qwest's internal accountants and outside auditors.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them. Mr. Noyes states affirmatively that he was not aware of any "secret portability," at the time of the transactions.

**ALLEGATION #105:**

By falsely making the IRU sales appear eligible for immediate revenue recognition, Mobebbi and Casey allowed Qwest to improperly recognize over \$366 million in immediate revenue on seven IRU transactions between the third quarter ended September 30, 1999 through the second quarter June 30, 2001. This fraudulent revenue recognition caused Qwest's financial statements to be materially false and misleading.

- a. In the third quarter 1999, Verio, Inc. purchased a \$57 million IRU from Qwest, and Qwest recognized \$57 million as immediate revenue. An e-mail to Casey from a Verio executive on September 9, 1999, stated that, "We have assumed, to this point, that the capacity inherent in the IRU is 'fungible' - meaning substitutions and upgrades." Casey knew that Verio would not sign the IRU contract unless the IRU was portable, and . . . Casey provided a Verio a secret verbal assurance of portability of the IRU. Casey did not inform Qwest's internal accountants of this secret verbal agreement.
- b. In the fourth quarter 1999, Verio also purchased a \$10 million IRU from Qwest, and Qwest recognized nearly all of that revenue immediately. Verio agreed to purchase the IRU with the

understanding that the lit fiber could be exchanged. Again, Casey provided Verio a secret verbal assurance of portability, without informing Qwest's internal accountants.

- c. In the first quarter 2000, Qwest sold to Cable & Wireless a \$9.6 million IRU, and recognized \$8.2 million in immediate revenue. In order to close the deal, Casey gave Cable & Wireless verbal assurances that the lit fiber could be ported. Casey told Cable & Wireless that the IRU was like a "coupon," meaning that the lit fiber purchased was interchangeable for other lit fiber. Casey never told Qwest's internal accountants about this secret verbal side deal.
- d. In the second quarter 2000, Qwest also sold to Cable & Wireless \$65 million of older-technology lit fiber, and recognized about \$65 million in immediate revenue. During negotiations, Cable & Wireless informed Casey that it wanted newer technology lit fiber on different routes, which Qwest had not completed constructing at the time. Casey signed a secret option agreement that granted Cable & Wireless the ability to port the lit fiber. Casey once again failed to disclose this secret arrangement to Qwest's internal accountants.
- e. In the fourth quarter 2000, Qwest sold to Cable & Wireless another IRU for \$109 million. It recognized \$108 million in immediate revenue. Qwest did not have the lit fiber that Cable & Wireless actually wanted to buy at the time. Therefore, Mohebbi and Casey convinced Cable & Wireless to purchase lit fiber through a secret written side agreement promising that Cable & Wireless could exchange the lit fiber later. Accordingly, on December 29, 2000, Mohebbi sent to Cable & Wireless the secret agreement in an e-mail that guaranteed "a full and fair trade" of the lit fiber Cable & Wireless bought for the different lit fiber at a later date. Neither Mohebbi, nor Casey informed Qwest's internal accountants of this secret deal. In October 2001, when confronted about the e-mail promising porting, Mohebbi denied knowledge of the e-mail and attempted to delete it from his computer.
- f. In the second quarter of 2001, Flag sought to purchase certain lit fiber from Qwest. Qwest did not have the lit fiber available to sell at that time but, Qwest's sales team offered to sell Flag alternative lit fiber and to give Flag the ability to port it at a later date. Flag requested that the written contract include the ability to port.

Casey learned that “[b]ottom line Flag is willing to trust us,” so he instead provided secret verbal assurance to Flag of the ability to exchange the IRU outside the written contract. Thereafter, on June 27, 2001, Qwest and Flag entered into a swap transaction in which Qwest sold to Flag \$20 million of lit fiber. Qwest recognized \$19.9 million in revenue on the transaction in the second quarter 2001. Casey never told Qwest’s internal accountants about the verbal agreement to port.

- g. In June 2001, Qwest sold approximately \$101 million of lit fiber to Global Crossing, and recognized nearly \$97 million of revenue immediately. Global Crossing requested the ability to exchange at a later date the fiber it purchased at the original purchase price, rather than the fair market value at the time of the porting as provided for in the contract. A Qwest salesperson arranged a telephone conference between Casey and Global Crossing’s president to “confirm the gentleman’s agreement,” regarding the porting and price issues. Casey gave secret verbal assurances beyond the written contract to Global Crossing’s president that Qwest would agree to port the lit fiber at the original purchase price. Later, when Global Crossing sought to exchange some of the lit fiber, a Qwest executive stated in e-mail correspondence that our “only option is to allow the trade . . . .” “Our word is our bond.” Casey never disclosed the secret side agreement to Qwest’s internal accountants.

**ANSWER:**

Mr. Noyes denies these allegations. Mr. Noyes admits, however, that he, while working in technical accounting, was never informed of any secret verbal side agreements in IRU transactions. This is probably because everyone at Qwest knew he would not approve such agreements and would deny revenue recognition for those transactions. There is a sad and disturbing inconsistency in the SEC’s allegations regarding Mr. Noyes and the portability issue.

**ALLEGATION #106:**

In the rush to complete enough IRU transactions by quarter close to make Qwest’s revenue targets, Mohebbi, Casey, and Noyes backdated contracts for the explicit purpose of falsely making it appear that immediate revenue recognition was

appropriate in a specific quarter. Mohebbi, Casey, and Noyes failed to inform Qwest's internal accountants of this backdating and the revenue was recognized.

- a. Qwest sold to Cable & Wireless, a \$9.6 million IRU, and recognized \$8.2 million in immediate revenue on the transaction in the first quarter 2000. Casey knew that the contract was not executed until April 4, 2000, after the close of the first quarter. The contract falsely appeared eligible for immediate revenue recognition, thereby causing Qwest to recognize improperly approximately \$8.2 million of revenue in the first quarter ended March 31, 2000.
- b. Qwest entered into a swap transaction with Cable & Wireless recorded in the first quarter 2001, and recognized \$69.8 million in immediate revenue. The IRU sale contract was not executed until April 12, 2001. Mohebbi knew that the transaction with Cable & Wireless was not signed in the first quarter. On April 1, 2001, two Qwest executives each called Mohebbi at home to inform him that the IRU agreement had not been signed. On April 12, Casey executed the backdated contract with a false date of March 31, 2001.
- c. In the third quarter 2001, Qwest recognized \$85.5 million of revenue from the sale of an IRU in a swap transaction with Enron. The agreements negotiated by Noyes had a false date of September 30, 2001, but in fact were not executed by the parties until October 1, 2001, after the close of the quarter.

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 106. This paragraph states multiple, unrelated claims over a 17-month time period in which Mr. Noyes left Qwest and returned in a completely different role. This pleading deficiency notwithstanding, Mr. Noyes states affirmatively that:

- He was in technical accounting in April 2000, and was not aware of any backdating on the Cable & Wireless contract.

- He was not in technical accounting in September 2001. He was aware that the Enron contract was executed shortly after midnight on October 1, 2001. He was not aware of any substantive negotiations after midnight. This agreement was properly considered a Q3 2001 transaction.

Mr. Noyes denies that there was anything false, fraudulent or misleading about this transaction.

**ALLEGATION #107:**

As part of the scheme, Mohebbi, Casey, and Noyes fraudulently purchased lit and dark fiber for Qwest in IRU swaps that Qwest did not need. It was a violation of GAAP for Qwest to recognize revenue from the sale side of the swaps under these circumstances.

**ANSWER:**

Mr. Noyes denies these allegations. Mr. Noyes states affirmatively that he had no authority to purchase anything beyond office supplies on behalf of Qwest.

**ALLEGATION #108:**

Mohebbi and Casey bought whatever fiber was available to close IRU swap deals without regard to Qwest's actual needs for the assets purchased. Mohebbi, Casey, and Noyes were willing to buy lit and dark fiber Qwest did not need in these swap transactions to achieve immediate revenue recognition on the transaction in order to meet revenue targets. Mohebbi and Casey rarely consulted with Qwest's network planning unit, the group responsible for determining the fiber needed for Qwest's fiber network. As a result, Qwest accumulated a huge amount of lit and dark fiber it did not need. For example:

- a. In the first quarter ended March 31, 2001, and the second quarter ended June 30, 2001, Mohebbi and Casey in swaps purchased East Asia fiber cable on four occasions from several customers for a total of approximately \$289 million. Qwest did not need at least two-thirds of the East Asia cable it bought, but Mohebbi and Casey agreed to make the purchases for the explicit purpose of selling IRUs to customers in swap transactions to obtain immediate revenue recognition. Qwest recognized approximately \$288 million of revenue from these swaps.

- b. In the swap transaction between Qwest and Enron falsely backdated to September 30, 2001, Noyes purchased a large amount of dark fiber from Enron for \$308 million so that Enron would in turn purchase lit fiber from Qwest. The fiber Qwest purchased was duplicative of routes that Qwest already owned, and was located in areas of low demand. Further, a detailed Qwest analysis done before the transaction was completed described most of the dark fiber to be purchased as having only “scrap value.” That analysis concluded that Qwest was paying between \$36 and \$75 million in excess of fair market value for the IRU. Noyes was aware of this fair market analysis, but disregarded it and prepared his own analysis for, among others, Qwest’s accountants that made it appear falsely that Qwest paid market rates for the dark fiber.

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 108.

**ALLEGATION #109:**

Another internal analysis conducted in approximately November 2001 showed that Qwest could use only one-third of the billion dollars of international lit fiber it had accumulated. This included lit fiber bought by Mohebbi and Casey in order to close swap deals. Qwest’s senior vice president of network planning, engineering, and technology stated, “[i]t just blew my mind when I found how much [international fiber] we had. . . .”

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #110:**

As part of the overall fraudulent scheme to show revenue and earnings growth every quarter Nacchio, Woodruff, and Szeliga accelerated revenue recognition at Qwest’s wholly-owned subsidiary, Qwest Dex, Inc.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #111:**

Dex published telephone directories once every twelve months. Qwest recognized all revenue from a Dex directory at the time it began delivering that directory to the public.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #112:**

In August 2000, executives at Dex informed Nacchio, Woodruff, and Szeliga that Dex would not meet its 2000 EBITDA target. The Dex executives presented them with the option of making up the revenue shortfall by publishing Dex's Colorado Springs, Colorado directory in December 2000 rather than January 2001 as scheduled, thereby allowing Qwest to recognize revenue from that directory twice in 2000.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #113:**

While presenting that option, one Dex executive expressed his concern that such a schedule change would reduce 2001 revenue and earnings and that, in his view, Qwest probably would be required to disclose the change to the public. The Dex executive made it clear to Nacchio, Woodruff, and Szeliga that he did not favor the schedule change. Nevertheless, Nacchio, in the presence of Woodruff and Szeliga, directed Dex to go forward with the schedule change to meet Dex's EBITDA target.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #114:**

Even though Nacchio required the accelerated recognition of \$28 million of revenue in 2000, he told the Dex executives that their 2001 revenue targets would remain unchanged.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #115:**

By recognizing revenue from the Colorado Springs directory in 2000, Qwest generated \$28 million in additional revenue and \$18 million in additional EBITDA for the year.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #116:**

Qwest's 2000 10-K annual report filed with the SEC stated that Dex's 2000 revenue increased by almost \$100 million due in part to "an increase in the number of directories published." The statement was materially false because it failed to apprise investors that Dex generated more than one-quarter of the revenue increase by publishing its Colorado Springs directory twice in 2000, or that the schedule change could produce a commensurate decline in Dex revenue for the first quarter of 2001.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #117:**

Nacchio signed the 2000 10-K, Woodruff reviewed the 10-K and Szeliga reviewed and signed the 10-K. Nacchio, Woodruff, and Szeliga signed false management representation letters to Qwest's outside auditors about the 10-K.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #118:**

For 2001, Nacchio and Szeliga established an unrealistic EBITDA target for Dex. Dex executives met with Szeliga in March 2001 to discuss "gap-closing" alternatives for the first two quarters of 2001. One alternative proposed by the Dex executives was advancing the publication dates of several directories, thereby allowing Dex to recognize revenue in earlier quarters, and lengthening the lives of other directories from 12 to 13 months, thereby allowing Dex to bill each advertiser for one additional month of advertising fees. Szeliga instructed the Dex executives to implement the proposed changes.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #119:**

Later in 2001, Dex executives met with Szeliga and informed her that Dex would again need to implement directory schedule changes to meet its third and fourth quarter financial targets. Szeliga directed that the schedule changes take place.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #120:**

During 2001, in accordance with the plan, Dex advanced the publication dates or extended the lives of 34 directories, and those schedule changes produced \$42 million in additional revenue and \$41 million in additional EBITDA for Qwest.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #121:**

Qwest's 10-Q quarterly reports filed with the SEC for the first three quarters of 2001 stated that period-over-period changes in Dex's revenue were attributable in part to changes in the "mix" and/or "lengths" of directories published. Like the 2000 10-K annual report, the statements in those reports were materially false because they failed to apprise investors that Qwest had manipulated its directory publishing schedule to meet financial targets.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #122:**

Qwest maintained a liability for unused employee vacation. When improper revenue recognition alone was insufficient to meet EBITDA growth targets, Szeliga improperly reduced vacation liabilities to artificially inflate earnings. This is because, when a liability is decreased, earnings are increased. In doing so, for the year ended December 31, 2001, Szeliga improperly increased EBITDA by \$71.3 million, an amount that was material and was in violation of GAAP.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #123:**

Szeliga's first arbitrary and improper adjustment reduced the June 30, 2001, vacation liability by 50 percent resulting in a \$44.5 million decrease to Qwest's second quarter expenses and an equal increase in earnings.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #124:**

Szeliga's second improper and arbitrary adjustment was made to Qwest's December 31, 2001, financial statements and improperly reduced the liability by an additional 50 percent resulting in Qwest's expenses being reduced by an additional \$23.5 million, increasing earnings by an equal amount.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #125:**

Szeliga's third improper and arbitrary adjustment occurred in early 2002, when she reduced Qwest's December 31, 2001 vacation liability by another \$5 million, thereby increasing earnings by an equal amount.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #126:**

Szeliga failed to disclose her arbitrary change in accounting for vacation liabilities and the resulting 2001 financial impact of this change in its filings with the SEC in its 10-Q for the quarters ended June 30, 2001, and September 30, 2001, and its 2001 10-K. This failure to disclose was material and a violation of GAAP. Further, the lowering of the reserve was a violation of GAAP.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #127:**

Starting in 1999, there was a complete break-down concerning accounting practices relating to IRU revenue recognition generally and immediate revenue recognition in particular. In fact, Qwest's IRU revenue recognition failed to meet several GAAP rules and Woodruff, Szeliga, Kozlowski, and Noyes each caused Qwest to improperly recognize revenue in IRU transactions. Moreover, by 2001, most IRU sales were swaps and Qwest's revenue recognition on those transactions was also improper.

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 127 and incorporates, by reference, his answer to the allegations in Paragraph 5.

**ALLEGATION #128:**

Woodruff, as CFO, was responsible for all of Qwest's accounting. It was his duty to insure that Qwest accounted for revenue, including IRU transactions, properly and reported those financial results according to GAAP. The improper immediate recognition of revenue from IRU transactions began at Woodruff's direction and continued throughout the time he was CFO. All of Qwest's publicly released financial statements fraudulently included revenue from IRU transactions during the period he was CFO. Woodruff was responsible for these fraudulent financial statements distributed to the public by Qwest.

**ANSWER:**

Mr. Noyes denies the allegations of improper or fraudulent accounting or reporting in Paragraph 128 and incorporates, by reference, his answer to the allegations in Paragraph 5. Mr. Noyes admits that the CFO is ultimately responsible for accounting and reporting.

**ALLEGATION #129:**

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

**ANSWER:**

Mr. Noyes denies the allegations of improper or fraudulent accounting or reporting in Paragraph 129 and incorporates, by reference, his answer to the allegations in Paragraph 5. Mr. Noyes admits that the CFO is ultimately responsible for accounting and reporting.

**ALLEGATION #130:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 130 and supplements this answer as follows:

As recently as March 21, 2002, the SEC acknowledged that “[m]any of the accounting issues surrounding the accounting for telecommunications capacity contracts are complex . . . .”

March 21, 2002 Testimony Concerning Telecommunications Accounting Issues Before Subcommittee on Oversight and Investigations Committee on Financial Services by John M. Morrissey, SEC Deputy Chief Accountant; *see also In re e.spire Communs., Inc., Sec. Litig.*, 127 F. Supp. 2d 734, 746-47 (D. Md. 2001). Despite this recognition by the SEC and the courts, and in derogation of its responsibility, the SEC refused when requested in 1999 to provide guidance on IRU accounting. As a result, Mr. Kozlowski and Mr. Noyes continued to rely on Qwest’s outside independent auditors -- the experts on IRU accounting, to assist them in accounting for Qwest’s IRU transactions. KPMG, which audited Qwest’s financial statements (including those related to IRU transactions), attested in Qwest’s 1998 10-K that the “financial statements . . . present fairly, in all material respects, the financial position of Qwest . . . as of December 31, 1998 . . . in conformity with generally accepted accounting principles.” KPMG accountants -- duty bound to audit and attest to the accuracy of Qwest’s books -- apparently never suggested to Mr. Kozlowski that Qwest’s up-front recognition of revenue or other policies and practices associated with IRU accounting did not conform with GAAP.

During the first half of 1999, Qwest’s executive leadership decided to change Qwest’s independent accountants. Arthur Andersen was chosen because it was considered a leader in telecommunications. Within the telecommunications industry, the Andersen White Paper was considered authoritative for issues related to accounting associated with IRU transactions. In the absence of any authoritative direction from the FASB, AICPA, or SEC concerning accounting for

IRU transactions, Mr. Kozlowski and Mr. Noyes considered the White Paper as authoritative accounting literature -- *i.e.*, the best accounting guidance available.

Through the time that Mr. Noyes departed Qwest at the end of September 2000, Arthur Andersen routinely was consulted regarding particular IRU transactions and the accounting for them. In connection with its annual audits for 1999 and thereafter, Arthur Andersen repeatedly represented that Qwest's accounting and financial statements were in conformity with GAAP.

**ALLEGATION #131:**

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

**ANSWER:**

Mr. Noyes admits that he approved revenue recognition on some IRU transactions from April 1999 until September 2000. He denies all other allegations in Paragraph 131 and incorporates, by reference, his answer to Paragraphs 130 and 5 herein.

**ALLEGATION #132:**

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

- a. The lit fiber sold in the IRU transactions was classified as Plant, Property, and Equipment ("PP & E") and not inventory for sale.
- b. The earnings process must be complete, including that assets sold must remain fixed and unchanged. Qwest failed to meet these requirements in many IRU sales because Qwest either gave IRU purchasers the ability to port or exchange the fiber, or groomed the fiber it had previously sold.
- c. The seller must have firm evidence that it will be able to transfer ownership of the fiber to the buyer. At the time Qwest recognized

revenue in IRU transactions it had no such firm evidence, often because of the very nature of the fiber it was selling. This was due to, among other things, the fact that Qwest was required to maintain the network and therefore had a substantial continuing involvement with the fiber it sold.

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 132, and states the following:

The fact that Qwest had not formally designated an IRU inventory for lit capacity in 1999-2000 does not translate into a GAAP violation.

In many cases, the electronics were not installed until Qwest had a buyer. Qwest was dealing with new technology, new markets and new accounting issues. This is an example of why GAAP are flexible and a standard of reasonableness must prevail. Qwest was not dealing with traditional assets. Qwest was not dealing with a traditional market. Pre-sale inventory segregation was not realistically possible. An “inventory” route was a route Qwest had a buyer for. The inability to have traditional segregation is hardly securities fraud as to Frank Noyes or anyone else.

Frank Noyes was a firm and consistent advocate against porting. He had no knowledge at the time of revenue recognition, of any porting, “secret” or otherwise.

The role of Frank Noyes in the determination of fair market value was very limited. He relied on subject-matter experts.

Based on technology and market realities at the time of the subject transactions, Mr. Noyes’ statement in Issue Paper 99-18 is correct: “In general, in a capacity IRU transaction,

Qwest's conclusion is that the majority of the value resides in the electronics and equipment necessary to 'light' the fiber." (Issue Paper 99-18, p. 5.) Mr. Noyes explained the "time-to-market" advantage Qwest enjoyed at that time. Mr. Noyes believes this was a reasonable conclusion. Qwest's market position with regard to "lit" fiber was unique. The useable, lit fiber routes Qwest sold were available only from Qwest and they were in great demand at that time.

With regard to fair market value and cost allocation issues, Mr. Noyes was entitled to rely on subject-matter experts within the company as well as the independent auditor. The comments to SAS 73 state, *inter alia*, that "no specific guidance exists to allow or prohibit the use of different departments within the same company to calculate estimates and/or determine fair market value. This appears to be a business decision to be made by the company." The comments conclude that, if appropriate internal standards are maintained, ". . . it appears reasonable for the company to delegate the analysis of fair market value to a different department and then forward the results to the accounting department for proper recording." As the comments note, ". . . groups other than the accounting department may have been more adept to determining fair market value based on their specific knowledge and expertise. These groups may have been more equipped to perform the necessary due diligence in industry comparisons. Uses of specialists are not uncommon and often times necessary to assist management."

Transfer of title and ownership of ROW were addressed in the White Paper. Andersen concluded that the transfer of title to the underlying land was not a prerequisite to sales-type lease accounting. Qwest was justified in following the advice of its independent auditor on this issue.

This issue illustrates the unfair "changed playing field" approach of the SEC. On *July 19, 2001*, EITF *finally* deliberated Issue 00-11 (ownership transfer requirements) and reached a

consensus that affected revenue recognition for providers of broadband capacity who “historically” applied sales-lease type accounting to capacity contracts. The “guidance” was “effective prospectively for all transactions occurring after July 19, 2001.”

**ALLEGATION #133:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them. Mr. Noyes states affirmatively, however, that there was a reasonable basis for immediate revenue recognition in IRU sales.

**ALLEGATION #134:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #135:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 135 and incorporates, by reference, his answer to Paragraph 132.

**ALLEGATION #136:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 136 and incorporates, by reference, his answer to Paragraph 132.

**ALLEGATION #137:**

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

- a. In February 2000, Szeliga, Kozlowski, and Noyes received an e-mail alerting them that a Qwest executive committed to port an IRU. The e-mail referred to a \$140 million fourth quarter 1999 IRU sale where Qwest committed to buy back \$104 million of fiber sold and re-sell to the customer an additional \$162 million. Specifically, the e-mail stated, "I want everyone to be aware of the outstanding commitment that requires us to buyback circuits for upgrade purposes."
- b. By mid-2001, Szeliga and Noyes knew that Qwest allowed customers to port at least ten percent of their IRU purchases. Concerned that this level of porting prevented immediate revenue recognition, Szeliga twice warned Qwest executives involved in IRU transactions that porting "jeopardized" immediate revenue recognition. She stated in a voice mail that IRUs that allowed porting, "[i]f reviewed by the SEC, that would be overturned as inappropriate revenue recognition. We would be forced to restate our financial statements, and it would be made public. And we're not going there."
- c. From September 2001 through November 2001, Noyes received several emails alerting him that in past IRU sales, Qwest had told customers they would be allowed to port.

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 137. He states further that the allegations misconstrue the e-mail referenced. There is a significant difference between an *upgrade* by *mutual* consent and porting as defined by the SEC. In mid 2001 Mr. Noyes heard that some level of porting had occurred and Ms. Szeliga warned Qwest executives that porting was not permitted. Mr. Noyes was not in technical accounting in 2001.

**ALLEGATION #138:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #139:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #140:**

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

**ANSWER:**

Mr. Noyes admits that he heard (a year after the fact) there was a side agreement for upgrading in a Q4 2000 Cable & Wireless transaction. Mr. Noyes was not with Qwest in Q4 2000. He was not in technical accounting in 2001. He had no authority to do anything about the side agreement rumor. The second sentence in this paragraph is so vague, Mr. Noyes can only say that he is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #141:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #142:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #143:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #144:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #145:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #146:**

On March 31, 2000, Qwest sold a \$9.6 million IRU to Cable & Wireless in which Qwest included a contract clause preventing the assignment, sale, or transfer without Qwest's consent. Notwithstanding this contingency that called into question the GAAP requirement that Qwest be able to transfer ownership,

Kozlowski and Noyes approved this transaction for immediate revenue recognition. Additional IRU sales to Cable & Wireless in later quarters totaling \$29 million were subject to the same contingency.

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 146. Mr. Noyes denies that there was any contingency which implicated a potential GAAP violation in revenue recognition.

**ALLEGATION #147:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #148:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #149:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 149.

**ALLEGATION #150:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 150.

**ALLEGATION #151:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 151.

**ALLEGATION #152:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 152.

**ALLEGATION #153:**

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

- a. The assets exchanged must be dissimilar.
- b. The purchase must have a legitimate business purpose.
- c. There must be adequate evidence of the fair market value of the fiber exchanged.

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 153.

**ALLEGATION #154:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 154.

**ALLEGATION #155:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 155. He notes, further, that he was not in technical accounting or financial reporting in 2001-2002.

**ALLEGATION #156:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 156. He incorporates, by reference, his answer to Paragraph 64 of the complaint.

**ALLEGATION #157:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #158:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #159:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #160:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them. Mr. Noyes notes, with interest, that the SEC did not, and is unable to, allege that he made any profits on Qwest stock sales.

**ALLEGATION #161:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #162:**

The SEC re-alleges paragraphs 1 through 161 above.

**ANSWER:**

Mr. Noyes incorporates by reference his previous answers.

**ALLEGATION #163:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 163.

**ALLEGATION 164:**

Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mobebbi, and Casey violated and unless restrained and enjoined will in the future violate Securities Act Section 17(a)(1).

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 164.

**ALLEGATION #165:**

The SEC re-alleges paragraphs 1 through 161 above.

**ANSWER:**

Mr. Noyes incorporates by reference his previous answers.

**ALLEGATION #166:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 166.

**ALLEGATION #167:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 167.

**ALLEGATION #168:**

The SEC re-alleges paragraphs 1 through 161 above.

**ANSWER:**

Mr. Noyes incorporates by reference his previous answers.

**ALLEGATION #169:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 169.

**ALLEGATION #170:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 170.

**ALLEGATION #171:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 171.

**ALLEGATION #172:**

The SEC re-alleges paragraphs 1 through 161 above.

**ANSWER:**

Mr. Noyes incorporates by reference his previous answers.

**ALLEGATION #173:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 173.

**ALLEGATION #174:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 174.

**ALLEGATION #175:**

The SEC re-alleges paragraphs 1 through 161 above.

**ANSWER:**

Mr. Noyes incorporates by reference his previous answers.

**ALLEGATION #176:**

Defendants Nacchio, Woodruff, Szeliga, Mohebbi, and Casey made materially false or misleading statements, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were

made, not misleading, to Qwest's accountants and independent auditors in connection with an audit or examination of Qwest's financial statements or in the preparation or filing of Qwest's documents or reports filed with the SEC.

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #177:**

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

**ANSWER:**

Mr. Noyes is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**ALLEGATION #178:**

The SEC re-alleges paragraphs 1 through 161 above.

**ANSWER:**

Mr. Noyes incorporates by reference his previous answers.

**ALLEGATION #179:**

Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mohebbi, and Casey, aided and abetted Qwest, in that they provided knowing and substantial assistance to Qwest, which as an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed materially misleading annual and quarterly reports with the SEC and failed to file with the SEC, in accordance with rules and regulations the SEC has prescribed, information and documents required by the SEC to keep current information and documents required in or with an application or registration statement filed pursuant to Section 12 of the Exchange Act and annual reports and quarterly reports as the SEC has prescribed in violation of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 179.

**ALLEGATION #180:**

Unless restrained and enjoined, Defendants Nacchio, Woodruff, Szeliga, Kozlowski, Noyes, Mohebbi, and Casey will in the future aid and abet violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 180.

**ALLEGATION #181:**

The SEC re-alleges paragraphs 1 through 161 above.

**ANSWER:**

Mr. Noyes incorporates by reference his previous answers.

**ALLEGATION #182:**

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

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 182.

**ALLEGATION #183:**

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

Nacchio, Woodruff; Szeliga, Kozlowski, Noyes, Mobebbi, and Casey will in the future aid and abet violations of Section 13(b)(2) of the Exchange Act

**ANSWER:**

Mr. Noyes denies the allegations in Paragraph 183.

**AFFIRMATIVE DEFENSES**

1. Mr. Noyes denies all allegations in the complaint not specifically admitted herein.
2. The complaint fails to state a claim against Mr. Noyes upon which relief can be granted.
3. Mr. Noyes did not act with scienter.
4. Mr. Noyes did not act with an “extreme departure from reasonable accounting practices” necessary to constitute alleged securities law violations.
5. A reasonable accountant reviewing the facts, figures, and information known by Mr. Noyes while employed by Qwest could determine that Qwest’s financial statements conformed with GAAP and would not mislead the public.
6. Qwest’s outside independent auditors repeatedly approved of Qwest’s financial statements prepared during the period of Mr. Noyes’s employment in technical accounting and financial reporting and for two years thereafter.
7. Mr. Noyes did not intentionally withhold facts from the public in order to deceive, manipulate, or defraud.
8. Mr. Noyes did not recklessly disregard the importance of facts to the public in order to deceive, manipulate, or defraud.
9. Mr. Noyes did not possess a motive to deceive, manipulate, or defraud the public.

10. Qwest's outside independent auditors concluded that Qwest could treat IRU transactions as sales-type leases and account for the revenue therefrom up front.

11. Qwest's outside independent auditors reviewed Qwest's IRU transactions during the period of Mr. Noyes' employment at Qwest and concluded that Qwest properly accounted for IRUs as sales-type leases and properly recognized revenue up front on those transactions.

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

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

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

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

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

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

18. To Mr. Noyes' knowledge, fiber sold in IRU transactions was being held in a nondepreciating account. Thus, a reasonable accountant could conclude that it was appropriate

to treat such IRU transactions as sales-type leases and to recognize the revenue associated therewith up front. Indeed, Qwest's outside independent auditors so concluded during Mr. Noyes' employment at Qwest.

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

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

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

22. A reasonable accountant could conclude based on the information known to Mr. Noyes during his employment at Qwest that contemporaneous IRU transactions ("swaps") could

be treated as sales-type leases and that revenue therefrom could be recognized up front. Indeed, Qwest's outside independent auditors so concluded during Mr. Noyes' employment at Qwest.

23. Mr. Noyes was not in the technical accounting unit after September 2000 and had no responsibility or authority for revenue recognition thereafter.

24. Mr. Noyes had no authority, at any time, to purchase any assets on behalf of Qwest.

25. Some of the SEC's claims are barred by statutes of limitation.

WHEREFORE, Defendant Frank T. Noyes, requests an order dismissing the complaint against him and for such other relief as may be shown to be proper.

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

Respectfully submitted,

s/ Forrest W. Lewis

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**Attorney for Defendant Frank T. Noyes**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **ANSWER OF DEFENDANT FRANK T. NOYES TO AMENDED COMPLAINT AND JURY DEMAND** was sent via email on this 28<sup>th</sup> day of April, 2006, to the following email address:

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