IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-cv-480 MSK-CBS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

COMPLAINT

Plaintiff Securities and Exchange Commission, for its complaint, alleges:

I. SUMMARY

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.

2) **Joseph P. Nacchio**, Qwest's former chief executive officer, and the company's two former chief financial officers, **Robert S. Woodruff,** and **Robin R. Szeliga**, caused, directed, and implemented the fraudulent scheme. The massive financial fraud directly resulted from aggressive and rigid targets for Qwest's revenue and earnings growth set by **Nacchio**,

Woodruff, and **Szeliga**, which they constantly touted to the investing public and Wall Street. Extreme pressure was placed on subordinate Qwest executives to meet these aggressive targets at all costs and the pressure spread throughout the company, causing a "culture of fear." For example, at a January 2001 all-employee meeting, **Nacchio** stated that, "[T]he most important thing we do is meet our numbers. It's more important than any individual product, it's more important than any individual philosophy, it's more important than any individual cultural change we're making. We stop everything else when we don't make the numbers."

3) 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.

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.

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.

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.

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).

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.

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.

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.

II. DEFINITIONS

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.

III. JURISDICTION AND VENUE

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)].

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

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.

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.

IV. SUMMARY OF VIOLATIONS AND MATERIALLY FALSE STATEMENTS

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.

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.

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.

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.

V. DEFENDANTS

A. Senior Executives

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.

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.

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.

B. <u>Accounting</u>

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 from January 1999 through September 2000.

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.

C. IRU Sales

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

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.

VI. RELATED PARTY

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.

VII. COMPENSATION OF DEFENDANTS

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 received from companies seeking to do business with Qwest.

d) **Mohebbi** 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.

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.

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

A. Summary

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.

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.

B. The Significance of Non-Recurring Revenue

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.

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.

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.

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."

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."

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.

C. <u>Hiding Qwest's Non-Recurring Revenue</u>

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.

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

53a) **Nacchio, Woodruff,** and **Szeliga** knew that Qwest's books and records fraudulently included revenue from one-time IRU and equipment sales in its 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.

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.

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.

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

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.

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.

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

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."

E. Obsession With Meeting Earnings, Revenue, and Growth Targets

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.

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."

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.

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) **Mohebbi** 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) **Mohebbi** 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] …."

F. <u>Nacchio, Woodruff, and Szeliga Removed Disclosure in Qwest's 1999 Annual Report</u>

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

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.

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.

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

68) **Kozlowski** and **Noyes** then drafted IRU disclosure 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.

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.

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.

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.

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

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.

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.

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."

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

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.

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.

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."

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."

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.

I. <u>The Fraud Unravels</u>

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.

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.

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.

83) 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."

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.

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."

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.

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."

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.

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."

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.

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."

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.

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.

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.

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

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

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

A. Summary

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.

98) **Mohebbi** directed and managed the IRU sales unit which sold most of Qwest's lit fiber IRUs. Further, **Mohebbi** 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.

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.

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

101) **Casey** complained to **Mohebbi** frequently about having to fill Qwest's revenue gap with IRU sales, including swaps.

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**.

B. Mohebbi and Casey Concealed Secret Side Agreements For Portability of IRUs

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.

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

105) By falsely making the IRU sales appear eligible for immediate revenue recognition, **Mohebbi** 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.

C. <u>Mohebbi, Casey, and Noyes Backdated Contracts</u>

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**.**

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

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.

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.

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. . . . "

X. NACCHIO, WOODRUFF, AND SZELIGA MANIPULATED DEX REVENUE TO MEET TARGETS

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

XI. SZELIGA FRAUDULENTLY LOWERED VACATION LIABILITIES TO MEET EARNINGS TARGETS

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.

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.

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.

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.

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.

XII. WOODRUFF, SZELIGA, KOZLOWSKI, AND NOYES WRONGLY RECOGNIZED REVENUE FROM IRU SALES

A. Summary

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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

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 e-mails alerting him that in past IRU sales, Qwest had told customers they would be allowed to port.

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]."

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.

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.

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.

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.

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.

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.

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.

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 $291 million were subject to the same contingency.

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.

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.

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.

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

150) From 1999 until December 2001, Qwest fraudulently recognized 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.

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.

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.

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.

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

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

XIII. KOZLOWSKI AND NOYES REMOVED IRU DISCLOSURE FROM QWEST'S 1999 ANNUAL REPORT

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.

XIV. INSIDER TRADING BY NACCHIO, WOODRUFF, AND SZELIGA

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.

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

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

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

XV. QWEST'S STOCK PRICE

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.

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

162) The SEC realleges paragraphs 1 through 161 above.

163) Defendants **Nacchio**, **Woodruff**, **Szeliga**, **Kozlowski**, **Noyes**, **Mohebbi**, 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.

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

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

165) The SEC realleges paragraphs 1 through 161 above.

166) Defendants **Nacchio**, **Woodruff**, **Szeliga**, **Kozlowski**, **Noyes**, **Mohebbi**, 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.

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

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

168) The SEC realleges paragraphs 1 through 161 above.

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.

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.

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.

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

172) The SEC realleges paragraphs 1 through 161 above.

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.

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.

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

175) The SEC realleges paragraphs 1 through 161 above.

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.

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.

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

178) The SEC realleges paragraphs 1 through 161 above.

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.

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.

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

181) The SEC realleges paragraphs 1 through 161 above.

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.

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**, **Mohebbi**, and **Casey** will in the future aid and abet violations of Section 13(b)(2) of the Exchange Act.

PRAYER FOR RELIEF

The SEC respectfully requests that this Court:

1) Find that defendants **Nacchio**, **Woodruff**, **Szeliga**, **Kozlowski**, **Noyes**, **Mohebbi**, and **Casey** committed the violations alleged;

2) Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining defendants **Nacchio**, **Woodruff**, **Szeliga**, **Kozlowski**, **Noyes**, **Mohebbi**, and **Casey** from violating, directly or indirectly, or aiding and abetting violations of the law and rules alleged in this complaint;

3) Order defendants **Nacchio**, **Woodruff**, **Szeliga**, **Kozlowski**, **Noyes**, **Mohebbi**, and **Casey** to disgorge all ill-gotten gains in the form of any benefits of any kind derived from the illegal conduct alleged in this Complaint, including, but not limited to, salary, bonuses,

proceeds from stock sales, the value of “vendor stock” they received, plus pre-judgment interest;

4) Order defendants **Nacchio**, **Woodruff**, **Szeliga**, **Kozlowski**, **Noyes**, **Mohebbi**, and **Casey** to pay civil penalties, including post-judgment interest, pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Sections 21(d)(3) as to all defendants, and also 21A [15 U.S.C. §§ 78u(d)(3), and 78(u)(A)] only with respect to **Nacchio**, **Woodruff**, and **Szeliga**, in an amount to be determined by the Court;

5) Order that Defendants **Nacchio**, **Woodruff**, **Szeliga**, **Mohebbi**, and **Casey** be permanently barred from serving as an officer or director of any public company; and

6) Order such other relief as is necessary and appropriate.

JURY DEMAND

Plaintiff demands a jury trial in this matter.

Respectfully submitted, April 12, 2006.

/s/ Polly Atkinson
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Certificate of Service

I hereby certify that on April 12, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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