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

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

CORRECTED SECOND AMENDED 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 growth, caused the company to improperly report billions of dollars of revenue, and facilitated the company's June 2000 merger with US West.

2) **Joseph P. Nacchio**, Qwest's chief executive officer during the time of the fraudulent conduct, **Robert S. Woodruff,** the company's chief financial officer until March 2001, and others, caused, directed, and implemented the fraudulent scheme. As part of the financial fraud, **Nacchio** and **Woodruff** consistently portrayed to the public and Wall

Street that Qwest's revenue and growth resulted from recurring revenue sources such as Internet, data and telecommunication services, when in fact they knew, and failed to disclose, that Qwest's revenue and growth resulted largely from nonrecurring or one-time revenue from IRU and equipment sale transactions.[1] Extreme emphasis was placed on revenue and growth targets and tremendous pressure was placed on employees to meet the targets through any means available. 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 targets, Qwest 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** and **Woodruff** fraudulently and materially misrepresented Qwest's performance and historic growth to the investing public. **Afshin Mohebbi**, Qwest's president and/or chief operating officer during the time of the fraudulent conduct, also knew that Qwest's performance was being materially misrepresented. Nevertheless, **Mohebbi** substantially assisted the fraud by procuring the one-time revenue used to meet the revenue and growth targets set by **Nacchio** and **Woodruff**.

[1] The allegations concerning IRU transactions in this complaint are limited to the IRU transactions listed on Exhibits A-C attached hereto.

4) Qwest relied so heavily on the immediate revenue recognition from one-time IRU and equipment sales transactions to meet its revenue and growth targets that Qwest management and employees referred to the practice as a "drug," an "addiction," "heroin," and "cocaine on steroids." In addition, Qwest's reliance on 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).

5) To meet revenue and growth targets, **Nacchio, Woodruff** and others also caused the manipulation of revenue associated with Qwest Dex, a wholly-owned subsidiary of Qwest and failed to disclose that they were doing so.

6) **Woodruff** and certified public accountants **James J. Kozlowski** and **Frank T. Noyes**, his subordinates until September 2000, failed to ensure that revenue from IRU and equipment sales transactions was properly recorded in Qwest's financial statements, causing the company to improperly report revenue. Moreover, **Woodruff**, **Kozlowski**, and **Noyes** failed to make required accounting disclosures about IRUs to the investing public.

7) To meet revenue targets, others at Qwest, including **Mohebbi** and **Noyes,** manipulated IRU transactions to meet revenue targets, **Mohebbi** by allowing backdating of contracts and secret side agreements, and **Noyes** by backdating a contract.

8) **Nacchio** and **Woodruff** sold Qwest stock and made significant profits, knowing and failing to disclose 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 through salary, bonuses, stock sales, and/or 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. Thereafter, 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) Analysts – 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 and reporting corporate earnings.

15) Fiber-optic 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 – moving lit capacity sold in IRU transactions to promote network efficiency or address network changes. Grooming makes immediate revenue recognition improper under GAAP because the assets do not remain fixed and unchanged.

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

19) Lit capacity – a specific portion of 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 upon which the auditors rely.

21) Merger – the transaction announced on July, 1999 resulting in a merger between Qwest and US West on June 30, 2000.

22) 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.

23) 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.

24) Porting – allowing IRU purchasers the ability to exchange the dark fiber or lit capacity purchased for different fiber or capacity at a later date. Porting makes immediate revenue recognition improper under GAAP because the assets do not remain fixed and unchanged.

25) 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.

26) Swap – an IRU transaction in which Qwest sold an IRU to another company in exchange for Qwest's buying an IRU from the same company.

III. JURISDICTION AND VENUE

27) 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)].

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].

29) 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.

30) Certain of the transactions, acts, practices, and courses of business constituting the violations of law alleged herein occurred within this district.

IV. SUMMARY OF VIOLATIONS AND MATERIALLY FALSE STATEMENTS

31) **Nacchio** engaged in violations of the securities laws, including the following:

a) by falsely representing that Qwest was meeting its revenue and growth targets with recurring services revenue and failing to disclose that Qwest was meeting those targets with revenue from one-time IRU and equipment sales, by misrepresenting the increase of revenue resulting from changes in the publication of Dex directories, and by trading in Qwest stock while he was aware of material non-public information about Qwest's business, **Nacchio** violated Sections 17(a)(1), (2), and

(3) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and, unless restrained and enjoined, is likely to engage in future violations;

b) by causing Qwest's books and records to falsely include one-time sales of IRUs and equipment in services revenue, **Nacchio** violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] thereunder, and aided and abetted violations of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)], and, unless restrained and enjoined, is likely to engage in future violations;

c) by representing to Qwest's auditors that Qwest's financial statements were correct when in fact he knew that Qwest had failed to disclose the true composition of its revenue and the true nature of revenue from changes in the publication of Dex directories, **Nacchio** violated Rule 13b2-2 [17 C.F.R. § 240.13b2-2] under the Exchange Act, and unless restrained and enjoined, is likely to engage in future violations;

d) by falsely representing that Qwest was meeting its revenue and growth targets with recurring services revenue and failing to disclose that Qwest was meeting those targets with one-time IRU and equipment sales, by causing Qwest's filings to falsely include one-time sales of IRUs and equipment in services revenue while failing to disclose revenue from one-time IRU and equipment sales, and by causing Qwest's filings to misrepresent revenue from changes in the publication of Dex directories, **Nacchio** aided and abetted Qwest's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13

32) **Woodruff** engaged in violations of the securities laws, including the following:

a) by falsely representing that Qwest was meeting its revenue and growth targets with recurring services revenue and failing to disclose that Qwest was meeting those targets with revenue from one-time IRU and equipment sales, by misrepresenting the increase of revenue resulting from changes in the publication of Dex directories, and by trading in Qwest stock while he was aware of material non-public information about Qwest's business, **Woodruff** violated Sections 17(a)(1), (2), and (3) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and unless restrained and enjoined, is likely to engage in future violations;

b) by failing to implement proper procedures to ensure that revenue from IRU sales was appropriately recognized and was not wrongly recorded in Qwest's books and records, **Woodruff** violated Sections 17(a)(2) and (3) of the Securities Act, and unless restrained and enjoined, is likely to engage in future violations;

c) by failing to institute appropriate internal controls to ensure that revenue recognition requirements were met or failing to ensure that such controls were instituted, and by causing Qwest's books and records to falsely include one-time sales of IRUs and equipment in services revenue, **Woodruff** violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and aided and abetted violations of Section 13(b)(2) of the Exchange Act, and unless restrained and enjoined, is likely to engage in future violations;

d) by representing to Qwest's auditors that Qwest's financial statements were correct when in fact he knew that Qwest had failed to disclose the true composition of its revenue and the true nature of revenue from changes in the publication of Dex directories, **Woodruff** violated Rule 13b2-2 under the Exchange Act, and unless restrained and enjoined, is likely to engage in future violations;

e) by falsely representing that Qwest was meeting its revenue and growth targets with recurring services revenue and failing to disclose that Qwest was meeting those targets with one-time IRU and equipment sales, by causing Qwest's filings to falsely include one-time sales of IRUs and equipment in services revenue while failing to disclose revenue from one-time IRU and equipment sales, by causing Qwest's filings to misrepresent revenue from changes in the publication of Dex directories, and by failing to ensure that Qwest's public filings adequately disclosed revenue from one-time IRU and equipment sales and causing Qwest to improperly report revenue from IRU transactions, **Woodruff** aided and abetted Qwest's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and unless restrained and enjoined, is likely to engage in future violations.

33) **Mohebbi** engaged in violations of the securities laws, including the following:

a) by causing the recognition of revenue from contracts that did not meet revenue recognition requirements because of backdating or side agreements to allow porting, **Mohebbi** violated Sections 17(a)(1), (2), and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and unless restrained and enjoined, is likely to engage in future violations;

b) by causing one-time sales of IRUs and equipment while knowing that the source and nature of that revenue from those sales was not disclosed, but rather, was hidden and misrepresented, and by causing the recognition of revenue from contracts that did not meet revenue recognition requirements because of backdating or side agreements to allow porting, **Mohebbi** aided and abetted violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder, and unless restrained and enjoined, is likely to engage in future violations;

c) by causing revenue from contracts that had been backdated and contracts that did not meet revenue recognition requirements to be recorded in Qwest's books and records, **Mohebbi** violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and aided and abetted violations of 13(b)(2) of the Exchange Act, and unless restrained and enjoined, is likely to engage in future violations;

d) by causing false and misleading IRU contracts to be provided to Qwest's auditors, **Mohebbi** violated Rule 13b2-2 under the Exchange Act, and unless restrained and enjoined, is likely to engage in future violations;

e) by causing one-time sales of IRUs and equipment while knowing that the source and nature of revenue from those sales was not disclosed in Qwest's public filings, but rather, was hidden and misrepresented in those filings, by allowing the recognition of revenue from contracts that had been backdated, and by allowing the recognition of revenue from contracts that did not meet revenue recognition requirements, **Mohebbi** aided and abetted violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and unless restrained and enjoined, is likely to engage in future violations.

34) **Kozlowski** engaged in violations of the securities laws, including the following:

a) by failing to ensure that Qwest's public filings adequately disclosed revenue from one-time IRU and equipment sales, **Kozlowski** violated Sections 17(a)(1), (2), and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and unless restrained and enjoined, is likely to engage in future violations;

b) by failing to implement proper procedures to ensure that revenue from IRU sales was appropriately recognized and was not wrongly recorded in Qwest's books and records, **Kozlowski** violated Sections 17(a)(2) and (3) of the Securities Act, and unless restrained and enjoined, is likely to engage in future violations;

c) by failing to institute appropriate internal controls to ensure that revenue recognition requirements were met, or failing to ensure that such controls were instituted and thereby causing revenue to be wrongly recorded in Qwest's books and records, **Kozlowski** violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and aided and abetted violations of Section 13(b)(2) of the Exchange Act, and unless restrained and enjoined, is likely to engage in future violations;

d) by failing to ensure that Qwest's public filings adequately disclosed revenue from one-time IRU and equipment sales and causing Qwest to improperly report revenue from IRU transactions, **Kozlowski** aided and abetted violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and unless restrained and enjoined, is likely to engage in future violations.

35) **Noyes** engaged in violations of the securities laws, including the following:

a) by failing to ensure that Qwest's public filings adequately disclosed revenue from one-time IRU and equipment sales and by causing recognition of revenue from backdated contracts, **Noyes** violated Sections 17(a)(1), (2) and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and unless restrained and enjoined, is likely to engage in future violations.

b) by failing to implement proper procedures to ensure that revenue from IRU sales was appropriately recognized and was not wrongly recorded in Qwest's books and records, **Noyes** violated Sections 17(a)(2) and (3) of the Securities Act, and unless restrained and enjoined, is likely to engage in future violations;

c) by failing to institute appropriate internal controls to ensure that revenue recognition requirements were met, or failing to ensure that such controls were instituted and thereby causing revenue to be wrongly recorded in Qwest's books and records, and by causing revenue from backdated contracts to be recorded in Qwest's books and records, **Noyes** violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and aided and abetted violations of Section 13(b)(2) of the Exchange Act, and unless restrained and enjoined, is likely to engage in future violations;

d) by failing to ensure that Qwest's public filings adequately disclosed revenue from one-time IRU and equipment sales, by causing Qwest's filings to include revenue from backdated contracts, and by causing Qwest to improperly report revenue from IRU transactions, **Noyes** aided and abetted violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and unless restrained and enjoined, is likely to engage in future violations.

36) The defendants' violations resulted in various materially false and misleading statements contained in: Qwest's SEC Forms 10-K - for the periods ending December 31, 1999, December 31, 2000, and December 31, 2001; Qwest's 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's 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's 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. During the relevant time period, Defendants **Nacchio** and **Woodruff** signed or reviewed public filings, signed management representation letters, reviewed and

approved earnings releases, and participated in analyst calls and conference presentations. Defendant **Mohebbi** was familiar with Qwest's public filings and participated in certain analyst calls and conference presentations during the relevant time period. Defendants **Kozlowski** and **Noyes** materially assisted in the preparation of the Forms 10-K and Forms 10-Q from April 1999 through September 2000.

V. DEFENDANTS

37) **Joseph P. Nacchio** 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 filed with the SEC. He drafted and/or approved all of Qwest's earnings releases discussed in this complaint. **Nacchio** spoke at analyst calls and conferences and made various television appearances.

38) **Robert S. Woodruff** 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 of Qwest's materially false 10-Q quarterly reports filed with the SEC and Qwest's materially false 1999 10-K annual report. He drafted and/or reviewed 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 relevant analyst calls and certain conferences.

39) **Afshin Mohebbi** 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) **James J. Kozlowski** 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 and misleading 10-Q quarterly reports and 10-K annual reports from April 1999 through September 2000.

41) **Frank T. Noyes** 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. **Noyes** assisted in drafting all fraudulent and misleading 10-Q quarterly reports and 10-K annual reports from April 1999 through September 2000.

VI. RELATED PARTY

42) **Qwest Communications International Inc.,** based in Denver, Colorado, is one of the largest telephone and Internet service companies in the United States. In June 2000, Qwest merged with US West, a regional "Baby Bell" company. 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. Approximately $40 billion of that was issued in connection with the merger with US West.

VII. COMPENSATION OF DEFENDANTS

43) The SEC seeks an order requiring each defendant to disgorge compensation 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) **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.

d) **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.

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

VIII. FAILURE TO DISCLOSE THE TRUE SOURCE AND NATURE OF QWEST'S REVENUE AND GROWTH

44) **Nacchio** and **Woodruff** frequently announced to the public and Wall Street that Qwest's rapid growth resulted from an increase in Qwest's recurring revenue from Internet, data and telecommunication services.

45) Qwest met its revenue and growth targets, but largely from an increase in one-time sales of IRUs and equipment rather than from recurring Internet, data and telecommunication services. Revenue from the one-time sales listed in Exhibits A, B and C was hidden in services revenue to make it appear that Qwest was meeting targets with recurring revenue.

46) **Nacchio**, **Woodruff**, and **Mohebbi** knew that growth of revenue from Internet, data and telecommunication services was particularly valued by investors and stock analysts who believed such revenue 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. Thus **Nacchio**, **Woodruff** and **Mohebbi** knew that the manner in which Qwest was meeting its revenue and growth targets was material to investors.

47) **Nacchio, Woodruff** and others failed to disclose that Qwest had relied on non-recurring or one-time IRU and equipment sales to meet its revenue and growth targets when, in fact, one-time 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 one-time IRU and equipment sales revenue from transactions listed on Exhibit A accounted for over $900 million, or 23 percent of that amount. The source and nature of this one-time revenue was misrepresented and was not disclosed in the public filings, analyst calls, public statements or earnings releases referenced in paragraph 36.

b) In the first two quarters of 2000, before Qwest merged with US West, Qwest had total revenue of almost $2.5 billion. Hidden one-time IRU and equipment sales revenue from the transactions listed on Exhibit B accounted for $731 million, or almost 30 percent of the $2.5 billion total. The source and nature of this revenue was misrepresented and was not disclosed in the public filings, analyst calls, public statements or earnings releases referenced in paragraph 36.

c) After the merger with US West, for the first two quarters of 2001, Qwest reported total revenue of $10.27 billion. Of that, almost $1.2 billion, or over 10 percent, was revenue from the hidden one-time IRU and equipment sales listed on Exhibit C. The source and nature of this revenue was misrepresented and was not disclosed in the public filings, analyst calls, public statements or earnings releases referenced in paragraph 36.

48) No meaningful disclosure of revenue from one-time sales of IRUs and equipment was made until August 2001 and December 2001, respectively.

A. Qwest's Use of One-time Sales to Meet Revenue and Growth Targets

1. The Reimaging of Qwest as a Telecommunications Company With Recurring Revenue

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

50) 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 strands and "light" them in order to generate revenue for itself by selling telecommunications services.

51) Beginning in 1998, **Nacchio** and **Woodruff** publicly heralded the completion of Qwest's network construction and emphasized in public statements its telecommunications services from which Qwest predicted it would receive substantial recurring revenue. Qwest also 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 announced 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."

2. By 1999 Qwest Began Meeting Revenue and Growth Targets With One-time Sales

52) By 1999, Qwest was selling IRUs and recognizing the revenue immediately. Further, beginning in 1999, Qwest also sold equipment generating additional immediate revenue. Although these were one-time IRU and equipment sales, Qwest fraudulently included the one-time revenue in its reported recurring services revenue starting in July 1999.

53) Throughout 1999, **Nacchio** and **Woodruff** continued to claim that Qwest's past revenue growth was attributable to recurring communication services which included telephone, data and Internet services, and to predict double-digit growth in that revenue and EBITDA. For example 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."

54) 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) One Qwest executive 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."

3. <u>The True Source and Nature of Qwest's Growth Was Not Disclosed in Qwest's 1999 Annual Report</u>

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

56) **Kozlowski** 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 disclosure language.

57) **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.

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

59) **Kozlowski** and **Noyes** then drafted IRU disclosure for inclusion in the 1999 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** for review.

60) 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.

61) **Nacchio** and **Woodruff** each signed 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. These letters were false because **Nacchio** and **Woodruff** each knew that Qwest's financial statements misrepresented the nature and source of Qwest's revenue and growth.

62) 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 being filed without the IRU disclosure language.

4. <u>The Failure to Disclose One-time Sales Continued in Early 2000</u>

63) In early 2000, **Nacchio** and **Woodruff** still claimed to the public that Qwest's past revenue growth was attributable to recurring communication services which included telephone, data and Internet services. For example:

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

b) 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."

c) 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."

64) On June 30, 2000, Qwest completed a merger with US West, a regional "Baby Bell" telephone company. The merger agreement had been announced in July, 1999.

65) 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 between July 1999 and June 2000. By August 9, 1999, shortly after the merger announcement, Qwest's stock price had dropped from $34 per share to only $26 per share. **Nacchio**, **Woodruff** and **Mohebbi** all knew that a decline in the stock price would jeopardize the merger.

66) Defendants' failures to disclose that Qwest's growth had been largely fueled through one-time sales kept Qwest's stock price high allowing completion of the merger with US West.

67) 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.

5. <u>The Growth of Reliance on One-time Sales After the June 2000 Merger With US West</u>

68) Following the merger, the telecommunications industry generally experienced declines in demand for services. However, **Nacchio** and **Woodruff** continued to predict double-digit growth from communication services for the company, Qwest continued to meet its revenue and growth targets using one-time sales and **Nacchio** and **Woodruff** continued to announce that Qwest was meeting its revenue and growth targets without disclosing that the growth was fueled by one-time IRU and equipment sales.

69) **Nacchio** and **Woodruff** continued to emphasize that Qwest had transformed itself from an old fashioned telephone company like US West to a modern telecommunications company showing growth resulting from recurring Internet, data and telecommunication services. These statements were materially false because, among other reasons, **Nacchio** and **Woodruff** failed to disclose the existence of the one-time IRU and equipment sales that had fueled Qwest's growth and the significance of those one-time sales to Qwest's reported services revenue. For example:

a) 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."

b) In that same release, **Woodruff** was quoted saying, "Internet and data services continued to drive revenue growth."

c) Qwest's third quarter 2000 earnings release continued to predict future revenue growth including the growth of its recurring telecommunications services revenue.

d) 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."

e) 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."

f) The fourth quarter 2000 earnings release emphasized data and Internet services revenue growth, stating that such revenue had increased some 40 percent and represented 70 percent of Qwest's total revenue growth in the quarter.

g) None of the earnings releases disclosed that Qwest's revenue and growth were being met with revenue from one-time IRU and equipment sales.

6. <u>The True Source and Nature of Qwest's Growth Was Not Disclosed in Qwest's 2000 Annual Report</u>

70) 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, stated falsely that they were insignificant and failed to disclose the true nature of the revenue. Moreover, it was materially false and misleading because there was no disclosure concerning one-time equipment sales.

7. <u>The Failure to Disclose One-time Sales During the First Half of 2001</u>

71) During 2001, **Nacchio and Woodruff** continued to stress that Qwest had established a pattern of meeting its growth and revenue targets. These statements continued to be materially false because, among other reasons, **Nacchio** and **Woodruff** failed to disclose the existence of one-time IRU and equipment sales and the significance of the one-time sales to Qwest's reported services revenue. For example:

a) 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."

b) Qwest's second quarter 2001 earnings release stated, "Qwest has met or exceeded the consensus of analysts' estimates for the 17th consecutive quarter."

c) 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."

d) Neither the earnings call nor the earnings releases disclosed that Qwest's revenue and growth were being met with revenue from one-time IRU and equipment sales.

72) In January 2001, a senior Qwest executive warned **Nacchio** and **Woodruff** 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.

73) By at least mid-January 2001, **Nacchio** and **Woodruff**, 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** and **Woodruff** 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 one-time IRU and equipment sales. A senior Qwest executive characterized **Nacchio**'s skill at not answering such questions as dodging "the elephant in the room."

74) 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) As described above, 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 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."

c) **Nacchio** told one executive concerning revenue targets, "you do this or I'll find someone who will."

d) In February 2001, an executive complained to **Mohebbi** about his target revenue, saying "Remember I had to sign in blood for my budget."

e) In July 2001, an executive 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 the "margins were below business plan expectations", the executive 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."

75) On April 24, 2001, **Nacchio** 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

76) **Nacchio** knew that Qwest had met its growth targets through continued dependence on one-time revenue from IRU and equipment sales.

77) 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."

78) By mid-May, 2001, most of the company's business units had reported to **Nacchio** that they anticipated target shortfalls that could only be made up with more IRU sales.

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

80) In mid-July 2001, documents provided to **Nacchio** for Qwest's second quarter earnings call with analysts highlighted that Qwest had depended on IRU sales to meet gaps in 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." **Nacchio** knew that, if this

information was disclosed, analysts would likely be surprised at the magnitude of the one-time revenue and that Qwest's stock price might fall.

81) **Nacchio**, 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. The release was materially false.

8. <u>Exposure of Qwest's Reliance on One-time Sales</u>

82) 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**. 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."

83) 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 misleading because, among other things, **Nacchio** failed to inform the analysts that, in total, Qwest had actually booked approximately $888 million of revenue from IRUs in the first half of 2001.

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

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

86) **Nacchio** attempted to conceal the importance of this information concerning IRUs by delaying further disclosures, including that Qwest was lowering its publicly announced financial targets.

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

88) After these disclosures, the price of Qwest's stock declined steeply.

B. Nacchio and Woodruff's Responsibility for the Disclosure Fraud

89) Qwest's internal revenue targets were set on a top down basis. **Nacchio** and **Woodruff** set targets based on the numbers necessary for Qwest to meet public growth predictions. **Nacchio** and **Woodruff** determined the targets to be met by the various business units and informed the business units of those targets. From 1999 through August 2001 it became increasingly difficult for various business units to meet the revenue targets set for them. When that happened, **Nacchio** and **Woodruff** relied on **Mohebbi** to fill the gap between current revenues and targets with one-time revenue from IRUs.

90) **Nacchio** exerted extreme pressure on subordinate executives who managed the business units responsible for IRU sales to meet the targets set for them and to make up shortfalls in targets set for other business units. In turn, the business unit executives exerted extraordinary pressure on their managers and employees to meet or exceed the revenue targets and fill the gaps at all costs. For example, Qwest ensured 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.

91) Quarter after quarter **Nacchio** and **Woodruff** learned that Qwest’s growth and revenue targets would not be met through increases in recurring communications services revenue as had been publicly announced. Rather than admitting that targets would not be met or disclosing that revenue and growth targets were not being met through sales of communication services, **Nacchio** and **Woodruff** used one-time revenue, specifically IRU and equipment sales, to fill the gap and meet the revenue targets.

92) Each quarter, prior to releasing Qwest’s financial results to the investing public, **Nacchio** and **Woodruff** 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** and **Woodruff** met with executives operating Qwest’s business units at the end of every quarter to review Qwest’s financial performance. As a result, **Nacchio** and **Woodruff** knew the magnitude of Qwest’s revenues from IRU and equipment sales, and Qwest’s sources of recurring and non-recurring revenue. **Nacchio** knew that Qwest needed to stop relying on “accounting tricks” to make it revenue and growth targets.

93) **Nacchio** and **Woodruff** knew that Qwest's books and records wrongly included revenue from one-time IRU and equipment sales in its recurring services revenues. **Nacchio and Woodruff** knew that because Qwest’s books and records improperly included revenue from one-time IRU and equipment sales in its recurring services

revenues, Qwest's books and records were materially inaccurate. **Nacchio** and **Woodruff** knew of Qwest's one-time IRU and equipment sales and approved the fraudulent public reporting of such sales as recurring revenue.

94) 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 and 10-K filings. Additionally, **Nacchio**, **Woodruff**, 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** and **Woodruff** controlled the earnings release process and determined what information to release to the investing public. **Nacchio** and **Woodruff** reviewed and approved of all Qwest's public filings. Despite these facts, during the relevant time periods, **Nacchio** and **Woodruff** represented to the public that Qwest had met its revenue and growth targets using recurring services revenue, when in fact, it had used one-time revenue from IRU and equipment sales to meet those targets.

95) Analysts and investors frequently asked about the nature of Qwest's revenue, but **Nacchio** refused to disclose that information. In addition, Qwest executives advocated disclosing the source and nature of Qwest's revenue. **Nacchio** rebuffed those suggestions.

96) **Nacchio** had several discussions with others at Qwest concerning the effect disclosure of the one-time revenue would have on Qwest's stock price. Although he was told that investors needed the information to make informed decisions about whether to buy or sell Qwest stock, **Nacchio** refused to disclose the information.

C. <u>Mohebbi Aided and Abetted the Disclosure Fraud</u>

97) **Mohebbi** directed and managed the business units which sold most of Qwest's lit capacity IRUs. **Mohebbi** was aware of the magnitude of IRUs sold by Qwest, and the sources of recurring and nonrecurring revenue within Qwest. Further, **Mohebbi** controlled Qwest's capital expenditure budget for IRU transactions, and was responsible for all purchases of lit capacity in swap transactions between 1999 and 2001.

98) **Mohebbi** was familiar with Qwest's financial statements, public filings, earnings releases and analyst calls. **Mohebbi** participated in certain analyst calls and conference presentations. As a result **Mohebbi** knew that the use of one-time IRUs to meet Qwest's revenue and growth targets was not disclosed, but rather, was being hidden and misrepresented. **Mohebbi** knew that **Nacchio** and **Woodruff** represented to the public that Qwest had met its revenue and growth targets using recurring services revenue, when in fact, it had used one-time revenue from IRU and equipment sales to meet those targets.

99) **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."

100) The executive who negotiated and executed most of Qwest's lit capacity IRU transactions from 1999 through third quarter 2001 reported directly to **Mohebbi** and with **Mohebbi's** approval, purchased lit capacity in IRU swap transactions.

101) In a June 2001 e-mail **Mohebbi** praised one of his direct reports as "the guy who made [the merger with US West] happen" because of his closing of IRU deals to meet

revenue projections. **Mohebbi** bragged that if his business unit had not "pulled the quarters" that it did in 1999, "there would not have been a [merger with US West] …."

102) People reporting to **Mohebbi** frequently complained about having to fill Qwest's revenue gaps with IRU sales, including swaps.

103) In mid-May 2001, **Mohebbi** was advised that IRU sales were becoming increasingly difficult to generate and that as a result "the quarter is in significant jeopardy." At the same time, **Mohebbi** sent an e-mail stating, "Business is in bad shape . . . need a ton of one-time items to make the quarter."

104) Despite his knowledge that **Nacchio** and **Woodruff** were hiding Qwest's reliance on IRUs to fuel its growth, **Mohebbi** continued to substantially assist the fraud by providing the IRUs necessary to meet Qwest's targets.

D. <u>Kozlowski and Noyes' Respsonsibility for the Disclosure Fraud</u>

105) **Kozlowski** and **Noyes** as alleged above in paragraphs 55 – 62 removed material disclosure concerning IRU transactions from Qwest's 1999 10-K annual report filed with the SEC.

106) As the director and senior director of financial reporting for Qwest, **Kozlowski** was responsible for, among other things, drafting Qwest's financial statements and Forms 10-K and 10-Q. **Kozlowski** was also responsible for ensuring that Qwest's financial statements and public filings accurately disclosed information concerning Qwest's IRU sales and swap transactions. Nevertheless, he failed to ensure that the necessary disclosures were included in Qwest's public filings from 1999 through September 2000.

107) As the director of financial reporting for Qwest, **Noyes** was responsible for ensuring that Qwest's financial statements and public filings accurately disclosed information

concerning Qwest's IRU sales and swap transactions. **Noyes** also failed to ensure that the necessary disclosures were included in Qwest's public filings from 1999 through September 2000.

IX. FAILURE TO DISCLOSE THE MANIPULATION OF DEX REVENUE

108) As part of the overall fraudulent scheme to show revenue and earnings growth every quarter, **Nacchio** and **Woodruff** accelerated revenue recognition at Qwest's wholly-owned subsidiary, Qwest Dex, Inc. and failed to disclose that they were doing so.

109) 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.

110) In August 2000, executives at Dex informed **Nacchio** and **Woodruff** that Dex would meet its 2000 EBITDA target, but would not meet its 2000 revenue 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.

111) 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** and **Woodruff** that he did not favor the schedule change. Nevertheless, **Nacchio**, in **Woodruff's** presence, directed Dex to go forward with the schedule change to meet Dex's EBITDA target.

112) 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.

113) 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.

114) 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 misleading because it failed to apprise investors that Dex generated more than one-quarter of the revenue increase by moving up the publication of the Colorado Springs from 2001 to 2000, or that the schedule change could produce a commensurate decline in Dex revenue for the first quarter of 2001.

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

X. FRAUDULENT REVENUE RECOGNITION RESULTING FROM BACKDATED CONTRACTS AND UNDISCLOSED SIDE AGREEMENTS

A. Summary

116) In order to fraudulently record IRU sales to meet revenue targets, **Mohebbi** entered into an undisclosed side agreement and **Mohebbi** and **Noyes** participated in falsifying documents to hide material facts regarding the sales from Qwest's internal accountants and outside auditors. **Mohebbi** and **Noyes** knew that their actions caused improperly recognized revenue to appear on Qwest's financial statements.

117) In order for revenue from IRU sales transactions to be immediately recognized, the applicable accounting rules require that the earnings process must be complete, including that assets sold must remain fixed and unchanged. An agreement to allow IRU purchasers the ability to port or exchange dark fiber or lit capacity prevents the asset from being fixed and unchanged, and makes immediate recognition of the revenue from the transaction improper.

118) In addition, the accounting rules require that revenue from transactions be recognized in the quarter in which the transaction is completed.

119) **Mohebbi** and **Noyes** knew the accounting rules for immediate revenue recognition from IRUs. **Mohebbi** and **Noyes** also knew that porting prohibited immediate revenue recognition on IRU sales. In addition, **Mohebbi** and **Noyes** knew that revenue from transactions should be recorded and reported in the quarter in which the transaction was completed.

B. The Undisclosed Side Agreements For Portability of IRUs

120) **Mohebbi** knew that many customers would only purchase IRUs if portability was part of the deal. **Mohebbi** knew that Qwest had a pattern and practice of allowing customers to port IRUs, and that Qwest provided assurances that customers could port IRUs in order to close IRU transactions. **Mohebbi** knew that porting of IRUs was commonplace in the telecommunications industry.

121) Therefore, to allow revenue to be recognized immediately, **Mohebbi** and others promised portability to IRU purchasers, but did not disclose these agreements to Qwest's internal accountants or outside auditors, thereby causing Qwest to improperly recognize revenue from IRU transactions in its financial statements.

122) In the fourth quarter of 2000, Qwest sold an IRU to Cable & Wireless for $109 million. It recognized $108 million in immediate revenue. Qwest did not have the lit capacity that Cable & Wireless actually wanted to buy at the time. Therefore, **Mohebbi** provided Cable & Wireless with a written side agreement promising that Cable & Wireless could exchange the capacity later. On December 29, 2000, **Mohebbi** sent the side agreement to Cable & Wireless in an e-mail that guaranteed "a full and fair trade" of the lit capacity Cable & Wireless bought for different lit capacity at a later date. **Mohebbi** did not inform Qwest's internal accountants or outside auditors of this side 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.

C. <u>The Backdated Contracts</u>

123) In the rush to complete enough IRU transactions by quarter close to make Qwest's revenue targets, contracts were backdated for the explicit purpose of falsely making it appear that immediate revenue recognition was appropriate in a specific quarter. **Mohebbi** and **Noyes** did not inform Qwest's internal accountants or outside auditors of this backdating and the revenue was recognized in Qwest's financial statements.

a) 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. In fact, on April 1, 2001, two Qwest executives each called **Mohebbi** at home to inform him that the IRU agreement had not been signed.

b) 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 signature date of September 30, 2001, but in fact were not completed by the parties until October 1, 2001, after the close of the quarter**.**

XI. IMPROPER REVENUE RECOGNITION RESULTING FROM FAILURE TO ENSURE PROPER PROCEDURES FOR ACCOUNTING OF IRU TRANSACTIONS

A. Summary

124) Starting in at least June 1999, Qwest's IRU revenue recognition failed to meet several GAAP rules. Further, there were material weaknesses in Qwest's internal controls relating to IRU accounting which led to the improper revenue recognition. At relevant times, **Woodruff**, **Kozlowski**, and **Noyes** were responsible for Qwest's revenue recognition from IRU transactions. **Woodruff**, **Kozlowski**, and **Noyes** each failed to ensure that Qwest properly recognized revenue in IRU transactions. Moreover, many IRU sales were swap transactions and **Woodruff**, **Kozlowski**, and **Noyes** failed to ensure that Qwest's revenue recognition on those transactions was proper. Qwest used improperly recognized revenue from IRU sales to meet its revenue and growth targets.

125) **Woodruff,** as CFO, was responsible for all of Qwest's accounting. It was his duty to ensure that Qwest properly accounted for all revenue, including IRU transactions, 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 improperly 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.

126) **Kozlowski** devised and implemented Qwest's policies concerning 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. **Kozlowski** failed to establish sufficient policies and procedures to provide reasonable assurance that the accounting for Qwest's IRU transactions was proper. As a result, there were material weaknesses in internal controls over accounting for IRUs.

127) **Noyes** assisted **Kozlowski** in implementing Qwest's policies concerning immediate recognition of revenue from IRU transactions. **Noyes** failed to establish sufficient policies and procedures to provide reasonable assurance that the accounting for Qwest's IRU transactions was proper. As a result, there were material weaknesses in internal controls over accounting for IRUs. Also, **Noyes** specifically approved and authorized revenue recognition on many IRU transactions from April 1999 until September 2000.

128) The federal securities laws require companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are executed in accordance with management's authorization, and transactions are recorded as necessary to permit the preparation of appropriate financial statements. **Woodruff**, **Kozlowski**, and **Noyes** failed to devise and implement a system of internal controls and procedures at Qwest that reasonably assured that Qwest properly recognized revenue from its IRU sales under GAAP.

B. Improper Immediate Revenue Recognition From IRU Sales

129) From June 1999 through 2001, due to material weaknesses in internal controls, Qwest improperly recognized revenue from the IRU sales listed on Exhibits A, B, and C in violation of GAAP. GAAP sets forth a number of requirements that must be met in order to recognize revenue immediately from an IRU sale transaction. During the relevant time, Qwest failed to meet the following GAAP requirements for IRU sales:

a) GAAP requires that before revenue can be immediately recognized from IRU sales, the earnings process must be complete. As part of the earning process, the assets sold must be specifically identified and remain fixed and unchanged. Qwest failed to meet this requirement for many IRU sales because it agreed to give IRU purchasers the ability to port or exchange the dark fiber or lit capacity they purchased for different fiber or capacity at a later date. For example, Qwest gave ICG, Cable & Wireless, and Verio the ability or right to port IRU transactions. Qwest also failed to meet this requirement for many IRU sales because it groomed or moved the lit capacity it sold in order to promote network efficiency or address network changes. Porting and grooming violate GAAP because the assets sold do not remain fixed and unchanged.

b) GAAP requires that for revenue to be immediately recognized from IRU sales, the seller needs firm evidence that it will be able to transfer ownership of the fiber sold to the buyer and that all rights of ownership transfer to the buyer. For many IRU transactions, Qwest failed to meet this requirement.

c) GAAP requires that for revenue to be recognized immediately in connection with IRU sales, revenue must be allocated to the separate IRU components based on relative fair value. Qwest failed to meet this requirement. In addition, Qwest significantly undervalued the right-of-way component of the IRUs it sold.

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

131) 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.

132) By at least early 2000**, Kozlowski** and **Noyes** learned of Qwest's practice of porting, which they knew prohibited immediate revenue recognition, because the asset would not be fixed and remain unchanged and the earning process would not be complete. For example:

a) In February 2000, **Kozlowski** and **Noyes** received an e-mail alerting them that a Qwest executive committed to port an IRU purchased by ICG. 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) In March 2000, **Kozlowski** and **Noyes** were consulted about capacity that Cable & Wireless was buying but intended to trade in for different capacity the following quarter.

c) In May 2000, **Noyes** was consulted about how to handle capacity that had been sold to Primus in the previous quarter, apparently "for the purpose of trading it in" in the second quarter of 2000. **Noyes** expressed concern with the amount of porting that was occurring. It appeared that Qwest was selling customers what was available to close deals and letting them know that they could trade in their routes when what they wanted was available.

d) In about July 2000, **Noyes** knew that Qwest gave Cable & Wireless a unilateral right to port or upgrade capacity regarding an IRU transaction that was executed in the second quarter 2000.

e) 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.

133) Despite knowledge of porting, **Kozlowski** and **Noyes** failed to devise and implement policies or procedures that ensured that revenue recognition from IRU sales complied with GAAP.

134) **Kozlowski** and **Noyes** knew of Qwest's practice of grooming. Despite this knowledge, they failed to devise and implement policies or procedures that ensured that revenue recognition from IRU sales complied with GAAP.

135) 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.

C. Improper Immediate Revenue Recognition From IRU Swap Transactions

136) Over time, Qwest found it increasingly difficult to sell IRUs to customers unless, at the same time, Qwest purchased lit capacity or dark fiber from those same customers in swap transactions. 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.

137) Qwest found IRU swaps especially attractive because of their effect on the company’s financial statements. Qwest recognized large amounts of revenue immediately on the sale, but did not recognize any significant expense from its purchases immediately, instead capitalizing those expenses.

138) During the relevant time periods, **Woodruff**, **Kozlowski**, and **Noyes** improperly allowed revenue to be immediately recognized in all of Qwest’s IRU swap transactions listed on Exhibits A, B and C. This was fraudulent and material. It also violated the requirements of GAAP.

139) Immediate revenue recognition on Qwest’s IRU swap transactions was improper for the same reasons that immediate revenue recognition on non-swap IRU sales was improper. In addition, immediate revenue recognition on Qwest’s IRU swap transactions violated at least the following GAAP requirements:

a) GAAP requires that the assets exchanged in a swap transaction must be dissimilar. Qwest did not have a reasonable basis for determining that the assets exchanged in swap transactions were dissimilar.

b) GAAP requires that there must be adequate evidence of the fair values of the assets exchanged in the swap transaction. Qwest did not document the basis for determining the fair values of the assets being exchanged in swap transactions.

140) Qwest improperly recognized revenue from undisclosed, material swap transactions during 1999 of $312 million, $506 million in 2000, and $674 million in 2001. Those transactions are set forth on Exhibits A, B, and C.

141) **Woodruff**, **Kozlowski**, and **Noyes** failed to devise and implement a system of internal controls or procedures at Qwest that reasonably assured that Qwest properly recognized revenue from its IRU swap transactions.

XII. INSIDER TRADING BY NACCHIO AND WOODRUFF

142) **Nacchio** and **Woodruff**, 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.

143) From November, 1999 through April, 2001, **Woodruff** made profits of approximately $36.8 million from the sale of Qwest stock. During that entire period he was aware that while he and others at Qwest were claiming that Qwest was meeting revenue and growth targets with recurring services revenue, in fact, he and others at Qwest were hiding and not disclosing that Qwest was meeting those targets with one-time revenue, which was material, non-public information about Qwest's business.

144) From July, 1999 through May, 2001, **Nacchio** made profits of about $176.5 million from the sale of Qwest stock. During that entire period he was aware that while he and others at Qwest were claiming that Qwest was meeting revenue and growth targets with recurring services revenue, in fact, he and others at Qwest were hiding and not disclosing that Qwest was meeting those targets with one-time revenue, which was material, non-public information about Qwest's business.

145) During April through May 2001, Nacchio made profits of about $52 million from the sale of Qwest stock. During that entire period, while Nacchio assured investors that Qwest was on track to meet its publicly-stated financial targets, he was aware that Qwest's revenue from recurring sources had not increased sufficiently during the first quarter of 2001 in order for Qwest to meet its targets and that Qwest's revenue from

one-time sources would not be enough to fill the gap between Qwest's actual performance and its targets.

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

146) The SEC realleges paragraphs 1 through 145 above.

147) Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi**, 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.

148) Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi** 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)]

149) The SEC realleges paragraphs 1 through 145 above.

150) Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi**, 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.

151) Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi** 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]

152) The SEC realleges paragraphs 1 through 145 above.

153) Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes** and **Mohebbi**, 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.

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

155) Alternatively, by reason of the conduct alleged in paragraphs 1 through 142, Qwest violated Exchange Act Section 10(b) and Rule 10b-5 thereunder, and **Mohebbi** aided and abetted Qwest's violations by knowingly and substantially assisting those violations. Unless restrained and enjoined, **Mohebbi** 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]

156) The SEC realleges paragraphs 1 through 145 above.

157) Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi**, 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.

158) Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi**, 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]

159) The SEC realleges paragraphs 1 through 142 above.

160) Defendants **Nacchio**, **Woodruff**, and **Mohebbi**, 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.

161) By reason of the foregoing, defendants **Nacchio**, **Woodruff**, and **Mohebbi** 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]

162) The SEC realleges paragraphs 1 through 145 above.

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

164) Unless restrained and enjoined, Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi** 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)]

165) The SEC realleges paragraphs 1 through 145 above.

166) Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi** aided and abetted Qwest, in that they provided knowing and substantial assistance to Qwest, which failed 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 failed

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.

167) By reason of the foregoing, Qwest violated Exchange Act Section 13(b)(2), and Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi** aided and abetted Qwest's violations. Unless restrained and enjoined, Defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi** 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**, **Kozlowski**, **Noyes**, and **Mohebbi** 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**, **Kozlowski**, **Noyes**, and **Mohebbi** from violating, directly or indirectly, or aiding and abetting violations of the law and rules alleged in this complaint;

3) Order defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi** 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 stock they received, plus pre-judgment interest;

4) Order defendants **Nacchio**, **Woodruff**, **Kozlowski**, **Noyes**, and **Mohebbi** 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** and **Woodruff**, in an amount to be determined by the Court;

5) Order that Defendants **Nacchio**, **Woodruff**, and **Mohebbi** 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.

s/ Polly Atkinson
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Certificate of Service

I hereby certify that on July 15, 2008, 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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s/ Polly Atkinson
Polly Atkinson

EXHIBIT A

1999 Standard IRU Sales

1999Q1	AllTell
1999Q1	Helvey Com, Inc.
1999Q1	MCI Worldcom Network Services, Inc.
1999Q1	Genuity
1999Q1	BTI
1999Q1	Hyperion
1999Q1	Global Crossing North American Networks, Inc.
1999Q1	MCI Worldcom Network Services, Inc.
1999Q1	GITG
1999Q1	Espire
1999Q1	Ameritech
1999Q1	Global Crossing North American Networks, Inc.
1999Q1	NEON
1999Q1	Interpath
1999Q1	RCN
1999Q1	Network Plus, Inc.
1999Q1	Caprock
1999Q1	Madison River-Gulf
1999Q1	ICG Equipment, Inc.
1999Q1	Bestel, S.A. de C.V.
1999Q1	Entergy
1999Q1	ATG
1999Q1	VPS
1999Q2	AllTell
1999Q2	Electric Lightwave, Inc.
1999Q2	Cisco Systems, Inc.
1999Q2	Helvey Com, Inc.
1999Q2	Madison River-Gulf
1999Q2	Genuity
1999Q2	Global Crossing North American Networks, Inc.
1999Q2	Hyperion
1999Q2	BTI
1999Q2	MCI Worldcom Network Services, Inc.
1999Q2	GITG
1999Q2	Ameritech
1999Q2	Global Crossing North American Networks, Inc.
1999Q2	Espire
1999Q2	NEON
1999Q2	Caprock
1999Q2	Bestel, S.A. de C.V.
1999Q2	RCN
1999Q2	Interpath
1999Q2	Network Plus, Inc.
1999Q2	ATG
1999Q2	Entergy
1999Q2	ICG Equipment, Inc.
1999Q2	VPS

1999Q3	Ardent, Inc.
1999Q3	Winstar Wireless, Inc.
1999Q3	Verio, Inc.
1999Q3	E. Volve Technology Group, Inc.
1999Q3	Destia Communications Services, Inc.
1999Q3	Infonet Broadband Services Corporation
1999Q3	MCI WorldCom Network Services, Inc.
1999Q3	Hyperion
1999Q3	Global Crossing North American Networks, Inc.
1999Q3	Madison River-Gulf
1999Q3	AllTell
1999Q3	BTI
1999Q3	GITG
1999Q3	Genuity
1999Q3	Global Crossing North American Networks, Inc.
1999Q3	Sprint
1999Q3	NEON
1999Q3	Bestel, S.A. de C.V.
1999Q3	RCN
1999Q3	Network Plus, Inc.
1999Q3	Espire
1999Q3	ICG Equipment, Inc.
1999Q3	Caprock
1999Q3	PacBell
1999Q3	Entergy
1999Q3	Primus Telecommunications, Inc.
1999Q4	Primus Telecommunications, Inc.
1999Q4	Electric Lightwave, Inc.
1999Q4	Verio, Inc.
1999Q4	Lucent Technologies, Inc.
1999Q4	TimeWarner
1999Q4	Genuity
1999Q4	Global Crossing North American Networks, Inc.

1999 IRU Swaps

1999Q1	FTV
1999Q2	ICG Equipment, Inc.
1999Q2	DTI
1999Q2	FTV
1999Q3	Worldwide360
1999Q3	FTV
1999Q4	Worldwide360
1999Q4	ICG Equipment, Inc.
1999Q4	Enron Broadband Services, Inc.
1999Q4	Worldwide360
1999Q4	DTI

1999 Equipment Sales

1999Q3	KMC
1999Q4	Cobra Sales

EXHIBIT B

2000 Standard IRU Sales

2000Q1	America Online, Inc.
2000Q1	Nortel Networks
2000Q1	Primus Telecommunications, Inc.
2000Q1	Verio, Inc.
2000Q1	North American Data Comm
2000Q1	Cable & Wireless (USA) Inc.
2000Q1	DTI
2000Q1	Winstar Wireless, Inc.
2000Q1	US Carrier
2000Q1	AllenTV
2000Q1	KPNQwest Corporate Development B.V.
2000Q1	Madison River-Gulf
2000Q2	DTI
2000Q2	Madison River-Gulf
2000Q2	Grande Communications Networks, Inc.
2000Q2	RSL COM U.S.A., Inc.
2000Q2	Network Plus, Inc.
2000Q2	Winstar Wireless, Inc.
2000Q2	ICG Equipment, Inc.
2000Q2	America Online, Inc.
2000Q2	Pac-West Telecomm, Inc.
2000Q2	Winstar Wireless, Inc.
2000Q2	BBO
2000Q2	Roseville
2000Q3	International Business Machines Corporation
2000Q3	Cable & Wireless Global Network Limited
2000Q3	BBO
2000Q3	Global Metro
2000Q3	KPNQwest Corporate Development B.V.
2000Q3	Winstar Wireless, Inc.
2000Q4	Teleglobe USA Inc.
2000Q4	Winstar Wireless, Inc.
2000Q4	Winstar Wireless, Inc.
2000Q4	Adelphia
2000Q4	Affiliated Computer Services, Inc. (ACS)
2000Q4	Genuity

2000 IRU Swaps

2000Q1	ACSI
2000Q1	ICG Equipment, Inc.
2000Q1	Worldwide360
2000Q1	PathNet
2000Q1	Singapore Telecommunications Ltd.
2000Q2	Singapore Telecommunications Ltd.
2000Q2	Metromedia Fiber Network Services, Inc.
2000Q3	Cable & Wireless (USA) Inc.
2000Q3	Cable & Wireless Global Network Limited

2000Q3	Network Plus, Inc.
2000Q3	Global Crossing North American Networks, Inc.
2000Q3	Cable & Wireless (USA) Inc.
2000Q3	KPNQwest Corporate Development B.V.
2000Q3	Enron Broadband Services, Inc.
2000Q4	NextLink
2000Q4	Network Plus, Inc.
2000Q4	Cable & Wireless (USA) Inc.

2000 IRU Equipment Sales

2000Q1	KMC
2000Q2	KMC
2000Q3	Genuity
2000Q4	Genuity
2000Q4	Cobra Sales

EXHIBIT C

2001 Standard IRU Sales

2001Q1	Hewlett Packard Company
2001Q1	BBO
2001Q1	Teleseon
2001Q1	OnFiber
2001Q1	Edward D. Jones & Co. L.P.
2001Q1	Microsoft Corporation
2001Q1	America Online, Inc.
2001Q1	Lucent Technologies, Inc.
2001Q1	Nortel Networks
2001Q1	ACSI
2001Q2	America Online, Inc.
2001Q2	Network Plus, Inc.
2001Q2	Progress Telecommunications Corporation
2001Q2	Broadban Utility Resources, L.P.
2001Q2	MCI WorldCom Network Services, Inc.
2001Q2	EMC Corporation
2001Q2	Primus Telecommunications, Inc.
2001Q2	Juniper Networks, Inc.
2001Q2	Lucent Technologies, Inc.
2001Q2	America Online, Inc.
2001Q2	KDL
2001Q2	Williams
2001Q2	Enkido
2001Q3	Flag Telecom Limited
2001Q3	Dukenet
2001Q3	Teleglobe USA Inc.
2001Q3	Looking Glass
2001Q4	America Online, Inc.
2001Q4	Looking Glass
2001Q4	Global Crossing North American Networks, Inc.
2001Q4	Looking Glass
2001Q4	El Paso Networks
2001Q1	Hewlett Packard Company
2001Q1	BBO
2001Q1	Teleseon

2001 IRU Swaps

2001Q1	KPNQwest Corporate Development B.V.
2001Q1	Global Crossing North American Networks, Inc.
2001Q1	Global Crossing North American Networks, Inc.
2001Q1	Singapore Telecommunications Ltd.
2001Q1	Redback Networks, Inc.
2001Q1	Global Crossing Ireland Limited
2001Q1	Global Crossing North American Networks, Inc.
2001Q1	New World Telephone Limited
2001Q1	New World Telephone Limited
2001Q1	Cable & Wireless (USA) Inc.

2001Q1	Winstar Wireless, Inc.
2001Q1	Telergy
2001Q1	Corvis
2001Q1	XO
2001Q2	Metromedia Fiber Network Services, Inc.
2001Q2	Tycom Network (US) Inc.

2001 IRU Equipment Sales

2001Q1	KMC
2001Q1	Genuity
2001Q1	Cobra Sales
2001Q2	KMC
2001Q2	Genuity
2001Q2	Arizona School Facilities Board
2001Q2	Cobra Sales
2001Q3	Genuity