

REDACTED

FILED WITH THE
COURT SECURITY OFFICER
CSO: [Signature]
DATE 10/31/06

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 05-cr-00545-EWN

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSEPH P. NACCHIO,

Defendant.

**THIRD SECTION 5 CIPA SUBMISSION
ON BEHALF OF DEFENDANT
(FILED IN CAMERA AND UNDER SEAL WITH THE COURT SECURITY OFFICER)**

Defendant Joseph P. Nacchio, by and through undersigned counsel, pursuant to Section 5 of the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3 § 5, and in accordance with leave granted during the sealed proceedings of October 12, 2006, respectfully submits this Third Section 5 CIPA Submission.

I. INTRODUCTION

During the sealed portion of the proceedings of October 12, 2006, the Court granted leave to Mr. Nacchio to make supplemental Section 5 CIPA submissions, in order to provide additional detail as to the classified information which he reasonably expects to disclose or cause to be disclosed at trial. In his first two § 5 CIPA submissions, Mr. Nacchio sought to provide notice of a developing and blossoming relationship with U.S. government clandestine agencies, which

REDACTED

led to lucrative contracts for Qwest and, more to the point of this proceeding, the prospect of lucrative government contracts which Mr. Nacchio reasonably believed would justify the publicly announced guidance during the relevant indictment period.

Mr. Nacchio presented evidence of contacts with four agencies: [REDACTED]

[REDACTED] At the October 12, 2006 Section 6 hearing, after the Court made findings and conclusions (later reduced to writing in its October 24, 2006 "First Memorandum Opinion And Order Pursuant To Section 6(a) Of The Classified Information Procedures Act" (First CIPA Order), the Court acknowledged Mr. Nacchio's need to make supplemental Section 5 submissions as to areas preliminarily found too vague to be admissible and/or based on newly acquired information.

In his Third Section 5 CIPA Submission, Mr. Nacchio seeks to provide the detail concerning [REDACTED] that the Court found wanting and, in addition, submits additional classified information for the Court to determine use, relevance and admissibility. This Third Section 5 Submission comprises all additional potentially classified information which is presently known to the defense and believed to be relevant.

Commencing October 13, 2006, Mr. Nacchio was further interviewed by his counsel, counsel has conducted factual research, counsel has reviewed documents and has conducted such witness interviews it was able to arrange on limited notice. Mr. Nacchio now provides the following additional classified information which he intends to present at trial.

II. [REDACTED]

In the First CIPA Order, the Court ruled that with very limited exception, Mr. Nacchio's

Section 5 proffer concerning [REDACTED] was relevant, admissible and could be used at trial.

However, the Court also directed Mr. Nacchio to provide as much detail as he could about his relationship with all the agencies. Consequently, we provide the following additional details.

In late 1997, Dean Wandry advised Mr. Nacchio that he had received a call from [REDACTED]

[REDACTED] Wandry reported that a general officer wanted to meet

Mr. Nacchio. [REDACTED] showed up two weeks later with a (three star) Lieutenant General and his aide, a First Lieutenant. The meeting took place in Denver, at 555 17th St. They told Mr.

Nacchio they'd heard about Qwest's new network. Mr. Nacchio described it to them and talked about his background at ATT, with which they were already familiar. They asked if the General and Wandry could then meet privately and Mr. Nacchio said yes.

The General and Wandry stepped into a separate conference room. The General told Mr.

Wandry that he ran the largest telecom operation in the world, he had looked at Qwest's network and he wanted to use it for government purposes. The General also told Wandry that he wanted

Wandry to meet with [REDACTED] within the next week at [REDACTED]. After the

people left that first meeting, Mr. Wandry told Mr. Nacchio that there was a big opportunity here for Qwest, and that [REDACTED] also wanted Mr. Nacchio to obtain a security clearance.

When Mr. Wandry arrived at [REDACTED] to meet [REDACTED] the next week, he

learned that he had already been granted security clearance and was "read in" to those programs relevant to [REDACTED] use of Qwest's network. Mr. Nacchio received his own clearance a short time later. [REDACTED]

¹ Mr. Wandry preceded Mr. Payne as manager of Qwest's government group.

The first Qwest project began with [REDACTED] putting out an industry wide Request for Information ("RFI"). Qwest, through Mr. Wandry, prepared a response to the RFI in an extremely short turn-around time. [REDACTED] quickly concluded that only Qwest had the capability to fulfill the contract requirements, which led to a phone call to Qwest shortly thereafter, informing them they would get the work. Mr. Nacchio then wanted to announce it publicly, but [REDACTED] refused permission. [REDACTED]

Mr. Nacchio understood at the time that this was the beginning of a relationship which had enormous potential for future work. This proved increasingly true as time went on. Indeed, in the Fall of 1999, when Mr. Wandry was leaving Qwest, he advised Mr. Nacchio that the relationship with [REDACTED] if managed correctly, would become extremely lucrative for Qwest.

When Mr. Payne replaced Mr. Wandry in August 1999, [REDACTED] was an still ongoing contract. [REDACTED] kept coming up with "Pearl Harbor" internet scenarios, that is to say, that the system might fail either through natural causes or under attack. These concerns caused the to continue expanding the project, purchasing multiple fiber pairs from Qwest in order to enhance redundancy.

In 1998, even before Mr. Payne took over for Mr. Wandry, [REDACTED] was expanded when

[REDACTED] came to Qwest with a project known at Qwest as [REDACTED]

identifies this project by the code name, [REDACTED] This was the construction of a fiber

optic network from Qwest's international gateway at [REDACTED]

where a local vendor then extended the network [REDACTED]

Mr. Wandry told Mr. Nacchio that [REDACTED] had a "big requirement" for a

fiber network to [REDACTED] Although the Court made a determination based only on the prior

submissions that the purpose of this network is not relevant, in this Third Section 5 CIPA

Submission we suggest that the jury must be allowed to hear about the purpose of the network in

terms of its vital role in the national defense, in order to appreciate the close role that Qwest

played with [REDACTED] In other words, [REDACTED]

[REDACTED] and the importance of these projects to national security was, in itself, a further

reason why Mr. Nacchio could reasonably and in good faith expect that promises of similar

future work from [REDACTED] were likely to be kept, particularly as they were for projects of such

importance.

Because of this [REDACTED] contract, Qwest acquired [REDACTED]

[REDACTED] again awarded this contract to Qwest as a sole source

project which might go as high as \$500 million. Although begun on Mr. Wandry's watch, the

project continued following Mr. Payne's arrival, in August 1999.

Our original submissions suggested that [REDACTED] generated revenue in late 1998 or

1999 in the range of \$150-200 million. It may be, however, that the revenue was generated in

1999, 2000 or perhaps even later since, although the project was initiated during Mr. Wandry's

tenure, it was put on hold due [REDACTED] and Senatorial maneuvering and did not get completed

until Mr. Payne was on the scene. We will not be able to be more precise until the return date of our 17(c) subpoena.

██████████ conducted semi-annual award fee ceremonies based on a company report card that rated over 60 parameters. The award fee was a \$1 million bonus. These events would often lead to conversations at a senior level, at which Qwest would be told that it had demonstrated unprecedented success in achieving its goals. Qwest achieved a rating of 96.

Qwest's success with ██████████ was so beyond the norm that Mr. Payne shared with Mr. Nacchio his increasing belief that ██████████ was serious about giving big new business to Qwest in 2001. ██████████ told Qwest that a rating of 96 was highly unusual and that most companies were only rated in the 70s. Indeed, ██████████ would come to Denver once a year and would want to meet personally with Mr. Nacchio. Mr. Payne would attend these meetings. Mr. Payne will testify to the unusually close nature of this relationship.

██████████ discussions with Qwest moved increasingly to work to be done OCONUS (outside continental United States). Mr. Nacchio met with ██████████

██████████ We are unable to give the exact dates of the meetings until the return of our Rule 17(c) subpoena, but we believe that they took place between September 2000 and February 2001. The discussions concerned the extension of the network that Qwest built for

into Europe and the Middle East. ██████████ represented that ██████████ was seriously interested in Qwest doing this project, which he stated would result in Qwest receiving greater revenue than in the prior project.

Qwest's European network ended at Prague, and Mr. Nacchio concluded that he would have to go out and get routes from there down through the Red Sea and into India to create a

fully global network.² Mr. Payne emerged from the meeting very optimistic about the prospect for future work, and he shared this with Mr. Nacchio.

The relationship between [redacted] and Qwest was sufficiently important to [redacted] that the Agency would constantly monitor Qwest's financial health, particularly after the "dot.com" bubble burst. Mr. Payne would get calls after a fluctuation in Qwest's stock price, seeking reassurance that Qwest remained ready, willing and able to continue performing for the agency.

On one occasion, Mr. Payne got a call from [redacted] during a time of media speculation over a Deutsche Telecomm bid for Qwest. [redacted] expressed concern at the prospect of a Qwest take over by a foreign company. This led to a meeting at which [redacted] sought to dissuade Qwest from considering such a merger by assuring Mr. Payne that there was great upside for the future.

III. [redacted]

Qwest had a few small contracts with [redacted] during Mr. Wandry's tenure at Qwest. In late December 1999, Mr. Payne met with Qwest government group staff members "to discuss the potential opportunity with the Maryland customer," with the expectation of Mr. "Nacchio becoming involved." (See Exhibit A, email from Robert Seidel to James Payne (December 28, 1999).) A follow-up meeting was held in mid-January 2000. A meeting with [redacted] personnel was scheduled for Mr. Nacchio's office in Denver for March 8, 2000, but was cancelled due to illness on the [redacted] side.

Qwest's serious involvement with [redacted] was initiated by its employees, and Mr. Payne was meeting with [redacted] headquarters as early as March

² Indeed, it was due to inter-connectivity among the agencies that Qwest's European network extended to Prague. [redacted]

2000. On July 6, 2000, Mr. Payne traveled to [REDACTED] to participate in a security briefing held in [REDACTED] (See Exhibit B, James Payne Outlook Calendar entry (July 6, 2000).) At this briefing, Mr. Payne was "read into" the various tickets which would allow them to discuss [REDACTED] programs with the agency. Next, in or around September 2000, as part of contract for an "Army customer" which wanted access to [REDACTED]

Mr. Payne had been working his way into a relationship with the agency. By early 2001, a new NSA project were being sought and had reached the point for Mr. Nacchio to join the effort to obtain the contract. This new NSA project was called "Groundbreaker," and Qwest's portion consisted of a \$50-100 million opportunity, planned for implementation in 2001, to construct a CONUS private fiber network and provide related network services. The contemplated work was similar to what Qwest had already done for [REDACTED]

[REDACTED]

In a March 13, 2001 email from Mr. Payne to a group including Mr. Nacchio, Mr. Payne

wrote:

Attached is a one page "opportunity profile" for the NSA "Groundbreaker" that was profiled in today's Wall Street Journal. Qwest is on the CSC team. On February 27 Joe Nacchio and I met with this agency. General Hayden, the NSA Director was not available but we did meet with the lead NSA official that looks at "Commercialization". Qwest joined the CSC team in early 1999.

In addition to the above team we are "ghosting" NSA Groundbreaker by exploring the utilization of existing Qwest contract vehicles. Network service under Groundbreaker has been delayed until 2002.

(See Exhibit C, email from James Payne to a group including Joseph Nacchio (March 13, 2001)

(Bates No. QDSECAM0867435).)

Qwest was a sub-contractor/member of the Groundbreaker "Eagle Alliance," headed by managing partner Computer Sciences Corporation ("CSC"). The Groundbreaker project grew out of the aftermath from a fire at Ft. Meade which destroyed a large NSA data center. It was thereafter decided to outsource much of this work to private industry. The project was described in a July 31, 2001 press release issued by CSC as providing "secure and non-secure telephony and network services, distributed computing services, and enterprise and security management of the non-mission information technology infrastructure at NSA headquarters and surrounding offices." (See Exhibit D, CSC press release (July 31, 2001) (<http://www.csc.com/newsandevents/news/1454.shtml>); see also Exhibit E, NSA press release (July 31, 2001) (<http://www.nsa.gov/releases/relea00034.crm>).)

As the March 13, 2001 email corroborates, Qwest was in active negotiations with NSA during February and March -- the heart of the time period when Mr. Nacchio was trading. Indeed, Mr. Payne's email makes clear that Qwest was "ghosting" the Groundbreaker project, which meant that Qwest was looking for ways to obtain an even greater portion of the work for itself, using "existing Qwest contract vehicles" such as [REDACTED]. We intend to prove that, had Qwest succeeded, it would have received a contract to build a private, fiber optic network for NSA similar to the ones it had already created for [REDACTED].

It was this pending opportunity that lead to Mr. Nacchio's first meeting with NSA, which took place on February 27, 2001 at the NSA Headquarters at Ft. Meade, Maryland. Mr. Nacchio

expected to discuss the \$50-100 million "Groundbreaker" opportunity at this meeting, and he thought great progress was made on the substantive discussions.

Mr. Nacchio

walked out thinking that the NSA \$50-100 million opportunity remained viable.

It wasn't until July 31, 2001, when Mr. Nacchio saw the public announcement of the Groundbreaker contract with Qwest left off the list of subcontractors, that he realized that his expectation for the work had been frustrated. We intend to prove that Mr. Nacchio's expectations during the period of his trading were reasonable

company prior to the merger with US West.

In a July 26, 2006 Amended Complaint that was filed in

McMurray, et al v. Verizon Communications Inc., et al, Index No. 06 CV 3650 (LBS)

(S.D.N.Y.)³ (see Exhibit F), the following allegations were made:

- “Within eleven (11) days of the onset of the Bush administration, and at least seven (7) months ~~prior to the attacks of September 11, 2001~~, defendant ATT began development of a center for monitoring long distance calls and internet transactions and other digital information for the exclusive use of the NSA.” *Id.*, ¶ 81.

- “The center was put into development by ATT following a proposal by the NSA for the construction and development of a network operations center identical to ATT’s own network operations center located in Bedminster, New Jersey for the exclusive use of the NSA.” *Id.*, ¶ 82.

- “Such a data center would also enable the NSA to tap into any call placed on the ATT network and to monitor the contents of all digital information transmitted over the ATT network.” *Id.*, ¶ 85.

- “Said data center would enable the NSA to tap into any phone line and to monitor any digital transfer of information on ATT’s networks including voice telephone calls, facsimile transmission and all internet traffic.” *Id.*, ¶ 87.

- “The NSA program was initially conceived at least one year prior to 2001 but had been called off; it was reinstated within 11 days of the entry into office of defendant George W. Bush.” *Id.*, ¶ 89. “The NSA program was code-named *Pioneer-Groundbreaker* and was also

³ By August 9, 2006 Order of the Multidistrict Litigation Panel, this matter was among 16 cases transferred to the Northern District of California for coordinated or consolidated pretrial proceedings.

known at ATT Solutions division as GEMS (Groundbreaker Enterprise System)." *Id.*, ¶ 90 (emphasis added).

We have been told by plaintiff's counsel in the *McMurray* matter that these allegations have been confirmed by an AT&T employee who personally saw documents corroborating these facts. We thus intend to corroborate the accounts of Messrs. Wandry, Nacchio and Payne,

[REDACTED]


We recognize that the Court, on the

basis of our earlier Section 5 submission, has found that submission "too vague, conclusory and general to form the basis for any good faith influence that NSA was contemplating any contract with Qwest during the relevant time period." (See First CIPA Order at 22) Our present submission clearly overcomes our previous failure. The interview of Payne and the Payne email (Exhibit C) certainly provide the substantiation the Court found lacking in the earlier submission. Our present Rule 17(c) application, if granted, can provide even more.

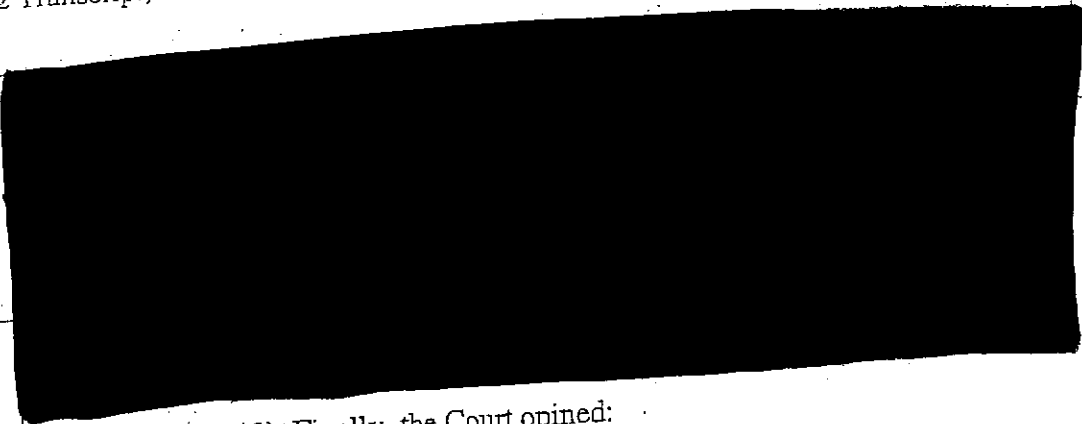
So substantiated, this proffer conforms to the Court's observations that a ruling of relevance would depend on the authentication that a contract between Qwest and NSA was more than a "gleam in the eye" or just a supposition. During the October 12, 2006 closed hearing, the Court stated:

It depends, it really depends. Suppose that the truth is that there was a \$200 million contract that NSA and Payne had been talking about, and Payne is reporting back to Nacchio and saying, we've got this \$200 million contract, it's going to be awarded to us in the next six months. And then Nacchio goes to this meeting in Washington, D.C., thinking he's going to firm up the contract, close the deal, and

[REDACTED]

 as he represents. And he says, no, and the contract suddenly dries up, that's relevant.

(October 12 Transcript, 65:1-13) The Court went on to note:

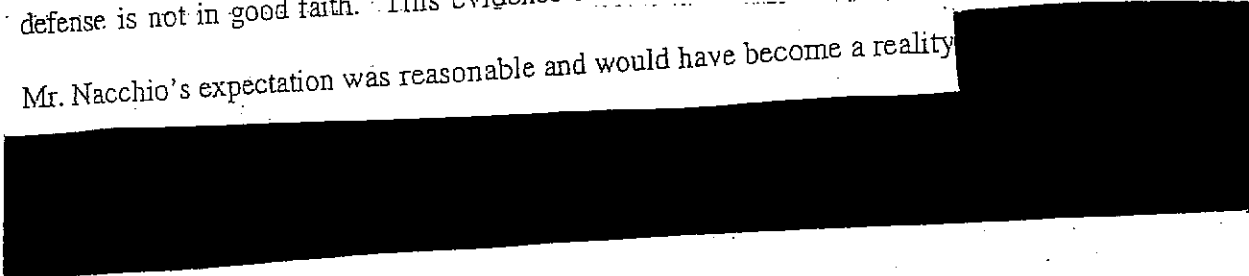


(October 12 Transcript, 66:7-18) Finally, the Court opined:

All right. I understand what is being said now. And the Court believes that it is still relevant. ~~If there was such a contract to be awarded during the relevant time and as a matter of fact that contract was not awarded because of Mr. Nacchio's reactions, then the fact that it was not awarded or that he did not learn of the reasons until after May 29 is something that certainly comes out in front of the jury and can be evaluated by the jury, but it doesn't make it inadmissible.~~

(October 12 Transcript, 68:9-17)

The evidence is also relevant for another reason. Specifically, the government persists in offering evidence that Qwest did not, in fact, achieve significant revenue in 2001 from classified government contracts, implying that Mr. Nacchio's expectations were unreasonable and his defense is not in good faith. This evidence counters any such inference by demonstrating that Mr. Nacchio's expectation was reasonable and would have become a reality



IV. [REDACTED]

Mr. Payne told Mr. Nacchio sometime in 1999 that there was a classified \$500 million world-wide RFI that would be awarded in pieces. [REDACTED]

[REDACTED] Mr. Nacchio knew, from Messrs. Wandry and Payne, that the agencies talked to each other about Qwest's capabilities and Mr. Nacchio understood that Qwest's prior successes for [REDACTED] had likely been conveyed [REDACTED]. Consequently,

Mr. Nacchio had a reasonable expectation that Qwest would receive some portion of this \$500 million contract.

[REDACTED] bid set up
By mid-August 2000, Mr. Payne's staff was working on a [REDACTED] as a one-year contract with four one-year renewal options, the overall value of which could exceed \$50 million. (See Exhibit G, email from Thomas Mallaney to Roger Hoaglund (August 17, 2000) (Bates No. QILL0002154762).) Mr. Payne's key staff person was Joe Canale

[REDACTED]
(See Exhibit H, email from Liza Burns to Chris Howell (January 22, 2001) (Bates No. QILL0008093640)).

[REDACTED] Mr. Payne explained that the contract improved the

[redacted] communications abilities from the post-World War II era to current technology, and that [redacted] was enthusiastic about it.

[redacted]

From [redacted] September 2000

through 2001, Mr. Payne shared with

wanted to extend what Qwest did in

Mr. Nacchio that there was a high probability that

[redacted] Europe to other parts of the world, including South America. [redacted] was extremely

pleased with the concept of private [redacted] networks, and asked Mr. Payne if Qwest could do

in South America what it was doing in Europe.

[redacted]

Indeed, Mr. Payne knew that five or six agencies

were all trying to solve problems in Europe, the Middle East and elsewhere, and they were

talking about the possibility of giving it all to Qwest.

Mr. Nacchio recalls the prospect of [redacted] business from the South America project, over

which Mr. Payne was in discussions [redacted] from the latter part of 2000 right through

the first half of 2001. These discussions prompted Mr. Nacchio to order and purchase capacity

in South America. [redacted] told Qwest it wanted a continental backbone capacity in South

America and back to Washington, D.C., [REDACTED] (See Exhibit I, email from William Heil to James Payne (September 27, 2001) (Bates Nos. QDSEC0563612/QILL0005317321).) This would be the same type of network as

which were up-front capital intensive and could "easily" be in the \$100-200 million range.

"Most likely" access cities

[REDACTED] were:

[REDACTED] "Good to have" cities

[REDACTED] were:

[REDACTED] (Id.)

Accordingly, discussions [REDACTED] over the award of a South American network continued unabated, although the project was "not coming together" as quickly as Qwest had expected in the early part of the year. (See Exhibit J, email from Roger Hoaglund to Dan Nimitz

dated July 3, 2001) That Qwest was frustrated at delays in July 2001 actually corroborates Mr.

Nacchio's recollection that, during the relevant period of the indictment, he had reason to believe that this contract would be forthcoming during 2001. The breadth of the expected contract is

further corroborated by a July 9, 2001 email, which noted that "[m]any of the RFPs will require both CONUS and OCONUS circuit pricing." (Exhibit K, email from Richard Fernandez to

Roger Hoaglund (July 9, 2001). In other words, the network would extend from the United States (CONUS) into South America (OCONUS). The constant inter-connectivity between

agencies is illustrated by the question in the email, "[w]hy can't we get it cheaper from [REDACTED]

[REDACTED] of course, was the Qwest code name for [REDACTED]

[REDACTED] to the [REDACTED]

[REDACTED] network.

V. DISA

When [redacted] entered into its contract with Qwest for the network which became known as [redacted] it included an option for another clandestine agency to build its own private fiber optic network. Impressed by [redacted] success and upon the recommendation of [redacted] [redacted] took advantage of this and exercised the option. Dean Wandry informed Mr. Nacchio that DOD wanted to have Qwest build a CONUS fiber network, as Qwest had done for [redacted]. This was necessarily prior to August 1999, when Payne succeeded Wandry.

[redacted] was so successful that, at some point, a DISA representative told Mr. Payne that it would prefer that Qwest didn't do anything but classified work in the area of private fiber networks.

Accompanied by Mr. Payne, Mr. Nacchio met twice with General Raduege in his DISA capacity, first in June 2000 and again in September 2000 (Mr. Nacchio also met with General Raduege as part of their joint participation in NSTAC). The June 2000 meeting was at an army base in northern Virginia. [redacted] was already well under way and Mr. Nacchio knew this was an outgrowth from Qwest's earlier success with [redacted]. They discussed business opportunities with DISA.

The second meeting occurred in the fall of 2000. It was attended by Messrs. Nacchio and Payne, the latter having had earlier meetings with General Raduege. Mr. Nacchio knew that [redacted] was still expanding in CONUS, and there was now interest further expanding the network OCONUS, to Europe. Mr. Nacchio left the second meeting confident that significantly more business would be forthcoming from DISA. General Raduege was responsible for all DOD telecommunications contracts. Ferrari and Moby Dick are each different internal Qwest code

names for this effort. Payne had been led to believe that DISA could probably justify sole sourcing this to Qwest and avoid public bidding, which confirmed Mr. Nacchio's expectations for significant DISA revenue in 2001.

Indeed, within a month of the September 2000 meeting, Mr. Payne's staff was estimating a \$100 million opportunity and preparing a "White Paper" and pricing for presentation to DISA for dark fiber to replace the existing DOD network throughout the UK, Belgium, Germany and

Italy. (See Exhibit L, email from Tom Legare to Penny Bosse (October 29, 2000) (Bates Nos. QWSEC0005138/QILL0005815158).) There are a series of key documents which track the evolution of DISA's negotiations with Qwest. In a January 15, 2001 email that both lays out the

DISA opportunity and once again illustrates the inter-connectivity among the agencies, Mr.

Payne stated:

[A] brief summary of a \$100+M IRU opportunity my team is presently negotiating. This new IRU is indirectly linked to the [redacted] program.

* * *

I am in negotiations with another agency that is looking closely at [redacted] and intends to transact a [sic] IRU that could exceed \$100+M in revenue *this year* (see below). ... Perhaps because of the [redacted] program award, the DOD has suddenly awoken to the fact that their costs and strategic investments in a broader world network is not where it should be. My team has been working with the DOD customer and various classified agencies to move quickly to implement a world wide network using existing Qwest contract vehicles. With the new Bush Administration's emphasis on increased investments in DOD infrastructure, the timing on the IRU is good.

* * *

As you can see this is a very large opportunity that could scale up or down due to the new Administration and the various political maneuvering associated with a program of this size. Timing and speed are key factors in this IRU strategy. ... I can only repeat that this program is the wedge that opens all of the other

agencies to Europe. All of my current and potential customers are looking intensely at [REDACTED]

(See Exhibit H (emphasis added).)

Mr. Payne's reference in January 2001 is to DISA's intention to award Qwest in excess of \$100 million revenue in 2001. He also explains the possibility that Qwest can accomplish this work in a variety of ways "using existing Qwest contract vehicles," i.e., by expanding DISA's own [REDACTED] network OCONUS, or by piggy-backing on the [REDACTED] European network Qwest was building at that very moment [REDACTED]

[REDACTED] This, again, establishes the inter-connectivity of the agency contracts and work.

As talks progressed through the first half of 2001, DISA began expanding the breadth of the work it wanted done. It decided to have Qwest install [REDACTED]

provide connectivity to U.S. bases." (Exhibit M, email from George Johnston to Liza Burns (February 27, 2001) (Bates No. QILL0008093655).) In other words, DISA wanted a redundant network, which would significantly increase up-front costs (and therefore revenue) beyond the \$100 million plus to which Payne had referred the month before. Mr. Payne's staff was of the opinion that, "[b]ottom line is that this will be BIG and will require faster response time than we have experienced on [REDACTED] with local tail providers." (*Id.* (emphasis in the original)) Qwest was

focusing on "what sections we can sell the Government today." (See Exhibit N, email from Mike Mannion to Roger Hoaglund (May 11, 2001) (Bates No. QILL0002119686).)

As time went on, Mr. Payne's group continued to raise its internal projection of project "Ferrari" revenue from \$100 plus million to more than \$200 million (See, e.g., Exhibit O, email from Frank Lukas to Roger Hoaglund (June 21, 2001) (Bates No. QILL0002124737).) Indeed,

although DISA "originally ... expected the number to come in at around \$120 M," Mr. Payne's

staff was contemplating that revenue from the project would be fully \$246.3 million, and only be kept that low by excluding Italy. (Exhibit P, email from Frank Lukas to Jeffrey Hackman (June 18, 2001) (Bates No. QILL0002123744).)

Significantly, despite the fact that Mr. Payne's team discussed project strategy and ways in which the contract could be implemented with non-classified personnel at Qwest, none of these projected revenues were included by Payne in his budget forecasts, and certainly not in the public guidance which had first been issued on September 7, 2000.

VI. NSTAC

We have not yet been able to interview Mr. Clarke. Nonetheless, we do have additional materials for this submission. As we have previously submitted, during the first half of 2001 Mr. Nacchio understood that GovNet was to be a "fast tracked" \$2 billion project that would be implemented in six months. This is substantiated by contemporaneous public documents. In October 2001, *OMB Watch* quoted Mr. Clarke as saying that "planning for GOVNET actually started as far back as December 2000." (See Exhibit Q, relevant pages from *OMB Watch*, vol. 2 No. 21 (October 21, 2001) (<http://www.ombwatch.org/articleprint/961/-1/137>).)

Mr. Clarke introduced himself to Qwest in late 1999 or early 2000, visiting Mr. Payne at Qwest's offices. He revealed to Mr. Payne his knowledge about the classified work the company had already done for various agencies, and impressing Mr. Payne with his vision for a future private network that would be impervious to cyber-warfare and government-wide, sweeping up both classified and non-classified agencies. This vision became known as GovNet. Mr. Payne arranged for Mr. Clarke to tour Qwest's "CyberCenter" in Sterling, Virginia on June 22, 2000.

Qwest's relationship with Mr. Clarke continued to improve, and Mr. Payne was urging Mr. Nacchio's appointment to NSTAC in place of former US West CEO Sol Trujillo. As early as June 2000, Mr. Payne was explaining the importance of Mr. Nacchio's participation on NSTAC: "Though no one 'sells' anything at the NSTAC there is certainly ample opportunity to position Qwest for even greater classified and [sic] programs in the DD but it also elevates Qwest's general status in my marketplace." (Exhibit R, email from James Payne to Michael Tarpey (June 23, 2000) (Bates No. QDSECAM0867457).) In January 2001, Mr. Payne learned that Mr. Nacchio's nomination to NSTAC had been upgraded to "Vice-Chair." Mr. Payne was encouraged because a new administration was coming in, such a position was highly regarded in the DOD community, and Gen. Raduege was the senior DOD interface with NSTAC. Messrs. Payne and Nacchio had already met twice privately with the General on DISA business, in June and September 2000.

The March 7, 2001 meeting in the White House Situation Room was attended by Condoleeza Rice, Richard Clarke, General Raduege, Messrs. Nacchio and Payne, and also representatives from Raytheon and GTE. At this meeting, Mr. Clarke asked the group if it was possible to create a network, then proceeded to describe [REDACTED] Mr. Payne hadn't known that Mr. Clarke had the "need-to-know" that would have allowed him to know the details of this project.

After describing his "hypothetical" network, Mr. Clarke asked the group what kind of company could do this. Everyone said no one could, it couldn't be done. Mr. Nacchio, instead of saying "I already built this network twice, once for [REDACTED] and once for DISA," instead simply described how it could be done. Later, Paul Kurtz (a NSC staffer) told Mr. Payne that Mr.

Clarke did this because he wanted to see Mr. Nacchio's response. Their conclusion was that Mr. Nacchio handled it appropriately, and this cemented Mr. Clarke's decision to move Mr. Nacchio into the NSTAC chairmanship.

Like [REDACTED] what Mr. Clarke had in mind for GovNet was an "airgap network," impervious to outside attack. The network was driven by IRUs in order to create a private government intranet. At the March 7, 2001 meeting, Mr. Clarke talked about the vulnerabilities of the internet, the "Pearl Harbor" scenario. This led the Qwest representatives to conclude that substantial work was in the offing.

In the first half of 2001, Mr. Clarke had repeated conversations with Mr. Nacchio and other Qwest employees about plans for GovNet. Mr. Clarke asked Mr. Nacchio how quickly could the network be implemented. Mr. Nacchio said in six months. Indeed, as has been shown, when the RFI finally came out it called for exactly that and Mr. Clarke was later criticized for believing it could be done in that short a time frame. It was Mr. Clarke who told Mr. Nacchio it would run about \$2 billion, based on Mr. Clarke's knowledge of the agencies involved. This seemed reasonable to Mr. Nacchio because he knew about the agencies he had worked with, their budgets and their spending.

Mr. Clarke asked Mr. Payne to arrange a follow-up meeting with Mr. Nacchio, in Denver. Part of the trip was an inspection of Qwest's operational facilities. Scheduling difficulties resulted in the meeting taking place at the Anschutz Ranch on May 9, 2001.

Things had advanced to the point where a meeting was scheduled for Mr. Payne to brief Assistant Secretary of Defense Wolfowitz at the Pentagon on NSTAC developments. Messrs.

Nacchio and Payne attended a June 5, 2001 NSTAC dinner, which was followed by a June 6, 2001 breakfast at the White House and then a working session, and things continued to go well.

As we have previously noted, it was only subsequently that Mr. Payne learned that Mr.

Clarke's efforts would not bring the immediate results he and Mr. Nacchio had been led to expect, and the entire landscape changed after the events of September 11, 2001.

VII. EXECUTIVE SECURITY CLEARANCES

Messrs. Nacchio and Payne held top secret clearances during the relevant period. Dean

Wandry did so for the earlier period. Mr. Mohebbi had no security clearance of any kind during

the entire period relevant to this case. We will prove that his application for "top secret"

clearance, made in 1999, was shelved until July 16, 2001. Even after obtaining that clearance,

Mr. Mohebbi was not "read in" to any of the programs for which Qwest was doing classified

work until February 25, 2002. And he was never authorized with the "need to know" which

would have allowed him access to the details of the classified work Qwest was doing for the

various agencies. In sum, during the period of August 2000 to September 2001, Mr. Mohebbi

was not allowed to know anything about the prospective classified work referred to in the

Section 5 CIPA submissions.

It will be recalled that, following the November 2 and 17, 2000 letters from Mr.

Nacchio's counsel to the Department of Justice, explaining that Mr. Nacchio had classified

financial information not in the public guidance that was relevant to the impending "inside

trading" charge contemplated by the Department of Justice, Mr. Mohebbi was hurriedly

interviewed by the government on November 14, 2005. According to his 302, he advised the

government that he "had a top secret clearance while he was employed at Qwest

Communications International, Inc." and he further stated that when he "was giving his warnings to Joseph Nacchio about the company, he took into account all business, classified or not." He also is reported to have assured the government that "all federal contracts which were potential were identified on the initiative sheets."

These statements are not correct and the government's assertion -- based on the government's interviews with Mr. Mohebbi and other Qwest personnel who also lacked any security clearances -- that all of the prospective classified contracts were incorporated in both the annual guidance and the quarterly budgets is not correct. And we wish to introduce the material in our CIPA submissions to prove the basis of Mr. Nacchio's good faith belief in the validity of the guidance, in spite of Mr. Mohebbi's contrary views, and those of others who were unaware of the contents of these CIPA submissions.

VIII. CONCLUSION

For the foregoing reasons, Mr. Nacchio respectfully requests that: the Court find that the facts set forth herein are relevant, admissible and may be used at trial in this matter.

Respectfully submitted this 31st day of October, 2006.

s/Herbert J. Stern

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2006, a true and correct copy of the foregoing THIRD-SECTION 5 CIPA SUBMISSION ON BEHALF OF DEFENDANT (with Exhibits A-E) was filed and served by hand delivering same, in Washington, D.C., to the Court Security Officer appointed by the Court in this within matter.

s/Edward S. Nathan

Edward S. Nathan

EXHIBIT A

From: Seidel, Robert W
Sent: Tuesday, December 28, 1999 2:50 PM
To: Payne, James; Peed, David; Cole, Donald
Cc: Terwilliger, Melissa
Subject: Maryland Opportunity Meeting Email

I'd like to get the four of us together next week to discuss the potential opportunity with the Maryland customer. Don and I had a very informative meeting last week and I met with Rand Allen and Scott McCaleb, Wiley, Rein & Fielding, today to discuss this issue. They will be looking at the issue from a more legal perspective (assumption of liability, etc.), but there are operational issues that need to be examined. Don's counsel in this regard was invaluable. Especially with Nacchio becoming involved, we need to fully examine all of the potential risks and rewards associated with pursuing this endeavor. Melissa, can you coordinate the various calendars to schedule the meeting?

Thanks.

Skip Seidel

Only the named recipient(s) should read this e-mail. If you are not a named recipient or received this e-mail by mistake, please notify me immediately by reply e-mail and delete the message.

EXHIBIT B

J. Specter

Updated: Security Briefing

ct: [redacted]
ion: [redacted]

Thu 7/6/2000 8:30 AM
Thu 7/6/2000 11:30 AM
Out of Office

v Time As:
rrrence: (none)

ting Status: Accepted

We need to be there by 8:30 at the latest. I will coordinate with you so we can carpool.

Tks.

rv/George,

You have been scheduled for your [redacted] security briefing on July 06, 2000 at 8:30 a.m. You need to be badged through [redacted] You should report exit off of the [redacted] This exit ramp (this is their main visitor control center at [redacted]) no later than 8:10. You can get to [redacted]

At the first traffic light, turn right and look for someplace to park your car. Parking can sometimes be a problem and you may have to walk a little bit. Please ensure that you have a picture ID to present to the security officer. A visit cert was sent in for you to attend this briefing. Once badged, you need to proceed to [redacted] The on-site security guard can provide you directions to the briefing room. The briefing starts promptly at 8:30 a.m. and concludes at approximately 11:15 am. They will not accept anyone who is late.

Please let me know whether you have any questions or concerns.

Dave
4809

EXHIBIT C

From: Payne, James
Sent: Tue, 13 Mar 2001 15:16:14 GMT
To: Hall, Tom W; Nacchio, Joe; Jacobsen, Stephen
CC: Seeger, Howard; Johnston, George; Hallett, Audrey; Kaplow, Wes
BCC: Peed, David; Folderauer, Kenneth M
Subject: WSJ Article on NSA "Groundbreaker"

Attached is a one page "opportunity profile" for the NSA "Groundbreaker" that was profiled in today's Wall Street Journal. Qwest is on the CSC team. On February 27 Joe Nacchio and I met with this agency. General Hayden, the NSA Director was not available but we did meet with the lead NSA official that looks at "Commercialization". Qwest joined the CSC team in early 1999.

In addition to the above team we are "ghosting" NSA Groundbreaker by exploring the utilization of existing Qwest contract vehicles. Network Services under Groundbreaker has been delayed until 2002. Qwest is the current DIA provider for NSA and we are pressing NSA to work a CyberCenter solution possibly independent of the above contract.

James F.X. Payne
Senior Vice President
Government Systems

2000 Federal Computer Week
Federal 100 Winner

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james.payne@qwest.com

Qwest
"10 Hot Companies to Watch in Federal Market"
Federal Computer Week October, 1999

EXHIBIT D



Newsroom

News Release -- July 31, 2001

CSC-LED JOINT VENTURE WINS NATIONAL SECURITY AGENCY (NSA) GROUNDBREAKER INFORMATION TECHNOLOGY CONTRACT

750 NSA Employees to Transition to the Private Sector

EL SEGUNDO, Calif., July 31 -- Computer Sciences Corporation (NYSE: CSC) today announced that a CSC-led joint venture, the Eagle Alliance, has been awarded the Groundbreaker contract by the National Security Agency (NSA). CSC is the managing partner of the Eagle Alliance, which was formed in partnership with Logicon, a Northrop Grumman company. The contract is estimated to be valued by NSA in excess of \$2 billion if all options are exercised. The contract has a potential duration of 10 years.

The Eagle Alliance and its subcontractor companies will provide secure and non-secure telephony and network services, distributed computing services, and enterprise and security management of the non-mission information technology infrastructure at NSA headquarters and surrounding offices. When the contract takes full effect in November, CSC will assume responsibility for transitioning approximately 750 NSA employees into the Eagle Alliance and begin a modernization of the agency's information technology infrastructure.

The Eagle Alliance was created for and dedicated to NSA and the Groundbreaker program. It will provide a cost-effective model for fulfilling NSA's requirements and provides a single framework for the delivery of services by all Eagle Alliance members. With full financial backing of CSC and Northrop Grumman, the Eagle Alliance provides a single point of accountability -- the senior executive, Timothy J. Sheahan. In his new position, Sheahan will report to Tom Robinson, president of the Defense Group within CSC's Federal Sector and chairman of the alliance.

The Eagle Alliance also includes Strategic Alliance Partners -- key members of the delivery team from the beginning, who are committed to the success of Groundbreaker: General Dynamics for telephony and networks, Keane Federal Systems for distributed computing and enterprise management support, as well as Omen Inc (a small business) to fully integrate the members of the Eagle Alliance Small Business Consortium. Other companies, such as ACS Defense, BTG, CACI, Compaq, TRW, Windermere, Fiber Plus, Verizon and Superior Communications make up the team of Technology and Service Delivery Partners.

"We are committed to supporting NSA in this landmark opportunity to use our Tier 1 outsourcing credentials to modernize and streamline their operations and reduce costs," said Van B. Honeycutt, CSC's chairman and chief executive officer. "This award represents a continuation of the trend among government agencies to utilize best commercial practices and employ information technology to help meet operational objectives while making better use of IT budgets."

"We will support the requirements of the National Security Agency in a second-to-none secure environment," said Paul Cofoni, CSC's Federal Sector president. "Our team understands the task at hand, and together we will provide strong information

James P. Sullivan
Director,
Communications
Federal Sector
703.641.2588
> Email

Frank Pollare
Director, Public
Information
Corporate
310.615.1601
> Email

Bill Lackey
Director, Investor
Relations
Corporate
310.615.1700
> Email

technology expertise, proven best commercial practices and large-scale systems management to meet NSA's objectives."

CSC will leverage its global capabilities to bring the full power of the company in supporting NSA.

"Our overall solution for NSA capitalizes on CSC's experience in developing strategies, implementing technologies and achieving service delivery levels for large, global clients," added Sheahan. "The combination of our extensive outsourcing experience, information security expertise, and 40-year heritage of supporting the federal government ideally positions us to understand the overall needs of the National Security Agency and deliver the results they require."

About CSC

Computer Sciences Corporation, one of the world's leading consulting and information technology (IT) services firms, helps clients in industry and government achieve strategic and operational results through the use of technology. The company's success is based on its culture of working collaboratively with clients to develop innovative technology strategies and solutions that address specific business challenges.

Having guided clients through every major wave of change in information technology since 1959, CSC combines the newest technologies with its capabilities in consulting, systems design and integration, IT and business process outsourcing, applications software, and Web and application hosting to meet the individual needs of global corporations and organizations. With nearly 68,000 employees in locations worldwide, CSC had revenues of \$10.5 billion for the twelve months ended March 30, 2001. It is headquartered in El Segundo, California. For more information, visit the company's Web site at www.csc.com

EXHIBIT E



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

NSA PRESS RELEASE
31 July 2001
For further information, contact:
NSA Public and Media Affairs,
301-688-6524

National Security Agency Outsources Areas of Non-Mission Information Technology to CSC-Led Alliance Team

The National Security Agency (NSA) has established an official government-industry partnership for Information Technology Infrastructure (ITI) services within the areas of Telephony, Distributed Computing, Enterprise Management, and Networks by awarding a prime contract on 31 July 2001 to the CSC-led Alliance Team. Today's acquisition, known as Project GROUNDBREAKER, concludes an extensive procurement process, following a 15-month Feasibility Study, announced in a June 2000 Press Release, and a managed competition among industry leaders, announced in a March 2001 Media Update. The winning Alliance Team, self-named as Eagle Alliance, is a CSC-led joint venture in partnership with Logicon, a Northrup Grumman company. Additionally, the team comprises strategic alliance partners that include General Dynamics for telephony and networks, Keane Federal Systems for distributed computing and enterprise management support, and Omen, Inc., a small business that will integrate the Eagle Alliance small business consortium. Technology and Service Delivery Partners for this Alliance Team include ACS Defense, BTG, CACI, Compaq, TRW, Windemere, Fiber Plus, Verizon, and Superior Communications.

As an agency in transition, NSA continues to address the technology explosion of the past decade by leveraging the expertise of the commercial marketplace through an aggressive reformed acquisition strategy. The Eagle Alliance Team will be responsible for redefining and implementing new ITI processes and end-to-end solutions under a contract that has a potential duration of 10 years with a potential value that exceeds \$2 billion.

"The ability of NSA to perform its mission depends on an efficient and stable ITI, one that is secure, agile, and responsive to evolving mission needs in balance with the requirements to recapitalize and refresh technology," NSA Director Lieutenant General Michael V. Hayden, USAF, said. "This outsourcing partnership for these four ITI areas supports our transformation efforts. It allows us to refocus assets on the Agency's core missions of providing foreign signals intelligence and protecting U.S. national security-related information systems by turning over several ITI services for industry's purview."

This government-industry partnership will result in service quality improvements, continuous modernization of NSA's ITI, as well as a cost avoidance for the Agency over the duration of the contract. It is also an employee-friendly approach to redefining NSA's internal corporate structure in that the contractors will receive monetary incentives to hire a significant number of Agency employees, and offer them comparable or better pay, benefits, and opportunities. Over the contract duration, Eagle Alliance will manage the selective ITI areas while undergoing continuous governance and monitoring by NSA based on Service Level Agreements that identify the performance levels required. NSA will continue to provide transition services (e.g., career counseling, resume preparation, and seminars) for employees interested in moving to the private sector under this contract.

The contract is expected to be fully operational in November 2001, 2 months ahead of the original schedule.

America's Constitution and Code of Ethics
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EXHIBIT F