IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 05-cr-00545-EWN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH P. NACCHIO,

Defendant.

REPORTER'S TRANSCRIPT
TRIAL TO JURY
VOLUME ONE

Proceedings before the HONORABLE EDWARD W. NOTTINGHAM, Judge, United States District Court for the District of Colorado, commencing at 12:04 p.m., on the 20th day of March, 2007, in Courtroom A1001, United States Courthouse, Denver, Colorado.

THERESE LINDBLOM, Official Reporter
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APPEARANCES

For the Government

CLIFFORD B. STRICKLIN, ESQ.
JAMES O. HEARTY, ESQ.
KEVIN TRASKOS, ESQ.
United States Attorney's Office
1255 17th Street
Denver, Colorado
LEO WISE, ESQ.
COLLEEN CONRY, ESQ.
U.S. Department of Justice
1400 New York Avenue
Washington, D.C.

For the Defendant

HERBERT J. STERN, ESQ.
JEFFREY SPEISER, ESQ.
EDWARD NATHAN, ESQ.
MARK RUFOLO, ESQ.
Stern & Kilcullen
75 Livingston Avenue
Roseland, New Jersey
JOHN M. RICHILANO, ESQ.
MARCI GILLIGAN, ESQ.
Richilano & Gilligan
1800 15th Street
Denver, Colorado

P R O C E E D I N G S

THE COURT: Good afternoon, members of the jury. We're ready to hear the opening statements of the lawyers.

Mr. Hearty.

OPENING STATEMENT

MR. HEARTY: May it please the Court. Counsel.

Ladies and gentlemen of the jury, good afternoon.

This is a case about cheating. Joe Nacchio, who is the chief executive officer at Qwest Communications, he sold 100 million worth of Qwest stock, and when he knew about problems at Qwest, problems that people outside Qwest did not know.

And after learning about those problems, in December 2000, Mr. Nacchio sold his stock faster than he ever sold it before.

Joe Nacchio is charged with 42 counts of insider trading for selling $100 million worth of Qwest stock in the first five months of 2001.

Now, the judge will instruct you on what the law is. And just in its most basic terms, it is illegal for a corporate insider to sell stock in his company on the basis of important inside information; that is, information people outside the company don't have. And that's based on a very simple principle, fairness.

Corporate insiders are in a position where they can take advantage of the information that they have that people outside the company don't have.

Now, at its core, this case is fairly simple.

Joe Nacchio was the chief executive officer of a very large company, Qwest Communications. And because of that position, he had -- he knew a lot of information that people outside the company did not know. And in December 2000, Mr. Nacchio learned of problems that Qwest would be facing in 2001. And those problems were kept inside Qwest. People outside the company did not know about them.

In fact, Mr. Nacchio frequently talked to investors during this time frame, and he told investors that everything at Qwest was great, that Qwest was better than his competitors.

Now, Mr. Nacchio, the evidence will show, knew that the problems that he was told about were not known outside the company. And he knew that the information was information that would be important to investors, and that he sold $100 million of Qwest stock.

The people outside Qwest, including the people who bought the stock that he sold, did not have the benefit of knowing about those problems, so when they made the decision to buy Qwest stock, they didn't have the advantage that he had of knowing about those problems when they made the decision how much they were willing to pay for Qwest stock.

When Joe Nacchio sold $100 million worth of Qwest stock in 2001, we will prove that the playing field was not level.

Ladies and gentlemen, my name is Jim Hearty, and together with my colleagues, we represent the United States of America. And I know you were introduced to most of my colleagues yesterday, but many of you were sitting in different seats in different courtrooms. I'm going to take a moment now to introduce you to everybody.

This is Cliff Stricklin, he's another one of the attorneys on the case; Colleen Conry; over here is Leo Wise, who I don't think you have been introduced to yet; and Kevin

Traskos; and also assisting the United States in this case is Special Agent Susan Montoya, sitting here next to Mr. Traskos, with the FBI; and Postal inspector Joe Jan Henderson; and finally Mr. Mike Denno, who is going to be helping us with our courtroom presentation so you'll be able to see exhibits and so forth, hopefully, on the screens in front of you here shortly.

This is a straightforward case. It isn't a case about accounting; it's a case about fairness. There would have been nothing wrong with Mr. Nacchio selling his stock, so long as he told investors outside of Qwest, including the investors who bought the stock that he sold, about the problems that he knew about inside Qwest, problems that he knew about because of his position as an insider at Qwest Communications.

Now, in late 2000, you're going to hear that many of Qwest's competitors were beginning to have problems. And in November and December of 2000, big companies like AT&T, SBC and WorldCom were telling their investors they weren't performing as well as they had expected to. They were telling investors they weren't going to grow as much as they had previously told them to expect.

You're going to hear that growth, particularly in this time frame and in this industry, telecommunications, was very important to investors and so, therefore, had a significant impact on company stock price.

And you're also going to hear that when the company failed to meet the growth objectives that they set for investors, the company's stock price was punished. It would typically drop.

Now, Mr. Nacchio told you -- chose to talk to investors frequently. And you'll hear that he was a persuasive promoter of Qwest. And he knew that what he said about Qwest, particularly what he said about Qwest's future growth projections, had a significant impact on Qwest stock prices.

And in late 2000 and early 2001, Mr. Nacchio talked to investors frequently. And he repeatedly told them that Qwest was different than his competitors who were struggling.

In fact, he told investors to expect high growth from Qwest. And in his words, Qwest's growth was two to three times that -- that is, Qwest's growth that he was projecting for investors was two to three times that of its competitors. And unlike other companies, Mr. Nacchio told investors that he was very confident that Qwest would achieve those high growth targets that he told investors to expect.

However, at the same time, Mr. Nacchio is being told very different information from his executive team inside Qwest. He was being told that the targets that he set for 2001 were unrealistic. He was being told that in order for Qwest to achieve those growth targets, Qwest would have to grow in a way that it never grew before.

In fact, he was told that Qwest would have to grow its core recurring business at twice the rate that it had grown in 2000; that is, it would have to double its rate of growth when economic conditions at that time were driving the prices down for many of Qwest's products.

Now, inside Qwest, Mr. Nacchio knew about those risks. However, outside Qwest, investors didn't.

Now, by April of 2001, Mr. Nacchio knew that the risk that Qwest would not be able to achieve the growth targets that he told investors to expect was even greater, because by April 2001, Mr. Nacchio had the results of how Qwest had actually performed in the first three months of the year. And what he knew is that Qwest was not growing at a rate that was sufficient to hit the yearly targets that he had told investors to expect.

He was also told during that time period that the way that Qwest had made its numbers in the past, that is, the way that Qwest had achieved the growth targets that they told investors to expect, were large, one-time transactions, and he was told that in the second half of 2001, not to count on large, one-time transactions to make the numbers.

Now, inside Qwest, Mr. Nacchio knew of those risks. But outside Qwest, investors didn't.

Now, with the benefit of knowing these risks, risks that the public did not know, Mr. Nacchio sold $100 million worth of Qwest stock. And you will hear that keeping the problems that Mr. Nacchio knew about inside the company from getting out helped keep Qwest's stock price up. Therefore, when Mr. Nacchio sold his stock, he made more money.

You'll also hear that Mr. Nacchio sold many more shares of Qwest stock during this time period than he ever sold before.

In fact, in just the first five months of 2001, Mr. Nacchio sold 250,000 more shares than he had in the previous 18 months combined.

Now, as I've described to you, you're going to learn through this trial that there was information about problems that Qwest was facing in 2001 that the public did not know about. And whether or not Qwest, the company, should have disclosed that information to investors is not what this case is about.

What's important in this case is that Mr. Nacchio knew about these problems, because he was a Qwest insider. And if he was going to sell his stock, those problems needed to be disclosed to other investors, and they weren't.

Now, the evidence will show that Joe Nacchio kept that information from the public, because he knew that if disclosed that it would impact Qwest's stock price. And one of Joe Nacchio's rules at Qwest was, you never say anything that will hurt the stock price. And Mr. Nacchio owned a lot of Qwest stock.

You're going to hear, however, that the stock that Mr. Nacchio owned was not stock that he went out and purchased from the New York Stock Exchange like other investors; it was stock that was granted to him by the company. And many of you, I'm sure, have heard of stock options. The vast majority of the stock that Mr. Nacchio sold that he's charged with in this case he obtained from stock options.

Now, what stock options are is, they are an option that Mr. Nacchio had to buy Qwest stock at a certain price. And for the counts charged in the Indictment, Mr. Nacchio was able to buy that stock at $5.50. He turned around and he sold that stock, essentially the same day, for roughly around $40 a share.

So Mr. Nacchio didn't have to pay any money out of his pocket for those shares that he sold.

The evidence will show that Joe Nacchio knew the rules against insider trading. In October 2000, Mr. Nacchio sent out a notice to all Qwest employees. And the purpose of that notice was to ensure compliance of Qwest with the laws against insider trading. And in that notice, all Qwest employees were told that it is a crime to sell Qwest stock on the basis of important information that has not been disclosed to the public.

Now, as you consider the evidence that the United States will present to you during this trial, there are at least three important facts that I'd like you to keep in mind that show how Mr. Nacchio took advantage of investors when he sold his stock.

The first is, that Mr. Nacchio controlled what Qwest said to the public.

Two, Mr. Nacchio knew that investors wanted additional information about how Qwest was growing.

And three, Mr. Nacchio didn't give them that information. He didn't tell investors that much of Qwest's past growth had been based upon large, one-time transactions rather than on recurring business that is more stable and more reliable.

Now, I'm going to explain some background facts to you, so bear with me. I know many of you know a fair amount about investments and stock markets, so some of this stuff might be old news, but if you could bear with me while I go through some basic facts that are important to understanding the evidence in this case.

The first is related to the stock market. Qwest was a public company, and what that means is that the company was owned by the public in the forms -- form of stock. Essentially, what stock respects is an ownership share in the company. And Qwest's stock was traded on the New York Stock Exchange.

What that is, that's actually a physical place in New

York City where buyers and sellers of Qwest stock would go to determine a price that Qwest stock be bought and sold. It's essentially an auction. And so for every share of Qwest stock that Mr. Nacchio sold that he's charged with in the Indictment, somebody had to purchase that stock, and they had to purchase that stock for the price that he sold it for.

You're going to refer to hear people refer to Wall Street, or in this case, street. What that means is large investors and analysts. When people say, Mr. Nacchio talked to the street, or talked to Wall Street, that's really what we're talking about.

Analysts are people who follow stocks and companies and their performance. So there were analysts in late 2000 and early 2001 that followed Qwest's stock. And they would track how Qwest was performing and monitor what Mr. Nacchio said about Qwest's future growth projections.

And they would make recommendations to investors about whether or not they should buy or sell or hold Qwest stock.

They also made recommendations about how much they felt Qwest stock price was worth.

And you're going to hear that Qwest stock was owned in different ways, basically. One of the main ways that Qwest stock was owned by investors was through mutual funds. These are basically just places where groups of people invest, and they pay someone to make investment decisions for them. And so these mutual fund companies, companies like Janus, American Funds, Fidelity, they have analysts that work for them that would follow Qwest stock and make recommendations as to whether or not the fund managers should own Qwest stock or not.

Qwest stock was also owned by pension funds. Basically, worked the same way. People's retirement savings being managed by a fund manager, who is making decisions about how those funds are invested.

And Qwest stock, of course, was also owned directly by individual investors, who also at times would listen to the recommendations of the analysts.

Now, Mr. Nacchio knew the importance of impressing Wall Street, and so he chose to talk to Wall Street frequently.

It's worth having some basic understanding of how investors and analysts value Qwest stock during this time period. And so I'm going to talk a little bit about how that was done. There is going to be on your screen in front of you some slides that I think they're -- you all share one of the screens, so hopefully you'll be able to see this on the projector.

Can you all see that on your screen?

Sorry about the delay.

So investors -- how investors make decisions about Qwest stock. And one of the most important things I -- I mentioned this a couple of minutes ago to investors, is what was Qwest's future growth rate? So investors are more concerned, of course, when they're making decisions about how Qwest is going to do in the future, not necessarily what they did in the past. They'll use the past information to try to help determine what they're going to do in the future. What they're interested in is how the company is going to do in the future.

Particularly, they're interested in the future growth rate of the company. And the idea there is, is that investors are willing to pay more for stock today if that stock is predicted -- that company, I should say, is predicted to grow in the future.

And the more the company's predicted to grow in the future, the higher price investors are generally willing to pay today for that stock.

And so one of the other pieces of information that investors -- I apologize.

Hopefully that makes more sense and tracks what I'm telling you.

One of the other things that investors wanted to know from Qwest, and from other companies, is, how are they growing?

That goes to investors are trying to evaluate whether or not the growth projections being given to them by the company are realistic, can they count on them?

And so investors want to know as much information as they could about how the company was growing and what their plan to grow in the future was.

And then finally, the last point on this slide is investors wanted to know, did Qwest achieve their growth targets? This relates to the credibility of what the growth targets are. Investors are interested to look back at Qwest management and say, have you achieved your growth targets that you told us you were going to achieve in the past?

And you'll hear that Mr. Nacchio understood the importance of achieving those growth targets. And in fact, he told employees that even a small miss, that is, even a slight miss, in achieving those growth targets that he sets for investors would result in a serious impact to Qwest stock price. And in Mr. Nacchio's words, Qwest stock will get whacked if they miss by even a small amount.

The next thing I want to talk to you about is the slide I had in front of you a minute ago, and we'll get there.

That is, what is guidance. You're going to hear in this trial the term "guidance." And these are the growth projections that Qwest management -- and at Qwest, it was Joe Nacchio that set Qwest guidance, but it is what Mr. Nacchio told investors to expect that the company could achieve.

And the future growth of the company.

You're going to hear from investors -- you're going to hear that investors relied on guidance, because executives inside the company like Mr. Nacchio know much more about the company than people outside the company, so they relied on that information in making their investment decisions. And guidance is also referred to as targets. So you're going to hear these growth projections that Mr. Nacchio makes referred to both ways as guidance and targets. In fact, this afternoon, I'll probably refer to them more as targets. That's just a term that is more comfortable for my use. It's basically the same thing. Guidance and targets.

Now, you'll hear that Mr. Nacchio knew the importance that investors placed on guidance, and particularly on future growth.

And so Mr. Nacchio's guidance to investors was that Qwest would grow a lot in the future. And you'll hear that that helped drive Qwest stock price up, or at least keep it up.

We will prove, however, that investors outside Qwest did not know what Mr. Nacchio knew about the risks of Qwest's ability to achieve that guidance that he told investors to expect in 2001.

Now, many of you have probably seen the large sign on the building just more than a block away from this courthouse, the large Qwest sign on the Qwest tower. During this trial -- in fact, that's the sign -- by the way at night, for those of you in the Denver area, blue neon light that comes out of that sign, during this trial will take you to the 52nd floor of the Qwest tower where Mr. Nacchio's office was, and where Mr. Nacchio was told in late December -- December, December 2001, and early -- 2000 and early 2001 that Qwest was going to have big problems achieving the growth rates that Mr. Nacchio told investors to expect in 2001.

But investors that bought the stock that Mr. Nacchio sold weren't in those meetings. They didn't have the benefit of knowing about those problems. So when they made the decision to buy Qwest stock, they didn't know about those problems, and Mr. Nacchio didn't tell them.

Just in terms of basic, what was Qwest and what is Qwest. Large telecommunications company, headquartered here in Denver.

And telecommunications, really what we're talking about is phone companies.

Now, as you all know in 2000, also today, phone companies do a lot more than just land line telephone service. It's also internet service and cellular service, just other kinds of information services.

But basically, we're talking about a phone company.

Now, U S West was the combination of two companies. Qwest was a much smaller company that basically acquired a much larger U S WEST in 2000.

U S West as probably most of you remember was the local phone company that provided telephone service in Colorado and 14 state region surrounding Colorado.

And U S WEST was much bigger than Qwest. When Qwest acquired U S WEST, Qwest was only about 25 percent of the combined company; whereas U S WEST was the remainder three-quarters of the company.

And companies in the rel- -- and the relative size of companies are often evaluated on revenue. So revenue is something -- company's revenue and revenue growth is something that was very important to investors when they evaluated companies, including Qwest.

And all revenue is, that's the amount of money that the company brings in during the course of the year. Essentially, their income.

And there are only two types of revenue. There is either recurring revenue and non-recurring revenue. And while those two names -- two words might be readily apparent what that means, it's worth understanding, because it's important in this case.

Recurring revenue is where Qwest would have a customer that would pay Qwest month after month after month. So Qwest could count on receiving income or revenue from that customer relationship.

So it would be like a telephone customer, someone has a telephone service with Qwest, you pay your bill this month, pay your bill next month, and so forth. Qwest can predict that revenue and count on that revenue, because they're counting to get it each month.

It's more predictable, it's more sustainable, it's more reliable.

And you're going to hear in the telecommunications industry, anyway, it was considered revenue of higher quality.

Now, non-recurring revenue, on the other hand, at Qwest was referred to as one-timers. And the name is descriptive. It was revenue that the company earned one time. There wasn't an ongoing relationship with the customer, where Qwest could count on a revenue stream that kept coming in. So they'd have to start over each quarter or each period and earn additional one-timers.

And the principal kind of one-timer at Qwest were these large contracts, where Qwest would sell a customer access to a piece of their network. And so basically what they would do is a customer would buy the right to use a piece of their network for 20 years. So let's say from Denver to Chicago, a customer would go to Qwest and say, we just want to be able to transmit this much information across your network for the next 20 years. And Qwest would structure those contracts in a way that they would be able to get all of that money up-front, essentially, paid up-front.

And so Qwest would generate all of that revenue today, but they wouldn't get the revenue for the next 20 years.

You're going to hear that these one-timers, because they have to start over with them each quarter, they're less reliable, less predictable.

You're also going to hear that Qwest used these one-timers as a way to achieve their growth targets that they set with investors, starting in 1998 and through 2000.

Now, the problem with growing your company through one-timers is that you have to start over each quarter. And if you're growing your company by relying on one-timers, not only do you have to be able to do as many of those one-timers as you did last quarter, you have to do more to make the growth projections that you told investors to expect.

And that problem is even further complicated in 2000 and 2001, because the industry was getting more and more competitive, which was driving the price of Qwest one-timers down.

So not only did Qwest have to sell more one-timers in subsequent quarters to make -- to account for the growth, they had to sell even more to make up for the prices that were dropping in these one-timers that they sold.

I actually think I have a slide that I forgot to project to you on this. I spent all of that time preparing it, I'm going to make you look at it.

Again, just to review this, because this is important. Two types of revenue, recurring revenue on the left-hand side of your screen, and non-recurring on the right. And the way this chart is set up is basically two examples to help you understand the difference between recurring and non-recurring revenue.

For recurring revenue, we're talking about something like a telephone customer, ongoing relationship with a customer. And on the other hand, non-recurring revenue, these 20-year contracts that I was telling you about, where Qwest structures them in a way to get that revenue up-front, which is great, of course, for the revenue today, but you don't have -- your -- you can't count on that revenue in the future. You have to go out and sell more of these in the next quarter.

So the recurring revenue is considered more predictable, reliable, sustainable, generally, higher quality. Non-recurring, one-timers, you're going to hear that reference a lot, both this afternoon while I'm talking and also during trial, less reliable because Qwest has to start over each quarter.

These are complicated deals. Qwest has to go out and find a customer for these networks. And we're talking big, big dollars. These are complicated deals to close.

Now, inside Qwest you will hear that Mr. Nacchio valued recurring revenue over non-recurring revenue, basically for the reasons that we've just talked about.

And internal Qwest financial documents, they tracked their recurring revenue separate from their non-recurring revenue, on their internal financial documents.

And you will hear that Mr. Nacchio pushed the different divisions at Qwest to earn more recurring revenue and to rely less on the more risky, one-time revenue.

However, outside Qwest, Joe Nacchio did not tell investors how much of their revenue came from the one-timers. He didn't break down the difference between one-time revenue and non-recurring revenue, even though that's the way the company tracked revenue inside, in their internal documents.

Now, this case isn't about whether or not Qwest, the company, had to -- should have disclosed that breakdown. However, we will prove that Joe Nacchio knew this information was important to investors; and that he knew that investors outside Qwest in late 2000 and early 2001 did not know how much Qwest was relying on these one-time revenue deals to make their numbers; and that Joe Nacchio knew that if he told investors how much Qwest relied on one-time revenue, Qwest's stock price would fall.

Because, of course, investors value recurring revenue more than non-recurring revenue, for the same reason that Mr. Nacchio did, because it was more predictable, more sustainable, more reliable.

When investors were making decisions about whether or not to hold -- own Qwest stock, they wanted to know, can they count on those predictions, growth projections that Mr. Nacchio told them to expect.

Now, I've got this large chart here I'm going to put up, as long as I can get it up on the easel, and it's going to show you rough kind of organization diagram of the company, kind of how the company was broken up.

Just real basic schematic of how the company was organized, and the principal players who interacted with Mr. Nacchio directly on a routine basis.

And obviously, you met Mr. Nacchio. He was the head man at the company, the chairman and the chief executive officer.

You will hear that Mr. Nacchio was hired to be Qwest's CEO in 1997, and that Mr. Nacchio had spent over 20 years at AT&T and had risen to the highest levels at AT&T. He was an experienced telecommunications executive, who knew the business and the industry well.

Now, when Mr. Nacchio first got to Qwest, Qwest was a private company, but soon after that, went public. And what that means is, Qwest was able to make money by selling -- make money from investors, basically, by selling stock, going public. Those investors give money to Qwest, and in turn, they would get a piece of the ownership of the company.

Now, Mr. Nacchio handpicked his executive team. These were his people. He put them in these positions.

Afshin Mohebbi, this gentleman right here, was the president and chief operating officer at Qwest. His title changed a little bit throughout the time period we're concerned with, and that's late 2000 into 2001. But what didn't change is he was always a key executive who reported directly to Mr. Nacchio.

Mr. Mohebbi was hired by Mr. Nacchio in the spring of 1999. That is around the time that Qwest was negotiating the acquisition or merger with U S WEST. Mr. Mohebbi was an experienced telecommunication executive.

Now, around the time that Qwest was going public, Mr. Nacchio needed somebody to be the head of investor relations. That's the person that helped Mr. Nacchio interact with investors. So he went back to AT&T where he used to work, and he hired Lee Wolfe to be his head of investor relations.

And what Mr. Wolfe's job was, was to help Mr. Nacchio deal with investors, so he would tell Mr. Nacchio the kind of information that investors wanted about Qwest, and he would also tell Mr. Nacchio how investors reacted or what they thought about things that Mr. Nacchio had said publicly about the company or the company's press releases.

And Mr. Wolfe will tell you how Mr. Nacchio dealt with investors, and he'll tell you that Mr. Nacchio was very active in investor relations and spoke to investors frequently.

One of the principal ways that Mr. Nacchio communicated with investors was on what are called investor calls. And on these investor calls, there are literally hundreds of investors and analysts that listened to what Mr. Nacchio said about how Qwest was doing.

And one of the regular types of investor calls that Mr. Nacchio held were what are called earnings release calls. And Qwest would hold an earnings release call four times each year, because they divided up the financial performance of the company into quarters. And so each quarter lasted three months, and so January through March was Qwest's first quarter, and so forth through the year.

And so after a quarter would end, Mr. Nacchio would hold an earnings release call where he would talk to investors. Usually these calls took place about three weeks after the quarter ended. And in those calls, Mr. Nacchio would tell investors how Qwest had performed in the past quarter, and he would also tell them -- issue guidance, we've talked about targets, for what the expected growth rate of Qwest was in the future.

Robin Szeliga was the chief financial officer at Qwest. You'll hear that Ms. Szeliga joined Qwest back before the merger, the finance department of Qwest in 1998, and she rose to the position of senior vice president in charge of financial planning and analysis. And even though that's a mouthful, those are the people at the company.

Her responsibility was for preparing overall company financial information for internal consumption, that is, for how they managed the business. So this would include budgets and plans and also forecasts.

And in 2001, Mr. Nacchio promoted Ms. Szeliga to be the chief financial officer for the company.

Now, Ms. Szeliga is going to tell you about the budget process. That's the process where the company tried to build their budget or their plan for what they were going to do in 2001. And they did that in the fall of 2000. And Ms. Szeliga was responsible for that process.

And then she'll tell you about how the company was performing and the management reports that the company created in early 2001 to monitor how the company was performing.

Ms. Szeliga will also tell you that she pled guilty to insider trading for selling 10,000 shares of Qwest stock in April 2001.

She admitted to selling Qwest stock on the basis of inside information, because she admitted that she knew that Qwest was not achieving its growth in the way that it told investors it was.

And because of that, she knew that a risk of investment in Qwest stock was greater than what the public knew.

Now, the operations at Qwest were principally divided into three divisions. Now, there were other divisions of Qwest, and at Qwest they called these business units. But these are the three principal business units represented on the chart here. Each one of these business units represented about one-third of the company's overall revenues.

So the customer and small business business unit was the business unit that sold phone service and internet service to households and to small businesses. It was the largest recurring revenue business at the company.

The wholesale division, wholesale division sold telecommunications products to other telecommunication companies, and the wholesale division was the division that sold the majority of the one-timers that Qwest had relied on.

And finally, finally global business was the business division that sold telecommunications products to large companies.

I mentioned the significance of the merger between Qwest and U S WEST. That -- that merger changed Qwest completely. The merger was announced in June 1999, and it took about a year to close; that is, the companies did not become one until June 30, 2000.

And, again, three-quarters of the combined company was from U S WEST. Only a quarter of it came from Qwest.

You will hear when the merger was announced, Qwest investors weren't very happy. In fact, Qwest's stock price dropped nearly 25 percent the day the merger was announced. And you will hear the reason for that was, was that Qwest investors were growth investors. They invested in Qwest because Qwest was a high growth company. However, when Qwest announced that they were acquiring U S WEST, those growth investors weren't very happy about it, because U S WEST was not a high growth company.

At this time frame, U S WEST was growing maybe 5 percent per year, somewhere in that ballpark.

You will hear that Joe Nacchio was upset by the market's reaction to the announcement of the merger, and so he went out to talk to investors, and he sought to heavily promote the combined company.

And what he told investors in the summer of 1999 was that the combined company would grow 15 to 17 percent over the next five years.

That was a huge growth rate for the combined company. Remember, three-quarters of that company was growing at only 5 percent. But now after the merger, Mr. Nacchio tells investors because of the synergies, basically, the benefits they're going to get from bringing two companies together, that now he's telling investors to expect 15 to 17 percent growth in the combined company.

Again, Mr. Nacchio tells investors that that is two to three times the growth rate of Qwest competitors.

And you will hear that Mr. Nacchio never backs off those high growth projections through the time that he's selling the stock in 2001, in spite of the fact that after the merger closes in the summer of 2000, he's repeatedly told by his -- his executive team that those growth rates are too high.

Now, as you can imagine, when Qwest acquired U S WEST in the summer of 2000, when the two companies became one, there was a difficult process, as the Qwest management team was taking over, basically, the much larger U S WEST.

And so in July and August, Mr. Nacchio and his team were trying to bring the two companies together.

In early September, Ms. Szeliga, who was in charge of financial planning and analysis, will tell you that they hadn't even built a budget or a plan, finalized their budget or plan for the end of 2000. And they really hadn't even started trying to build a budget or a plan for 2001.

But Mr. Nacchio, he decided to go out and tell investors on September 7 that Qwest was going to grow even more than he had told them earlier. He raised growth guidance. He raised the projections that he told investors to expect in 2001.

You will hear from Mr. Wolfe, the head of investor relations, that he urged Mr. Nacchio to actually lower guidance at that time, not raise it. But Mr. Nacchio went out and he told investors to expect even more growth from the company in

2001, when they hadn't even built a plan yet for what they were going to be able to do in 2001.

You're going to hear about the budget setting process. That's the process where Qwest went about the hard work of trying to build a budget for what they could do in 2001 as a combined company.

Now, of course, after Mr. Nacchio has already gone out and told investors what to expect, they start that process.

And what you're going to hear from Qwest executives, Mr. Nacchio's executive team, is that the budget process for 2001 was broken, that is, unrealistically, high targets were imposed on the divisions at Qwest. And the experienced telecommunications executives that Mr. Nacchio put to run its divisions presented aggressive plans for what they thought they could do in 2001 if everything went perfect. And those plans were still hundreds and millions of dollars lower than the target that Mr. Nacchio imposed on their business units.

Mr. Nacchio's response to the division heads when they came up with a plan that was short of the target that he imposed, the number is the number. Come up with a plan to hit the number.

They struggled coming up with the plan to hit the number, and you're going to hear about that. So the budget process was delayed as they were trying to come up with the budget and plan.

Towards the end of that process, in December, Ms. Szeliga, again, who was the person responsible for trying to put that budget together for the company, and who sat in meetings with her finance team and then with the finance team and heads of the different divisions, and also sat in the meetings with Mr. Nacchio, where those leaders of the divisions were telling Mr. Nacchio and telling Ms. Szeliga what they thought they could do in the business units for 2001, after sitting through that entire process, Ms. Szeliga came to the conclusion that the targets for 2001 were $1 billion too high.

So she went to Mr. Nacchio, and she told him that.

Mr. Nacchio still told investors that Qwest was going to do the higher number, the additional billion dollars.

You're going to hear that the plan that Qwest put in place to try to achieve those higher numbers in 2001 required a big change from how Qwest had been performing in the past, because, remember, you know, it's a much larger company.

And Qwest realized that they couldn't make those growth targets by relying on these one-timers like they had in the past. They knew that in 2001 they were going to have to grow their recurring revenue business at a rate that they had never grown it before, because otherwise they wouldn't be able to achieve those targets.

Now, Mr. Mohebbi, the president of the company at this time frame, was concerned enough about the 2001 plan that he sent Mr. Nacchio two memos in December of 2000 to express his concern about the plan.

And he'll tell you that he put these concerns in writing, even though Mr. Nacchio did not like to receive bad news in writing, because he wanted to make sure that he got Mr. Nacchio's attention, and that Mr. Nacchio frequently did not react well when he heard bad news and was confronted with bad news. So Mr. Mohebbi put these concerns in writing, made sure he got Mr. Nacchio's attention.

And what Mr. Mohebbi told Mr. Nacchio in those two memos in December of 2000 was that the targets for 2001 were a huge stretch.

And, again, what that huge stretch means is that Qwest had to grow their recurring revenue business at twice the rate that it had grown in 2000 in order to have a chance to achieve the 2001 targets.

And you'll hear in the telecommunications business, that's a huge increase, particularly in this time frame, where increasing competition was causing prices for many of Qwest's products to fall.

Mr. Mohebbi also told Mr. Nacchio that Qwest would have big problems in the second half of 2001 if that recurring revenue didn't pay off right from the beginning of the year, because if it didn't take off at the beginning of the year, then it was more likely to miss as the year went on. And as the year went on, there wouldn't be enough of the one-timers to fill the gap between the recurring revenue and the total revenue that Mr. Nacchio told investors to expect in the second half of the year.

And Mr. Mohebbi also reminded Mr. Nacchio that Qwest's track record, that is, their history on being able to grow recurring revenue at a sufficient rate to achieve their overall target revenue was not good.

Again, the problem was the overly high growth plans. It wasn't that Qwest wasn't growing. Qwest was growing. It's just the targets were too high.

Now, I think -- I'd like to use a chart that I'm going to put up on this board to try to illustrate to you what Mr. Mohebbi was talking about.

Can everybody see that okay?

THE COURT: I think the jurors on the end may be having trouble.

MR. HEARTY: I'll scoot it forward a little bit.

THE COURT: Can all the jurors see the chart? Raise the hand if you cannot see the chart.

Proceed.

MR. HEARTY: Now, just to get you oriented on this chart. What this red line represents is the overall revenue growth in Qwest's budget or plan for 2001. Okay. So this is total revenue. The red line represents total revenue.

So the plan was for $2.8 billion in total revenue. Okay. That's what the red line represents.

Down at the bottom is the financial report. So the first quarter, second quarter. First quarter represents a point in time on March 31, and this is the -- what their plan was to be able to achieve the $2.8 billion in total revenue.

What Mr. Mohebbi was communicating to Mr. Nacchio was that if the recurring revenue -- and that's going to be represented by the blue line that I'm going to draw there -- if recurring revenue did not grow fast enough at the beginning of the year to hit that growth, hit the overall company growth, that it was extremely likely that it would continue to miss and miss more as the year went on.

So while -- and by the way, you're going to hear people refer to the gap, and what that means is, again, the blue line is the recurring revenue, the red line is total revenue, so the distance between those two lines is what they referred to as the gap.

And the only way that gap could be filled in was with the one-timers. And so what Mr. Mohebbi was communicating to Mr. Nacchio, they may have enough one-timers to fill in that gap in the first quarter, and they may even have enough one-timers to fill in that gap in the second quarter. But as the year went on, the second half of the year, the gap gets too big, and they won't be able to fill it with one-timers.

That's what Mr. Mohebbi was concerned about and what he was telling Mr. Nacchio about in December of 2000.

Again, the evidence will show that Mr. Mohebbi was not telling Mr. Nacchio anything he didn't know. Mr. Nacchio was a experienced telecommunications executive that knew that recurring revenue was more reliable than one-timers. He was telling him that if the recurring missed early in the year, it was very likely it was going to continue to miss by more as the year went on.

In fact, at Qwest they would refer to that concept as the rule of 78. I don't know much really about what that means, other than the fact that as time went on, it was harder to make up for that miss, and you also now had a business trend for how things were performing. As time went on, you had less time for recurring revenue to earn the money that you needed to make up for the difference.

And in fact, Mr. Nacchio referred to this problem as a miss early in the year is like a snowball rolling downhill; that is, the miss just keeps getting bigger as the year goes on.

I'd like to have you look at your screens there again. I'm going to display for you a timeline.

Let me try to get you oriented on the timeline.

You see the date here in the middle of the screen. That is obviously the months. We're talking about really principally November and December. The information that is going to come up, flags going to come up above that line, represents information that was known outside the company, and below that line is information that was only known inside the company.

So the first flags that you're going to see on here are budget meetings that Mr. Nacchio was participating in as the company was struggling to come up with their budget for 2001 as I described to you. So it's in these meetings where Mr. Nacchio -- one on November 9, November meeting on November 16. These are meetings where Mr. Nacchio is meeting with his executive team about the problems and the difficulties that the divisions are having with trying to come up with a budget to hit the targets that have been imposed upon the divisions.

So November 9 meeting, November 16 meeting.

On December 1, Mr. Nacchio and others make a -- their first budget presentation to the Board of Directors. And the budget is not done yet. They haven't finished the budget process when they go to talk to the Board of Directors. In fact, you'll hear that some of the numbers were targets that were assigned to the different divisions, and the presentation that is given to the Board of Directors hadn't even been communicated yet to the division heads who ran the divisions.

Now, somewhere in the first two weeks of December is -- Mr. Mohebbi's memo is sent -- is sent to Mr. Nacchio. And again in that memo, Mr. Mohebbi tells Mr. Nacchio that the growth targets for 2001 are a huge stretch, and that recurring revenues must take off early for them to have a chance to hit those targets. Again, reminding Mr. Nacchio that Qwest's track record, that is their history, past performance, is not good in being able to get the recurring revenue to grow at a sufficient rate to hit the overall targets.

On December 12 and 13, there are a couple of budget closure meetings. What is interesting about these meetings is even this late, December 12 and 13, there is still hundreds of millions of dollars being moved from one division to another, as they basically try to impose this unrealistic target on the divisions in order to total up, right, and trying to total up all the pieces to get up to the number that Mr. Nacchio told investors to expect back on September 7, before they even had the plan.

December 20 is when Mr. Mohebbi sends the second memorandum to Mr. Nacchio, where he tells Mr. Nacchio that Qwest is going to have big problems if they don't crank up recurring revenue by April, because there will not be enough one-timers to close the gap in the third and fourth quarter, second half of the year.

Now, at this time frame, outside Qwest, Qwest competitors are telling their investors that they're not doing as well as they had predicted. AT&T and SBC around this time frame are lowering their growth guidance, their growth projections that they told investors to expect.

And what happened is, Qwest stock price drops 20 percent between December 18 and December 20. And Mr. Nacchio decides he better go out and talk to investors. And so he conducts an impromptu investor call on December 21.

In that call, Mr. Nacchio reaffirms the targets that he told investors about back in September. And he tells investors that he's very confident that Qwest will achieve the 2001 growth targets that he set, and that Qwest stock should not be adversely affected by problems that its competitors are having.

And he tells that to investors even though that he knew that the targets he imposed on his divisions were unrealistic, and that the president of the company had told him that the targets required a huge stretch, and that his executive that was responsible for building the budget thought that the targets were $1 billion too high.

Ladies and gentlemen, $1 billion -- first of all, it's a lot of money. But also we're talking 2 1/2 billion is the growth, basically, he's telling the investors to expect. One billion is 40 percent of that growth. As I told you, you're going to hear that growth and the amount of growth was very important to investors.

Now, the result of Mr. Nacchio going out and talking to investors on December 21, the next day Qwest stock price goes from 32 bucks to over 37 bucks. What Mr. Nacchio said to investors had a direct effect on the stock price.

Now, on January 2 and January 3, Mr. Nacchio sold just over $14 million of Qwest stock, approximately 350,000 shares.

Now, the way that those shares were sold was unusual. Mr. Nacchio signed an instruction, that is an instruction where he made a commitment to sell that stock on an earlier date. You'll see that that instruction was signed by Mr. Nacchio. In order for that instruction to be effective, Mr. Nacchio had to certify that he was not in possession of insider information at the date that he made the commitment to sell that stock.

However, what you're going to learn and what the evidence will show is the document that Mr. Nacchio signs was created -- wasn't created before December 13. So the actual physical piece of paper that Mr. Nacchio signs wasn't created until December 13, okay.

However, the date on the document was backdated to November 3, which is six weeks earlier than the document -- than what the evidence will show of when the document was created.

Now, what's happened since November 3? All of those meetings that we went through on the difficulty of closing the budget, where Mr. Nacchio is being told by his division heads that the targets that are imposed -- that he imposed on their divisions was too high.

The other thing that has happened in that time period is it's around the time period that Mr. Mohebbi gives him his first memo expressing his concern about the plan for 2001.

Let's take a look at that. This is it. I don't want to get too bogged down in all the details. You'll be able to see this during trial again.

But the first highlighted portion there in the second paragraph is the certification, so Mr. Nacchio certifies that the undersigned -- the undersigned certifies that as of the date hereof he has no material, non-public information, and is not otherwise prohibited from trading in Qwest stock.

Now, that date, if you look down at the bottom, left of the page, is November 3.

But the evidence will show that this document wasn't even created until December 13. And you see up at the top of the page, this document is addressed to Salomon Smith Barney. Salomon Smith Barney was one of Mr. Nacchio's brokers.

And you'll hear that there is no evidence that this document was even sent to Mr. Nacchio's broker.

Now, you're going to hear about the shares that Mr. Nacchio sold based on that instruction, and those shares were sold January 2 and January 3.

The way Mr. Nacchio obtained those shares was different than the rest of the shares that he's charged with selling in the Indictment. These two sales, by the way, January 2 and January 3, represent Count 1 and Count 2 in the Indictment.

And Mr. Nacchio obtained those shares differently. They were called growth shares. And so Mr. Nacchio is entitled to a certain amount of compensation based upon the success of the company, that is, the growth of the company. And Mr. Nacchio -- the amount that he was entitled to was determined actually a year and a half earlier, when the company merged, basically, around the time of the merger announcement in 1999. Mr. Nacchio knew he was getting those shares, and the number of shares was calculated based upon the amount of money that he was entitled to.

He was entitled to $25 million. So the number of shares that he was issued was determined based upon the stock price during this time period.

So Mr. Nacchio was entitled to the same amount of money regardless of what the stock price was. And the reason that you see $14 million worth of stock here rather than 25 is the company basically backed out the amount of taxes that Mr. Nacchio would have to pay on that income and then only issued, essentially, the net number of shares -- number of shares to hit the net amount of compensation that he would receive after taxes.

But those shares, when they were issued to him, weren't different than any other shares. Once he got them, they were common stock. And Mr. Nacchio didn't have to sell them on January 2 or January 3. That's just when he would receive them. And it wouldn't have cost Mr. Nacchio anything if he kept them or held them because the taxes were already taken care of separately.

And you will hear that in the past when Mr. Nacchio was issued growth shares, he held some of those shares. And the other thing that's not any different about those shares is that when Mr. Nacchio sold those shares, somebody else bought them, and they bought them for the price that Mr. Nacchio sold them for. And they weren't in the meetings that Mr. Nacchio was in in December. And they didn't know about the warnings that Mr. Mohebbi had given Mr. Nacchio about his concerns for the plan in 2001.

Now, in the beginning of January of 2001, the company went about preparing for their earnings release, and they had an earnings release call, again, roughly three weeks after the end of the quarter that ended December 31, where Mr. Nacchio went out and talked to investors on January 24.

And you're going to hear that during this time period investors started asking more questions. They wanted more information on how Qwest was growing, and they weren't getting it. And on January 24, Mr. Nacchio went out and talked to investors again, and he told investors how Qwest had done in the fourth quarter 2000. And he reaffirmed that he was confident that Qwest would achieve the growth targets that he previously set back in September, and what he referred to as industry leading growth rates in the face of a weakened economy.

He does not tell investors what he knew, that his division leaders, his executives that he put in place to run his divisions, told him that the targets that were imposed upon their divisions were unrealistic, and what Ms. Szeliga had told him about believing the targets were a billion dollars too high, and what Mr. Mohebbi had told him about the targets -- characterizing the targets as a huge stretch and telling Mr. Nacchio that Qwest would have big problems in the second half of the year if the recurring revenue didn't grow in a way it had never grown before right from the start of the year.

Then when trading window -- I'll tell you about the trading window in a second. But when the trading window opens two days later after the earnings call, Mr. Nacchio sells $31 million worth of Qwest stock between January 26 and February 15. What the trading window is the window that the companies put on insiders like Mr. Nacchio on when they can sell Qwest stock.

It's not unique to Qwest, by the way. Many public companies have these kind of restrictions. Basically it's around the time when the company is preparing their earnings releases, that insiders are not allowed to trade, not allowed to sell stock. Therefore, when the window is open, insiders are allowed to sell stock, so long as it's not based on material, non-public information.

I'm going to use another timeline that will come up on your screen here to talk about some significant events that occurred February through May of 2001.

And again, this one is set up the same as the last one, so the -- above the date bar there, just to orient you, again, are events that occurred that are public events, and below the date bar are events that are not public. These are meetings that occur on the 52nd floor of the building just about a block away from here.

Now, on February 15, the trading window closes. And so Mr. Nacchio has now just sold $31 million worth of Qwest stock between January 26 and February 15, and then he enters into a sales plan. And what a sales plan is, is it's a way that insiders, in particular -- particularly, chief executive officers like Mr. Nacchio, can sell their stock by making a commitment today to sell their stock in the future, even if there is subsequent restrictions that come up in the future.

So, for instance, by Mr. Nacchio entering into a sales plan to sell 11,500 shares of stock per day, by entering into that plan before the trading window closes, he's allowed to sell that stock even when the trading window is closed.

And the other restriction that frees him up -- that this is designed to free him up from, is if Mr. -- when Mr. Nacchio makes the commitment to sell that stock today at some time in the future, if he later comes in to inside information, but he's made the commitment now, he's still allowed to sell that stock, because he's not controlling those shares. He's made the decision to make those sales earlier in time.

So, of course, for the sales plan to be effective, Mr. Nacchio has to certify in the sales plan that he's not currently in possession of insider information.

Now, when Mr. Nacchio enters into the sales plan, Qwest issues a press release, because you'll hear that sophisticated investors and analysts paid attention to when insiders sold significant amounts of Qwest stock, because, obviously, that could concern them if they think that company insiders are dumping their stock.

So when Mr. Nacchio entered into this plan, Qwest issued a press release. And in that press release, Mr. Nacchio announced the reasons why he was entering into the sales plan.

And the first reason was, is that Qwest had granted Mr. Nacchio a lot of stock options. And many of those stock options -- in fact, all the ones that he sells that he's charged with here were set to expire in about two and a half years from this time frame. And so this plan was designed so that Mr. Nacchio could exercise and sell all of those shares before his options expired.

And the other reason that he tells investors that he's entering into the plan is because the Board of Directors at Qwest had expressed concern about Mr. Nacchio, what they called, bunching his sales. And that is, because he had all of these options that were going to expire in two and a half years, they were worried that if those options were all exercised and sold in big groups, that that wouldn't look good to the marketplace. And so this plan was designed to solve those problems.

And you will hear that it would have. I mean, first of all, the plan was to sell 11,500 shares per day until all of those options were gone. That would even out all of those sales.

And then secondly, had Mr. Nacchio stayed in this plan, all of those options that were going to expire in two and a half years would have been exercised and sold under the terms of this plan three months before expiration.

Now, you're also going to hear testimony in this case that financial analysts advised Mr. Nacchio to diversify. Typical financial advice, pretty much all industries, but particularly executives at public companies who frequently had a large percentage of their wealth connected to the stock in the company where they worked.

And so this plan would have helped Mr. Nacchio diversify as well, because all of these stock options would have been sold, exercised and sold on a regular schedule before they expired.

But even though this plan solved all of those problems, Mr. Nacchio cancels the plan on March 1.

Now, when he canceled the plan, the trading window is closed, so he couldn't sell stock at that time outside of the plan.

And then as we go through March, now, Mr. Nacchio starts having his internal meetings. And you're going to hear about a meeting on March 20 where -- this is ten days before the quarter closes, so the company is now, you know, bringing together their financial updates on where they are as they're preparing to close the first quarter on March 31.

And this presentation that was prepared for Mr. Nacchio March 20 shows that even ten days before the quarter, that the company needs $500 million of one-timers that haven't been closed yet, haven't been finished, in order to make the quarter.

And so what it shows is that the recurring revenue per plan is not taking off the way the plan called for. The company is having to rely more on the one-timers in order to make the first quarter.

On April 9, the quarter is over, and so Ms. Szeliga, who is the chief financial officer, prepares -- her staff prepares an update, product update of how the company has done first quarter compared to what their plan was.

And you will see that in that plan that Ms. Szeliga presents to Mr. Nacchio that recurring revenue is not taking off, the recurring revenue is already 19 percent below plan, and that the shift -- the shift that Qwest was relying on to happen in 2001 to have a chance to meet those growth targets was not occurring at the rate expected. And the company was having to increase -- had to rely more on one-timers, the non-recurring revenue, than they had planned to.

And you will hear that Mr. Nacchio got angry in this meeting. He didn't like what the performance results were.

Two days later, on April 11 through April 13, Mr. Nacchio conducts business unit reviews with the various divisions of Qwest on how their business units had performed in the first quarter. Basically, gets more of the same information; that is, that the recurring revenue business is not performing the way that their plan called for, and they're having to rely more on these one-timers in order to make the numbers.

And he's also told during these meetings that the market for these one-timers, for the non-recurring, is worse than they expected, while they're working on -- while the different divisions, primarily the wholesale division is working on one-timers for help for the second quarter numbers, that they don't see any more significant one-timers in the second half of the year.

So I want to go back to this chart here and talk about what Mr. Mohebbi was concerned about and expressing to Mr. Nacchio back in December, was coming true; that is, the recurring revenue was not taking off and was already 20 percent off plan.

But it's even worse than that, because now the gaps in the second half of the year are going to have even less one-timers to fill them, because now Mr. Nacchio's told that the market for the one-timers is even worse than they had expected.

So Mr. Mohebbi predicted if the recurring revenue did not take off early there wouldn't be enough one-timers.

Well, now, the market for the one-timers is even worse in the second half of the year. The wholesale unit tells Mr. Nacchio that they're working on deals, big deals, that are going to help him meet the second quarter, but they don't see any significant big deals after that time frame, in the second half of the year.

What does Mr. Nacchio do after getting those -- having those meetings on the 52nd floor of the Qwest tower, just a block or so away from this courthouse? He goes out and he talks to investors.

On April 24, he has the first quarter earnings call with investors, and in that call, he tells investors that Qwest had a strong quarter, that he was very pleased with Qwest's performance, and that he is confident that Qwest will achieve the growth rates that he previously told investors to expect in 2001, and that he sees nothing to dissuade him from that plan that he announced 18 months ago, after the merger closed, the 15, 17 percent revenue growth rate.

Why don't we listen to what Mr. Nacchio said in his own words. I'm going to play now two excerpts from that call. The first excerpt is Mr. Nacchio at the beginning of the call, or very early in the call. And Mr. Denno, can you play that now.

(Tape played.)

Your Honor, is there a way to get the volume higher?

I'm going to ask if Mr. Denno will play it again. Apparently that's as loud as we can get it, so I apologize for that. You'll have an opportunity during trial to hear this tape again. Hopefully we'll do a better job getting that louder.

I'll ask Mr. Denno to play that again. Do the best you can to listen to what Mr. Nacchio says.

(Tape played.)

There is the second clip, which is the last statement,

statement that Mr. Nacchio makes during the investors call.

It's another short excerpt about the same length. Again, it's the last words that Mr. Nacchio says to investors on this call, on April 24.

(Tape played.)

Mr. Nacchio tells investors how well Qwest is doing, even though he knew that they had missed their recurring revenue plan by almost 20 percent, and that now they were going to have, very likely at least, to have big problems in the second half of the year, achieving growth rates that he told investors to expect.

And even -- it could even be worse, because the market for the one-timers, he didn't tell the investors about that, the market for the one-timers was worse than anticipated, what they were going to try to use to fill that gap, they were going -- there were going to be less of them. He knew that, but he didn't tell them that.

Two days later, the trading window opens, where Mr. Nacchio is now for the first time since it closed, and he canceled his plan, and is allowed to sell stock again, according to the company policy.

On April 26 through May 15, while the trading window is open, Mr. Nacchio sells $49 million worth of Qwest stock, just in those few days. In fact, on April 26 alone, the first day that he had a chance to sell his stock, he sold 350,000 shares of Qwest stock and received over $13 million, just for the sales on that day.

Then the next day, April 27, he sold 300,000 more shares, for nearly $12 million.

You will see that what he sold -- the rate that he sold while this window was open was seven times the rate that his plan called for that he canceled back on March 1. His plan called for him to sell 11,500 shares per day. When you look at the trading days that he was allowed to sell during this window, he sold over 80 -- averaged selling over 80,000 shares per day.

When the trading window closes, on May 16, Mr. Nacchio sets up another sales plan, and he sells an additional 75,000 shares of stock under that sales plan between May 16 and May 20.

I want to show you two charts to kind of depict what Mr. Nacchio's trading pattern was during this time period.

Okay. What this first one depicts here is on the left-hand side of the screen, the bottom left, you see Mr. Nacchio's sales when he's in the plan, okay. Down there at the bottom is when he's selling 11,500 shares per day. And the way this chart works is essentially accumulating the number of sales that he makes day after day, just kind of putting them on top of each other. That's why you're seeing it come up. The first day he sells 11,500, the next day he sells another 11,500 and so on.

Then when he cancels the plan on March 1, the window is closed, so he can't sell stock between March 2 and April 25. And then the first day the window opens, on April 26, he sells 350,000 shares of stock. And you can see the way those sales work, then, kind of spiking up, as you go -- as you go to the right-hand side of the chart there.

Then where you see a kind of gradual level off, if you look down at the bottom, that's when he gets into the trading plan, the window closes again, on May 16.

If you compare how many shares Mr. Nacchio would have sold had he stayed in the plan -- so had he stayed in the plan, you compare the shares that he would have sold under the plan, compared to what he actually sold by starting in the plan, cancelling, and selling at a much greater rate in the window, that's what this chart depicts.

Mr. Nacchio would have sold about -- would have sold about 790,000 shares under the plan during this time period. What he actually sold was over 1.4 million shares, nearly twice as many shares.

And the value of that to him is had he stayed in the plan, he would have made about 29, almost $30 million. By cancelling the plan, he's selling at a much greater rate when the window opened, he made over 55 million.

The evidence will show that Mr. Nacchio's plan solved all of his problems but one. It didn't allow him to sell his shares fast enough.

Now, ladies and gentlemen, there are always risks when people invest in the stock market. However, Joe Nacchio knew about risks that people -- risk at Qwest that people outside the company did not know. And Mr. Nacchio didn't tell them. In fact, he did the opposite. He assured investors that everything was great at Qwest, that Qwest was doing very well, and then he sold $100 million worth of Qwest stock.

The evidence will show that when Mr. Nacchio saw a storm coming at Qwest, he sold as much stock as he could while he still could. Joe Nacchio told the public that Qwest was different than its competitors who were struggling. He told investors that he was very confident that Qwest could achieve the high growth rates that he told them to expect.

But at the same time, he was being told different information from his executive team inside Qwest. He was being told that there were severe risks in Qwest's ability to achieve those targets.

Joe Nacchio kept those risks from investors as he sold his stock faster than he had ever sold it before. He sold 250,000 more shares in just the first five months of 2001 than he had sold in the previous year and a half combined.

After the evidence has been presented, the United States will have another chance to speak to you, we'll ask you to convict Joe Nacchio of insider trading, because the evidence will have proved that Joe Nacchio cheated.

Joe Nacchio sold $100 million worth of Qwest stock when he knew of problems at Qwest that people outside the company did not know. And then he sold the stock faster than he ever sold it before to take advantage of the inside information that he had.

Thank you.

Thank you, Your Honor.

THE COURT: All right. We'll take a 15-minute recess at this time.

And then we'll -- do you wish to make an opening statement, Mr. Stern?

MR. STERN: Yes, I do.

THE COURT: Very well.

Court will be in recess until 10 minutes of 2:00.

(Recess from 1:35 p.m. to 1:53 p.m.)

THE COURT: Mr. Stern.

MR. STERN: Thank you, Your Honor.

OPENING STATEMENT

MR. STERN: If it please this honorable Court, gentlemen for the prosecution, my colleagues, members of the jury.

I'm getting a little dry.

I am going to do everything that I can to demonstrate to you in every way that I can that the Indictment that has been brought in this case is incorrect. You haven't heard much about that from the prosecution, but I'm going to show it to you. And I'm going to stand before you and tell you, not with carefully selected pictures in which my client is the only one not smiling, but using the actual documents in the case, how we who have no burden of proof in this case, none at all -- I don't have to say a word to you, as the judge has informed you, but how we are going to demonstrate, show you and prove to you that the charges in this case are absolutely false.

And we're going to do it using the words of the Indictment. We're not going to get confused about growth targets. There are no growth targets in this Indictment. There is only publicly stated financial targets. And very quickly -- well, maybe not so quickly -- I'm going to demonstrate to you the difference and perhaps why the representative of the United States used growth targets rather than the words of the Indictment, publicly stated financial targets.

I am going to tell you that this Indictment charges that Mr. Nacchio knew non-public, material information, not important information, which the prosecutor has chosen to use, but in the words of his Indictment, non-public, material information about the publicly stated financial targets of Qwest, not growth targets, not important information.

And you're going to be able to decide why those kinds of terms were fudged when the terms are very specific in the Indictment.

I am going to demonstrate to you that there was no non-public, material information, that Joseph Nacchio sold on no such thing, that he believed passionately, fervently and honestly in the publicly stated financial targets of his company, that he stood behind them with his personal wealth, with his children's money.

And I'm going to do that, use that, by imposing on your time a little bit. It is not possible to demonstrate that to you without spending some time doing it.

This is not like a politician's speech. You know, they stand before us, promise the sun, the moon and the stars, then we vote, and then they deliver or they don't deliver.

I know very well and you know very well that you're going to vote on the basis of what is delivered in this courtroom, and I am here to tell you what we are going to deliver. We, who have no burden to do anything, are going to do -- to demonstrate and show you that this Indictment is wrong. And although this is not the Indictment that we brought, I'm going to show it to you, even though he did not.

Now, make no mistake about it, a public guidance was issued stating what the public financial targets of Qwest were for 2001. And those targets were issued on September 7, 2000.

Now, I'm starting at this point, and then I'm going to drop back. But I think it's important for you to see what the actual public statement of financial targets was.

It was issued on September 7. Joe Nacchio did, in fact, issue it.

Now, you remember that the prosecutor in this case told you that the public could count on it. You remember, he used those words, the public could count on it.

Let's talk for a minute about what these targets, financial targets were. They were issued on September 7 for year end 2001, that's 16 months in the future, on the basis of a newly formed company, just a couple of months old, that is to say, the merger of Qwest and U S WEST, clearly, and obviously dependent on people's good faith, to be sure, reasonable, to be sure, but nonetheless, good faith and reasonable projections of what a year would look like -- pardon me, 16 months into the future would look like.

And because it is a projection, and because it is dependent on the divisions and departments and places all over the world, because Qwest was a worldwide company -- and because it's most of all dependent, as we learned during jury voir dire, about what an economy would be like 16 months into the future, and, of course, this guidance was issued on September 7, 2000, for year end 2001, and because of all of that, before the guidance is even issued -- and this is the way it reads, on September 7, I think maybe -- could you put that on the screen, Candy?

I don't know if you folks could see it. I blew it so much, but --

Maybe you could yellow it as I go.

The current 8-K, that's what it is called in technical terms, folks, it's a filing with the SEC. That's the way you make these announcement. The 8-K form contains projections and other forward looking statements that involves risks and uncertainties. These statements may differ materially from actual future events or results. Readers are referred to documents on file with the SEC.

Specifically, the most recent reports which identify important risk factors that could cause actual results to differ from those contained in the forward looking statements, including potential fluctuations in quarterly results, changes in demand for the registrants' products, that would be Qwest, dependence on new product development and acceleration of the deployment of advanced new services, such as broadband data, wireless and video services, which could require substantial expenditure of financial and other resources in excess of contemplated levels, rapid and significant changes in technologies and markets, adverse changes in the ability to provide, et cetera, and so forth and so on -- and financial results expected to result from the acquisition of U S WEST timely or at all and difficulties in combining the operations of Qwest and U S WEST.

As you have heard, that combination had taken place only three months before.

Now, to say that the investing public could count on a projection made 16 months into the future is simply wrong. But make no mistake about it, those projections we will show you were honestly made, reasonably made, and not made up.

Moreover, we will prove to you that the internal debates and discussions were not about the publicly stated financial targets of Qwest but were instead internal debates about a budget which was $700 million higher than the publicly stated financial targets of Qwest and deliberately stated $700 million higher as aspirational goals within Qwest in order to energize and get the people working at Qwest to exceed the public guidance.

And you are going to learn, and I'm going to demonstrate before you, that all of the documents that the prosecutor has referred to in his case were debates and discussions about the internal budget which was $600 million higher than the publicly stated financial targets of Qwest, and that a great deal of that discussion and debate was because people's bonuses, their end of year financial returns to themselves, depended not on meeting the publicly stated financial targets of Qwest, but the internal budgets of Qwest which were, in fact, set hundreds of millions of dollars higher in order to do everything possible, not just to meet the publicly stated financial targets of Qwest, but to exceed them.

It is to be regretted that there has been no effort up till this point to distinguish between internal budgets, to which the public has no access, have no right to know about, and the publicly stated financial targets of Qwest which is what is charged in this Indictment.

Moreover, you have heard from the representative of the prosecution that the so-called important -- not material, non-public information, but the so-called important information which he says drove Joe Nacchio to accelerate the sales of his stock in January -- that's what he told you, because he has to say that, because the Indictment says that. The Indictment is wrong, he's wrong, but he says it. He says that the important non-public -- important non-public information was a note that Mr. Mohebbi wrote to Mr. Nacchio. But he didn't show it to you.

He said in that note Mr. Mohebbi said the growth targets were a huge stretch. Do you recall it? He said it several times. A huge stretch. He didn't say it. And he did not refer to -- he was not talking about the publicly stated financial targets which are in this Indictment and which has a different number than the internal budgets.

I'm going to show you the Mohebbi letter. They don't even know when it was written, because it's not dated, so they speculate, it's sometime between December 1 and December 14. That's on their chart. That's what they showed you. Had no date.

Moreover, you will be surprised to learn that Mr. Mohebbi didn't mail it to Mr. Nacchio. He didn't hand it to Mr. Nacchio. He left it on his chair. It doesn't matter. Because we are going to prove to you from the words of the letter and from the mouth of Mr. Mohebbi after they have called him to the stand, that that letter was not about the public financial statements of Qwest that the public had a right to consider, but the internal budgets of Qwest which had been deliberately set $700 million higher in order to get those employees to exceed -- exceed those public targets.

Oh, you'll have no doubt about this before I step down from here, unless His Honor throws me out or I fall down, because I'm going to show you those budgets. Not by slides saying, Nacchio stole, Nacchio had information. I'm going to show you the actual budgets. I'm going to show you how those budgets say that themselves, that they are higher than the publicly stated financial targets of Qwest.

And as far as the acceleration of sales in January, we who have no burden of proof are going to prove to you that there was no acceleration, none. We are going to prove to you what the sales were, item by item, and why they were done.

Because please, I implore you remember this: This is a fraud case, insider information. Insider trading is a shorthand way of saying stealing. It is an accusation that Joseph P. Nacchio took advantage of somebody, committed fraud upon them, and we are going to demonstrate to you before I sit down that that is not true, not just because I say it, I'm going to show it to you by documents, by what he did, by what he didn't do.

I'm going to do this, although I have the right, as His Honor has told you, to sit quiet and do nothing.

Make no mistake, what is in the Indictment -- let me read it to you, for he has not. "Qwest through Nacchio and others issued financial guidance generally referred to as targets."

See, those are the ones issued.

Referred to as targets to the investing public concerning Qwest's future revenue growth and earnings.

That's not internal budgets. That's what you tell the people outside.

Then they say, "No later than December 4, 2000, through and including September 10, 2001, Nacchio was aware of," not important information, "Nacchio was aware of material, non-public information about Qwest's business, including but not limited to, (a)" -- here are the magic words, folks -- do you have it up there? Thanks.

"Including, (a), that Qwest's publicly stated financial targets, including its targets for 2001, were aggressive and a huge stretch."

Do you see that, folks, aggressive and a huge stretch? But I want you to notice something. There are quotes around "huge stretch." I'm sure you can see it. I hope you can see it.

There is no quote around the "(a)." Notice that. And I'm going to show you why. That is direct copy from the memo that -- undated memo that Mr. Mohebbi wrote. And he didn't write that the publicly stated financial guidance was a huge stretch as written in this Indictment.

He was writing that the budget had a huge stretch, and I'm going to explain to you what that meant. Not just because I say it, because I'm going to produce the internal documents of Qwest that demonstrate what Mr. Mohebbi was talking about. He will confirm it, I'm confident, from the stand. And it's not about what this Indictment says.

But I, who have no burden of proof, I'm probably going to have to take a little time to do all of this, but I'm going to show it to you, because your task is important. You know that. I know that. And this isn't just about winning and losing. Let me tell you something at this stage of my life, this is about doing the right thing.

I don't know if -- he told you it doesn't matter that

Qwest didn't have to change anything, Nacchio couldn't trade. I don't understand that. The numbers are either in good faith, reasonable and honest, in which case anybody can trade on it, we'll prove to you, or the numbers are make believe, in bad faith, not reasonable. In that case, you can't keep those numbers out there. It's not right. It's not just Nacchio trading; it's the world trading.

Well, that's a large undertaking, but I'm going to do it.

I have to drop back and tell you a little bit about this company, about the man, about his stock positions, how he came to them, what it means.

Qwest was -- and in this small way, I agree with the prosecutor -- Qwest was a private company. Was owned entirely by one of the leading citizens of this community, I understand, named Phillip Anschutz, a very wealthy man, moved from oil to railroads to telecommunications. And he wanted to build a telecommunication company of enormous size, something that would stun the world. And he wanted to do it with stuff I don't even understand, because I'm not of the right generation, fiber optic cable, built along the right of way of the railroad that he used to own, so he kept the right of way to lay the fibers. And he had 48 fibers, whatever that means.

But I understand that with just four of them you could accommodate the entire telecommunications capability of AT&T,

MCI, WorldCom, the whole United States. And it was his dream to make this into one of the dominant companies in this field.

He did not have the expertise. He had brilliance, he had money, he had investing ability, we'll prove to you. But he needed somebody to take this company which had four or five hundred employees, maybe an annual income of a few hundred million dollars, if that, and he needed somebody with the expertise to transform the company.

And he recruited Joe Nacchio.

Who is Joe Nacchio? We will prove to you in this -- in this too, I agree, this small way I agree with the prosecutor in the case, he was one of the leading people in the field in the United States.

He was right at the top -- right under the chairman and CEO of AT&T. He was well paid, well positioned. And Phil Anschutz wanted him. Joe Nacchio did not apply for the job. Anschutz went to get him. He will take the stand and confirm this. You know that he's on our witness list.

Now, Joe Nacchio didn't want the job. He didn't want the job for personal reasons. He had a personal problem at home. It's never been revealed publicly. I have to do this, for reasons you will understand later on as I go through this presentation.

He had a sick child. His child wasn't physically ill, had emotional difficulties. And Nacchio was torn between his natural desire to do something entrepreneurial with Mr. Anschutz, and the felt need that he had to be with his family. And he didn't want to take the job.

And so what Mr. Anschutz did was to tell him and to guarantee him that he did not have to move to Denver, that he would open an office in New Jersey. Oh, you won't have to worry about whether or not I'm telling you the truth, because we're going to mark his contract into evidence, and those provisions are right in the contract.

In December 1996, the only way that Mr. Anschutz could get Mr. Nacchio to come and make Qwest into the company that Mr. Nacchio -- Mr. Anschutz wanted, was to guarantee him that he would have a New Jersey office, that he would not have to come more than four days a week, and even get credit for the flying time off the four days, or he wouldn't have taken the job.

Now, in addition to that, because Mr. Nacchio was so highly ranked in AT&T, and had so many benefits which had accrued in AT&T, in the contract -- once again, I'm going to mark this contract into evidence at the earliest opportunity that His Honor will allow me to do it, so you'll understand that I'm not just standing up here telling you a story.

You have it up there?

Thank you. Honest to God, I didn't know -- do you have that provision about the -- well, it's at the bottom of the page, where it says "Position and duties," if you look at A, it goes over to the next page, Candy.

Four days a week. Office in New Jersey. I don't know if you folks can see it or not.

"The executive shall perform his duties and responsibilities at the company's offices in New Jersey, provided that he has to travel four days a week" -- I really didn't intend -- let me -- it's there. I hope you can see it.

In addition to that, he had vested rights at AT&T, $11,300,000 in vested rights at AT&T. And Mr. Anschutz wrote him a check for that amount of money to get him to leave his position at AT&T, to turn down other offers from other companies, to come and create what Mr. Anschutz wanted to create, this company, Qwest.

That, too, you will see in the contract -- don't put it up --

It's an attachment to the contract, paid over three years, and you will find specified in the contract what all the $11,300,000 is for, every part of the benefits he had accrued at AT&T.

Now, I want to emphasize something to you, folks. It's a private company we're talking about. Nobody's business. It's part of the background of the case. Didn't cost the public anything. This is Phillip Anschutz' personal money that he was willing to spend to attract Joseph Nacchio to come here and create this company.

But Mr. Nacchio was not willing to come for that reason, because all that did was to cash him out of his position at AT&T. He would come here, he would sacrifice what he had to sacrifice in terms of his home life, but only if there was an entrepreneurial advantage, some sort of way that he could make a lot of money, in crass terms, not just for himself, but for the very family who would be deprived of his presence.

And so what Phillip Anschutz promised him and put into a contract was that Joseph Nacchio should have 3 percent of the growth of Qwest. Mind you, Qwest, the private company.

These were called growth shares. They weren't real shares in one sense, in another sense they were. Some places, some of you may know of this, it's called phantom stock. It's a participation in the growth of the company due in part to your efforts and, of course, your colleagues' efforts. And he was given, Nacchio was, 3 percent. Let me give you a hypothetical.

Suppose when somebody in that position joins a company, the company's valued at a billion dollars. If the company grows to $2 billion through your efforts and those of your colleagues, you're entitled to 3 percent of the growth. That would be $30 million. That's a lot of money. But I take it, that's what America is about. It wasn't the public's money; it was Phil Anschutz' money. But in a real sense, it was everybody's money who was cooperating together within Qwest to increase the value of the company.

In 1997 Qwest, the private company, went public. At the time it was valued, it was valued by the investment bankers and the people who do these things at $2 billion. My -- it was slightly less, but I'm not going to make us crazy with 900 -- 1,900,000,000 some odd -- that's craziness. It was valued at roughly 1 billion when Mr. Nacchio joined. It was valued at 2 billion by the investment bankers when it went public.

And Joe Nacchio was entitled to $27,697,830.

It's important that I write that down, because although you do not know it, because I will show you, most of that money are the first two counts of this Indictment.

They gave me all of these things, and I don't --

$27,697,830, that's how much money Phil Anschutz owed Joseph Nacchio. And so when the company went public, this was a debt of the company to Joe Nacchio, and it was all the public filings, all the things -- we will introduce all the evidence to back up what I've told you now, all the fancy documents and all the letters.

As a matter of fact, I'm sure I have one handy.

Trust me, I'll do it.

Now, when the company went public, you see, he couldn't get his money out right away. Why? Because under the original growth share agreement, it all wouldn't vest at once.

Why? When you have a valuable executive, they do what they call golden handcuffs. They keep you around. How do they do that? They don't let all the money vest at once.

And so while all the 27 million some odd thousand dollars was a debt of the company, Nacchio couldn't get it at once.

Under the plan, the so-called growth share plan -- and witnesses will testify to this, documents will flow in about it, unfortunately -- in February of '98, he was entitled to $1,107,913. February of '99, a similar amount. February 2000, a similar amount, but small. Each year, 20 percent would vest, and each year he could withdraw 20 percent of 20 percent.

And the last was supposed to be December 31 of 2001. Okay. And that was to be the big one, about $24 million.

Members of the jury, I'll return to this in a moment, but this is what you must understand to understand the first two counts of this Indictment, why they are wrong, why they are unjust.

That money was to be paid in the Qwest stock, but it was not dependent on the value of the Qwest stock.

On February of '98, he would get $1,107,913 in Qwest shares, no matter what the price of the shares were. If the price of the shares were a dollar, he'd get $1 million; if the price of the shares were $10, he would get, you know -- I don't do math so good, but 110,000 shares, I guess. If the price of the shares -- well, you can do the math.

In other words, it was totally immaterial as to what the price of the stock was. He would have no earthly reason to pump up, lie about, be extravagant, anything concerning the earnings with a -- private or internal about Qwest because his remuneration didn't matter.

I will show you this later.

What happened to him was, on August the 13th -- August the 13th of 1999, they advanced the payment of the last tranche, $24 million to January 1, '01, and those are the shares that were sold on that time.

I'm going to come back to this. But if you remember the presentation you just heard, he's pumping up the stock, pumping up the stock so he can make the money on January 1 and January 2, Counts 1 and Count 2, and the truth of the matter is, it didn't matter if the stock sold for 10 cents a share, he'd get the same amount of money. And that is irrefutable. Hold me to it.

Moreover, he never wanted any shares like this. We were told in the opening, why not keep it? Because every time he got shares, he had to write a check to the United States Government. This is not like options, ladies and gentlemen, you know. This is direct compensation.

And so every year he wrote to the company, don't give me the stock, give me money. But I'll show you why, because I have to -- as a guy sang from where I come from, we have to make all the stops along the way. But you'll see it.

So Qwest went public. He was entitled to this amount of money, $27 million, because that's what the private company owed him. And if you wanted to buy the company publicly, that was the obligation that was his.

What else? They wanted him to stay. The company issued 100 million shares of stock to the public at $22 a share. That was the public offer. There is no dispute about it. If we have to, we'll bring in documents like this to demonstrate.

You recall he had been promised by Anschutz 3 percent of the company, 3 percent of the growth of the company. Nothing of the capital. Nothing of the capital. And in order to keep him as chief executive officer, they continued the 3 percent growth program. How did they do it? They gave him options which equaled 3 percent of the growth of the company.

So he got 3 million options. 3 million options. So 100 million, got 3 million options. And this was in, I believe, 1997.

And the stock went way up and started splitting. His 3 million -- it split twice. He got 3 million options at $22 a share. It split once, so he had 6 million options at $11 a share. Split again, and he wound up with 12 million options at

$5.50. Okay. But they would be worthless to him, indeed, unless the stock went up. And they were given to him for that reason, to incentivize him and energize him to make this into a great company. And he did.

You will hear in a little while when we get to the September 7 guidance, which he issued a 21 billion .3 to 21 billion .7 for year ending 2001, how he had grown that company, through mergers, through acquisitions, through investments into the company by Microsoft, by Bell South, by Treasury stock, not public stock. How he had grown the company from 400 employees to 65,000 employees does. It is not make believe, mirrors. It's a real company, with real income.

I now would like to give you a survey of what he was doing with these options. But I must tell you one more thing about these 12 million options. He could not get them all at once.

Do you remember what I mentioned about golden handcuffs? They would only be given in tranches every year. Every year on December 31, he would get an additional 2,400,000 options.

So let us watch him. Let us see what he has done from the beginning of 1998. Let us see whether it is true, as alleged in this Indictment, that he accelerated his trading in January of '01 because Mr. Mohebbi dropped him a note and left it on his chair about the internal budgets.

May I do this, Your Honor?

THE COURT: Yes.

MR. STERN: This is 1998, the IPO, initial public offering, has been in 1997. His first tranche of 2,400,000 options of his total of 12 have vested -- he's executing. Why shouldn't he?

You know what I didn't tell you, folks? When he made his deal with Anschutz in the private company, his salary was $600,000. That's a lot of money. I'm not kidding around with that. That's not why he agreed to do what he did in terms of his family. It was to have an entrepreneurial chance to make a lot of money. And when Qwest went public, his salary was about 600, $650,000. That's all he was being paid.

And I listened to you folks during the voir dire that we had, and I heard what you said. And I'm here to tell you that he never got a big salary, ever got a big salary, that he began with that company about 600, $650,000 a year, plus a bonus of 3 or 400,000, and that his total salary and bonus even at the end, when Qwest was high as a kite, never exceeded about a million and a half dollars.

He did what I heard in this courtroom you're supposed to do, get your money by increasing shareholder value.

But, of course, when you do that, and your options do mature, do begin to vest, again, then, again you cash them in, and that's what he did.

The first year, his first tranche vested December 31, 1997, the year Qwest went public. Yes, the IPO. He had 2400, he executed on 1,131,000 shares. He decided to keep 351,000 shares, folks. That means, ladies and gentlemen, he paid taxes on the difference between $5.50 a share and $19.93 a share. That difference represents the profit on the exercise. He held the stock, paid personal income taxes on it, and never sold it, ever.

Well, I'll come to that.

In all, he exercised 47 percent of his available options in that year.

Let's look at 1998. I hope this is 1998.

Here is 1999. He had 1,268,092 remaining that he didn't exercise the year before, right? I think you all saw that on the chart. If not, I want to verify it for you, so you shall know that I'm telling you the truth.

There it is. That's what he had left. And --

Shows you how good I am.

He has that left, carried over from the year before.

On December 31, his next tranche of 2,400,000 vested. So at the beginning of the year, he had vested shares of 3,668,902 options. He exercised 1,881,000 options. No one is claiming he had any inside information. They're not attacking him -- indicting him for any of that. He exercised options, 51 percent of all of his available options. That's what he was in it for. It wasn't for the salary; it was for the increase in the share price.

And you can see that the prices increased, goes up, goes down. And as many of you taught us yesterday, that's what it is in the market. 51 percent.

I'm showing you this because of the Indictment allegation that his sales accelerated after Mohebbi left a note on his chair sometime between December 1 and December 14 of the year 2000.

Something else happened that year, folks. He was granted an additional 9,000 options at a strike price of 28.50. Did I say 9,000? I mean 9 million. That's quite a difference.

Again, golden handcuffs. Couldn't have it all at once. 25 percent of it would vest, but beginning August 13, 2000.

So began the year with a 351,000 personal shares, he executed on 51 percent of the 5 1/2 that he had, and now he had in his pocket additional options.

On that same day, August 13 of 2000, the company advanced the payment date of the $24 million that were due him for the growth shares.

And in a letter that we show marked into evidence -- trouble is, when you try to show people you've really got it, you've got a lot of stuff. Here it is.

Exhibit 1704. Please put it on the screen if you can,

please. Maybe I have the wrong exhibit.

If you read the paragraph next to the end, "It is also agreed that the growth share payments in the amount of 25 million . . . payable to you during the year 2001 under the growth share plan will be paid in full January 1, 2001."

On that day, he would receive that much in Qwest shares no matter what the price of the shares were. $1, he'd get 25 million.

Now, the numbers, I understand, don't completely match up. But you're going to find out that the whole accounting was -- but that is the growth shares, make no mistake about it. Directors of Qwest will come into this courtroom and confirm it. And he had no interest in what the price of the share was, in terms of that payment. Of course, he cared about the price. But I mean, in terms of pumping up the stock as has been suggested because he wanted to sell in order to be indicted on the first two counts, he had no interest.

So let's return to the year 2000.

He had at the end of the year 1,787,902; and on December 31, 1999, an additional 2,400,000 options vested.

He now had 4,187,902 options available. See, when the Government, as the prosecution has styled itself, the United States, says the sales were accelerating, they don't happen to mention that he was also getting inundated with options. But even then it's not accelerating in terms of percentages. So he's executing, he's executing. And then on March 1, 2000, he executes on 200,000 shares, pays tax on $41, nearly, a share, because he holds the shares. Holds them.

So out of the gross proceeds of $8,150,000, he pays income tax to the United States, Colorado, and to New Jersey and holds the shares. He's still holding the first 351,000. He now has 551,000, personal account. He began -- that's by March. He began with 4,187,000 options.

On August 18, his first tranche of $28.50 options vest, so he has an additional 2,500,000 vested options at $28.50, and he's in the money because, as you can see, on August 8, he had exercised some options at $53.33. Okay.

Now I'll tell you some interesting things that he does, this man who they say is lying and cheating and pumping up stock.

Here is what he does. On July the 26^{th}, right in here, he gives 90,000 shares of his stock to his children. That stock has a value for gift tax purposes -- it was given at a price of $48.28. And for gift tax purposes, it was valued at $4,345,312.50. Mustn't forget about that, because the government won't, and paid gift tax on it.

He paid gift tax on it to the United States Government for the privilege of gifting that many shares, 90,000 shares, to his children.

And he never sold them throughout the entire time that he was the CEO at Qwest, even when it was going down, even through the terrible year of 2001, even after 9/11, even after everything, even to the day he left the company, those children owned 90,000 shares and lost 3 1/2 or $3.6 million on them, because the man never sold a share.

But he had a problem. I'll tell you what that problem was. You see, all of these options here, 4,187,000, he had to get rid of them. He had no choice.

Why? Because when Qwest went public in '97, he had a five-year vest on them. In June of '02, he would lose them, worthless. It was use them or lose them. They made some reference to that. I guess maybe they anticipated I was maybe going to happen to mention it.

He had to get rid of those options. Would expect him just to say, I'm not going to exercise them? That was it -- was the whole purpose of him undertaking this whole Denver experience.

He didn't want to exercise them. He believed in the company. The same mind that gave 90,000 shares to his children and paid taxes, gift taxes on $4.3 million, did not want to exercise those options to the degree that he would have to. Sure, his financial advisers were telling him, look, don't be crazy, don't keep all of your wealth in one stock. Nobody does that. I don't think anybody does that unless -- I don't think it's a wise thing to do. That's what he was being told. We will put many of the people who advised him of that on the stand. They will say it to you. They were pounding at him, diversify, diversify, diversify. And he did some, but not to the extent that they wanted him to. And he didn't want to get rid of all of these options.

You know what he did? He went to the Board of Directors and said, please extend my options. I will put witnesses on the stand from the management of that company who will swear to you under oath, people with no interest whatsoever in this case, that during exactly this period of time he went to the Board of Directors and said, please extend my options. I don't want to exercise and sell.

Nobody kind of mentioned that to you. But it is the truth.

They said no, and they had a good reason. I don't understand the reason, but apparently for accounting purposes. Maybe some of you would. For accounting purposes, if you extend options in that way, the company has to take a hit to earnings. And they weren't willing to do it. They weren't willing to do it. And they told him, Joe, go sell. Go sell. Try to smooth it out, try not to affect the price of the stock, Joe. Joe, go sell.

Now, maybe you think I'm making it up. But I'm telling you, I'm going to put people on the stand to tell you.

And what do you know, Joseph Nacchio on October 31 --

first of all, he starts selling -- now, mind you, he doesn't even have his note yet, because under these charges, he doesn't get this note until sometime between December 1 and December 14. I think you folks will remember that. And the Indictment says it was around December 4 when he got all of this vital -- what was it, important information from Mr. Mohebbi in the note left on his chair.

On October the 31st, Joe Nacchio held a press conference and announced publicly -- sorry, Your Honor.

October 31 -- we can actually play this, I think. We could show it to you on video, I believe -- no, can't show it to you on video. You could hear his voice. It's all right.

This is the actual transcript of what he said. Can you put that on the screen as well? If you can't, read along with me.

Somebody named Tom asks him, "What about this requirement to sell?"

Joe Nacchio: "Right now I got two grants. I got a '97 grant in which there is 7.4 million options outstanding."

See, he had another tranche coming in, next year, 4.1 starting the year, another 2.4, all of which expire, not just mature, most of them are vested.

Quite true.

Most of them are vested, but they expire in under 30 months. And that was true, June of '02 they would expire.

"Then I got a 9 million option grant that goes for another nine years." Remember that one, folks? 9 million at 28.50, vesting, you know, along.

"The problem we have, me and my board have, is that my grants expire. It is use them or lose them, and they have got a big gain in them. So I can't just exercise and hold."

What that means, folks -- I think many of you know this. If you exercise the option, you pay income tax on the difference between the option price you exercise and the option price you take it at. So you're -- you've got the stock, but then you've got to write a check to the United States, state of Colorado, and state of New Jersey.

"So I have to sell every quarter, and you will see me sell. You will see me sell. Now, I've gone to the board and said they ought to think about a different method because we're running out of quarters and they still have 7.4 million to sell. So you've got to sell about a million a quarter."

This man, who they say accelerated the sales because Mr. Mohebbi left him a note on his chair.

"So I've got to sell. But right now I'm in this little window, and that's really where the big selling is coming. I am not selling anything that is vested that I've got nine years left."

Translation, I think you know what it means. I'm not selling any of the 28.50, because I don't have to. I've got nine years left to go. And he never did, from the time he got it through each vesting period until he left the company, he never exercised, never sold a share of that $28.50 stock.

Well, you can read the rest. He's telling the people, look, watch out. I have to sell. I don't want to. And I will prove to you every word that I have said to you is absolutely true.

Remember, folks, Mr. Mohebbi's note is important. Important information, not material, non-public information, but the important information, is somewhere between December 1, December 14 of the year 2000. That's what they say. That's what they've charged.

Now, why don't we take a look back at what happens on September 7. That's the public guidance that I started out with, if you'll recall, the one with the warnings. That is the publicly stated financial targets that are an issue in this case, the ones they say that there was important information about.

Here it is. And that's Nacchio talking. "Based on the strength of our business and our" -- you know what, I'm not going to start with that. I'll leave it up there for you.

I want to give you the background of that first.

Qwest became Qwest with U S WEST on June 30, a couple of months before that. And on June the 30th, in Exhibit A-204, it was announced --

I don't think you're looking at the same thing I am, but that's okay.

I'll read it to you. Trust me, they'll find it and show it to you.

On June 30, registrant consummated the merger of U S WEST, a Delaware corporation -- that's when they got together.

Then the announcement. Could you highlight the paragraph that begins, "The new Qwest will have" --

THE COURT: Mr. Stern, I don't mean to interfere, but why don't you enlarge it, rather than highlighting it. At least that would help me, and maybe it --

MR. STERN: Because I'm not smart enough. I'm not technological.

THE COURT: You know the difference between big and yellow, don't you?

MR. STERN: Depends on the hour of the day, Your Honor.

THE COURT: Proceed.

MR. STERN: All right.

Here is the projection, folks. 18 and a half billion dollars, right. For what year? 2000.

Where did that come from? For a year, the investment bankers had studied what the prospects were for these two companies, because it took a year to make -- you know, to make the merger happen. I think even the prosecutor mentioned that in his opening. It took a year for the merger to happen.

And two investment banking houses, Donaldson, Lufkin & Jenrette and Lehman Brothers, got together to figure out what the projections would be for this newly merged company for the year 2000 and the year 2001 and continuing thereafter.

Would you kindly put on the screen, enlarge, yellow and do everything necessary, Exhibit 502, the top line.

It was called Project America. They had these codes, these investment houses, when they do these deals. There was a red, there was a blue and a white, and one company was blue. They used code names.

Can you enlarge "revenues," see the word "revenues"? The very top line.

I'm spending time on this, folks, because it really is important.

They said for -- is it okay?

They said for the year 2000 the revenue would be $18.5 billion for this new company. And they said for the year 2001 the revenue would be 21 billion 33. I didn't come -- that didn't come from Nacchio, that came from Lehman Brothers, Donaldson, Lufkin & Jenrette, and that was projection for when this merger would take place.

And so when it took place -- when it took place, Nacchio announced, consistent with what he had been told he should announce, that the revenue projection for the year

2000 would be 18.5, on July 9, a reasonable projection, based on what he had been told by investment banking houses it should be.

Then on July 19, 2000, he reiterated what the investment bankers had said, 18.5 billion for the year 2000. Now, he's pretty deep into 2000, but still far from the end. This -- there is five months or so left to go. But he is sending out the projection. Of course, they have the usual warnings attached thereto, but the company is in good faith, he's in good faith, the numbers are reasonable. If you're going to make projections, what else can you do? You make a projection. That's the projection.

He also announced that he expected Qwest's growth rate to be 15 to 17 percent. We have been told how unreasonable that is. The truth of the matter is that that is exactly in the report of the investment bankers, Donaldson, Lufkin & Jenrette and Lehman Brothers, which predicted, prognosticated that the revenue growth of these two companies would be exactly that. He didn't make it up. He was in good faith. He was reasonable. Because if he wasn't reasonable, then you got two investment banking houses that were unreasonable.

And then you know what happened, folks? The business was doing better. Isn't that surprising, based on what you heard a little while ago? Throughout July and August, the business was actually doing better than the projections. I don't blame you for being surprised.

And so you see on September 7, 2000, in the projection which is the subject matter of this Indictment, Mr. Nacchio raised -- raised the projections from 18.5 to a new projection of 18.8 to $19.1 billion.

I'm going to tell you a secret. I'm going to get ahead. You know, he made it. And because the business was doing better, he raised the projection from 21 billion to 2000, that is to say, the end of 2001, to between 21.3 to $21.7 billion, replete, of course, with all the warnings and advice that these are projections, best evidence. No one can count on it.

I did not hear one word that this was unreasonable, done in bad faith, done as a plot or a scheme to cheat somebody.

And these warnings, you read the warnings at the beginning of the 8-K. These warnings are at the end of the 8-K. I'm not hiding behind those warnings, folks. But I can't sit silent when somebody said, people counted on these projections. That is unreasonable.

So that was the statements to the public.

By the way, he made the middle -- you know, I thought I wrote this down.

He actually did 18.9 for the year 2000, beating the 18.5, and in the middle of the raised estimate which he had given on September 7, 2001.

Remember what I told you, I have to deliver on this. But I will.

Now, what is this about the budget? What is this about all this important information that is being concealed from the public?

Well, we were told that the budget process had not even yet begun, which is true. Do you realize, folks, that at the time these public statements of projected targets were issued, the internal budgets that he was talking about, seems a long time ago in his opening, had not yet even begun in progress.

Play his November 9 one, okay. 005A. Play the one he played you. He's got all of that stuff, Nacchio's inside information. This is the inside information he had about this guidance that is out there in the public for two months. The budget meeting, they said.

And then on November 16, do you see, the finalization, says the Government, of Nacchio's inside information, which is the 2001 targets. Isn't the word "targets" interesting, ladies and gentlemen? What targets are they talking about? They're not talking about these targets up here on this board, folks. They're talking about the budget targets.

Now, what are the budget targets? Maybe you'd like to actually see it. Would you kindly put up Exhibit 814.

This is the budget of November 15. We're now a little more than two months after the publicly stated financial targets of Qwest referred to in the Indictment, and which is on that board.

Do you got it?

Would you blow up, yellow and do anything else you can do with this thing in the bottom that looks like something from a cartoon.

I don't know if you folks can see this. It shows -- it shows that the internal targets -- that's to say the budget targets -- are 21,991,000,000. And it's bigger, bigger than the publicly stated financial targets of Qwest, the thing that the public is counting on.

And the gap, and the growth, and the targets that the prosecution has been talking to you about this morning are the complaints, internal complaints of Qwest's employees who didn't want to have to reach 21,991,000,000. They weren't talking about 21,300,000,000. They were worried about an additional nearly $700 million over the public guidance, the publicly stated financial projections.

And why? Why? Because their salaries depended on it.

Why so? Because those internal budgets were imposed on them by a terrible man. And they were imposed upon them by this man to get them to exceed the publicly stated financial targets of Qwest, so that the public that owned the shares of the stock of Qwest would profit and so would he.

The Board of Directors met. They adopted this budget, $21,991,000,000. And all of the internal crying, complaining and very important information that was not publicly revealed was that these executives, worried about their own pocket, didn't like that $21,991,000,000 number.

And you know why? Because Mr. Mohebbi had a 100 percent bonus. He made $600,000 a year and was entitled to 100 percent bonus if, but only if, he could meet the internal targets which were set each year by his boss, and, right, he was his boss. And he wanted him to exceed the publicly stated financial targets of the company by imposing on people like Mohebbi and others like Szeliga too, she had a bonus at stake, internal numbers which the public had no right to know, because many businesses do that.

Now, they would complain to him, to be sure. We don't like this number. We can't do this number. He'd say, I think you can do it. How do you think he built the company to the point it was? Listening every time when some junior person to him said, I can't make it, I can't do it. The purpose is to get people to exceed what they think they can do.

You know what those budgets were called? This is the biggest joke. They were called stretch budgets. It was a term of art within Qwest.

I am going to prove to you that when Mr. Mohebbi dropped a note somewhere between December 1 and December 14 on Mr. Nacchio's chair, talking about not a huge stretch, but huge stretch, he was describing a stretch budget. It's what it was called within Qwest.

Let's take a look, for example. Here is the May meeting of the audit committee. It's our Exhibit 20, page 4.

Budget overview. I think it's the next page. Will you highlight, yellow and make whatever you have to into the title of that page.

Will you do something to the words now. They can see them.

Want another one? A-37.

I'm sorry, Judge, I know I'm deficient in this. That's what happens when life passes you by.

I'll just tell you, folks, here is the 2001 compensation targets. It's entitled "Compensation targets," because it's what these folks have to reach to make their bonuses. 2001 compensation targets. Here is the word "stretch budgets." And there is the amounts, $21,800,000,000, because they had by this time lowered the internal budget because of all the complaining and all the rest of it. They lowered the 21-991 to 21-8, which was still comfortably above the high range of the publicly stated financial targets of Qwest. These are all internal numbers.

But I'm afraid my friend got us a little confused in his presentation about what growth targets we were talking about.

THE COURT: All right. Mr. Stern, I have to stop you now. Please stick with the facts. I think you're arguing now.

MR. STERN: I'll be happy to.

I will prove to you that Nacchio did not agree with the critics of the internal budgets. I will prove to you that he had a reason not to agree with the internal budgets, because he was aware of information which was not available to the people who were criticizing the internal budgets.

First of all, he knew more about the business than he did. That's why he was brought in there, and that's why he built it.

But we'll also prove to you that he had access to classified information about potential work that he believed was available to Qwest within the year 2001 which neither Mr. Mohebbi nor Ms. Szeliga nor any of the people who were worried about reaching the 2.9 or the 2 -- 21.9 or 21.8 budgets.

So that, from our point of view, is this: We will prove to you that throughout the relative period of time, the employees who you heard about were not complaining inside the company that they could not reach the publicly stated financial targets of Qwest as alleged in the Indictment; that they were complaining about the internal budgets which were higher because of their own pecuniary interest. And we will prove to you that Mr. Nacchio in good faith discounted and disbelieved those higher estimates because he had additional information that they did not have.

You wouldn't consider giving a little break to me, a little recess?

THE COURT: We can do that, yeah.

MR. STERN: Thank you very much.

THE COURT: Dare I ask how much longer you have?

MR. STERN: I would think I can be done in an hour. Thank you. Thank you for your indulgence. I thank the jury.

THE COURT: We'll take a 15-minute recess.

(Recess from 3:22 p.m. to 3:38 p.m.)

THE COURT: Mr. Stern, you may proceed.

MR. STERN: Thank you, Your Honor.

I am going to try and do like the Muppets used to say, keep moving right along.

So the Government says, Mr. Nacchio got a note on December -- somewhere between December 1 and 14th, which, you know, activated him in some way. There is not a single sale during that period of time.

They said he was told important information about a huge stretch. Well, this is what the Indictment says, their Indictment.

"No later than December 4, 2000, Nacchio was aware of material, non-public information about Qwest's business including that Qwest's publicly stated financial targets were extremely aggressive and a, quote, huge stretch." It's copied from the Mohebbi memo, which isn't talking about this guidance; it's talking about this budget.

And here is what Mohebbi actually said. I don't mind reading it to you.

"Joe, the purpose of this memo" -- are we going to do this one or not?

"The purpose of the" -- better wait.

THE COURT: Proceed.

MR. STERN: Thank you, Your Honor.

"The purpose of this memo is to share with you some ideas about how we can efficiently run Qwest in 2001. In doing so, I have talked to Drake . . .

"As we discussed this week, the revenues and EBITDA numbers for next year are not a huge stretch." It says "huge stretch." He's talking about the stretch budgets, and I believe when he takes the stand in this courtroom on behalf of the United States, he will confirm that this memo is not about the publicly stated financial targets of Qwest, but the $700 million budget -- I mean, the $700 million addition in the budget. That's what he was worried about. And I believe he will confirm it.

Now, in an effort to persuade you to convict

Mr. Nacchio of the first two counts, they began a chain of explanation to you this morning, starting with December 20. They say that on December 20 Mr. Mohebbi wrote another memo. It, too, is not dated. It, too, you were not shown. It, too, was not given to Mr. Nacchio. It, too, Mr. Mohebbi will admit on the witness stand, he didn't give to Mr. Nacchio. It, too, he will say he put on Mr. Nacchio's chair.

And then the Government has alleged as a result of receiving that memo, Mr. Nacchio decided that he had to pump up the stock because when AT&T and the other telephone company had a problem, temporarily Qwest stock went down. I don't know if you remember this.

First of all, we will prove to you that on December 20 -- that on December 20, 005F, Mr. Nacchio was not in Denver. He was in Appalachia with his now abbot of the Saint Benedictine order distributing food in hovels to underprivileged people. There was absolutely no way he could get this December 20 memo.

We will bring into this court, the abbot, the records, the trip, and prove it to you.

Moreover, we will show you this memo, which is not about the public stated financial targets of Qwest, but which is about the budget. And we will show you that in the memo, while Mr. Mohebbi is expressing concern, he says, even the budget is doable. That's the word he used, is doable.

Now, the Government contends -- show them, please, 005F.

This I think you will enjoy. All right.

Here is the story that the Government has offered. December 1 to 14, Mohebbi memo to Nacchio, we know that's about the budget. We know the budget is being created after the guidance. December 20, Mohebbi memo to Nacchio. December -- which he could not have possibly gotten. Even if he got it, was only about the budget, which Mohebbi says is doable.

December 21, Nacchio reaffirms guidance. He did. And why shouldn't he? The guidance is not the budget. The budget is a much higher number, and no one is complaining about the guidance.

January 2, Nacchio sells $14 million worth of stock. That's the gross shares, ladies and gentlemen, the shares which he couldn't possibly care about what the price was, because he was going to get $24 million, roughly, in shares, and if you -- the amount of shares would be, you know, dependent on what it took that day to give him $24 million.

And we're going to prove to you that he didn't want the shares, never wanted growth shares, did not want to accept shares and pay income tax on it. And every tranche going back to 1998, he, every year, wrote the company and said, don't give me these growth shares. Give me money. I've got -- he's got enough shares. He doesn't want the shares.

And we will prove to you -- yes, because you see with options, he doesn't have to exercise. If he takes these shares, he has to pay income tax on ordinary income rates on every share that he takes.

We will put every one of those letters into evidence.

Now, he doesn't want the $24 million in shares. And when he finds out that these too have to be in shares in spite of the letter which says you're going to get $24 million, his financial advisers pound on him. See if you can defer the money. And so he doesn't even take the full 24 million in shares. $8 million is put into deferred compensation. Doesn't take the shares. The company is making him take shares, but at least they go along with putting $8 million into a deferred compensation account.

Now, on the year 2001, he had remaining 2,012,902 vested shares from the year before. An additional 2,400,000 vested at the end of 2000. He began the year, therefore, with 4,412,902 vested options.

Aside from the growth shares the 1st and 2nd of January, which were sent to him, no stock is sold. He's still carrying 551,000 shares, which includes 90,000 shares that he has given to his children and paid gift tax on and has not sold after the first Mohebbi note or after the second Mohebbi note.

Consistent with his public announcement on October 31, remember, I have to sell a million shares a quarter -- by the way, I made a mistake. It's not June of '02. It was June of '03 that his options would vanish, the $5 and a half options. I'm going to be selling. So he's selling. He's not selling because Mohebbi wrote him a note about the budget which is $700 million higher than the external target numbers. He's selling because he has to sell. And he told the public that he would be selling and the reason he would be selling, and he told them that on October the 31st, which is six weeks before he got any sort of a note from Mohebbi.

And then on the 15th he enters a trading program. The Government told you about that. We will prove to you what your common sense must surely tell you. Any person looking to dump enormous amounts of stock because he has inside material, non-public information that the stock is going to tank, the last thing he would do in all the world would be to enter a trading program in which he is limited to 11,500 shares a day for the remaining life of the options.

The reason 11,500 shares a day was selected was that's how many days it would take for him to get rid of the 4 million 4 he still had minus these, plus the additional 2 million 4 he was going to get at the end of that year.

We will prove to you that the last thing anybody would do would be that the stock was going -- who believed the stock was going to tank would be to enter a program in which it was computed that to get rid of the stock over the next two and a half years, you would sell every day 11,500. The Government says he withdrew from that program. That is true, he did. The Government has not told you why he withdrew.

But I will tell you what we will prove, what he publicly stated at the time. He said, I'm going into the trading program here. He said, I am withdrawing from the trading program here.

And the reason he said is because the stock is getting too low. He didn't want to sell because the stock was getting too low. Believes, as he did, in the projections in the publicly announced projections, believes, as he did, in his own company and in his own people. He did not want to sell under $38. And so he withdrew from the program.

When the stock came up, he began to sell. He had to catch up to some degree.

Did he enter another trading program? Yes, he did. When did he do it? On or about shortly before May 18. What did he do? He entered a program in which he would be selling about 10,000 shares a day for the remaining life of the program. Only this time he rectified the mistake that he made the first time. The first time, we will prove to you, when he entered the trading program, he did not set a floor. In other words, he had to sell 11,500 shares a day, irrespective of the price of the stock. And if you believe that you -- that the stock, you know, is going to go up, that's what you do, because you don't have to worry about it falling down. So he had no floor.

He learned from his mistake. When he reentered the trading program, he put a floor and said, do not sell a single share, do not exercise a single option under 38.

And this is the man they said had inside information that the stock was going to go down.

Now, in that year he had 4,412,902 options available. He exercised 2,172,000, 49 percent. You will recall, not materially different from the percentages in all the years before.

How many shares of his own holdings, of his children's holdings did he sell? None.

What about the 2 and a quarter million options that had become vested? None. Although he could have, as you can see from the price of the shares. They were over $28.50 throughout the year. None. Not a share. Nothing.

By the end of the year, 4 million -- strike that, 4,500,000 options at $28.50 had become available. Throughout the year he was in the money. Could have exercised. Didn't, not a single share. Not a single personal sale, not a single share of his children, not a single one of the 4.5, this man who they say accelerated his trading because Mr. Mohebbi left a note on his chair about the budget.

I will prove to you, we will prove to you, for I can't do this by myself, my colleagues will be up there with witnesses, as well as -- as well as I, but we will prove to you an amazing thing. This is going to amaze you based on what you heard before me. He made the budget. He made it for the first quarter, and he made it for the second quarter. That's right. The higher budget, the one higher than the publicly stated financial targets, he made it for the first quarter, and he made it for the second quarter.

And for those who don't know what quarters are, the first quarter is January, February, March; the second quarter is April, May, June. He never traded.

And when I tell you he made the budget, that means they were performing at $600 million better, on an annualized basis, than the low end of the publicly stated financial guidance, which is what the public had a right to read and a reasonable right to rely on, given the fact that it is a projection going forward for many, many months, and is obviously dependent, we will prove to you, on what the economic circumstances, not of Qwest alone, are, but of the nation as a whole is.

Now, we know what the year 2000 became. But we won't rely on common knowledge. Obviously, we're going to prove to you what happened in a steadily eroding environment.

And for those of us who had such wisdom, we will prove to you, to foresee all of these things would happen, they would be right. And for those of us who looked at the glass not half empty but half full and had a different vision for the year, as many of us unfortunately did, we would have been proven wrong. But that doesn't make us cheats, criminals, or to be convicted.

We will produce into this courtroom the economic surveys which Mr. Nacchio relied on in continuing to believe and to reaffirm the guidance, the one in May which said, "Although the Qwest in region economy is slowing, it remains the fastest growing region in the nation. Qwest in region territory rate is still below the U.S. average. Qwest in region territory maintains positive demographic patterns."

I have one for June. I have one for July. I have one for August. But I don't want to outweigh your patience. Your patience has been unlimited, so has Your Honor's, but I cannot exceed it.

He took a rosier view, to be sure.

In June, he met the public. He maintained the guidance, but he said, you know, I think maybe we should think about more towards the lower end of the guidance than the higher end of the guidance.

Now, I have to tell you something that does not give me pleasure. A while ago the prosecutor stood before you and said, in essence, he was trying to figure a way out. He knew disaster was coming. Well, we unfortunately are going to have to prove to you that he had a way out, that if he were a man possessed of information, that there was trouble, big trouble in store and that he would lose all of these options, millions and millions of options would go under water, he had a way out.

At the end of January of '01, one of his sons, the one who had the problem, attempted to commit suicide. He went into a hospital at the University of Pennsylvania. From there he went to a hospital in New Jersey. From there he went to a hospital in Florida. And for over a month, over 30 consecutive days, the boy was confined to the hospital. He was beside himself.

He flew to Denver on February 14, and he wanted to resign. He wanted out. He had the perfect excuse. He could have resigned from the company. Nobody could have stopped him from cashing in all of his vested options. Look where they were, $40 a share. He had millions and millions at 5.50. He had several million at 28.50.

Armed with all of this private, important information, he could have walked out and resigned.

Members of the Board of Directors importuned him to stay. They felt they needed him. And he did stay. Didn't go. Didn't sell his children's stock. He didn't sell his own stock. He entered trading programs to dribble out his shares, intending to remain with the company all the months it would take him to exhaust the options at $10 a share with a floor not to sell below $38 a share.

Finally, of course, the economy overcame him. An optimist, someone who believed in this company, we'll prove to you, the realities even with the fact that the Denver area, he felt, based on economic reports that we will put before you was doing better than the rest of the country, it was now -- it could not any longer be withheld. His own feelings were overcome, and he had to publicly take down the numbers, and he did.

And we will show you the announcement. He reported in September that the economy had now reached a point where he could no longer endorse the publicly stated financial guidance of Qwest. Now, that's September. Months and months and months after all the trading. He's not interested in trading.

Never sold a share of stock after 5/29, because, we'll prove to you, he would not sell under $38 a share.

So he took the numbers back. You know what date he took it down, folks? You're going to be amazed. He took it down on September 10 of 2001. September 10. You know what happened the next day? Of course, you do. 9/11. Planes crashing into buildings, monsters killing our colleagues, stock market closed for seven days. And when it reopened, Qwest stock went up. Go figure.

The point of that is nothing, but it's not exactly a science.

So he was importuned to stay, and he stayed. And they wanted him to sign a new contract. Because, you see, the first contract was expiring at the end of '01. You'll recall December of '96 was the first contract for five years, expiring in December of '01. And so they got him to sign a new contract in October of '01, after the -- took the guidance down, stock, of course, was lower. Everybody's stock pretty much was lower, by October, it was after 9/11.

And they gave him another 7,250,000 options, in addition to the 12 million he had to start with, the 9 million they gave him later, and another 7,250,000 options at $16.81, because they wanted him to stay.

We'll put that contract into evidence as well. And we'll put into evidence in that contract the same provision that he insisted upon, that they have a New Jersey office, that he not be compelled to stay here, because, unfortunately, the things that he had feared back in '96 when he made those demands had come true.

He left as chairman in the middle of '02, around June. His record of exercising options, as you can see, was actually less in '01, the year that they have him indicted for, if you just look at the 5.50 options. I think they're putting it on your screen. If you add in all the options that he had in the money, the 28.50 and the others, this man who they say accelerated his trading because he got all of this important information and cheated people, cheated them, stole from them --

And when he walked out -- by the way, he ended the year 2001 with 228,000 more $5.50 options than he began the year with.

This acceleration you've heard about, and his personal and family stock, December 1, 570,130, onto June 2 when he left, he had 564,000, I'm including in that the 90,000 that his children had, total sold, none.

Now, you may wonder where this other piece was. He gave about 5500 shares to the Saint Benedictines, make -- they're going to make an issue, he took a tax deduction, but that accounts for it all.

So no personal shares in 2000, 2001 or 2002.

Bad things happened to the economy. Bad things happened to companies. And people do get upset about that. Sometimes there is a feeling that somebody has got to pay. And the investigations start, and the drums start banging.

And four and a half years after his last trade in May of 2001, they indict him; that is to say, 12 days short of the five years before the first trade that they're prosecuting for, they indicted him.

You will hear from the witnesses that they will call how many times they interviewed people and reinterviewed people and kept on interviewing people. We will prove to you from Ms. Szeliga, who eventually they got to plead guilty for something under a promise that nothing really bad will happen to her, that after years of saying that there was nothing wrong, nothing wrong with the company, yes, after years she said she didn't do anything wrong, they finally got her to say, I'm guilty of insider trading.

We will prove that.

Joseph Paul Nacchio proclaims that he did not. And when we have demonstrated every single thing that I tell you, I will appear before you, if His Honor will let me, and then I'm going to ask you not just for a verdict of not guilty, but for the verdict of innocent. Not just on reasonable doubt, because he didn't do it. He shouldn't be prosecuted.

Thank you.

THE COURT: All right. Is the Government prepared to call its first witness?

MR. WISE: Yes, we are, Your Honor.

THE COURT: All right. Let's do some furniture rearrangement. The podium has to go back to the evidence presentation area.

MR. STRICKLIN: Your Honor, while that happens, may I approach the bench with a brief motion outside the presence of the jury?

THE COURT: All right. I want somebody on the court staff to take down -- assist in taking down all of these --

MR. STERN: My colleagues will do that.

Honor.

THE COURT: Who is speaking for the defense?

MR. RICHILANO: I guess I will.

THE COURT: Mr. Richilano.

MR. RICHILANO: No, Your Honor.

THE COURT: All right. Court will be in recess.

(Recess at 5:03 p.m.)

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PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
308	134	135			

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated at Denver, Colorado, this 20th day of March, 2007.

s/Therese Lindblom

Therese Lindblom,CSR,RMR,CRR