

UPDATE ON THE GOVERNMENT'S RESPONSE TO NACCHIO

Two words about this update. First, to clarify from my earlier post: the WaPo article refers to a filing written in February 2007 that was just unsealed yesterday. So in fact, there are several more recent filings from Nacchio that rebut the claims made in this newly unsealed document.

*Here's the important part. From reading the available filings, it's unclear whether Nacchio is right that he lost the Groundbreaker business because he refused to participate in activities the Qwest General Counsel deemed to be illegal. But as far as I can tell, **there is no dispute** that NSA asked Qwest to do something the latter judged to be illegal (though the government has redacted many of the references to this purportedly illegal request). In other words, while I can't address Nacchio's central question of whether this material might be enough to refute his insider trading charges, I can say that the record appears to support Nacchio's claim that he was asked to do something he believed to be illegal (which we've assumed was domestic spying).*

Update: *Actually, let me revise that. The government is not disputing with this filing that Qwest was asked to do something illegal and Payne's testimony appears to support that claim. It's unclear whether the government is simply trying to refute charges by directing attention to the contracts or whether they're trying to distract away from the claims about an illegal request.*

Here's the filing that appears to be the basis of today's WaPo article claiming that the government's filing refutes Nacchio's claims. While I can't speak to the veracity of Nacchio's central claims, the filing unsealed yesterday

doesn't do what Carrie Johnson says it does. For starters, this appears to be a clear attempt (successful, in the case of Johnson) to refute claims made in July and later by unsealing a document written in February.

Johnson lists two ways in which the filing unsealed yesterday refute Nacchio's claims. First, that Qwest was included among the consortium that eventually won the Groundbreaker business.

Qwest was one of more than a dozen "strategic vendors" that provided services to the Eagle Alliance, which won a contract in July 2001 to upgrade computer systems and equipment at the National Security Agency, according to a document that prosecutors attached to their court filing yesterday.

And second, that the testimony of James Payne refutes Nacchio's claims about the February 2001 meeting. Let's take these in order.