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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 05-cr-00545-EWN

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSEPH P. NACCHIO,

Defendant.

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

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

I. INTRODUCTION

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

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

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

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

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

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

II. [REDACTED]

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

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

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

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

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

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

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

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

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

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

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

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

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

time later.

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

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

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

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

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

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