

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

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

**SECURITIES AND EXCHANGE COMMISSION'S UNOPPOSED MOTION FOR
ENTRY OF JUDGMENT BY CONSENT AGAINST JOSEPH P. NACCHIO**

Plaintiff, United States Securities and Exchange Commission, moves pursuant to Fed. R. Civ. P. 54(b) for entry of Final Judgment against Defendant Joseph P. Nacchio in the form attached hereto. As grounds for its motion the Commission states as follows:

1. The Commission and Defendant Nacchio have reached a settlement of this matter. Defendant Nacchio has consented to entry of a Final Judgment against him, in the form attached to this motion as Exhibit 1. A copy of the proposed Final Judgment is attached as Exhibit 2.

2. According to the terms of Defendant Nacchio's Consent, the Final Judgment, among other things:
 - a. Enjoins him from violations of the securities provisions alleged against him in the Commission's Corrected Second Amended Complaint;
 - b. Bars him from acting as an officer or director of any public company;
 - c. Orders him to pay disgorgement of \$44,632,464.38, which will be deemed satisfied by his forfeiture of that amount in the related criminal case, *United States v. Nacchio*, 05-cr-00545 (D. Colo.);
 - d. Notes that a civil penalty is not being imposed against him in light of the sanctions ordered in the related criminal case and because Defendant Nacchio agrees to waive all rights to appeal the \$19 million fine ordered against him in the related criminal case;
 - e. Includes other provisions concerning this Court's continuing jurisdiction and entry of the judgment.
3. If judgment is entered, it is anticipated that a motion will be filed asking the Court to transfer the \$44,632,464.38 in forfeited funds in the related criminal case, plus any interest accrued thereon, to the Fair Fund established for distribution of funds to harmed Qwest investors.
4. Entry of the Final Judgment will not affect the status of the case concerning the remaining defendants.

5. Counsel for Defendant Nacchio has authorized the Commission to state that Defendant Nacchio does not oppose this motion.

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully requests that this Court enter the attached Final Judgment against Defendant Joseph P. Nacchio.

Dated: September 2, 2010.

Respectfully submitted,

s/ Thomas J Krysa
Polly A. Atkinson
Thomas J. Krysa
Christopher P. Friedman
Barbara T. Wells
Attorneys for Plaintiff:
Securities and Exchange Commission
1801 California Street, Suite 1500
Denver, CO 80202
Switchboard 303.844.1000
Fax 303.844.1068

Certificate of Service

I hereby certify that on September 2, 2010, I caused a true and correct copy of the foregoing to be filed electronically using the CMF/ECF system, which will send notification to the following:

<p><u>Attorneys for Joseph P. Nacchio</u> Sean M. Berkowitz, Everett C. Johnson, Jr. and Nathan H. Seltzer Latham & Watkins, LLP-DC 555 11th Street NW Washington, DC 20004-1304 Email: sean.berkowitz@lw.com Email: everett.johnson@lw.com Email: nathan.seltzer@lw.com</p>	<p><u>Attorneys for Robert S. Woodruff</u> David Meister, David L. Cook, Steven Glaser Skadden, Arps, Slate, Meagher & Flom LLP Four Times Square New York, New York 10036 Email: david.meister@skadden.com Email: steven.glaser@skadden.com</p>
<p><u>Attorneys for Afshin Mohebbi</u> Paul R. Grand, Kristy Watson Milkov, Barbara C. Moses and Jasmine M. Juteau Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C. 565 Fifth Avenue, Floor 9 New York, New York 10009 Email: pgrand@maglaw.com Email: kmilkov@maglaw.com Email: jachilles@maglaw.com Email: bmoses@maglaw.com Email: jjuteau@maglaw.com And Patrick J. Burke, Dean S. Neuwirth Burke & Neuwirth P.C. 303 16th Street, Suite 200 Denver, Colorado 80202 Email: Patrick-J-Burke@msn.com Email: deanneuwirth@comcast.net</p>	<p><u>Attorneys for James J. Kozlowski</u> Kevin D. Evans, Jonathan J. Frankel, Phillip L. Douglass Steese, Evans & Frankel, P.C. 6400 South Fiddlers Green Circle Suite 1820 Denver, Colorado 80111 Email: kdevans@s-elaw.com Email: jfrankel@s-elaw.com Email: pdouglass@s-elaw.com</p>

<p><u>Attorney for Frank T. Noyes</u> Forrest W. Lewis Forrest W. Lewis, P.C. 1600 Broadway, Suite 1525 Denver, Colorado 80202 Email: flewispc@aol.com</p>	<p><u>Department of Justice (Intervenor)</u> Kevin T. Traskos, Peter D. Leary and Caroline Lewis-Wolverton U.S. Attorney's Office – Denver, Colorado 1225 Seventeenth Street, Suite 700 Denver, Colorado 80202 Email: kevin.traskos@usdoj.gov Email: peter.leary@usdoj.gov Email: caroline.lewis-wolverton@usdoj.gov</p>
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s/ Thomas J. Krysa

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Defendants.

CONSENT OF DEFENDANT JOSEPH P. NACCHIO

1. Defendant Joseph P. Nacchio ("Defendant") acknowledges having been served with the Corrected Second Amended Complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the Corrected Second Amended Complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violating or aiding and abetting violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)]; Sections 10(b), 13(a), 13(b)(2), and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2) and 78m(b)(5)] and Rules 10b-5,

12b-20, 13a-1, 13a-11, 13a-13, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, 240.13b2-1, and 240.13b2-2];

- (b) orders that Defendant be barred from serving as an officer or director of any public company pursuant to Exchange Act Section 21(d)(2) [15 U.S.C. § 78u(d)(2)] and Securities Act Section 20(e) [15 U.S.C. § 77t(e)];
- (c) orders Defendant to pay disgorgement in the amount of \$44,632,464.38, plus interest (but only if interest has accrued on the forfeited amount held in the Court Registry Investment System in connection with the related criminal case of *U.S. v. Joseph P. Nacchio*, 05-cr-00545 (Dist. Colo.) (hereinafter “related criminal case”));
- (d) does not order the Defendant to pay a civil penalty under Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Sections 21(d)(3) and 21A [15 U.S.C. §§ 78u(d)(3) and 78(u)(A)] in light of the criminal sanctions ordered by the Court during the re-sentencing on June 24, 2010 in the related criminal case, and the fact that Defendant agrees to waive all rights to appeal the criminal fine of \$19 million ordered in the related criminal case;

3. Defendant shall receive credit against the amounts owed pursuant to the Final Judgment for the \$44,632,464.38 amount forfeited by him to the United States in connection with the related criminal case, plus any interest that has accrued on the forfeiture amount while on deposit with the Court Registry Investment System in the related criminal case. Defendant consents to the distribution in this action, pursuant to the Fair Fund provisions, of the

\$44,632,464.38 that was forfeited by him in the related criminal case and any accrued interest thereon.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant waives all rights to appeal the criminal fine amount of \$19 million ordered in connection with the related criminal case. Defendant acknowledges that if Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission,

within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or

creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: July 27, 2010

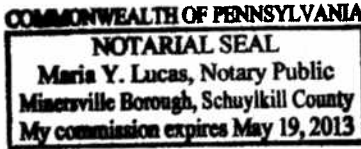
Joseph P. Nacchio
Joseph P. Nacchio

Commonwealth of Pennsylvania

County of Schuylkill

On this 27th day of July, 2010, before me, a Notary Public in and for said Commonwealth and County, personally appeared Joseph Nacchio. The person whose name is subscribed on the foregoing agreement, is known to me or has satisfactory proved to be.

Maria Y. Lucas
Notary Public



Approved as to form:

Sean Berkowitz

Sean M. Berkowitz, Esq.
Latham & Watkins LLP
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Attorneys for Defendant