

THE PROSECUTORS' RESPONSE TO NACCHIO

The WaPo reports that more documents have been unsealed in the Nacchio case—and they show (Prosecutors claim) that Nacchio's claim to have lost business don't hold up.

Qwest Communications belonged to a business alliance that won a rich national security contract in the summer of 2001, undermining claims that authorities retaliated against its former chief executive for refusing to support an unidentified government program earlier that year, prosecutors said in documents released yesterday.

I'm on two deadlines for other things, so I'm not going to sort through the unsealed documents until later. But understand this: **the document released today was filed in February 2007, at about the mid-point of discussions about the purported deals with the US government. This filing was filed in April 2007—it was one of the final filings on the subject and addresses some of the objections raised in the earlier filing.**

For example, it points out that Payne's claim (which appears to be cited in the Prosecutor's filings) that the February 2001 meeting did not pertain to big contracts happened in July 2006; in a statement made in October 2006, Payne affirmed that the meeting pertained to Groundbreaker (and a contemporaneous Payne email backs up that claim).

Similarly, the later filing explains that the Defense was denied two *ex parte* filings from February 2007 (which I'm guessing are the recently unsealed documents). But that the government had to disavow some of those statements subsequently.

While the Court eventually ordered the government to turn over the summary

memorandum of the government's interviews with agency counsel, over our objections, the Court has repeatedly refused to allow Mr. Nacchio access to the balance of the *ex parte* filings. The summary memorandum, however, confirmed that one purpose of bringing Messrs. Nacchio and Payne into the February 27, 2001 meeting was to [redacted] and stated that Qwest was subsequently denied any agency work as a direct result of Mr. Nacchio's refusal. After we brought this admission to the Court's attention, the statement was then disavowed.

So one thing that's going on is the government is introducing older information in an attempt to refute later information.

Further note that, by the time of the April 2007 filing, the government was arguing that Qwest was never in line to receive substantial business. That's directly contrary to the information released today from the February filing.

But if the February 2001 meeting did not pertain to illegal spying, then it might explain something else. Recall that in his statement responding to the USA Today story on customer data, Nacchio lawyer Harold Stern pointedly says that the request for cooperation came in fall 2002—after the period when Nacchio was alleged to be insider trading.

In other words, I'm not sure **what** to make of this WaPo story. It's clear that government is playing a bit of chronological jujitsu here (and may have SJC—and not the Nacchio appeal judges—in mind as the audience for this release). Yet it's not clear to me, without reviewing the filings, whether the claims in the filing have merit or not.