

DID NACCHIO LIE, OR JUST MISUNDERSTAND?

The Rocky Mountain News has a good summary of the issues the Tenth Circuit will consider this week in Joseph Nacchio's appeal. It's worth reading the whole thing to get an idea of all the issues. But I'm most interested in the representation the RMN makes of the government's claim regarding Nacchio's claim that he lost business because he refused to wiretap Americans.

The judge should have let Nacchio present his classified, national security defense. Previous filings indicate Nottingham ruled the defense was irrelevant.

Defense argument

The CEO was optimistic about Qwest in early 2001 because he knew the company was in line to receive top-secret government contracts. Redacted court documents suggest Nacchio planned to argue that Qwest didn't get the contracts because he refused to participate in a phone spying program.

Prosecution argument

Nacchio's version of events was "a lie," said First Assistant U.S. Attorney Cliff Stricklin, lead prosecutor on the case, while speaking at a Denver luncheon in October. He said prosecutors were ready to discredit the defense if Nacchio presented it.

Now compare that to what a government source told the NYT for last night's article.

A government official said the N.S.A. intended to single out only foreigners on Qwest's network, and added that the agency believed Joseph Nacchio, then the

chief executive of Qwest, and other company officials misunderstood the agency's proposal. Bob Toevs, a Qwest spokesman, said the company did not comment on matters of national security.

One source is saying Nacchio's lying, the other is saying Nacchio just misunderstood the ask.

Of course, these sources aren't exactly commenting on the same thing. I presume Stricklin is claiming Nacchio is lying about his expectation that Qwest would get lots of NSA business. Whereas, given the NYT report that Nacchio was asked to give the government access to the local Qwest network (and therefore to traffic that was undoubtedly in the US), the anonymous government source is likely addressing that issue—saying that Nacchio misunderstood which circuits the government was after.

Furthermore, it's not like the distinction matters for the case. Nacchio can't very well call "that guy who was an anonymous source for James Risen" to testify that he was asked to do something, even if he misunderstood what that ask was for.

But I am struck by the seeming admission, on the part of a government source, that Nacchio was indeed asked to do something, but there was just a big misunderstanding about what he was asked to do. Because that kind of misunderstanding (real or imaginary) is the kind of thing that might make a government contractor lose business.