



## Ex-Qwest Chief Nacchio Convicted of Insider Trading (Update3)

By David Voreacos and Joel Rosenblatt

April 19 (Bloomberg) -- Joseph Nacchio, former chief executive of Qwest Communications International Ltd., was convicted of insider trading, capping a five-year federal crackdown on corporate crime after the collapse of Enron Corp.

A U.S. jury in Denver today found Nacchio guilty of selling stock based on private warnings from top lieutenants that the company would miss revenue targets. Prosecutors said he made \$101 million by illegally trading on inside information he withheld from investors.

"The term 'convicted felon Joe Nacchio' has a very nice ring to it," said Colorado U.S. Attorney Troy Eid outside the courthouse following the verdict. "Make no mistake my friends, this is an overwhelming determination of guilt."

The jury found Nacchio guilty on 19 counts of insider trading for trades totaling \$52 million. He was found not guilty of 23 counts relating to earlier trades totaling \$49 million. Facing a maximum 10-year term and \$1 million fine on each count, Nacchio, 57, could spend the rest of his life in prison.

The conviction is the latest in a U.S. corporate fraud offensive that began when Enron filed bankruptcy in 2001. Hundreds of executives have been convicted, including three ex-CEOs, Enron's Jeffrey Skilling, Bernard Ebbers of WorldCom Inc. and John Rigas, founder of Adelphia Communications Corp.

### \$100 Billion Drop

Nacchio, who built Qwest into the fourth-largest U.S. phone company and presided over a \$100 billion drop in market value, left the courthouse with his wife Anne without commenting. The jury of eight men and four women convicted him after six days of deliberations.

U.S. District Judge Edward Nottingham set his sentencing date for July 27. The judge refused a request by Assistant U.S. Attorney Cliff Stricklin to increase Nacchio's bail from \$2 million to \$5 million. Nottingham said Nacchio posed no risk of flight, and he saw no reason to modify his terms of bail.

Nacchio, who was CEO from 1997 to 2002, didn't testify in his own defense at the four-week trial. Defense lawyers said he acted in good faith and believed Qwest would meet the projections after buying US West in 2000. Nacchio sold stock to diversify his portfolio, exercising options due to expire, his lawyers said.

### Discounted

The ex-CEO discounted warnings from top executives at Qwest in late 2000, who said the Denver-based company would fall short of its public revenue target of up to \$21.7 billion in 2001, defense lawyers said.

Before the trial, Nacchio said he would present evidence that he believed Qwest would make its forecast because he alone knew of the company's chances of securing secret government contracts. Nacchio never presented such evidence because of unfavorable rulings from Nottingham.

Nacchio joined Qwest from AT&T Inc. in 1997 and continued to return to his New Jersey home on weekends. He was ousted by Qwest directors in June 2002 as a criminal probe began. He wasn't charged with involvement in the accounting manipulations that later led Qwest to erase \$2.5 billion in

revenue.

During the trial, former Qwest President Afshin Mohebbi said he warned Nacchio in December 2000 that the targets would be a "huge stretch." Former Chief Financial Officer Robin Szeliga testified that she warned her boss of a \$1 billion gap.

'Screw Them'

Nacchio's lawyers said those discussions were about higher internal budgets, not public targets given to investors. Qwest made its earnings targets in the first two quarters, and Nacchio believed in forecasts first devised by investment bankers, attorney Herbert Stern said in his closing arguments.

"Maybe his business projections didn't come true," Stern said. "Maybe the same optimism, energy, drive and ambition that built the company in the first place led him in the end to miscalculate what could be achieved in the terrible year of 2001. That may be true. But that is not a crime."

Qwest lowered its public forecast by \$1 billion in September 2001. Before that, several executives said, Nacchio refused to disclose Qwest's use of one-time sales of network capacity while overstating the growth of recurring revenue.

In his testimony, former Qwest investor relations chief Lee Wolfe said that when he asked what to tell Wall Street analysts who pressed for details of one-time sales, Nacchio said, "Screw them, tell them to go buy."

Analysts

Two analysts told jurors they lowered their opinion of Qwest after the company began to disclose in August 2001 the extent of its reliance on one-time sales.

The government contended that Nacchio accelerated his stock sales upon learning in April 2001 that Qwest had missed its first-quarter forecasts for recurring revenue. Nacchio exercised and sold \$34 million in shares from April 26, 2001, to May 1, 2001.

Prosecutors attacked Nacchio's good-faith defense, pointing to a document dated Nov. 3, 2000, that authorized the sale of \$14 million in shares. They said it was backdated by Nacchio in mid-December because he had heard the bad news. Stern said the document was just a way of recording Nacchio's decision to sell.

Jurors saw several video clips of Nacchio giving upbeat forecasts. They also heard evidence that his net worth, including stock options, was \$547 million in 2000.

The defense presented only three witnesses, including Qwest founder Philip Anschutz and a priest from Nacchio's home state of New Jersey.

Priest

Both Anschutz and the priest told jurors Nacchio sought to resign from Qwest in January 2001 after one of his two sons attempted suicide. Nacchio's lawyers claim he could have left Qwest then and exercised and sold his stock options without legal consequence.

Nottingham didn't allow jurors to hear evidence that Qwest restated \$2.5 billion in revenue after Nacchio left the company.

Following the verdict, Stern declined to comment.

"Today, 12 very courageous jurors right here in Denver sent a very strong message all the way to Wall Street," Assistant U.S. Attorney Colleen Conry said outside the courthouse after the verdict.

Nacchio still faces a lawsuit from the U.S. Securities and Exchange Commission that accuses him of directing a \$3 billion accounting fraud. He also faces investor lawsuits.

Qwest shares reached a closing high of \$64.50 in March 2000 on expectations of a surge in the use of its fiber-optic network. Nacchio took advantage of investor optimism to load up on debt that financed a

nationwide phone-and-data network.

As other companies also rushed to capitalize on the expected growth in demand, a glut of network capacity developed, causing prices for sending calls and data signals to fall.

Qwest shares sank to as low as \$1.11 in August 2002, two months after Nacchio's ouster, when some investors said the company would follow WorldCom and others into bankruptcy.

Richard Notebaert, who replaced Nacchio as CEO, averted a collapse by selling the company's phone-book unit and slashing borrowings to \$17 billion from \$26 billion.

The case is USA v. Nacchio, 05-cr-545, U.S. District Court, District of Colorado (Denver).

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