

**THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

JOSEPH P. NACCHIO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
QWEST COMMUNICATIONS	)	
INTERNATIONAL INC., a Delaware	)	
corporation,	)	
	)	
Defendant.	)	

**VERIFIED COMPLAINT**

Plaintiff Joseph P. Nacchio, by and through his undersigned counsel, upon knowledge as to himself and his own actions and upon information and belief as to all other matters, alleges for his verified complaint as follows:

**Nature of the Action**

1. This is an action brought against defendant Qwest Communications International Inc. (“Qwest” or the “Company”) pursuant to Section 145 of the General Corporation Law to enforce provisions of an Employment Agreement, dated as of October 24, 2001, by and between the Company and Plaintiff (the “Employment Agreement”), and a Resignation and Consulting Agreement, dated as of June 16, 2002 (the “Resignation Agreement”), by and between the Company and Plaintiff, that provide Plaintiff with advancement rights.

2. In this action, Plaintiff seeks a determination that the Company must advance to him expenses he has incurred, is currently incurring and will incur in connection with the Covered Proceedings (as defined below) in which Plaintiff is a party to or otherwise involved in by reason of the fact that he was a director and officer of the Company. Plaintiff also seeks a

determination that the Company must indemnify him for the expenses he is incurring and will incur bringing this action to enforce his advancement rights.

### **The Parties**

3. Plaintiff Nacchio is the former Chairman and Chief Executive Officer of the Company. Plaintiff was receiving advancements from the Company for legal fees and expenses incurred in connection with the Covered Proceedings. The Company has refused to reaffirm its advancement obligations.

4. Defendant Qwest is a Delaware corporation with its principal place of business in Denver, Colorado.

### **Background**

5. Plaintiff served as the Company's Chairman of the Board of Directors and Chief Executive Officer from 1996 through 2002. Accordingly, Plaintiff was a director and an officer of the Company.

6. Plaintiff voluntarily resigned from his positions as Chairman and Chief Executive Officer on or around June 16, 2002. At that time, the Company and Plaintiff entered into the Resignation Agreement pursuant to which the Company agreed that Plaintiff's "resignation shall be treated as a termination by the Company without 'Cause'" for purposes of Plaintiff's Employment Agreement and "all plans, programs and grants in which the Executive participate[d]."

7. Since 2001, Plaintiff has been a party to numerous civil litigation proceedings, including those currently pending in Colorado and New Jersey, brought by purported stockholders of the Company alleging that he violated various state and federal laws as a director and officer of the Company. Plaintiff also is a party to civil litigation and legal proceedings in Arizona, New Jersey, New York, and the Netherlands by reason of his former status as an officer

and director of the Company. In addition, Plaintiff was made a party to a criminal proceeding in a federal district court in Colorado relating to alleged insider trading violations while serving as a director and officer of the Company. Plaintiff also was the subject of an investigation and is a party to a civil action brought by the United States Securities and Exchange Commission relating to his role as a former director and officer of the Company. The foregoing proceedings are referred to collectively as the “Covered Proceedings.”

8. Plaintiff was made a party to each of the Covered Proceedings by reason of the fact that he was a director and officer of the Company. Plaintiff incurred and continues to incur legal fees and expenses in connection with the Covered Proceedings, including appeals thereof.

#### **Plaintiff’s Right to Receive Advancements**

9. Plaintiff’s Employment Agreement provides him with mandatory indemnification and advancement rights to the fullest extent permitted by the Delaware General Corporation Law from the Company.

10. Section 3(j) of the Employment Agreement provides that:

To the fullest extent permitted by the indemnification provisions of the articles of incorporation and bylaws of the Company in effect as of the date of this Agreement and the indemnification provisions of the corporation statute of the jurisdiction of the Company’s incorporation in effect from time to time... the Company shall, with regard to his past and future service, (i) indemnify the Executive, as a director and officer of the Company... against all liabilities and reasonable expenses that may be incurred by the Executive in any threatened, pending, or completed action, suit or proceeding, whether civil, criminal or administrative, or investigative and whether formal or informal, because the Executive is or was a director or officer of the Company... and (ii) pay for or reimburse the reasonable expenses incurred by the Executive in the defense of any proceeding to which the Executive is a party because the Executive is or was a director or officer of the company.... The rights of the Executive under the Indemnification Provisions shall survive the termination of the employment of the Executive by the Company.

11. Section 2 of the Resignation Agreement provides that “nothing in this Agreement shall affect the Executive’s or the Company’s rights or obligations under the Employment

Agreement or Plans upon a termination of the Executive's employment without Cause, including, without limitation, those rights or obligations set forth in Paragraph[] 3(j)... of the Employment Agreement.”

12. Plaintiff's Resignation Agreement also provides Plaintiff with an independent contractual right to mandatory advancements.

13. Section 11 of the Resignation Agreement provides that:

In accordance with Section 145(c) of the General Corporation Laws of the State of Delaware, the Company has determined to pay the expenses of the Executive incurred in the defense of various litigations.

14. Pursuant to Section 11 of the Resignation Agreement, Plaintiff provided an undertaking to repay all advancements if it ultimately is determined that he is not entitled to indemnification.

15. Thus, as a former director and officer of the Company, Plaintiff is entitled to advancements for fees and expenses incurred in connection with the Covered Proceedings.

16. The advancement of fees, as required by the Employment Agreement and the Resignation Agreement, is essential for Plaintiff to protect himself legally.

**The Company Refuses to Affirm Plaintiff's Advancement Rights**

17. The Company has been advancing Plaintiff's legal fees and expenses incurred by his lead counsel, Stern & Kilcullen, LLC (“S&K”), since early 2006.

18. The course of dealing, consistent with exchanges of correspondence between S&K and the Company in late 2005, has been that S&K submits to the Company, and the Company advances to S&K payment of, monthly bills for legal fees and disbursements incurred in representing Mr. Nacchio in several pending lawsuits and other claims arising from his former positions as the Chief Executive Officer and Chairman of the Company (“Qwest Matters”).

19. Pursuant to that course of dealing:

- (a) During the first half of each month, S&K submits to the Company a separate bill for each Qwest Matter on which S&K performed services during the prior month.
- (b) Within approximately 30 to 45 days from S&K's submission of such bills, S&K attorney Joel Silverstein and the Company in-house lawyers – Heather Shull in the case of Qwest Matters initiated by the federal government – review and negotiate about potential deductions from those bills identified by the Company's representative.
- (c) The bill is typically paid by the Company within 45 to 60 days of its submission by S&K to the Company.

20. On April 19, 2007, following a trial in federal court in Denver that commenced on March 19, 2007, Mr. Nacchio was convicted of 19 of 42 counts of insider trading.

21. S&K announced that it would file post trial motions and would appeal to have the convictions overturned.

22. On or about May 14, 2007, Silverstein telephoned Shull to schedule their normal review and negotiation of the S&K's April bills for services performed for Mr. Nacchio in governmental Qwest Matters in March 2007.

23. Contrary to the normal course of dealing between S&K and the Company, Shull advised Silverstein in that telephone conversation that discussion of the April bills was "beyond [her] pay grade," and that S&K senior partner, Herbert Stern, would have to discuss it with the Company's General Counsel, Richard Baer.

24. Within a day thereafter, Stern telephoned Baer, who advised that he had engaged outside counsel to consider the Company's obligations to continue advancing Mr. Nacchio's

legal fees and expenses. When Stern asked whether the Company intended to pay S&K's April bills for governmental Qwest Matters, Baer declined to commit that the Company would do so, but said he would have Shull review and negotiate with Silverstein any potential deductions Shull might identify in those bills.

25. On May 24, 2007, the Denver Post reported as follows:

A Qwest shareholder asked Wednesday whether the company would try to recover the money it has advanced to pay for Nacchio's legal fees - a tab that continues to rise as Nacchio has reportedly hired a top Washington lawyer to appeal his conviction on 19 counts of illegal insider trading.

Qwest chief executive Dick Notebaert said the company is reviewing "what is possible and what the correct path is."

He said Qwest's lawyers in Denver and Delaware, where the company is incorporated, are analyzing the matter to see what the company can recover.

"It's extremely complex," Notebaert said.

26. Having reviewed Notebaert's comments in the Denver Post article, Stern telephoned Baer at approximately 2 p.m., EDT, on May 24, 2007, and left a message requesting that Baer return the call. Contrary to Baer's customary practice of promptly returning Stern's calls, Baer did not return Stern's call on May 24.

27. Also on May 24, having previously scheduled the date, Shull telephoned Silverstein to discuss S&K's April bills for governmental Qwest Matters. Contrary to the normal course of dealing between S&K and the Company, Shull announced that, while she would identify, review, and negotiate deductions to S&K's April bills for governmental Qwest Matters, she could not represent that these bills would be paid or, if so, when they would be paid, or that the deductions she identified would be the only issues the Company would raise concerning these bills.

28. Plaintiff has submitted to the Company invoices for legal fees and expert fees incurred in certain of the Covered Proceedings that remain unpaid.

29. The Company has impermissibly cut off and declined to reaffirm Plaintiff's right to mandatory advancements for the Covered Proceedings.

**COUNT 1:**

**Plaintiff's Right to Mandatory Advancements Under the Employment Agreement**

30. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

31. Plaintiff is a former director and officer of the Company.

32. Plaintiff has delivered to the Company the undertaking.

33. Plaintiff has incurred legal fees and expenses in connection with the Covered Proceedings. The Company has paid a portion of those legal fees and expenses.

34. Under Section 3(j) of the Employment Agreement, Plaintiff is entitled to advancements for all the reasonable fees and expenses he has incurred, is incurring and will incur in connection with the Covered Proceedings as those fees are incurred.

35. The Company has refused to reaffirm its obligations to make advancements and has indicated its intention to stop making advancements to Plaintiff.

36. An actual dispute exists over whether Plaintiff is entitled to advancements.

37. Plaintiff is entitled to a declaratory judgment determining that he is entitled to such advancements for his legal fees and expenses incurred in connection with the Covered Proceedings.

38. Plaintiff is entitled to an award of damages in the amount of the legal fees and expenses he has already incurred, but the Company has not yet paid, in connection with the Covered Proceedings.

**COUNT 2:**

**Plaintiff's Right to Mandatory Advancements Under the Resignation Agreement**

39. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

40. Plaintiff is a former director and officer of the Company.

41. Plaintiff has delivered to the Company the undertaking.

42. Plaintiff has incurred legal fees and expenses in connection with the Covered Proceedings. The Company has paid a portion of those legal fees and expenses.

43. Under Section 11 of the Resignation Agreement, Plaintiff is entitled to advancements for all the reasonable fees and expenses he has incurred, is incurring and will incur in connection with the Covered Proceedings as those fees are incurred.

44. The Company has refused to reaffirm its obligations to make advancements and has indicated its intention to stop making advancements to Plaintiff.

45. An actual dispute exists over whether Plaintiff is entitled to advancements.

46. Plaintiff is entitled to a declaratory judgment determining that he is entitled to such advancements for his legal fees and expenses incurred in connection with the Covered Proceedings.

47. Plaintiff is entitled to an award of damages in the amount of the legal fees and expenses he has already incurred, but the Company has not yet paid, in connection with the Covered Proceedings.

**COUNT 3:**

**Plaintiff's Right to Indemnification for This Action**

48. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

49. Under 3(j) of the Employment Agreement, Plaintiff is entitled to indemnification to the fullest extent permitted by law for expenses incurred in prosecuting this advancement claim.

50. Plaintiff is entitled to a declaratory judgment determining that he is entitled to indemnification for legal fees and expenses incurred in connection with this action for advancements, including attorneys' fees and costs.

51. Plaintiff is also entitled to an award of damages in the amount of the legal fees and expenses he has incurred in connection with this action for advancements.

WHEREFORE, Plaintiff respectfully request that this Court enter an order:

a. Declaring that the Company must provide advancements or payments to Plaintiff for all of the legal expenses, including attorneys' fees, that he has incurred, is incurring and will incur in connection with the Covered Proceedings.

b. Ordering the Company to advance or pay to Plaintiff all amounts incurred but unpaid to date.

c. Ordering the Company to pay pre-judgment interest on all advancements and payments incurred to date, beginning from the date such advancements and/or payments became due.

d. Ordering the Company to pay post-judgment interest on all advancements and payments due from the date of this Court's order.

e. Declaring that the Company must provide indemnification for Plaintiff for all legal expenses, including attorneys' fees, which he has incurred in prosecuting this action for advancements.

f. Ordering the Company to pay attorneys' fees and costs incurred in this action for advancements to Plaintiff.

g. Establishing procedures to ensure prompt payment of advancements or payments going forward.

h. Granting Plaintiff such other and further relief as the Court deems just and proper.

Of Counsel:

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Dated: May 24, 2007