

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Securities and Exchange Commission,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action No.
	:	
Augustine M. Cruciotti,	:	
	:	
Defendant.	:	

COMPLAINT

Plaintiff the Securities and Exchange Commission (“Commission”), for its complaint, alleges as follows:

A. Summary

1. This matter involves the activities of Augustine M. Cruciotti in connection with three transactions that were part of a scheme by Qwest Communications International, Inc. (“Qwest”) to inflate revenue and earnings artificially. In each transaction, Cruciotti, a Qwest Executive Vice President, authorized subordinates to provide, or provided, an undisclosed side agreement allowing the purchaser of fiber-optic cable to exchange (or “port”) the fiber purchased for different fiber. The explicit purpose of not disclosing the side agreements was to conceal from Qwest’s accountants and outside auditors the purchasers’ ability to port, since such exchange rights would have defeated, under generally accepted accounting principles, the upfront revenue recognition sought by Qwest. Through his actions, Cruciotti aided and abetted Qwest’s improper recognition of \$26.6 million of revenue in the first and second quarters of 2001, which contributed to Qwest’s ability to meet its revenue targets in those quarters.

2. The Commission brings this action pursuant to the authority conferred upon it by Section 21 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u] to impose a civil money penalty to address Defendant Cruciotti’s wrongdoing.

3. The Commission seeks an order requiring Defendant Cruciotti to pay \$150,000 in civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

B. Jurisdiction and Venue

4. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa]. Venue lies in this Court pursuant to Section 27 of the Exchange Act.

5. Certain of the transactions, acts, practices and courses of business constituting the violations of law alleged herein occurred within this judicial district. Moreover, Defendant Cruciotti resides in this district.

6. In connection with the transactions, acts, practices, and courses of business described in this Complaint, Defendant Cruciotti, directly or indirectly, has made use of the means or instrumentalities of interstate commerce, of the mails, of the facilities of a national securities exchange, and/or of the means and instruments of transportation or communication in interstate commerce.

C. The Defendant

7. Defendant Cruciotti, a resident of Elizabeth, Colorado, was an officer of Qwest from August 1999 until his resignation in March 2004. From August 1999 to December 2000, Cruciotti was the Senior Vice President of “Qwestlink,” Qwest’s construction business unit responsible for building its fiber-optic cable network in the United States. From December 2000 to May 2002, Cruciotti was the Executive Vice President of Qwest’s local networks, which

included Qwestlink. From May 2002 to March 2004, Cruciotti was the Executive Vice President of Qwest's network services.

D. Related Party

8. Qwest, a telecommunications company based in Denver, Colorado, provides broadband Internet communications, data, and multimedia services, as well as wireless services, local telecommunications, telephone directory services, and related services.

9. Qwest's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and the company is obligated to file reports on Forms 10-K and 10-Q. Qwest common stock is traded on the New York Stock Exchange.

E. Factual Allegations

10. In the United States, through the Qwestlink business unit, Qwest constructed its fiber-optic network by laying fiber-optic cable around and between major metropolitan cities. In addition to building the network for Qwest's use, Qwestlink sold fiber-optic cable to other telecommunications companies.

11. During 2000 and 2001, as well as in other time periods, in SEC filings and in public statements, Qwest emphasized its projected revenues and earnings growth, and focused investors on the revenues and growth generated from its nationwide fiber-optic network. Qwest could not, however, meet its projected revenues and earnings growth through legitimate means.

12. Therefore, Qwest senior management relied on undisclosed "IRU" sales as a method to make up the difference between Qwest's real revenues and its projected revenue targets. An IRU, or Indefeasible Right of Use, is an irrevocable right to use a specific amount of fiber optic-cable or fiber capacity for a specified time period. Qwest accounted for IRUs as sales-type

leases, and recognized revenue upon purported delivery and acceptance of the fiber (i.e., upfront). Qwest senior management commonly referred to IRUs as “gap fillers.”

13. In three IRU transactions executed between December 2000 and June 2001, Qwestlink persuaded purchasers of fiber-optic cable to enter into IRU agreements ahead of any actual business requirement for the fiber. The purchasers agreed, but only on condition of having the ability to port, or exchange, the fiber purchased for other fiber in the future. In each instance, Cruciotti understood that the IRU transactions would not be executed without an agreement to port. Cruciotti also knew or was reckless in not knowing that Qwest’s corporate accountants would deny upfront revenue recognition if the IRU agreements contained any reference to portability. Portability created a future contingency defeating, under Generally Accepted Accounting Principles (“GAAP”), the upfront revenue recognition sought by Qwest.

14. Cruciotti knew that all aspects of an IRU agreement must be contained within the four corners of the contract so that Qwest’s accountants could review the agreements fully. Therefore, in order to circumvent Qwest’s internal accounting controls, Cruciotti authorized his subordinates on two occasions to provide purchasers with an undisclosed verbal side agreement to port, and Cruciotti personally provided an undisclosed verbal side agreement to port on a third occasion. In each of the three instances, Cruciotti knew or was reckless in not knowing that providing an undisclosed verbal side agreement, rather than including portability in the IRU agreements, would conceal material facts from Qwest’s corporate accountants.

15. Because the three IRU sales wrongly appeared eligible for upfront revenue recognition, Cruciotti aided and abetted Qwest’s improper recognition of \$15.1 million of revenue in the first quarter ended March 31, 2001, and \$11.5 million of revenue in the second quarter ended June 30, 2001.

FIRST CLAIM FOR RELIEF
(Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5)

16. Plaintiff repeats and realleges paragraphs 1 through 15 above.

17. Qwest, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, the mails, or any facility of a national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. By engaging in the conduct described above, Cruciotti is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

SECOND CLAIM FOR RELIEF
(Section 13(a) of the Exchange Act and
Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13)

18. Plaintiff repeats and realleges paragraphs 1 through 17 above.

19. Qwest violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13]. By engaging in the conduct described above, Cruciotti is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

THIRD CLAIM FOR RELIEF
(Section 13(b)(2)(A) of the Exchange Act)

20. Plaintiff repeats and realleges paragraphs 1 through 19 above.
21. Qwest violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]. By engaging in the conduct described above, Cruciotti is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

FOURTH CLAIM FOR RELIEF
(Rule 13b2-1 Under the Exchange Act)

22. Plaintiff repeats and realleges paragraphs 1 through 21 above.
23. Qwest's books, records and accounts were subject to Section 13(b)(2)(A) of the Exchange Act, and Defendant Cruciotti, directly or indirectly, caused to be falsified Qwest's books, records and accounts.
24. Defendant Cruciotti violated Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

FIFTH CLAIM FOR RELIEF
(Section 13(b)(5) of the Exchange Act)

25. Plaintiff repeats and realleges paragraphs 1 through 24 above.
26. Defendant Cruciotti knowingly circumvented a system of internal accounting controls and knowingly failed to implement a system of internal accounting controls, and knowingly falsified books, records, or accounts described in Section 13(b)(2) of the Exchange Act.
27. Defendant Cruciotti violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court order Defendant Cruciotti to pay a civil money penalty in the amount of \$150,000 under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

Dated: _____, 2004

Respectfully submitted,

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