

REDACTED

FILED WITH THE
COURT SECURITY OFFICER
CSO: *Matthew J. Pinner*
DATE: *01/22/07*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Action No. 05-cr-00545-EWN

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSEPH P. NACCHIO,

Defendant.

**REPLY TO "GOVERNMENT'S ALTERNATIVE SUBSTITUTIONS"
(FILED IN CAMERA AND UNDER SEAL WITH THE COURT SECURITY OFFICER)**

Defendant Joseph P. Nacchio, by and through undersigned counsel, and pursuant to Section 6(c) of the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3 § 6(c), respectfully submits this Reply to the January 17, 2007 "Government's Alternative Substitutions" (the "Alternative Substitutions").

In light of the Court's prior rulings, except as set forth below, the Alternative Substitutions are acceptable to Mr. Nacchio, subject to: (i) our standing objection to the adequacy of the § 6(c) CIPA substitutions to protect Mr. Nacchio's constitutional rights, (ii) our two caveats, and (iii) the procedure set forth by the Court for admitting substitutions, all as described in our January 4, 2007 § 6(c) Reply at 2.

- Substitution 13.1 -- Rather than merely "a U.S. intelligence agency," a more accurate substitution for [REDACTED] should be [REDACTED]

REDACTED

- Substitution 13.2 -- To conform with our proposal for 13.1, this substitution should read "the communications office of [REDACTED]"

- Substitution 13.3 -- Singular and plural references should be retained, that is, "U.S. government overseas facilities" should replace [REDACTED] not the government's proposed substitution of a single "facility" for [REDACTED]

- Substitution 13.4 -- This substitution is acceptable to Mr. Nacchio.

- Substitution 13.5 -- This substitution is acceptable to Mr. Nacchio.

- Substitution 13.6 -- This substitution is acceptable to Mr. Nacchio.

- Substitution 13.7 -- As there were [REDACTED] potential South American cities and a considerable number of European cities, we propose instead of "several" or "a number of," substituting "a considerable number of" cities in either Europe or South America that any of the contracts with [REDACTED] were intended to cover.

- Document Redactions -- While some redactions or substitutions in documents may be appropriate to effectuate the above substitutions, this should be done consensually between the parties, with any irresolvable disputes referred to the Court for adjudication.

Finally, this reply is submitted without prejudice to our position set forth in our January 11, 2007 Reply Brief on our motion to compel government production of rebuttal information pursuant to CIPA § 6(f). There, we noted that in the face of the Court's specific § 5 findings of use, relevance and admissibility of classified information, the government cannot -- after having received from Mr. Nacchio the specifics of how he will use the classified information in his defense -- evade its § 6(f) obligations to provide its rebuttal information, through the artifice of

claiming that, because substitutions have been allowed, the balance of Mr. Nacchio's § 5 submission is now unclassified and, therefore, no longer subject to the requirements of § 6(f).

Respectfully submitted this 24th day of January, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 2007, a true and correct copy of the foregoing **REPLY TO "GOVERNMENT'S ALTERNATIVE SUBSTITUTIONS"** was filed and served by hand delivering same, in Washington, D.C., to the Court Security Officer appointed by the Court in this within matter.

s/Edward S. Nathan
Edward S. Nathan