

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 03-CR-089-RB

UNITED STATES OF AMERICA,

Plaintiff,

v.

2. THOMAS HALL

Defendant.

SECOND SUPERSEDING INDICTMENT

18 U.S.C. § 1343, Wire Fraud
15 U.S.C. §§ 78m(b)(2)(A) & (B), (b)(5), & 78ff(a), and
17 C.F.R. 240.13b2-1, Securities Fraud
18 U.S.C. § 2, Aiding and Abetting

The Grand Jury charges that:

COUNTS 1-3
(Wire Fraud)

1. From on or about March 2001 through January 30, 2002, in the District of Colorado and elsewhere, the defendant, THOMAS HALL, aiding, abetting, counseling, commanding, and inducing others, knowingly devised and participated in a scheme to defraud (hereinafter “the scheme”) Qwest accountants, Qwest shareholders, and the investing public, by improperly recognizing and reporting revenue for a transaction between Qwest Communications International Inc. (“Qwest”) and the State of Arizona. As part of the scheme, the defendant participated in the creation of documents which

falsely described the transaction and he caused a fraudulent shipment of equipment to make it appear that a larger transaction was completed.

The Scheme to Defraud

2. It was a purpose of the scheme to make it appear that Qwest had sold approximately \$33 million of telecommunications equipment (“the equipment”) to the State of Arizona School Facilities Board (“SFB”) during the 2nd quarter of 2001 when, in truth and in fact, Qwest had not sold such equipment. It was also a purpose of the scheme to inflate Qwest’s financial performance in the second quarter by improperly recognizing and reporting revenue of approximately \$33 million for the SFB transaction.

3. From on or about March 2001 through on or about January 30, 2002, Qwest employed the defendant, THOMAS HALL, as Senior Vice President in the Government and Educational Solutions group within the Global Business Unit of Qwest.

4. The defendant, THOMAS HALL, knew that in order for Qwest to recognize and report this revenue for the SFB transaction in the 2nd quarter of 2001, certain accounting requirements would have to be met including: i) the customer, SFB, had to accept the risks of ownership of the equipment; ii) the customer, SFB, had to agree to pay for the equipment whether or not Qwest successfully installed the equipment; and iii) all the equipment had to be delivered to a Qwest warehouse in Arizona before the end of the 2nd quarter which ended on June 30, 2001.

5. The defendant, THOMAS HALL, knew that the accounting requirements set forth in paragraph 4 were not met. Specifically, HALL knew that the SFB would not accept the risks of ownership of the equipment, that SFB would not pay for the equipment unless and until it was satisfactorily installed by Qwest, and that all of the equipment was not delivered to a Qwest warehouse by the end of the 2nd quarter 2001.

6. Even though the defendant, THOMAS HALL, knew that the SFB transaction did not meet the rules for revenue recognition, he continued to participate in, aid, abet, counsel, command, induce, and procure the recognition and reporting of this transaction as revenue for the 2nd quarter 2001.

7. In furtherance of the scheme, the defendant, THOMAS HALL, signed three false and fictitious letters as described below which were materially false in that they described the transaction between Qwest and the SFB contrary to the actual agreement of the parties.

8. In furtherance of the scheme, the defendant, THOMAS HALL, placed and caused to be placed an order for approximately \$7.6 million in additional telecommunications equipment after learning that the equipment supplier, Cisco Systems, could not deliver all of the needed equipment to Arizona by June 30, 2001. Rather than recognize revenue only on the equipment that could be shipped, defendant HALL caused his subordinates to place with Cisco a supplemental order to fill the gap with whatever equipment Cisco had on hand (“the supplemental order”). The purpose of the

supplemental order was to make it appear that Qwest was in possession of the full amount of the equipment that Qwest was purportedly selling to SFB.

9. The equipment purchased by Qwest from Cisco in the supplemental order was not equipment that SFB had agreed to purchase from Qwest, the equipment was never purchased by SFB, and the equipment was not delivered to a Qwest warehouse by June 30, 2001.

10. In furtherance of the scheme, the defendant, THOMAS HALL, signed, sent, or received the following three false documents that misrepresented the transaction with SFB, through material misrepresentations and through material omissions, in a way that made it appear that immediate revenue recognition on the SFB transaction in the 2nd quarter of 2001 was proper:

- a. A letter dated June 27, 2001 (the June 27th Letter) that falsely stated that SFB was requesting that Qwest “permit the state to purchase” the equipment. The letter falsely made it appear that SFB had initiated the transaction and that SFB wanted the equipment purchase accelerated.
- b. A letter dated June 29, 2001 (the June 29th Letter) that falsely stated that SFB would pay for the equipment according to a fixed payment schedule when in fact SFB had made it clear that it would pay according to that schedule only if the equipment was installed in the schools by those dates.

c. A letter dated July 2, 2001 (the July 2nd Letter) that was prepared by Qwest for SFB to acknowledge receipt and acceptance of the equipment. The July 2nd Letter also recited that either party could decide not to proceed with the remainder of the project. In fact, Qwest had not received the equipment, and SFB had not inspected or verified its receipt. In addition, SFB did not accept the risk of loss associated with the equipment and had deleted any reference to SFB accepting risk of loss from earlier versions of the letter. Finally, both parties expected and intended that Qwest would perform additional services with respect to the equipment. Qwest had already begun to furnish those additional services.

11. On or about the following dates, in the District of Colorado, the defendant, THOMAS HALL, for the purpose of executing and attempting to execute the scheme described in paragraphs 1-10 above and reincorporated herein, knowingly transmitted and caused to be transmitted, by means of a wire or radio communication in interstate commerce, the following writings and signals:

Count	Date	Writing
1	June 29, 2001	June 27 th Letter described in paragraph 10.a by fax to Denver, Colorado from Arizona
2	June 29, 2001	June 29 th Letter described in paragraph 10.b by fax from Denver, Colorado from Arizona
3	July 3, 2001	July 2 nd Letter described in paragraph 10.c by electronic mail from Denver, Colorado to Arizona

Each of the foregoing Counts 1-3 was in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT 4
(Securities Fraud)

12. The Grand Jury realleges and incorporates by reference the allegations in Paragraphs 1-11 and further charges that:

13. Beginning on or about March 2001 and continuing until on or about January 30, 2002, in the District of Colorado and elsewhere, the defendant, THOMAS HALL, aiding, abetting and counseling persons known and unknown to the Grand Jury did willfully and knowingly violate a rule or regulation promulgated under the Securities Exchange Act of 1934, namely Rule 13b2-1, the violation of which is made unlawful or the observance of which is required. More specifically, defendant HALL willfully and knowingly violated SEC Rule 13b2-1 by directly and indirectly falsifying, and causing to be falsified, books and records of account and by causing Qwest's books and records of account to inaccurately and unfairly reflect the SFB transaction. Defendant HALL prepared and caused to be prepared the three materially false documents set forth in paragraph 10, caused these documents to be placed into Qwest's files for the purpose of appearing to support the accounting for the SFB Transaction, and caused them to be delivered to Qwest's accountants. These documents caused Qwest's internal accountants to prepare erroneous journal entries in Qwest's general ledger and statement of revenue, earnings and income for the 2nd quarter of 2001. Finally, Defendant HALL also

knowingly circumvented Qwest's internal accounting controls by authorizing a side agreement with the SFB that was at variance with the false letters dated June 27, 2001 and June 29, 2001 and by procuring the execution of the false July 2, 2001 letter, knowing that all the equipment had not been delivered.

The foregoing was in violation of Title 15, United States Code, Sections 78m(b)(2)(A) and (B), and (b)(5), 78ff(a), and Title 17, Code of Federal Regulations, Section 240.13b2-1, and Title 18, United States Code, Section 2.

A True Bill

Grand Jury Foreperson

JOHN W. SUTHERS
United States Attorney

By: William J. Leone
First Assistant U.S. Attorney

By: James O. Hearty
Assistant U.S. Attorney

DATE: June 9, 2004

DEFENDANT: Thomas Hall

AGE: 52 (DOB: 9/25/51)

ADDRESS: Dallas, Texas

OFFENSE: Counts 1-3 18 U.S.C. § 1343
Wire Fraud
Count 4 15 U.S.C. §§ 78m(b)(2)(A) & (B), (b)(5) & 78ff(a), and
17 C.F.R. 240.13b2-1, Securities Fraud

LOCATION OF OFFENSE: Colorado

PENALTY: Counts 1-3
NMT 5 years imprisonment; NMT \$250,000 fine, or both;
\$100.00 Special Assessment
Count 4
NMT 10 years imprisonment; NMT \$1,000,000 fine, or both;
\$100.00 Special Assessment

AGENTS: Miles Gooderham and Gary Gomez
Special Agents, Federal Bureau of Investigation

AUTHORIZED BY: William J. Leone
First Assistant U.S. Attorney
James O. Hearty
Assistant U.S. Attorney

ESTIMATED TIME OF TRIAL:

five days or less
 over five days
 other

THE GOVERNMENT

will seek detention in this case
 will not seek detention in this case

The statutory presumption of detention **is not** applicable to this defendant.

OCDETF CASE: Yes No