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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. HONG LIANG LU and MICHAEL J. SOPHIE, Defendants.	CV 08 2262 Case No. COMPLAINT PJH

Plaintiff Securities and Exchange Commission (the "Commission") alleges against defendants Hong Liang Lu ("Lu") and Michael J. Sophie ("Sophie") ("Defendants"):

SUMMARY OF THE ACTION

1. Lu, the Chief Executive Officer of UTStarcom, Inc. ("UTSI" or "the company"), and Sophie, UTSI's former Chief Financial Officer, certified, pursuant to Section 302 of the Sarbanes-Oxley Act, the accuracy and completeness of UTSI's quarterly and annual reports filed with the SEC. UTSI's reports were not accurate and complete, however. Between 2000 and 2006, telecommunications company UTSI improperly recognized revenue on transactions subject to undisclosed side agreements, failed to properly disclose and account for related party transactions, and failed to properly record compensation expenses related to employee stock

options. Despite being put on notice of potential accounting issues by, among other things, material weakness letters sent by the company's outside auditor, Defendants falsely certified that UTSI's quarterly and annual reports did not contain any material misstatements or omissions, disclosed all significant deficiencies in UTSI's internal controls, and fairly presented UTSI's financial condition and results of operations.

2. In a separate administrative proceeding relating to these violations, the Commission has issued an order directing Lu and Sophie to cease and desist from committing or causing any violations or future violations of certain provisions of the federal securities laws.

3. In this action, the Commission seeks a Court order requiring Defendants to pay civil monetary penalties for violating Rule 13a-14 of the Securities Exchange Act of 1934 ("Exchange Act") based on the same facts and circumstances.

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

5. This Court has jurisdiction over this action pursuant to Sections 21(d)(3) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78aa].

6. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Defendants reside and transact business within the Northern District of California.

7. Intradistrict assignment to the San Francisco Division is proper pursuant to Civil L.R. 3-2(c) because a substantial part of the events or omissions that give rise to this action occurred in the County of Alameda.

DEFENDANTS

8. Hong Liang Lu, 53, is a co-founder of UTSI and has served as a board member and Chief Executive Officer since 1995. Lu resides in San Ramon, California and Hangzhou, China.

9. Michael J. Sophie, 50, was UTSI's Chief Financial Officer from 2000 through August 2005 and UTSI's Chief Operating Officer from June 2005 through May 2006. Sophie resides in Pleasanton, California.

RELEVANT ENTITY

10. UTStarcom, Inc., a Delaware corporation with headquarters in Alameda, California, is a telecommunications company that sells software and hardware products in emerging and established telecommunications markets around the world. The majority of UTSI's operations are in Hangzhou, China and overseas. UTSI went public in 2000, and its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NASDAQ Global Select Market under the symbol UTSI.

STATEMENT OF FACTS

11. Historically, China has been UTSI's largest market. Between 1995 and 2002, nearly all of UTSI's revenue derived from sales by UTSI's subsidiary in China ("UT-China"). By late 2002, UTSI's business plan was expanded to include growth on an international scale. UTSI defines "international" sales as all sales outside of China, including sales in the U.S., Japan, India, and other overseas markets. In 2003 and 2004, sales in China accounted for 86% and 79% of UTSI's revenue, respectively. By 2006, sales in China accounted for 32% of UTSI's revenue. The finance department at UT-China handled the accounting for all transactions in China, and UTSI's finance department in the U.S. handled the accounting for all international transactions.

12. In March 2003, UTSI received a Management Recommendation letter from its auditor detailing internal control weaknesses identified during the December 31, 2002 year-end audit. The letter was addressed to the audit committee and copied to Lu and Sophie. Among other things, the letter specifically noted that UTSI should "strengthen procedures to ensure side letters and contract amendments are communicated and accounted for in a timely manner." In its written response to the auditor's letter, UTSI said it had implemented the necessary controls to track and monitor side letters and non-routine transactions. UTSI sometimes used letter

agreements, or side letters, to supplement or amend contractual terms. Such letters were allowed so long as the accounting for them was done properly.

13. UTSI received another Management Recommendation letter from its auditor in April 2004 detailing multiple internal control weaknesses (many classified as material) identified during the December 31, 2003 year-end audit. The letter was copied to Lu and Sophie, and again noted concerns about the use of side letters that were not forwarded to the finance department. The auditor also expressed concerns with many complex related-party transactions entered into by UTSI. The auditor informed UTSI that the company did not adequately disclose significant transactions involving joint venture arrangements between UTSI and its customers. In its written response, UTSI said it had strengthened controls to identify side letters and implemented monitoring procedures to identify significant joint venture transactions.

A. UTSI Prematurely Recognized Revenue From International Sales Subject To Undisclosed Side Agreements

14. Between 2003 and 2005, UTSI prematurely recognized nearly $50 million in net revenue from international sales, all of which occurred outside the U.S., which were subject to side agreements that had been concealed from the company's finance personnel. Because these agreements promised future performance by UTSI, revenue should not have been recognized under Generally Accepted Accounting Principles ("GAAP").

15. Among other contingent transactions, UTSI improperly recognized revenue from the sale of a $22 million network system to a purchaser in India. At the time of the sale, securities analysts had expressed concerns about UTSI's ability to enter markets outside China, and Lu specifically highlighted this deal as indicative of UTSI's success in gaining traction in India.

16. UTSI delivered the system and recognized revenue from the $22 million sale in phases over several quarters, including the second quarter of 2004 and the second quarter of 2005. Before recognizing the revenue, UTSI's finance department required the purchaser to sign a final acceptance certificate certifying that all elements of the phase had been delivered and successfully installed.

17. During the second quarter of 2004, the purchaser sent UTSI the final acceptance certificate, but included a proposed side agreement requiring UTSI to upgrade the system after the end of the quarter. Lu and Sophie were aware of the proposed side agreement. UTSI's revenue recognition manager, with the knowledge of Lu and Sophie, specifically admonished that approving the side agreement would prevent revenue recognition. Lu personally communicated with the customer to request that they accept the products without a side agreement.

18. Notwithstanding the admonition, a UTSI sales executive signed a side agreement with the purchaser, but failed to adequately disclose the agreement to finance personnel, resulting in the improper recognition of revenue by the company. Lu and Sophie failed to take adequate steps to determine how the customer's request for a side agreement had been resolved and whether revenue recognition was appropriate.

19. During the second quarter of 2005, UTSI recognized additional revenue from the India sale. Once again, a UTSI sales executive had signed a side letter making the customer's acceptance contingent on future upgrades (and thus rendering revenue recognition improper under GAAP). Lu and Sophie were aware the customer had made such a request, but received a communication from finance personnel that the final acceptance certificates received from the customer were acceptable. Neither Lu nor Sophie took steps to determine how the issue was resolved and whether revenue was properly recognized.

20. In addition to the India transaction, UTSI entered into five other international sales transactions totaling $27.5 million in net revenue where side agreements had been entered into promising future products or services. These side agreements should have precluded revenue recognition. On June 26, 2006, UTSI restated its financial statements for the period between Q1 2003 through Q3 2005, reversing $49.5 million in net revenue that had been improperly recognized by the company.

B. UTSI Prematurely Recognized Revenue On Sales In China With Undisclosed Contract Modifications

21. Between 2000 and 2005, UTSI prematurely recognized over $350 million in revenue from 78 sales transactions in China. On some occasions, UTSI sales personnel entered into contracts that contained non-standard product upgrade provisions precluding revenue recognition. In some instances, sales personnel documented the sales on two separate contracts, and only the company's standard contract (without the upgrade provisions) was made available to UTSI's finance personnel. As a result, UTSI repeatedly recognized revenue for contingent sales in violation of GAAP.

22. Lu and Sophie had been on notice since at least 2003 of significant internal control weaknesses in China, including the fact that in some instances side letters and contract amendments introducing revenue contingencies were not forwarded by sales offices to the contract and finance departments. Although Lu and Sophie took steps to improve internal controls in response to this information, neither those steps nor the resulting controls were sufficient to detect the improper dual contract practices and failed to prevent certain improprieties.

23. On October 10, 2007, UTSI restated its financial statements from 2000 through the second quarter of 2006 to reverse $271 million in net revenue improperly recognized by the company.

C. UTSI Failed to Disclose and Properly Account for Related Party Transactions

24. In 2001, a China-based company called MDC was formed in order to provide value-added services to UTSI products. The father of UT-China's Executive Vice President founded MDC; the UT-China executive served as the "alternate" chairman of MDC's board of directors. Numerous officers and other employees of UT-China invested in MDC, and certain UT-China employees worked for MDC while their salaries were paid by UT-China.

25. In 2003, UT-China entered into a complex transaction involving MDC and another customer in China, whereby MDC took ownership of UTSI inventory that had decreased

in value. Because UTSI failed properly to treat MDC as a consolidated entity, no impairment of the inventory value was recorded by UTSI at the time.

26. Lu and Sophie had been on notice of concerns raised by the company's auditor about UTSI's failure to adequately disclose related party transactions entered into by UTSI. Although Lu and Sophie took steps to improve internal controls in response to this information, neither those steps nor the resulting controls were sufficient to detect the improper transaction with MDC and failed to prevent inaccurate reporting of certain related party transactions.

27. On April 13, 2005, UTSI restated its 2003 financial statements in part to consolidate MDC, as MDC was deemed a related party controlled by UTSI. The restatement resulted in the write down of $7.5 million in UTSI inventory held by MDC.

D. UTSI Failed Properly to Account for Stock Compensation Expenses

28. UTSI failed properly to account for certain stock option grants because the company used incorrect grant dates for determining compensation expenses. Under GAAP, UTSI was required to record an expense on its financial statements for any stock options granted "in-the-money" – i.e. where the exercise price of the option was less than the market price for the security on the date the option was granted.

29. Certain grants to UTSI officers were backdated or accounted for with incorrect grant dates prior to the proper authorization of the grant by the company's Compensation Committee. This resulted in an exercise price below market price on the date of the grant, yet no expense was recorded by the company.

30. UTSI failed to establish and implement adequate internal controls for the granting of employee stock options. Among other things, UTSI failed to maintain necessary documentation showing when the grants were actually authorized by the Compensation Committee.

31. On October 10, 2007, UTSI restated its financial statements from 1998 through the second quarter of 2006 to recognize an additional $27 million in compensation expenses related to employee stock options.

E. Defendants Signed False Certifications Under Section 302 of the Sarbanes-Oxley Act

32. Lu and Sophie, as UTSI's CEO and CFO, were required to sign certifications each fiscal quarter and fiscal year stating that, based on their knowledge, the company's quarterly and annual reports did not contain any misstatements or omit material information, that the reports disclosed all significant deficiencies in the design or operation of UTSI's internal controls, and that the reports fairly presented in all material respects UTSI's financial condition and results of operations. Lu executed such certifications for the quarters and years from the first quarter of 2004 through the second quarter of 2006, and Sophie executed such certifications for the quarters and years from the first quarter of 2004 through the second quarter of 2005. For the reasons set forth above, these certifications were false.

CLAIM FOR RELIEF

Violations of Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14]

33. Paragraphs 1 through 21 are re-alleged and incorporated herein by reference.

34. Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14] requires quarterly and annual reports on Forms 10-Q and 10-K to include certifications of the issuer's principal executive and principal financial officers in the form set forth under Section 302 of the Sarbanes-Oxley Act [15 U.S.C. § 7241].

35. By falsely certifying that UTSI's quarterly and annual reports did not contain any material misstatements or omissions, disclosed all significant deficiencies in UTSI's internal controls, and fairly presented UTSI's financial condition and results of operations, Defendants violated Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment ordering Defendants to pay civil monetary penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and granting such other relief as the Court deems appropriate.

Respectfully submitted,

Dated: May 1, 2008

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SECURITIES AND EXCHANGE COMMISSION