

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**FILED**  
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U.S. DISTRICT COURT E.D.N.Y.

★ JUN 18 2009 ★

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

v.

**ULTICOM, INC.,**

**Defendant.**

BROOKLYN OFFICE

09 Case No. 2589

**SEYBERT, J.  
LINDSAY, M.J.**

**COMPLAINT**

Plaintiff Securities and Exchange Commission ("Plaintiff" or "Commission") alleges for its Complaint, as follows:

**SUMMARY**

1. Ulticom, Inc. ("Ulticom" or the "Company") engaged in two separate fraudulent schemes through which it materially misstated its financial results. The first scheme involved certain improper practices in connection with the backdating of Ulticom stock options. The second scheme involved improper accounting practices, including (i) the improper establishment, maintenance, and release of reserves, and (ii) the improper recognition of revenue on certain inter-company shipments and service contracts.

2. The misconduct began in 1996, when Ulticom was a wholly-owned subsidiary of Comverse Technology, Inc. ("Comverse"), and continued after Ulticom became a publicly-traded company, while still majority-owned by Comverse, in 2000.

3. Between April 2000 and April 2004, Ulticom improperly recorded the grant dates of eight company-wide grants of employee stock options. On four of those eight occasions, Ulticom backdated the options to coincide with near-term lows in the Company's stock price.

On these four occasions, the options were “in-the-money,” meaning the exercise prices of the backdated Ulticom options were less than the Company’s stock price on the date the grants were formally approved by Ulticom’s Stock Option Committee (the “Committee”). For the remaining four of the improperly-recorded grants, the backdating resulted in the options being “out-of-the-money,” meaning the exercise prices of these backdated Ulticom options were higher than the Company’s stock prices on the dates the grants were formally approved by the Committee. The backdating allowed the Company to award employees disguised in-the-money options without recording a corresponding non-cash compensation expense for the in-the-money portion of the option grant in conformity with U.S. Generally Accepted Accounting Principles (“GAAP”). As a result, Ulticom (i) filed materially false and misleading financial statements that materially understated its compensation expenses and materially overstated its net income and earnings per share through the fiscal year ended January 31, 2005, and (ii) made disclosures in certain periodic filings and proxy statements during this time that falsely portrayed Ulticom’s options as having been granted at exercise prices equal to the fair market value of Ulticom’s common stock on the date of the grant.

4. Ulticom’s second scheme involved certain long-standing and improper accounting practices that were not in conformity with GAAP. From 1996 until its initial public offering (“IPO”) in April 2000, Ulticom made improper adjustments to its reserve accounts in order to stockpile reserves. In its first fiscal year following its IPO, Ulticom released some of these improper excess reserves into income. Without these releases, the Company would not have met Wall Street analysts’ earnings estimates. In addition, from 1998 to April 2001, Ulticom improperly deferred to subsequent periods the recognition of revenues from certain shipments and service contracts between itself and another subsidiary of Comverse. As a result, Ulticom

filed materially false and misleading financial statements that misstated the Company's revenues, expenses, liabilities, net income, and earnings per share through the fiscal year ended January 31, 2004.

5. At the time of its IPO in April 2000, Ulticom included in its registration statements financial statements and related disclosures that were materially false and misleading as a result of the Company's improper accounting practices. At the time of its follow-on offering in October 2000, Ulticom included in its registration statements financial statements and disclosures that were materially false and misleading as a result of both the improper options backdating and other improper accounting practices described herein.

6. Ulticom has announced that its historical financial statements and any related reports of its independent registered public accounting firm should no longer be relied upon. Ulticom has announced that it will restate its historical financial statements for its fiscal years ended December 31, 1996 ("Fiscal Year 1996") through January 31, 2005 ("Fiscal Year 2004"), in order to record additional material non-cash charges for option-related compensation expenses and to correct the material misstatement of its revenues and earnings.

7. By engaging in the foregoing conduct, Ulticom violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and 78n(a)] and Exchange Act Rules 13a-1, 13a-11, 13a-13, and 14a-9 [17 C.F.R. §§ 240.13a-1, 240.13a-11, 240.13a-13, and 240.14a-9]. An injunction is necessary to ensure that Ulticom will not continue to violate the foregoing provisions of the federal securities laws.

## JURISDICTION AND VENUE

8. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

9. Defendant Ulticom, directly or indirectly, used the means and instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, transactions, practices and courses of business alleged herein.

10. Venue is proper in this District because certain of the acts, transactions, practices and courses of business alleged herein took place in the Eastern District of New York and Ulticom's parent company, Comverse, was headquartered and/or maintained an office in Woodbury, New York at all relevant times.

## THE DEFENDANT

11. Defendant **Ulticom, Inc.** is a New Jersey corporation based in Mount Laurel, New Jersey, that provides service-enabling signaling software for fixed, mobile, and internet communications. Ulticom was a wholly-owned subsidiary of Comverse until its IPO in April 2000; it has been a majority-owned subsidiary of Comverse since April 2000. Ulticom's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the NASDAQ Global Market. Trading in Ulticom stock was suspended on February 1, 2007, and the stock was eventually delisted, due to Ulticom's failure to file timely its fiscal 2005 annual report on Form 10-K and fiscal 2006 quarterly reports on Forms 10-Q. Ulticom has not filed periodic reports on Forms 10-K or 10-Q with the Commission since December 2005. Currently Ulticom's stock is registered with the Commission pursuant to

Section 12(g) of the Exchange Act and is quoted on the "Pink Sheets" under the symbol "ULCM" or "ULCM.PK."

#### **RELATED PARTY**

12. **Comverse Technology, Inc.**, a New York corporation which at all relevant times was based in Woodbury, New York, makes software systems and provides related services for multimedia communication and information processing applications. Comverse is the parent company and majority shareholder of Ulticom and, at various times relevant to this Complaint, former Comverse executives and board members also served as former executives and board members of Ulticom. Specifically, Comverse's Chairman and Chief Executive Officer ("CEO") was Chairman of Ulticom's board of directors from October 1997 until May 1, 2006. Comverse's Chief Financial Officer ("CFO") was Ulticom's CFO from December 1999 to September 2001, and a Director from April 2000 to May 1, 2006 (hereinafter referred to as the "Former CFO"). Comverse's General Counsel was the Corporate Secretary and a Director of Ulticom from at least 2000 until June 2004. He also served on several board committees, including Ulticom's Compensation Committee, and provided legal services to Ulticom through a services agreement between Comverse and Ulticom.

#### **FACTS**

##### **A. Ulticom's Backdating of Stock Options**

13. Ulticom used employee stock options as a form of compensation to recruit, incentivize and retain key employees, as did many other companies at the time. Between April 2000 and April 2004, however, four of Ulticom's backdated stock option grants resulted in the award of disguised in-the-money options to employees of the Company. Ulticom did not

disclose the in-the-money status nor record the corresponding non-cash compensation expenses for the in-the-money portion of these option grants in conformity with GAAP.

14. As a result, Ulticom filed materially false and misleading financial statements that materially understated its compensation expenses and materially overstated its net income and earnings per share through the fiscal year ended January 31, 2005. The Company also made disclosures in certain periodic filings and proxy statements during this time that falsely portrayed Ulticom's options as having been granted at exercise prices equal to the fair market value of Ulticom's common stock on the date of the grant.

**1. The Ulticom Stock Option Plan**

15. Since going public in 2000, and continuing to June 2005, Ulticom granted options to its employees and employee-directors pursuant to the Company's 1998 Stock Incentive Compensation Plan ("Plan"), which was amended effective January 20, 2000. The Plan was drafted by Comverse's General Counsel and was approved by Ulticom's board of directors and voted upon by its shareholders.

16. The stated purpose of Ulticom's Plan was to attract and retain employees and directors at Ulticom and its subsidiaries by giving those persons "a greater stake in [Ulticom's] success and a closer identity with it." The Plan gave Ulticom's Stock Option Committee the power to interpret and administer the Plan and the authority: (i) to select the specific employees to whom awards would be granted; (ii) to determine the type and amount of the award to be granted such employees; and (iii) to determine the terms of the option agreements to be entered into with such employees. In practice, the Committee approved an option grant based on a master list of grantees compiled by Ulticom's management. The Plan expressly prohibited the award of incentive stock options at less than the fair market value of a share of common stock on

the date of grant. "Fair market value" was defined as the mean between the highest and lowest sale price of Ulticom common stock on the principal national securities exchange on which it was listed on the date of the grant.

## **2. The Ulticom Bylaws**

17. Ulticom's bylaws, effective from March 2000 to the present, make clear that the Committee can formally act upon stock option grant proposals in two ways. The Committee can act without a formal meeting, if all members consent in writing to the adoption of a resolution authorizing the action (*i.e.*, the consent must be unanimous), or the Committee can act by holding a meeting at which a quorum of Committee members is present, if a majority of those present at the meeting approve the action.

## **3. The Ulticom Option Grant Process**

18. Beginning in 2000, and continuing until April 2004, Ulticom made eight stock option grants in which the grant dates preceded the date on which Ulticom's Stock Option Committee had formally acted to approve the grant proposals. The exercise price of the underlying options did not reflect the "fair market value" on the date when the Committee formally acted to approve such grants, and, by the time the Committee did formally act, options underlying four of the grants were in-the-money. The in-the-money portion of these grants should have been, but was not, recorded as a compensation expense on Ulticom's books and records or reflected in Ulticom's financial statements.

19. Ulticom's options-grant process commenced with Ulticom executives approaching the Former CFO or Comverse's CEO to obtain authorization to initiate a grant. As part of that initial contact regarding initiation of a grant or shortly thereafter, Ulticom's executives and employees would forward to the Former CFO or Comverse's CEO a list of

proposed grantees along with the proposed number of shares to be granted to each. If a grant was determined to be appropriate, the Former CFO then instructed certain Ulticom executives and employees to review the Company's historical stock prices and select a date on which the stock was trading at a low price. These individuals typically looked back a week or two and presented the Former CFO with the lowest closing price during the look-back period. The Former CFO approved a grant date based on the information provided.

20. A master list of proposed option grantees, which identified for each person a proposed number of options to be granted, typically then was forwarded to Comverse for review and, sometimes, revision.

21. While the master list of grantees was being reviewed, Ulticom executives and employees prepared a Unanimous Written Consent, based on a template provided by Comverse's General Counsel, to be forwarded to and signed by all members of Ulticom's Stock Option Committee in order to approve the grant. These individuals inserted into each Unanimous Written Consent an "as of" date that was the date that had been selected using the look-back procedure at the outset of the grant process, instead of the date when the Committee had approved the grant. Following approval of the Unanimous Written Consents by Comverse's General Counsel and approval of the master list of grantees by Comverse, the Unanimous Written Consents were forwarded to the Committee for signature.

22. The Former CFO, General Counsel, and certain former Ulticom executives and individuals knew that the "as of" date reflected in each Unanimous Written Consent – which, in turn, determined the exercise price for the underlying options – not only preceded the date on which the Committee had acted on the option grant proposal, it also preceded the date on which anyone had even begun to prepare the Unanimous Written Consents.



23. Ultimately, for the eight option grants made by Ulticom between April 2000 and April 2004, a Unanimous Written Consent and master list of proposed grantees was forwarded to each member of Ulticom's Stock Option Committee for review and signature. Committee members signed their individual copies of the Unanimous Written Consents and returned them to Ulticom where they subsequently were forwarded to Converse's General Counsel for filing as corporate records. The Committee acted upon option grant proposals during this period solely through Unanimous Written Consents.

24. None of the Unanimous Written Consents that were signed in connection with stock option grants between April 2000 and April 2004 identified the specific dates on which any Committee members had signed them. None of the Unanimous Written Consents during that period identified the date on which any stock option grant had been approved by the Committee. The sole date reflected on the Unanimous Written Consents was the "as of" date that had been approved by the Former CFO and that preceded any Committee action.

25. Ulticom changed its options-grant practices in or around April 2004, at which point Ulticom adopted the practice of recording a grant date only after receipt of signed Unanimous Written Consents from all Committee members.

**4. Ulticom's Materially Misleading Financials And Disclosures Resulting From Its Options Practices**

26. Options underlying four of the eight grants made by Ulticom between April 2000 and April 2004 were in-the-money on the date when Ulticom's Stock Option Committee acted upon the grant proposals.

27. The four grants were in-the-money, by the following amounts per option, when the Committee acted upon the grant proposals:

<b>“As Of” Grant Date</b>	<b>Exercise Price</b>	<b>Date Of Committee Approval</b>	<b>Fair Market Value On Estimated Date Of Committee Approval</b>	<b>In-The-Money Amount Per Option On Estimated Approval Date</b>
7/10/00	\$22.5625	7/20/00	\$45.25	\$22.6875
11/28/00	\$27.4688	12/15/00	\$39.565	\$12.0962
3/5/01	\$19.5625	3/14/01	\$24.50	\$4.9375
6/25/02	\$6.52	7/02/02	\$6.625	\$0.1050

Because it stated in its public filings that it accounted for its options during the relevant period in conformity with Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees,” (“APB 25”), Ulticom was required to record a compensation expense in connection with these four grants over the four-year vesting period of the options. It did not do so.

28. As a result of the foregoing acts, Ulticom materially overstated its net income and earnings per share for fiscal years ended January 31, 2001 (“Fiscal Year 2000”) through January 31, 2005 (“Fiscal Year 2004”). Ulticom’s overstatement, as a percentage of its previously-reported pre-tax income, ranged from as little as 2.7% to as much as 16.3% between Fiscal Years 2000 and 2004.

29. Ulticom issued quarterly earnings press releases, which contained materially false and misleading financial results, in current reports filed with the Commission on Form 8-K between June 2003 and December 2005. Ulticom knew or was reckless in not knowing that the net income and earnings figures reported in such documents were materially false and misleading as a result of its improper options-grant practices.

30. Ulticom published (or incorporated by reference) its materially false and misleading financial results for Second Quarter 2000 in, among other documents filed with the Commission, its registration statement on Form S-1 and offering prospectus for its follow-on offering, pursuant to which it (and certain of its and Comverse’s executives) sold 4,250,000

shares of common stock at \$50 per share in October 2000. Ulticom knew or was reckless in not knowing that the net income and earnings figures reported in such documents were materially false and misleading as a result of its improper options-grant practices.

31. The Form S-1 and related prospectus for Ulticom's follow-on offering in October 2000 also contained materially false and misleading disclosures about Ulticom's stock option-grant practices and accounting. There, less than two months after the grant dated "as of" July 10, 2000, Ulticom made the following materially misleading statements in three separate sections of its registration statement and prospectus:

The Company applies Accounting Principles Board Opinion No. 25, 'Accounting For Stock Issued to Employees,' and related interpretations in accounting for its option plans. Accordingly, as all options have been granted at exercise prices equal to fair market value on the date of grant, no compensation expense has been recognized by the Company in connection with its stock-based compensation plans.

\* \* \* \* \*

Options which are designated as "incentive stock options" under the option plans may be granted with an exercise price not less than the fair market value of the underlying shares at the date of grant and are subject to certain quantity and other limitations specified in Section 422 of the Internal Revenue Code.

\* \* \* \* \*

The price per share at which common stock may be purchased upon exercise of an option is determined by the committee; however, in the case of grants of incentive stock options, the price per share may not be less than the fair market value of a share of common stock on the date of grant.

32. Ulticom made additional materially misleading disclosures about its options-grant process in its proxy statements on Form DEF 14A, filed with the Commission on May 10, 2002 and May 16, 2003. Specifically, with respect to options that Ulticom had granted to certain of its executives in the "last fiscal year," Ulticom falsely represented that "[t]he exercise price of the options is equal to the fair market value of the underlying shares at the date of grant." The grants

referred to – the March 5, 2001 and June 25, 2002 grants – in fact were in-the-money on the date of Committee approval and the exercise prices of the underlying options did not reflect fair market value. Ulticom knew, or was reckless in not knowing, that these disclosures in the proxies and registration statements were materially false and misleading because of its backdating practices.

33. By virtue of the stock options backdating, Ulticom's books and records falsely and inaccurately reflected, among other things, the compensation and income tax expense associated with the Company's grants of stock options to its employees, the Company's net income and earnings per share, and its general financial condition. Ulticom also failed to maintain a system of internal accounting controls sufficient to provide assurances that its stock option grants were recorded as necessary to permit the proper preparation of financial statements in conformity with GAAP.

**B. Ulticom's Reserve and Revenue Recognition Practices**

34. Pre-dating Ulticom's stock options backdating practices, and continuing through at least January 31, 2002 ("Fiscal Year 2001"), Ulticom engaged in improper accounting, including (i) the improper creation, maintenance and use of reserves from 1996 through Ulticom's fiscal quarter ending October 31, 2001 ("Third Quarter 2001"); and (ii) the improper deferral of revenues on certain transactions between Ulticom and another subsidiary of Comverse, Comverse Network System's Israeli Division ("CNS-Israel" or "Comverse Ltd."), between 1998 and April 2001.

35. Ulticom filed materially false and misleading financial statements, including those that were incorporated into registration statements for the Company's IPO and follow-on offerings, that misstated the Company's revenues, expenses, liabilities, net income, and earnings

per share through Fiscal Year 2003. Although these improper practices ceased by late 2001, they continued to cause Ulticom's reported financials to be misstated in subsequent fiscal years, up through Fiscal Year 2004.

1. **Ulticom's Improper Reserves Practices**

36. Beginning in 1996 and continuing through Third Quarter 2001, Ulticom improperly added reserves to its books and records and/or maintained reserves that were no longer needed in periods when it performed above expectations. It released reserves during at least one fiscal year when it performed below expectations.

37. Specifically, under the direction of the Former CFO and other former executives, Ulticom maintained and routinely updated spreadsheets that tracked its revenues and earnings. The spreadsheet that tracked Ulticom's revenues was entitled "Rev Proj." The spreadsheet that tracked Ulticom's earnings was known among Ulticom executives as the "cancer table." Together these spreadsheets enabled Ulticom quickly to identify gaps between actual results and projected results and Wall Street analyst estimates as each quarter and year progressed, and to make adjustments (including adjustments to reserve balances) as necessary to lessen or close the gap.

38. Ulticom also tracked its reserve balances (and reserve usage) on a spreadsheet entitled "Accruals-Buffers." The spreadsheet – updated on a monthly (and later quarterly) basis – listed for each reserve the reserve balance (in one column) and the amount of the balance that was excess and thus available for release (in an adjacent column). The excess amounts were denoted either as "buffer" or "amount excess."

39. During Ulticom's quarter-end and year-end closing processes, Ulticom's Former CFO and other former executives directed the accounting staff to make upward or downward

adjustments to Ulticom's reserve levels, as necessary, either to stockpile reserves in the event an earnings boost was needed in the future or to close the gap between Ulticom's actual and projected earnings.

40. Such adjustments, for the most part, were unrelated to the underlying liability for which any reserve had initially been created and did not comport with GAAP, including Statement of Financial Accounting Standards No. 5, Accounting for Contingencies ("SFAS 5"), at ¶ 8, or Accounting Principles Board Opinion No. 20, Accounting Changes ("APB 20"), at ¶¶ 13 and 36-38.

41. In September 2001, a new CFO arrived at Ulticom, and the Company undertook to reverse a number of its excess reserve balances during the quarter ended January 31, 2002 ("Fourth Quarter 2001"). However, the reversals were not done in conformity with GAAP and Ulticom did not release the excess balances into the proper historical period. In addition, certain excess reserves remained on Ulticom's books and records in each period through the end of Fiscal Year 2004.

## **2. Ulticom's Improper Deferral of Revenues**

42. Beginning in 1998 and continuing through April 2001, Ulticom engaged in improper revenue recognition practices with respect to contracts between it and Comverse subsidiary CNS-Israel, in an effort to smooth revenues and demonstrate steady (as opposed to volatile and unsustainable) revenue growth to investors.

43. The improper and unsupported revenue deferrals involved inter-company shipments between Ulticom and CNS-Israel. The Former CFO and other former executives directed that problems be fabricated to prohibit the acceptance of products by CNS-Israel when in reality no such problems existed, or, if the products had already been shipped, Ulticom and

CNS-Israel agreed to delay the recording of invoices on their books and records. Also, on occasion, the Former CFO and other former executives directed that Ulticom ask CNS-Israel to delay making payments for services that Ulticom had performed on behalf of CNS-Israel for third parties.

44. By engaging in such practices, Ulticom violated its own long-standing policy of recognizing revenue on the date that the product was shipped to the customer, which also was the date on which Ulticom was required to invoice the customer. In addition, these practices did not conform with GAAP, including Statement of Financial Accounting Concepts No. 5, Recognition and Measurement in Financial Statements of Business Enterprises (“SFAC 5”), at ¶ 83.

45. As a result of these revenue recognition practices, Ulticom materially understated its revenues and pre-tax earnings in Fiscal Year 1998 and it overstated its revenues and pre-tax earnings in Fiscal Years 1999, 2000 and 2001:

Fiscal Year	Revenue Overstatement/ (Understatement)	Pre-Tax Income Overstatement/ (Understatement)	Percentage Impact On Pre-Tax Income
1998	\$ (1,162,500)	\$ (838,700)	(33.63) %
1999	\$ 229,500	\$ 67,100	2.64 %
2000	\$ 623,000	\$ 461,600	3.15 %
2001	\$ 310,000	\$ 310,000	1.79 %

46. Ulticom published (or incorporated by reference) these materially false and misleading financial results for Fiscal Years 1998 and 1999 in, among other documents filed with the Commission, its registration statements on Form S-1 and offering prospectuses for its IPO and follow-on offering.

47. Further, because the impact of Ulticom's revenue recognition practices from these periods remained on the Company's books and records in subsequent fiscal periods, Ulticom materially misstated its revenues, net income and earnings per share through Fiscal Year 2001.

48. As a result of these improper revenue recognition practices, Ulticom's books and records falsely and inaccurately reflected the Company's revenues, net income, earnings per share and the Company's general financial condition. Also by virtue of its improper revenue recognition practices, Ulticom failed to maintain a system of internal accounting controls sufficient to provide assurances that its accruals, reserves, and revenue were recorded as necessary to permit the proper preparation of financial statements in conformity with GAAP.

### **3. Ulticom's Public Stock Offerings**

#### **a. IPO**

49. On or about April 5, 2000, Ulticom commenced its initial public offering of 4.25 million shares of common stock at a price of \$13 per share. In connection with its IPO, Ulticom filed a registration statement on Form S-1 and a prospectus, which included audited financial statements for Ulticom's fiscal years ending January 31, 1998 ("Fiscal Year 1997"), January 31, 1999 ("Fiscal Year 1998") and January 31, 2000 ("Fiscal Year 1999"). The registration statement and prospectus also included unaudited financials for Fiscal Year 1996. This was the first time that the public had been provided with Ulticom-specific earnings data, its financial results having been consolidated with those of its parent (Comverse) prior to that time.

50. In Fiscal Years 1996, 1997, and 1999 Ulticom established unnecessary reserves and inflated existing reserves. In Fiscal Year 1998, Ulticom improperly took some of the excess amounts in its reserve accounts into income.



51. These improper reserve practices caused Ulticom to report, in the registration statement on Form S-1 and prospectus for its IPO, the following materially misleading earnings and loss amounts:

Fiscal Year	Earnings/(Loss)	Earnings/(Loss) Per Share
1996	\$ (1,577,000)	\$ (0.05)
1997	\$ 2,055,000	\$ 0.06
Jan. 1998	\$ (431,000)	\$ (0.01)
1998	\$ 1,567,000	\$ 0.05
1999	\$ 1,574,000	\$ 0.05

Ulticom thereby falsely presented itself as having achieved steady earnings on a per share basis for the three years leading up to its IPO, when, in fact, its actual results had been more volatile.

52. After the close of Fiscal Year 1998, Ulticom deferred a substantial amount of revenues into Fiscal Year 1999 to smooth its top-line results. In Fiscal Years 1999 and 2000, Ulticom overstated its revenues.

53. Ulticom knew or was reckless in not knowing that the historical earnings and loss amounts reported in its IPO Form S-1 registration statement and prospectus were materially misleading as a result of its improper reserve and revenue recognition practices.

**b. Follow-On Offering**

54. On or about October 17, 2000, Ulticom commenced its follow-on offering of 4.25 million shares of common stock at a price of \$50 per share. In connection with its offering, Ulticom filed a registration statement on Form S-1 and a prospectus, which included the same materially misleading financials that Ulticom had included in its IPO registration statement – *i.e.*, Fiscal Year 1996 (unaudited) and Fiscal Years 1997 through 1999 (audited) – and it added unaudited financials for the six month period ending July 31, 2000 (“First and Second Quarter 2000”).

55. For the First and Second Quarters of 2000, as a result of its continued improper reserve practices, Ulticom reported materially misleading cumulative earnings of \$2,677,000 (or \$0.07 diluted EPS).

56. Ulticom knew or was reckless in not knowing that the historical earnings and loss amounts reported in the Form S-1 registration statement for its follow-on offering and prospectus were materially misleading as a result of its improper reserve and revenue recognition practices.

57. Ulticom issued quarterly earnings press releases, which contained materially false and misleading financial results, in current reports filed with the Commission on Form 8-K between June 2003 and December 2005. Through actions directed by its former executives, Ulticom knew or was reckless in not knowing that the net income and earnings figures reported in such documents were materially false and misleading as a result of its improper reserve and revenue recognition practices.

58. By virtue of Ulticom's reserve misconduct, Ulticom's books and records falsely and inaccurately reflected, among other things, the Company's net income and earnings per share, and its general financial condition. Ulticom also failed to maintain a system of internal accounting controls sufficient to provide assurances that its reserve activity was recorded as necessary to permit the proper preparation of financial statements in conformity with GAAP.

**FIRST CLAIM**  
**Violations of Securities Act Section 17(a)**

59. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 58 above.

60. Ulticom, directly or indirectly, knowingly, recklessly, or negligently, in the offer or sale of Ulticom securities, by use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails, has: (a) employed devices,

schemes or artifices to defraud; (b) obtained money or property by means of 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 (c) engaged in transactions, practices or courses of business which operated or would have operated as a fraud or deceit upon purchasers of Ulticom securities.

61. By engaging in the conduct alleged above, Ulticom violated Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

**SECOND CLAIM**  
**Violations of Exchange Act Section 13(a) and**  
**Exchange Act Rules 13a-1, 13a-11, and 13a-13 Thereunder**

62. The Commission realleges and incorporates by reference Paragraphs 1 through 58 above.

63. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.13a-1, 240.13a-11, and 240.13a-13] thereunder, require issuers of registered securities to file with the Commission factually accurate annual, quarterly, and current reports.

64. By engaging in the conduct alleged above, Ulticom violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.13a-1, 240.13a-11 and 240.13a-13].

**THIRD CLAIM**  
**Violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B)**

65. The Commission realleges and incorporates by reference Paragraphs 1 through 58 above.

66. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately

and fairly reflected the transactions and dispositions of its assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

67. By engaging in the conduct alleged above, Ulticom violated Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

**FOURTH CLAIM**  
**Violations of Exchange Act Section 14(a) and**  
**Exchange Act Rule 14a-9 Thereunder**

68. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 58 above.

69. Ulticom directly or indirectly, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, negligently solicited by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and in light of the circumstances under which they were made, were false and misleading with respect to material facts, or omitted to state material facts necessary in order to make the statements therein not false or misleading or necessary to correct statements in earlier communications with respect to the solicitation of the proxy for the same meeting or subject matter which was false or misleading.

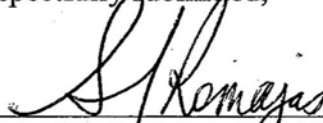
70. By engaging in the conduct alleged above, Ulticom violated Exchange Act Section 14(a) [15 U.S.C. § 78n(a)] and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully prays that this Court permanently enjoin Ulticom from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and 78n(a)], and Exchange Act Rules 13a-1, 13a-11, 13a-13, and 14a-9 [17 C.F.R. §§ 240.13a-1, 240.13a-11, 240.13a-13, and 240.14a-9].

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Washington, DC

Respectfully submitted,



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