

ORIGINAL  
FILED  
AM 9:40  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12  
13 SECURITIES AND EXCHANGE COMMISSION,  
14 Plaintiff,  
15 vs.  
16 HONG LIANG LU and MICHAEL J. SOPHIE,  
17 Defendants.

CV

08

2262

Case No.

COMPLAINT

PTJ

18  
19 Plaintiff Securities and Exchange Commission (the "Commission") alleges against defendants  
20 Hong Liang Lu ("Lu") and Michael J. Sophie ("Sophie") ("Defendants"):

21 **SUMMARY OF THE ACTION**

22 1. Lu, the Chief Executive Officer of UTStarcom, Inc. ("UTSI" or "the company"),  
23 and Sophie, UTSI's former Chief Financial Officer, certified, pursuant to Section 302 of the  
24 Sarbanes-Oxley Act, the accuracy and completeness of UTSI's quarterly and annual reports filed  
25 with the SEC. UTSI's reports were not accurate and complete, however. Between 2000 and  
26 2006, telecommunications company UTSI improperly recognized revenue on transactions  
27 subject to undisclosed side agreements, failed to properly disclose and account for related party  
28 transactions, and failed to properly record compensation expenses related to employee stock







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

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

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

20           20.     In addition to the India transaction, UTSI entered into five other international  
21 sales transactions totaling \$27.5 million in net revenue where side agreements had been entered  
22 into promising future products or services. These side agreements should have precluded  
23 revenue recognition. On June 26, 2006, UTSI restated its financial statements for the period  
24 between Q1 2003 through Q3 2005, reversing \$49.5 million in net revenue that had been  
25 improperly recognized by the company.  
26  
27  
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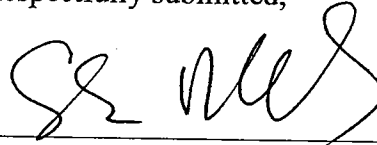




1 **PRAYER FOR RELIEF**

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

6  
7 Respectfully submitted,

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9 Dated: May 1, 2008

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11 Cary S. Robnett  
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14 Attorneys for Plaintiff  
15 SECURITIES AND EXCHANGE COMMISSION  
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