MARC J. FAGEL (Cal. Bar No. 154425)
MICHAEL S. DICKE (Cal. Bar No. 158187)
TRACY L. DAVIS (Cal. Bar No. 184129)
davistl@sec.gov
STEVEN D. BUCHHOLZ (Cal. Bar No. 202638)
buchholzs@sec.gov

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 2600
San Francisco, California 94104
Telephone: 415-705-2500
Facsimile: 415-705-2501

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,	Case No. CV 09 6094 JSW
Plaintiff,	
vs.	COMPLAINT
UTSTARCOM, INC.,	
Defendant.	

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY OF ACTION

1. This matter involves repeated bribe payments to foreign officials by Bay Area telecommunications company UTStarcom, Inc. ("UTSI" or "the company") in violation of the Foreign Corrupt Practices Act ("FCPA"). Between 2002 and 2007, UTSI paid nearly $7 million for hundreds of overseas trips by employees of Chinese government-controlled telecommunications companies that were customers of UTSI, purportedly to provide customer training. In reality, the trips were entirely or primarily for sightseeing.

2. During the same time period, UTSI provided other gifts and benefits to foreign government customers, including paying for them to attend executive training programs at U.S.

universities. UTSI also provided foreign government customers or their family members with work visas and purportedly hired them to work for UTSI in the U.S., when in reality they did no work for the company. UTSI also made payments to purported consultants in China and Mongolia who provided no documented services, under circumstances that showed a high probability that the payments would be used to bribe foreign government officials.

3. The Commission seeks an order permanently enjoining UTSI from violations of the anti-bribery, books and records, and internal control provisions of the FCPA, and requiring UTSI to pay a civil monetary penalty.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78aa]. Defendant has, directly or indirectly, made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

5. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Defendant maintains its headquarters and transacts business within the Northern District of California.

6. 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.

DEFENDANT

7. UTStarcom, Inc. is a Delaware corporation with headquarters in Alameda, California. UTSI is a global telecommunications company that designs, manufactures and sells network equipment and handsets. UTSI's 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." The majority of UTSI's operations and employees are in China. UTSI operates in China primarily through its wholly-owned subsidiary UTStarcom China Co., Ltd. ("UTS-China").

8. On May 1, 2008, in a prior action involving multiple accounting irregularities unrelated to the FCPA, the Commission issued an order finding that UTSI and certain of its executives violated the corporate reporting, books and records and internal controls provisions of the federal securities laws between 2000 and 2005. Without admitting or denying the Commission's findings, UTSI agreed to cease and desist from committing such violations.

FACTUAL ALLEGATIONS

A. UTSI Paid for Sightseeing Trips by Employees of Chinese Government Customers Pursuant to Systems Contracts.

9. Historically, China has been UTSI's most important market. Between 1995 and 2004, more than 75% of UTSI's sales were to government-controlled municipal and provincial telecommunications companies in China. From 2004 to 2008, the company attempted several business ventures to expand outside of China. However, by 2008, China again became UTSI's largest market by sales.

10. UTSI grew rapidly until 2004 based on UTS-China's sales of wireless network equipment for large cities in China. The initial sales contracts for the networks were referred to as "systems contracts."

11. At least by 2002, UTS-China's standard practice was to include as part of each systems contract a provision for UTS-China to pay for some of the customer's employees to attend purported training overseas at UTSI facilities after installation of the network.

12. After network installation was complete, UTS-China told the customer to contact a particular travel agent to choose destinations for the trip and provide the list of employees who would participate. Most trips lasted two weeks and cost USD $5,000 per customer employee.

13. UTS-China paid for the trips through the travel agent and accounted for the entire cost as a training expense. UTS-China's financial results were a component of UTSI's consolidated financial statements.

14. Between 2002 and 2007, UTSI spent nearly $7 million on approximately 225 trips for customer employees pursuant to training provisions in systems contracts.

15. Very little documentation was maintained relating to the trips, and UTSI did not have adequate internal controls to determine whether the trips were in fact for training purposes. On many of the trips, no training actually occurred. Instead, customer employees visited popular tourist destinations where UTSI had no facilities.

B. UTSI Paid for Employees of Chinese Government Customers to Attend Executive Training Programs at U.S. Universities.

16. On at least seven occasions between 2002 and 2004, UTSI paid for executive training programs at U.S. universities that were attended by managers and other employees of government customers in China. The programs covered general management topics and were not specifically related to UTSI's products or business.

17. UTSI paid for all expenses associated with the programs, which totaled more than $4 million from 2002 to 2004. The expenses included travel, tuition, room and board, field trips to nearby tourist destinations, and a cash allowance of between $800 and $3,000 per person. UTSI accounted for the cost of the programs as marketing expenses.

18. UTSI's senior management believed that the executive training programs helped UTSI obtain or retain business. In late 2002, UTSI's CEO and UTSI's Executive Vice President (who also served as CEO of UTS-China) approved increasing the budget for the programs in 2003 to provide a specific executive training program for employees of UTSI's largest customer, a Chinese government-controlled telecommunications company.

C. UTSI Provided Employment Benefits to Customers or Their Family Members.

19. On at least ten occasions between 2001 and 2005, UTSI provided or offered full-time employment with UTSI in the U.S., including salaries and other benefits, to employees of government customers or their family members in China and Thailand. These offers were made for the purpose of obtaining or retaining business from the customers.

20. UTSI paid and provided benefits to at least three of these individuals for a period of two years each as if they were real employees, even though they never worked for UTSI in any capacity. Phony annual performance reviews were placed in personnel files for the

individuals to document their employment, and UTSI improperly accounted for the payments to the individuals as employee compensation.

21. UTSI also sponsored permanent U.S. residency applications falsely stating that these three individuals would be full-time employees of UTSI in New Jersey. As a result, each of the individuals received a green card.

D. UTSI Paid for Gifts and Entertainment Expenses of a Government Customer in Thailand.

22. In 2004, as part of its effort to expand its business outside China, UTSI submitted a bid for a sales contract to a government-controlled telecommunications company in Thailand.

23. While UTSI's bid was under consideration, UTSI's general manager in Thailand spent nearly $10,000 on French wine as a gift to agents of the government customer, including rare bottles that cost more than $600 each. The manager also spent $13,000 for entertainment expenses for the same customer in an attempt to secure the contract.

24. UTSI's former Executive Vice President and CEO of UTS-China approved the payments. UTSI reimbursed the expenditures and accounted for them as marketing expenses.

E. UTSI Paid Consultants to Bribe Government Officials.

25. In 2005, UTSI attempted to expand its business into Mongolia. UTSI's Executive Vice President and CEO of UTS-China at that time authorized a $1.5 million payment to a Mongolian company pursuant to a purported consulting agreement and told UTSI's Board of Directors that the $1.5 million was a license fee paid to the Mongolian government.

26. UTSI did not maintain records showing what services, if any, were actually provided under the consulting agreement. UTSI accounted for the entire $1.5 million as a license fee.

27. In reality, the license fee was only $50,000. UTSI agreed to work with the Mongolian company and pay the $1.5 million because the Mongolian company had government connections. UTSI's Executive Vice President and CEO of UTS-China knew that the $1.5 million payment was not a license fee and that the Mongolian company used a portion of that

$1.5 million to make payments to at least one Mongolian government official to help UTSI obtain a favorable ruling in a dispute over its license.

28. In early 2007, UTSI's former Executive Vice President and CEO of UTS-China authorized a $200,000 payment to a Chinese company pursuant to a purported consulting agreement. Although the payment was accounted for as a consulting expense, no records were maintained describing what services, if any, were actually provided. In reality, it was a sham consulting company and the payment was made as part of an effort to obtain a contract from a Chinese government customer.

F. UTSI Later Implemented Remedial Measures to Improve FCPA Compliance.

29. In 2006, after learning of alleged bribe payments in Mongolia, UTSI's audit committee conducted an internal investigation into potential FCPA violations, which UTSI expanded in 2007 and 2008 to cover all of its operations worldwide. As a result of the internal investigation, UTSI has adopted new FCPA-related policies and procedures, hired additional finance and internal compliance personnel, implemented stronger internal accounting controls, and conducted FCPA training at all of its major offices around the world. UTSI's former Executive Vice President and CEO of UTS-China, who resides in China, has not been affiliated with UTSI or its subsidiaries in any capacity since 2007.

FIRST CLAIM FOR RELIEF

Violations of Section 30A of the Exchange Act (Anti-bribery Provision of the FCPA)
[15 U.S.C. § 78dd-1]

30. The Commission realleges and incorporates by reference paragraphs 1 through 29.

31. As described above, UTSI made or authorized payments in the form of money, gifts or other things of value, to foreign officials for the purpose of influencing their official acts and decisions and inducing them to use their influence to assist UTSI in obtaining or retaining business. Throughout the relevant period, the recipients of these offers and payments were foreign officials within the meaning of the FCPA, and the relevant foreign telecommunications companies were instrumentalities of foreign governments within the meaning of the FCPA.

32. By reason of the foregoing, UTSI violated the anti-bribery provision of the FCPA, codified as Section 30A of the Exchange Act [15 U.S.C. § 78dd-1].

SECOND CLAIM FOR RELIEF

Violations of Section 13(b)(2)(A) of the Exchange Act (Books and Records)
[15 U.S.C. § 78m(b)(2)(A)]

33. The Commission realleges and incorporates by reference paragraphs 1 through 32.

34. With respect to the offers and payments described above, UTSI failed to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets.

35. By reason of the foregoing, UTSI violated the books-and-records provision of the FCPA, codified as Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

THIRD CLAIM FOR RELIEF

Violations of Section 13(b)(2)(B) of the Exchange Act (Internal Controls)
[15 U.S.C. § 78m(b)(2)(B)]

36. The Commission realleges and incorporates by reference paragraphs 1 through 35.

37. With respect to the offers and payments described above, UTSI failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; and (ii) transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for its assets.

38. By reason of the foregoing, UTSI violated the internal controls provision of the FCPA, codified as Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue an order permanently restraining and enjoining UTSI and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise from violating, directly or indirectly, Sections 13(b)(2)(A), 13(b)(2)(B) and 30A of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B) and 78dd-1].

II.

Issue an order directing UTSI to pay a civil monetary penalty pursuant to Sections 21(d)(3) and 32(c) of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78ff(c)].

III.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IV.

Grant such further relief as this Court may determine to be just and necessary.

Dated: December 31, 2009

Respectfully submitted,

Marc J. Fagel
Michael S. Dicke
Tracy L. Davis
Steven D. Buchholz

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION