

Telecommunications Company Agrees to Pay \$3 Million for FCPA Violations

On December 31, 2009, the Securities and Exchange Commission (“SEC”) charged telecommunications company UTStarcom, Inc. (“UTSI”) with violations of the Foreign Corrupt Practices Act (“FCPA”) for authorizing unlawful payments to foreign government officials in Asia, including China. UTSI, which designs, manufactures and sells network equipment and hardware, agreed to pay a total amount of \$3 million to the government in fines, \$1.5 million to the SEC and \$1.5 million to the Criminal Division of the U.S. Department of Justice (“DOJ”).¹

The SEC complaint alleged that UTSI’s wholly owned subsidiary in China paid nearly \$7 million between 2002 and 2007 for hundreds of overseas trips by employees of its customers which were Chinese government-controlled telecommunications companies. These trips were purportedly to provide customer training, but, according to the SEC, in reality were entirely or primarily for sightseeing. The SEC also alleged improper hiring by UTSI of individuals affiliated with foreign government customers to work in the United States, when in reality the individuals did no work for UTSI. According to the SEC, UTSI also made improper payments to sham consultants in China and Mongolia while knowing that the consultants would pay bribes to foreign government officials.

The SEC complaint charges UTSI with violations of the anti-bribery, books and records and internal controls provisions of the FCPA.² In addition to paying the \$1.5 million penalty to the SEC, UTSI also agreed to the entry of a permanent injunction against future FCPA violations and to provide the SEC with annual FCPA compliance reports and certifications for four years.³

UTSI also entered into a separate agreement with the DOJ which requires payment of a \$1.5 million criminal penalty, the implementation of rigorous internal controls and full cooperation with the DOJ. In describing that agreement, the DOJ noted that:

“The agreement requires that UTSI pay a \$1.5 million penalty, implement rigorous internal controls and cooperate fully with the Department. The agreement recognizes UTSI’s voluntary disclosure, thorough self-investigation of the underlying conduct, the cooperation provided by the company to the Department, and the remedial efforts undertaken by the company. As a result of these factors, the Department has agreed not to prosecute UTSI or its subsidiaries for the making of improper payments, provided that UTSI satisfies its ongoing obligations under the agreement.”

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email David Kelley at 212.701.3050 or dkelley@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; or Kathy Strom at 202.862.8944 or stromk@cgrdc.com.

¹ A copy of the SEC’s complaint filed in the United States District Court, Northern District of California, is available at <http://www.sec.gov/litigation/complaints/2009/comp21357.pdf>.

² Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934, respectively. The SEC noted among other things that in May 2008, in a prior action involving multiple accounting irregularities unrelated to the FCPA, the SEC 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 SEC’s findings, UTSI agreed to cease and desist from committing such violations.

³ SEC Release No. 21357 (Dec. 31, 2009).