

UTSTARCOM INC
Form NT 10-K
March 16, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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FORM 12b-25

NOTIFICATION OF LATE FILING

(Check one): Form 10-K Form 20-F Form 11-K Form 10-Q Form 10-D
 Form N-SAR Form N-CSR

For Period Ended: **December 31, 2005**

- Transition Report on Form 10-K
- Transition Report on Form 20-F
- Transition Report on Form 11-K
- Transition Report on Form 10-Q
- Transition Report on Form N-SAR

For the Transition Period Ended:

Read Instructions (on back page) Before Preparing Form. Please Print or Type.

Nothing in this form shall be construed to imply that the Commission has verified any information contained herein.

If the notification relates to a portion of the filing checked above, identify the Item(s) to which the notification relates:

PART I REGISTRANT INFORMATION

UTSTARCOM, INC.

Full Name of Registrant

N/A

Former Name if Applicable

1275 Harbor Bay Parkway

Address of Principal Executive Office (*Street and Number*)

Alameda, CA 94502

City, State and Zip Code

PART II RULES 12b-25(b) AND (c)

If the subject report could not be filed without unreasonable effort or expense and the registrant seeks relief pursuant to Rule 12b-25(b), the following should be completed. (Check box if appropriate)

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has caused this notification to be signed on its behalf by the undersigned hereunto duly authorized.

Date March 16, 2006

By /s/ Francis P. Barton

RESPONSE TO PART III

UTStarcom, Inc. (the Company) is unable to file its Annual Report on Form 10-K for the year ended December 31, 2005 (the Form 10-K) by the prescribed due date due to circumstances described below. The Company seeks relief pursuant to Rule 12b-25(b) with respect to the Form 10-K.

The Company needs additional time (i) to enable the Audit Committee of the Board of Directors of the Company to complete an investigation with regard to the circumstances surrounding the premature recognition of revenue on a contract with a customer in India and certain other transactions and (ii) for management to complete the preparation of its 2005 consolidated financial statements and its assessment as of December 31, 2005 of the Company's internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act of 2002.

Audit Committee Investigation

As previously disclosed in the Company's press release dated February 9, 2006, at the request of the UTStarcom management team, the Audit Committee of the Board of Directors of the Company is conducting an investigation with the assistance of independent counsel and forensic accountants with regard to the circumstances surrounding the premature recognition of revenue on a contract with a customer in India and certain other transactions. The Company recognized approximately \$22 million in revenue on the contract, with total gross margin of less than one million dollars. This revenue was recognized during several of the quarters from 2003 through 2005. Significant progress has been made in connection with this investigation, and the Company's management has begun to formulate and implement appropriate remedial measures at the request of the Audit Committee. At the conclusion of this investigation, the Audit Committee will assess and evaluate the findings to determine if previously issued financial statements need to be revised. The Form 10-K cannot be completed and filed until the Audit Committee has completed its review of the matters that are the subject of its investigation.

Sarbanes-Oxley Act Section 404 Assessment

Management is still in the process of assessing the effectiveness of the Company's internal control over financial reporting as of December 31, 2005 as required under the provisions of Section 404 of the Sarbanes-Oxley Act of 2002, in part because of the above-mentioned investigation.

As previously disclosed in the Company's 2004 Annual Report on Form 10-K, management concluded that due to the existence of material weaknesses, the Company's internal control over financial reporting was not effective as of December 31, 2004. While management has not yet completed its assessment of internal control over financial reporting as of December 31, 2005, management has determined that due to the continued existence of certain of the previously identified material weaknesses, the Company's management will conclude in its Management Report on Internal Control Over Financial Reporting to be included in the Form 10-K, that the Company's internal control over financial reporting was not effective as of December 31, 2005. Also, as a result of these material weaknesses, the Company's management believes that the report of its independent registered public accounting firm will contain an adverse opinion with respect to the effectiveness of the Company's internal control over financial reporting as of December 31, 2005. A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

The presently identified material weaknesses at December 31, 2005 are with respect to: (i) controls related to revenue recognition; (ii) controls related to the existence and valuation of inventory/deferred costs and the related cost of sales; (iii) controls related to the financial closing and reporting process; (iv) processes and controls related to the preparation of the Company's provision of income taxes; (v) controls related to the segregation of duties and user access; (vi) the need to ensure the Company employs sufficient finance personnel with the necessary experience and technical accounting expertise, including knowledge of US generally accepted accounting principles, relative to their assigned level of responsibility, and; (vii) the need to ensure adequate processes and personnel exist to supervise and monitor decentralized locations. Further, the Company has assessed that it did not maintain an effective control environment as of December 31, 2005.

Additionally, since management is continuing to assess the effectiveness of the Company's internal control over financial reporting as of December 31, 2005, additional material weaknesses, including material weaknesses identified as part of the investigation noted above, may be identified.

In light of the foregoing, the Company will not be able to file the Form 10-K by March 16, 2006. The Company's management expects to complete its assessment of the Company's internal control over financial reporting as of December 31, 2005 and expects the Audit Committee to complete its investigation in time for the Company to file the Form 10-K on or about April 30, 2006.