

MPHASE TECHNOLOGIES INC
Form 10-K/A
June 11, 2018

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES AND
EXCHANGE ACT OF 1934 (NO FEE REQUIRED)

FOR THE YEAR ENDED **JUNE 30, 2016**

COMMISSION FILE NO. **000-30202**

mPHASE TECHNOLOGIES, INC.

(Name of issuer in its charter)

NEW JERSEY
(State or other jurisdiction of
incorporation or organization)

22-2287503
(I.R.S. Employer
Identification Number)

688 New Dorp Lane

10306-4933

Staten Island, New York
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **973-256-3737**

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT:

COMMON STOCK, \$.001 PAR VALUE

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer as defined in Rule 405 of the Securities Act.

Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for shorter period that the registrant was required to file such report), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or such shorter period that the registrant was required to submit and post such files).

Yes No

Indicate by check mark if the disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments to the Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act)

Yes No

As of June 30, 2016, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was \$3,554,529 based upon the closing sale price as of that date. As of June 30, 2016, there were 17,772,643,845 shares of common stock, \$.001 par value, outstanding.

As of May 4, 2018, there were 16,360,514,523 shares of common stock, \$.001 par value, outstanding.

Documents Incorporated by Reference

None.

EXPLANATORY NOTE

mPHASE TECHNOLOGIES, INC. (mPhase) the “Company” or the “Registrant”) hereby amend their Annual Report on Form 10-K for the year ended June 30, 2016 to expand the disclosure included in-

ITEM 5. Market for Registrant’s Common Equity Related Stockholder Matters and Issuer Purchases of Equity Securities: by correcting errors of the price of the Company’s common stock prices on page 25.

and

Item 10. Directors, Executive Officers and Corporate Governance: to amend page 33 by inserting the following as the last paragraph of the page..

This Form 10-K/A does not attempt to modify or update any other disclosures set forth in the original Annual Report on Form 10-K, except as required to reflect the additional information included in the above-referenced Items 5 & 10 of this Form 10-K/A.

PART II**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

(A) MARKET PRICES OF COMMON STOCK. The primary market for mPhase's common stock is the OTC Pink Quotation System, where it trades under the symbol "XDSSL." The Company became publicly traded through a merger with Lightpaths TP Technologies, formerly known as Tecma Laboratories, Inc. pursuant to an agreement dated February 17, 1997. The following table sets forth the high and low closing prices for the shares for the periods indicated as provided by the NASDAQ's OTCBB System. The quotations shown reflect inter-dealer prices, without retail mark-up, markdown, or commission and may not represent actual transactions.

YEAR/QUARTER	HIGH	LOW
Fiscal year ended June 30, 2016		
First Quarter	\$0.0001	\$0.00
Second Quarter	0.0001	0.00
Third Quarter	0.0001	0.00
Fourth Quarter	0.0001	0.00
Fiscal year ended June 30, 2015		
First Quarter	\$0.0021	\$0.0005
Second Quarter	0.0009	0.0005
Third Quarter	0.0007	0.0004
Fourth Quarter	0.0006	0.0003

(B) HOLDERS

Common stock

As of June 30, 2016, mPhase had approximately 17,772,643,845 shares of common stock outstanding and approximately 23,000 stockholders of record. The Company originally reserved 1,000,000,000 shares for obligations to John Fife and, subject to liability has remaining a total of 187,500,000 shares of common stock reserved for issuance upon the conversion of convertible securities of which may only be required to be issued depending upon the ability of the Company to maintain cash payments under the forbearance obligation with John Fife. Finally, subject to availability, the Company has reserved 1,493,326,550 shares for conversion of officer notes. Such notes may only be converted if the Board of Directors determines that such shares are not needed for general corporate financing or other

purposes.

Preferred stock

At a Special Meeting of the Board of Directors of the Company held on December 31, 2013 the Board authorized 20,000,000 shares of a new class of Series A \$25 par value preferred stock with a 6% quarterly cumulative dividend payable in preferred stock. The Series A preferred stock have a conversion feature into common stock commencing two years from the date of purchase. To date no shares of Series A preferred stock have been issued.

(C) DIVIDENDS

mPhase has never declared or paid any cash dividends on its common stock and does not anticipate paying any cash dividends in the foreseeable future. The Company currently intends to retain future earnings, if any, to finance operations and the expansion of its business. Any future determination to pay cash dividends will be at the discretion of the Board of Directors and will be based upon mPhase's financial condition, operating results, capital requirements, plans for expansion, restrictions imposed by any financing arrangements and any other factors that the Board of Directors deems relevant.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Executive officers are selected by the Board of Directors. No family relationships exist between any of the executive officers or directors. The following table sets forth certain information with respect to each person who is an executive officer or director. mPhase’s executive officers and directors as of June 30, 2016 are as follows:

NAME	AGE	POSITION(S)
Ronald A. Durando	59	Chief Executive Officer and Director
Gustave T. Dotoli (2)	81	Chief Operating Officer and Director
Martin Smiley	68	Chief Financial Officer

OUTSIDE DIRECTORS

Abraham Biderman (1)(2)	68	Director
Dr. Victor Lawrence	67	Director

(1)Member of the Audit Committee

(2)Member of the Compensation Committee

RONALD A. DURANDO is a co-founder of mPhase and has served as the Company’s President, Chief Executive Officer and Director since its inception in October 1996. Since 1994 through February 2015, Mr. Durando had been an Officer of Microphase Corporation. Mr. Durando was a Director of Microphase Corporation and from February 2015, Mr. Durando has been employed as a Strategic Advisor to Microphase Corporation. From 1986-1994, Mr. Durando was President and Chief Executive Officer of Nutley Securities, Inc., a registered broker-dealer. Mr. Durando also served as president of PacketPort until his resignation in February, 2008, when PacketPort merged with Wyndstorm Corporation.

GUSTAVE T. DOTOLI has served as mPhase’s Chief Operating Officer as well as a Director since October 1996. Prior to joining the Company, Mr. Dotoli was President and CEO of State Industrial Safety, Inc. from 1986-1996. In addition, Mr. Dotoli previously served as the Vice President of Corporate Development of Microphase Corporation. Mr. Dotoli was also a Director and Vice President of Packet Port. He was formerly the President and Chief Executive Officer of the following corporations: Imperial Electro- Plating, Inc., World Imports USA, Industrial Chemical Supply, Inc., SISCO Beverage, Inc., and Met Pack, Inc. Mr. Dotoli received a B.S. in Industrial Engineering from Fairleigh Dickenson University in 1959.

ABRAHAM BIDERMAN has been a member of the Board since August 3, 2000. He currently is the Managing Director of Eagle Advisers, Inc, a small investment banking firm. From 1990 through September 30, 2003, Mr. Biderman had been employed by Lipper & Co. as Executive Vice President; Executive Vice President, Secretary and Treasurer of the Lipper Funds; and Co-Manager of Lipper Convertibles, L.P. Prior to joining Lipper & Co. in 1990, Mr. Biderman was Commissioner of the New York City Department of Housing, Preservation and Development from 1988 to 1989 and Commissioner of the New York City Department of Finance from 1986 to 1987. He was Chairman of the New York City Retirement System from 1986 to 1989. Mr. Biderman was Special Advisor to former Mayor Edward I. Koch from 1985 to 1986 and assistant to former Deputy Mayor Kenneth Lipper from 1983 to 1985. Mr. Biderman is a Director of the Municipal Assistance Corporation for the City of New York. Mr. Biderman graduated from Brooklyn College and is a certified public accountant.

MARTIN SMILEY was elected on June 28, 2006 to the Board of Directors. He joined mPhase as Executive Vice President, Chief Financial Officer and General Counsel in August 2000. Mr. Smiley has over twenty years experience as a corporate finance and securities attorney and as an investment banker. Prior to joining the company, Mr. Smiley served as a Principal at Morrison & Kibbey, Ltd., a mergers and acquisitions and investment banking firm, from 1998 to 2000, and as a Managing Director for CIBC Oppenheimer Securities from 1994 to 1998. He served as a Vice President of Investment Banking at Chase Manhattan Bank from 1989 to 1994, and as a Vice President and Associate General Counsel for Chrysler Capital Corporation from 1984 to 1989. Mr. Smiley graduated with a B.A. in Mathematics from the University of Pennsylvania and earned his law degree from the University of Virginia School of Law.

DR VICTOR LAWRENCE is Batcheler Chair Professor of Electrical Engineering and Associate Dean for Special Programs in the Charles V Schafer, Jr. School of Engineering, at Stevens Institute of Technology. Dr. Victor Lawrence is a member of the National Academy of Engineering and has worked in the information technology and communications field for over thirty years. He is an industry leader in digital communications R&D and services, an entrepreneur, an active member of engineering professional organizations, an author, and a teacher who has extensive international experience. Prior to joining Stevens Institute of Technology, Dr. Lawrence was Vice President, Advanced Communications Technology, Bell Laboratories, Lucent Technologies. He led the development of technologies that go into the most innovative, reliable, and cost-effective communications networks for the leading telecommunications service providers. He has supported Lucent's businesses with a staff of about 500 leading technologists and a budget of about \$100M. Major projects included gigabit, photonic, and wireless networking developments and services. He was responsible for a team of engineers that worked on performance analysis, simulations and development of broadband access and backbone networks for many national and international service providers. All of Lucent's R&D organizations relied on his high-technology support of computer-aided hardware design, physical and thermal design, systems compliance testing and certification, and design for high performance network control, signaling, and management. Earlier, he was Director, Advanced Multimedia Communications at Bell Labs, where he was responsible for systems engineering, exploratory development of multimedia signal processing, transmission, and switching, including speech and audio coding, modems, broadband transmission, ATM switching and protocols, and wireless communication and signal processing. He held a variety of leadership positions in data communications research, digital techniques, and information systems. His application of digital signal processing to data communications in the late 1980s and early 1990s led to many significant advances in high-speed transmission over copper lines (e.g., voice band modems and DSL), which helped create a global industry that leverages the public switched telephone network. Dr. Lawrence played a significant role in the development of major international voiceband modem standards, making high-speed data communication over international networks possible. The universal availability of high-speed data connectivity stimulated the growth and widespread use of the Internet. He led the development of high-speed modem/fax chip sets that are used in data terminals, computers, and voice terminals for secure communications worldwide. His work on high-speed transceivers for local loop and for premises applications led to the development of a variety of DSL technologies, many of which are deployed today for broadband services. As an entrepreneur, Dr. Lawrence spun off several ventures internal and external to Lucent to maximize the impact of technology developed in his organization.

At each annual meeting of stockholders, the newly elected directors' terms begin on the date of election and qualification, and continue through the next annual meeting following election. Terms may differ in the event a director resigns or is removed from office, or continues until a successor director is elected and qualified.

On October 19, 2007, the Company announced that in connection with the settlement and dismissal of a civil law suit originally filed on November 16, 2005 by the Securities and Exchange Commission in the Federal District Court in the District of Connecticut, the SEC issued a Cease and Desist Order and certain remedial sanctions against two officers of mPhase Technologies, Inc. (the "Company"). The civil suit was filed against Packetport.com, Inc. a Nevada corporation, Microphase Corporation, a Connecticut corporation that provides administrative services to the Company and shares common management with the Company, and others. The two officers of the Company were Mr. Ronald A. Durando, President and Chief Executive Officer and Mr. Gustave T. Dotoli, the Chief Operating Officer. The civil suit by the SEC named as respondents Mr. Durando, Mr. Dotoli and others in connection with their activities as officers and directors of Packetport.com. The cease and desist order from the SEC found that (1) all parties had

violated Section 5 of the Securities Act of 1933, as making unregistered offers or sales of Packetport.com common stock, (2) Mr. Durando and Mr. Dotoli had violated Section 16(a) of the Securities Exchange Act of 1934, as amended, and Rule 16(a) thereunder by failing to timely disclose the acquisition of their holdings on Form 3's, and (3) Mr. Durando had violated Section 13(d) of the Securities Exchange Act of 1934, as amended, for failing to disclose the acquisition of more than five percent of the stock of Packetport.com. Under the order Mr. Durando was required to disgorge \$150,000 and Mr. Dotoli was required to disgorge \$100,000. The Company was not named as a party to the civil suit. More information regarding the detailed terms of the settlement can be found in SEC release No 8858 dated October 18, 2007 promulgated under the Securities Act of 1933 and SEC Release No. 56672 dated October 18, 2007 promulgated pursuant to the Securities Exchange Act of 1934. Mr. Durando and Mr. Dotoli have continued to serve as officers and directors of the Company. Mr Durando and Mr. Dotoli together with Microphase corporation and others, without admitting or denying the findings of the SEC, except as to jurisdiction and subject matter, have consented to the entry of the Order Instituting Cease and Desist Proceedings, Making Findings and Imposing a Cease and Desist Order and Remedial Sanctions pursuant to Section 8A of the Securities Exchange Act of 1933 and Section 21C of the Securities Exchange Act of 1934.

SECTION 16 (A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Directors, executive officers, and individuals owning more than 10 percent of mPhase common stock are required to file initial reports of ownership and changes in ownership with the SEC under Section 16(a) of the Securities Exchange Act of 1934, as amended. The SEC regulations also require those persons to provide copies of all filed Section 16(a) reports to the Company. mPhase has reviewed the report copies filed in fiscal year 2014 and, based also on written representations from those persons, the Company believes that there was compliance with Section 16(a) filing requirements for fiscal year 2016. All the officers and directors filed all of the required forms in a timely manner.

SIGNATURES

Pursuant to the requirements of the Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant, has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**mPHASE
TECHNOLOGIES, INC.**

Dated: June 11, 2018 By: /s/ Ronald A. Durando
Ronald A. Durando
President, CEO

Dated: June 11, 2018 By: /s/ Martin S. Smiley
Martin S. Smiley
Executive Vice President Chief Financial Officer and General Counsel

Pursuant to the requirements of the Securities and Exchange Act of 1934, this report has been signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

/s/ Ronald A. Durando
Ronald A. Durando, Chief Executive Officer,
Director June 11, 2018

/s/ Gustave T. Dotoli
Gustave T. Dotoli, Chief Operating Officer, Director June 11, 2018

/s/ Martin S. Smiley
Martin S. Smiley, Executive Vice President,
Chief Financial Officer and General Counsel June 11, 2018

/s/ Abraham Biderman
Abraham Biderman, Director June 11, 2018

/s/ Victor Lawrence
Victor Lawrence, Director June 11, 2018

EXHIBITS

- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes - Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes - Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes - Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes - Oxley Act of 2002.