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March 6, 2006

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: AfriSpace Opposition to Application for Review
IBFS File No. SAT-LOA-20050311-00061

Dear Ms. Dortch:

On behalf of our client AfriSpace, Inc. ("AfriSpace"), we respectfully request leave to include this letter in the record of the above-referenced proceeding, and hereby request a waiver of Section 1.45 of the Commission's rules to the extent necessary. As shown below, the Commission's consideration of this letter is in the public interest because it presents new information that was not available to undersigned counsel at the time of filing the Opposition of AfriSpace, Inc. to Application for Review (the "Opposition").

Undersigned counsel to AfriSpace received a copy of the attached article from an industry publication, Satmagazine.com, after filing the Opposition. This article states that "Ondas is making its own filing under the Spanish flag, which is making the necessary requests through the ITU."¹ Based on this article, which includes an interview with the CEO of Ondas Spain, S.L./Ondas Media, S.A. ("Ondas"), it is clear that Ondas has no bona fide intent of filing an application with the FCC. Ondas's assertion that it has "completed the process under *Spanish* law for obtaining the appropriate authorizations to implement its system" further shows that Ondas is belatedly attempting to participate in the AfriStar-2 proceeding solely for competitive reasons.² Since Ondas can show no motive for its opposition to the *AfriStar-2 Order* other than delaying the licensing process for AfriSpace and/or attempting to extract a commercial settlement, the Commission should consider this article and Ondas's own statement as further evidence that Ondas has abused the Commission's processes.³

¹ "2006: The Year for European Sat-radio?," Satmagazine.com (Feb. 2006) at 29.

² See Ondas Reply to AfriSpace Opposition ("Ondas Reply") at 2 (emphasis added).

³ AfriSpace further notes that during a meeting among representatives for Ondas and International Bureau staff on February 2, 2006, which counsel for AfriSpace attended, Ondas representatives stated that Ondas had
(continued...)

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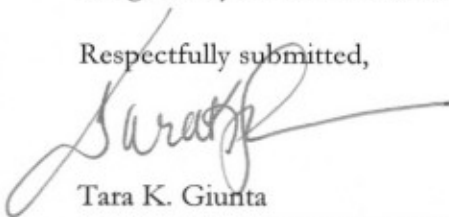
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Page 2

AfriSpace notes that the Ondas Reply relies, as did the Ondas Application for Review (the "Review Request"), entirely on highly technical questions of fact that Ondas neither raised in its so-called "Petition to Deny" nor in a petition for reconsideration to the International Bureau, as it was required to do under the Commission's rules.⁴ If Ondas had genuinely believed that a legitimate engineering analysis would support its assertion that the satellite system allegedly planned by Ondas is compatible with AfriStar-1—which it must show in order to demonstrate any *potential* harm caused to it by the *AfriStar-2 Order*—it would have presented the pertinent questions of fact to the technical experts in the Bureau.

Finally, AfriSpace respectfully urges that the Commission fully consider the long-term implications that would follow from a decision by the FCC to grant the Review Request. Such a decision would establish precedent for licensing new satellite systems that the FCC knows will interfere with systems that are already licensed and operational, such as AfriStar-1, and would undoubtedly discourage investment in the satellite industry by bringing into question the value of an FCC license. A grant of the Review Request also would create uncertainty in the industry by calling into question the valid precedent set by the Bureau in the *MSV Order* under virtually identical circumstances.

In the event that the Commission or its staff should have any questions concerning this filing, kindly refer them to the undersigned counsel for AfriSpace.

Respectfully submitted,



Tara K. Giunta
of PAUL, HASTINGS, JANOFSKY & WALKER LLP
Counsel for AfriSpace, Inc.

Enclosures

(...continued)

posted a bond in Spain. AfriSpace's local Spanish counsel has informed AfriSpace that the amount of this bond was likely €600,000. The fact that a "development stage business," *see* Reply at 2, has posted a bond in this amount further shows that Ondas has no legitimate intent of seeking an authorization from the FCC, and is instead abusing the Commission's processes solely for competitive reasons.

⁴ *See* 47 C.F.R. § 1.115(c). Further, with complete disregard for the facts, Ondas states repeatedly in the Ondas Reply that AfriStar-1 is authorized to use a total of only 2.5 MHz of spectrum. *See* Ondas Reply at 1, 3, and 4. This assertion relies on a single statement in the AfriStar-1 application that is deliberately taken out of context in an attempt to mislead the Commission. The AfriStar-1 application clearly sets forth the complete technical parameters under which AfriStar-1 operates and on which the Bureau based the grant of the AfriStar-1 license.

FEATURE

2006: The Year for European Sat-radio?

By Chris Forrester



Delphi sat-radio

Washington-based sat-radio operator Worldspace is moving rapidly ahead to build on its recent subscriber successes in India, with action targeted on China, Europe and the Middle East. It signed a last minute cooperation agreement with China Satellite Communications (China Satcom) on Dec 20, which runs to 2010. On January 3rd Worldspace received formal permission to build and launch a second craft, AfriStar 2, to 21 deg East, which when in position will boost its coverage over Europe. As Worldspace reported in its pre-holiday FCC filing, the Chinese deal "consolidates and updates the provisions of five earlier separate agreements" between Worldspace and its sole agent China Satcom, which were all due to expire on Dec 31. China Satcom gets a 10% 'agency fee' from any capacity leases signed up for the North-East beam on AsiaStar, the operator's 105 deg East craft.

Worldspace (WS) has the responsibility to build an Earth Station (at Dongbeiwang Village, Haidian District, Beijing) while China Satcom will "pro-

mote" channel leasing jointly with WS. China Satcom is "responsible" for obtaining and maintaining the official Chinese licences for L-band uplinking and transmission, and for after-sales services on receivers. More importantly, perhaps, is the obligation for China Satcom to build out the supplementary terrestrial repeaters needed for widespread reception. China Satcom, as part of its agreement with WS, has warranted that it has "obtained the requisite government licenses and/or approvals from the relevant departments of the Chinese government".

Coincidentally, the Chinese news helped with a Dec 22 major report on WS from investment bank Bear Stearns, which cited the business "peer perform" although suggesting the company was running an "obstacle course" of challenges ahead. December saw some useful upward progress in Worldspace's share price, as it moved from \$11 to \$14.72, helped by the Chinese deal. Analyst Kunal Madhukar writes that Bear Stearns is "constructive" about WS, generally citing the company's long-term prospects and "significant untapped market opportunity".

However, Madhukar reminds investors that Worldspace still hasn't tied up a European carmaker, despite the preliminary discussions with major automakers such as Citroen/Peugeot.

Also worth watching for is

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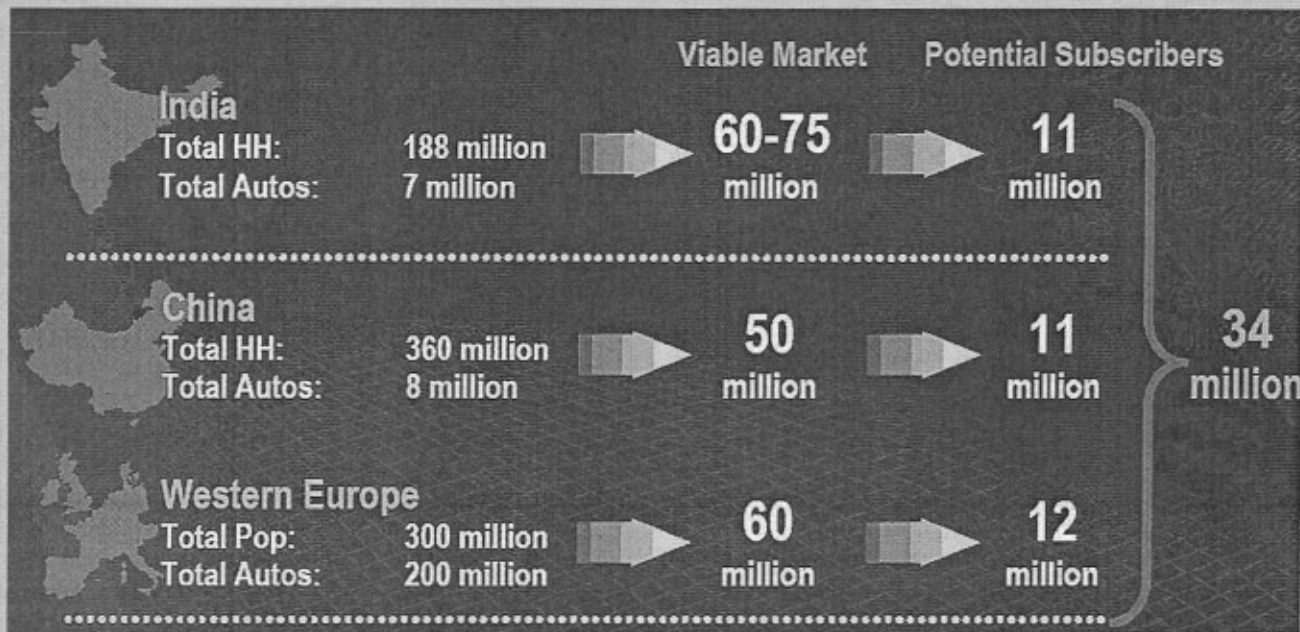
TURN ON YOUR WORLD

Worldspace's end-of-year report. Bear Stearns says it is looking for Q4/2005 numbers of 40,000 to be added to the 100,000 already declared, and predicts another 365,000 net additions for 2006. This would put mean a core 500,000 subscribers could be in place by the end of 2006. Bear Stearns projects 72,000 subs in India at 2005 year-end, 322,000 by the end of 2006, and 2.84m subscribers by 2014. "Based on our projections, we estimate free cash flow from India would turn positive in 2011. The net present value of the investments is estimated at about \$25 million for the country less the amounts already spent by 2006 year-end that is already included in our cash estimate. Using the real options valuation model, we value the business in India at an equity value of about \$45 million or about \$1 per share."

Bear Stearns highlights the obvious potential of India – and of course China, and provides a detailed look at Europe where it says it assumes WS is able to commence commercial operations in 2007 with France and Italy being its favoured markets. "We are projecting 4.7m subs in Europe by 2014. Based on our projections, we estimate free cash flow from Western

FEATURES

Worldspace's plans for International sat-radio



Data: IDC, Gallup, China Media Monitor, Worldspace estimates

Europe would turn positive in 2011," says the bank's report, helping take Worldspace's global total to 15m subs, when India, China and the Rest of the World are included. "We expect the company to turn net income positive in 2012, and earnings could reach \$200 million in 2014, or around \$3 per share," says the bank. "We estimate WorldSpace could begin generating positive free cash flows (FCF) in 2011, though FCF fruition would also depend, to a large extent, on the number of months the average subscriber prepaids, which has been significant for the two satellite radio operators in the U.S. Based on the timing of the FCF breakeven and incremental

satellite related capital expenditures whether to replace, expand capacity, or build a spare, we think the company may need to access the financial markets. Our model suggests the company may need to borrow/raise an additional \$450-\$500 million beginning in 2008 before it starts to repay the obligations beginning in 2011."

WorldSpace is to be congratulated for its activity in India, but the India government is not standing idly by and in December 2005 approved the funding of Insat-4E to be built by Indian Space Research Org. (ISRO), which broadcasting minister Priyaranjan Dasmunshi describes will be a "state of the art" craft with S-

DMB services as its core mission. Insat-4E is slated to be launched in "early 2008".

Worldspace key metrics for 2006

- 365,000 net new additions
- Further expansion in India
- Grant of further India repeater licences
- Progress in China
- Europe, launch in at least one country
- Decision on launch of 3rd satellite

But WorldSpace is not alone in international satellite radio. Luxembourg-based Europa-Max Participations, and Madrid-based Ondas Media – and maybe others are each looking to translate the success of XM and Sirius in the USA into Europe. Ondas has already announced a major link ("strategic investor and technology supplier") with sat-radio specialists Delphi Corp, and said it is planning to launch its 150-channel service

Worldspace – Europe forecasts (000, and \$000 Revenues)

	2007	2008	2009	2010	2011	2012	2013	2014
Subscribers	43	162	391	768	1,335	2,141	3,240	4,697
Revenues	2,186	9,434	24,825	52,144	95,962	162,108	257,777	392,059

Data: Bear Stearns

FEATURES



Celso Azevedo, CEO, Ondas

in 2009. Delphi will establish a European satellite radio innovation centre in Germany this year to develop these new products. Celso Azevedo, CEO, Ondas, says: "As Europe continues to be marked by a shortage of digital capacity, Ondas is in the pole position to bring European customers the unparalleled depth and breadth of media content they have never been able to enjoy."

"We are certainly excited to help introduce satellite radio to Europe," said Bob Schumacher, general director of advanced product development and business strategy at Delphi Electronics & Safety. "We believe satellite radio will revolutionize the European audio broadcast industry across the continent by offering consumers a lot more choices that are aligned with today's lifestyles." Delphi is currently in the middle of a Chapter 11 bankruptcy reorganisation, with – it says – the emphasis very much on reorganisation.

Worldspace is also doing business with Delphi, having signed a MOU with Delphi to have mobile receivers ready "in the 1st half of 2006".

However, let's look a little more closely at Ondas. It is now reasonably well funded, although recognises that significant fresh capital will have to be raised. Currently Delphi is the only named investor in Ondas, although Azevedo's previous industry links (DirecTV from 1995-1997, SES Astra 1986-1995) give him

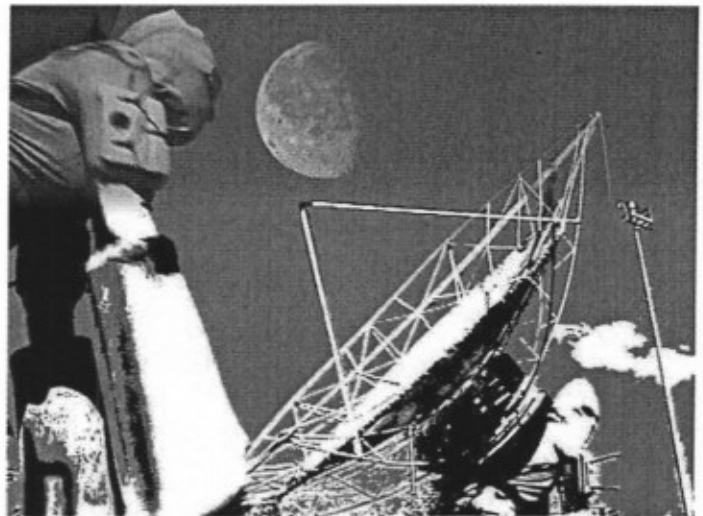
good contacts. Azevedo's team includes at least one previous player from the failed Global Radio operation in Luxembourg (as does Europa-Max). Initial seed investment for Ondas came from Hans Peter Peters and Klaus Otto Rehnig, both described as serial entrepreneurs.

Ondas promises....

- 150 channels of satellite radio
- Vehicle management
- Driver & Passenger info
- Emergency calls and signals
- In-car video/entertainment
- Enhanced data applications

Data: Ondas Media, Jan 2006

Ondas says initial (Aug 2005) market research from a Focus Group indicates "very positive demand", and it will follow this up with a more comprehensive study in Q1/06. Azevedo rightly stresses that Ondas (and potentially any rival that manages to make headway) will benefit from the hard work already done by XM and Sirius, and their radio suppliers. "Delphi have gone through all the problems encountered from the beginning of the project, so they are practically doing this for the third time, which for us is a reduction of the risk for both the



technology and the schedule," Azevedo says. He explained that the arrangement would not be exclusive because the various car manufacturers would want to use their own favoured audio suppliers. Delphi would however be able to supply a reference design that would be made available to other manufacturers. "We are in the third round of financing, and we still have a lot of financing to do, but we have four or five years in which to find the financing," said Azevedo.

But as we have mentioned Ondas is far from alone. Luxembourg-registered Europa-Max is still seeking next-round financing, and there may be an announcement shortly.

The Inmarsat/Globalstar and MSV projects do not initially include Europe, but you can see what might be possible further down the line. *However, the fundamental question is whether Europe might support more than one satellite operator in the DARS space given DARS spectrum constraints in Europe? We asked a well-placed European insider whether a WorldSpace 1.4GHz GEO satellite AND a 1.4 GHz HEO system from Ondas could both be viably accommo-*

FEATURES

dated in 12.5 MHz of spectrum already earmarked for S-DAB (=S-DARS) use by Europe's spectrum regulators? The answer: "Most unlikely, given that the business plans of XM and Sirius rely on each operator having access to 12.5 MHz of spectrum as licensed by the FCC; so dividing the available European S-DAB/S-DARS bandwidth by two and giving Ondas and WorldSpace each 6.25 MHz of spectrum is unlikely to sustain a viable business plan for both these two companies." In other words both WorldSpace and Ondas are fighting it out for the same bandwidth in the 1.4 GHz S-DAB/S-DARS range in Europe.

Ondas Media's main rival in the launch of a European service is Worldspace. Azevedo is not happy: "We think it's a mistake to ask the FCC to file for a system like this over Europe. It's like asking France to authorise a system over the United States." Ondas is making its

own filing under the Spanish flag, which is making the necessary requests through the ITU. **SM**

London-based **Chris Forrester**, a well-known broadcasting journalist is the Editor for Europe, Middle East and Africa for SATMAGAZINE. He reports on all aspects of the industry with special emphasis on content, the business of television and emerging technologies. He has a unique knowledge of the Middle East broadcasting scene, having interviewed at length the operational heads of each of the main channels and pay-TV platforms. He can be reached at chrisforrester@compuserve.com



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CERTIFICATE OF SERVICE

I, Tara K. Giunta, hereby certify that on this 6th day of March, 2006, copies of the foregoing letter unless otherwise noted were sent via first-class mail, postage prepaid, to the following:

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