

Hearing Date:  
June 24, 2004 at 10:30 a.m.  
**PORTLAND**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

_____ )	
In re: )	Chapter 11
_____ )	
PEGASUS SATELLITE TELEVISION, INC., et al., )	Case No. 04-20878
_____ )	
Debtors. )	(Jointly Administered)
_____ )	

**APPLICATION FOR ORDER AUTHORIZING THE  
DEBTORS AND DEBTORS IN POSSESSION TO EMPLOY MILLER  
BUCKFIRE LEWIS YING & CO., LLC AS FINANCIAL ADVISOR AND  
INVESTMENT BANKER PURSUANT TO 11 U.S.C. §§ 327(a) AND 328(a)**

Pegasus Satellite Television, Inc. and certain of its subsidiaries and affiliates, each a debtor and debtor in possession herein (collectively, the “Debtors”),<sup>1</sup> hereby file this Application (the “Application”) requesting entry of an order authorizing the Debtors to employ and retain Miller Buckfire Lewis Ying & Co., LLC (“MBLY”) as financial advisor and investment banker in these chapter 11 cases pursuant to sections 327(a) and 328(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The facts and circumstances supporting this Application are set forth in (i) the Affidavit of Ted S. Lodge, President, Chief

<sup>1</sup> The Debtors are: Argos Support Services Company, BT Satellite, Inc., Carr Rural TV, Inc., DBS Tele-Venture, Inc., Digital Television Services of Indiana, LLC, DTS Management, LLC, Golden Sky DBS, Inc., Golden Sky Holdings, Inc., Golden Sky Systems, Inc., Henry County MRTV, Inc., HMW Inc., Pegasus Media & Communications, Inc., Pegasus Satellite Communications, Inc., Pegasus Satellite Development Corporation, Pegasus Satellite Television of Illinois, Inc., Pegasus Satellite Television, Inc., Portland Broadcasting, Inc., Primewatch, Inc., PST Holdings, Inc., and South Plains DBS LP.

Operating Officer and Counsel of Pegasus Satellite Communications, Inc., in support of First Day Motions (the "Lodge Affidavit") and (ii) the affidavit of Marc D. Puntus (the "Puntus Affidavit"), Managing Director of MBLY, in Support of Application for Order Authorizing the Debtors and Debtors-in-Possession to Employ and Retain Miller Buckfire Lewis Ying & Co., LLC as financial advisor and investment banker pursuant to 11 U.S.C. §§ 327(a) and 328(a), attached hereto as Exhibit A. In further support of this Application, the Debtors respectfully state as follows:

### **STATUS OF THE CASE AND JURISDICTION**

1. On June 2, 2004 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On the Petition Date, the Debtors also jointly filed motions or applications seeking certain typical "first day" orders, including an order to have these cases jointly administered. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Lodge Affidavit.
2. The Debtors are continuing in possession of their properties and are operating and maintaining their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
3. No request has been made for the appointment of a trustee or examiner in these cases, and no official committees have yet been appointed by the Office of the United States Trustee.
4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this

Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein is 11 U.S.C. §§ 327(a) and 328(a).

### **BACKGROUND OF THE DEBTORS**

5. Pegasus Satellite Television, Inc. ("PST"), together with its subsidiaries, is the nation's largest independent provider of DIRECTV® programming. Organized in 1996 as a Delaware Corporation, PST is headquartered in Marlborough, Massachusetts. PST is a wholly owned indirect subsidiary of Pegasus Satellite Communications, Inc.

6. The Debtors' principal operating business is its direct broadcast satellite ("DBS") business.<sup>2</sup> Specifically, the Debtors provide DIRECTV programming services to rural households across the United States and, as of December 31, 2003, had in excess of 1.1 million subscribers and the exclusive right to distribute DIRECTV services to approximately 8.4 million rural households in certain territories within 41 states.

7. DBS services are digital broadcasting services that require a subscriber to install or have installed a satellite receiving antenna (or dish) and a digital receiver. DIRECTV, in particular, requires subscribers to have a satellite dish, which can be as small as 18 inches in diameter depending on the services received, to which DIRECTV directly transmits programming services via five high power Ku band satellites. The Debtors in turn offer certain core programming packages to subscribers, which vary according to channels delivered and price.

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<sup>2</sup> Debtor Pegasus Media & Communications, Inc. also conducts television broadcast operations through Debtors BT Satellite, Inc., HMW, Inc., and Portland Broadcasting, Inc. The markets served by, the call letters and network affiliations of these stations are Portland, Maine – WPXT (WB) and Portland, Maine – WPME (UPN).

8. The Debtors maintain an independent retail network through dealer relationships to distribute DIRECTV programming. The Debtors have expanded this network to include over 4,000 consumer electronics stores and other independent retailers serving rural areas in the Debtors' service area. Today, the Debtors' retail network is one of the few sales and distribution channels available to digital satellite service providers seeking broad and effective distribution in rural areas throughout the continental United States.

9. As of March 31, 2004, the Debtors had assets aggregating approximately \$1.6 billion related to their DBS business, which generated net revenues of approximately \$831.2 million during calendar year 2003. The Debtors have approximately 780 employees.

#### **RELIEF REQUESTED**

10. By this Application, the Debtors seek entry of an order pursuant to sections 327(a) and 328(a) of the Bankruptcy Code authorizing the employment and retention of MBLY, as of the Petition Date, as financial advisor and investment banker for the Debtors, to provide financial advisory and investment banking services in accordance with the terms and conditions of the engagement letter annexed hereto as Exhibit B (the "Engagement Letter"). In addition, this Application requests a waiver of certain requirements under Rule 2016-2 of the District of Maine Local Rules (the "Local Rules").

#### **BASIS FOR RELIEF**

11. In light of the size and complexity of these chapter 11 cases, the Debtors require the services of a seasoned and experienced financial advisor and investment banker. As such, the Debtors have selected MBLY based on (i) its experience in providing financial advisory and investment banking services in large and complex chapter 11 cases and (ii) its familiarity with the Debtors' businesses, finances, capital structure and operations.

## MBLY'S EXPERTISE

12. MBL Y commenced operating on July 16, 2002 as an independent firm providing strategic and financial advisory services in large-scale corporate restructuring transactions. MBL Y is owned and controlled by Henry S. Miller, Kenneth A. Buckfire, Martin F. Lewis, David Y. Ying and by the employees of MBL Y. MBL Y currently has approximately 45 employees, many of whom were employees of the Financial Restructuring Group of Dresdner Kleinwort Wasserstein, Inc. before July 16, 2002.

13. MBL Y's professionals have extensive experience in providing financial advisory and investment banking services to financially distressed companies and to creditors, equity holders and other constituencies in reorganization proceedings and complex financial restructurings, both in and out of court. For instance, MBL Y's professionals are providing or have provided financial advisory, investment banking, and other services in connection with the restructuring of Acterna Corporation; AT&T Latin America; Bruno's Inc.; Burlington Industries; Cajun Electric Power Corporation; Cambridge Industries; Carmike Cinemas; Celotex Corporation; Centerpoint Energy; Criimi Mae, Inc.; CMS Energy Corporation; CTC Communications; Dow Corning Corporation; Drypers, Inc.; Favorite Brands International Inc.; Focal Communications Corporation; FPA Medical Management; Grand Union Co.; Heartland Wireless; Horizon Natural Resources Company; Huntsman Corporation; ICG Communications; ICO Global Communication, Ltd.; IMPATH Inc.; Kmart Corporation; Loewen Group; Mirant Corp.; Montgomery Ward & Co.; National Airlines; Oakwood Homes; Pacific Crossing Limited; Pathmark Stores, Inc.; PennCorp Financial Group, Inc.; Pioneer Companies; PSINet; Polaroid Corporation; Polymer Group, Inc.; The Spiegel Group; Sunbeam Corporation; Trans World Airlines; US Office Products; and U.S. Generating Florida Partnerships.

14. MBLY is familiar with the Debtors' businesses and financial affairs and is thus well qualified to provide the financial advisory and investment banking services required by the Debtors. Through its pre-petition activities, MBLY has worked closely with the Debtors' senior management, financial staff, and other professionals and has become acquainted with the Debtors' financial restructuring needs. Accordingly, MBLY has developed significant relevant experience and expertise that will assist it in providing effective and efficient services in these chapter 11 cases.

### **SERVICES TO BE RENDERED**

15. The Debtors anticipate that MBLY will render financial advisory and investment banking services as needed throughout the course of these chapter 11 cases. The Debtors have negotiated the terms of the Engagement Letter, which sets forth the services (the "Services") MBLY will provide to the Debtors, as well as the manner in which MBLY will be compensated for its services. Subject to an order of this Court, MBLY will be engaged to render the following professional Services:

- a) familiarizing itself with the business, operations, properties, financial condition and prospects of the Debtors;
- b) if the Debtors determine to undertake a restructuring, providing financial advice and assistance to the Debtors in developing and seeking approval of a restructuring plan, including participating in negotiations with entities or groups affected by the plan;
- c) if the Debtors determine to undertake a sale, identifying and negotiating with potential acquirors in connection with a sale, including preparation of sale memoranda and presentation materials, as appropriate;
- d) if the Debtors determine to undertake a financing, identifying and negotiating with potential investors in connection with a financing, including preparation of financing memoranda and presentation materials, as appropriate; and

- e) rendering such other financial advisory services as may from time to time be agreed upon by the Debtors and MBLY.

### **DISCLOSURES CONCERNING CONFLICTS OF INTEREST**

16. To the best of the Debtors' knowledge, information, and belief, other than in connection with this case, MBLY has no connection with the Debtors, their creditors, the Office of the United States Trustee for the District of Maine (the "U.S. Trustee"), or any other party with an actual or potential interest in these chapter 11 cases or their respective attorneys or accountants, except as set forth in the Puntus Affidavit.

17. MBLY is not and has not been an investment banker for any outstanding securities of the Debtors and MBLY is not a creditor of the Debtors. To the best of the Debtors' knowledge, information, and belief, MBLY neither holds nor represents any interest adverse to the Debtors or to their respective estates in the matters for which MBLY is proposed to be retained. Accordingly, the Debtors believe that MBLY is a "disinterested person," as defined in section 101(14) of the Bankruptcy Code and as required by section 327(a) of the Bankruptcy Code. The Debtors' knowledge, information, and beliefs regarding the matters set forth herein are based, and made in reliance, upon the Puntus Affidavit.

### **COMPENSATION**

18. As set forth in the Engagement Letter, the Debtors have agreed that the fees for the Services rendered in these cases (the "Fee Structure") will be as follows:<sup>3</sup>

- a) A monthly financial advisory fee of \$175,000;

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<sup>3</sup> This summary is presented for convenience purposes. To the extent there is any discrepancy in terms contained herein and those set forth in the Engagement Letter, the terms of the Engagement Letter shall control. Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Engagement Letter.

- b) If the Debtors consummate a Restructuring, a Restructuring Transaction Fee of \$11,250,000, contingent upon and payable at the consummation of a Restructuring;
- c) If the Debtors consummate a Sale, a Sale Transaction Fee equal to the greater of (i) \$11,250,000 and (ii) the sum of (A) 0.75% of the Aggregate Consideration up to \$1.5 Billion plus (B) 0.50% of the Aggregate Consideration, if any, in excess of \$1.5 Billion, which is contingent upon and payable at the consummation of such Sale;
- d) If the Debtors undertake a Financing, financing fees equal to:
  - i. 1.00% of the gross proceeds of any indebtedness issued that is secured;
  - ii. 2.00% of the gross proceeds of any indebtedness issued that (x) is unsecured and/or (y) is subordinated;
  - iii. 3.00% of the gross proceeds of any equity or equity-linked securities or obligations issued; and
  - iv. with respect to any other securities or indebtedness issued, such underwriting discounts, placement fees or other compensation as shall be customary under the circumstances and mutually agreed by the Debtors and MBLY (subject to Court approval).

19. The Engagement Letter also provides that (i) 50% of the monthly advisory fees for the first twelve months of the engagement will be credited against any Restructuring Transaction Fee or Sale Transaction Fee; (ii) 50% of any financing fee payable to MBLY in respect of a Financing consummated prior to the consummation of a Sale or Restructuring (including any financing fee in respect of a DIP Financing) will be credited against any Restructuring Transaction Fee or Sale Transaction Fee; (iii) 100% of any financing fee payable to MBLY in respect of a Financing consummated concurrently with any Restructuring or Sale will be credited against any Restructuring Transaction Fee or Sale Transaction Fee; and (iv) notwithstanding anything to the contrary, in the Engagement Letter, MBLY will not be entitled to receive any financing fee(s) in respect of any Financing consummated after the consummation of a Sale or Restructuring in respect of which MBLY is entitled to receive a fee. At this time, it



is not possible to estimate (i) the number of months that will be required to perform the services contemplated by the Engagement Letter, (ii) the exact nature of the transactions to be consummated by the Debtors, or (iii) the aggregate amount of the fees payable under the Engagement Letter.

20. At this time, it is not possible to estimate (i) the number of months that will be required to perform the services contemplated by the Engagement Letter, (ii) the exact nature of the transactions to be consummated by the Debtors, or (ii) the aggregate amount of the fees payable under the Engagement Letter. Accordingly, it is not possible to estimate the total compensation to be paid to MBL Y under the Engagement Letter.

21. In addition to any fees payable by the Debtors to MBL Y under the Engagement Letter, the Debtors shall, whether or not any transaction contemplated by the Engagement Letter is proposed or consummated, reimburse MBL Y on a monthly basis for travel costs and other reasonable out-of-pocket expenses (including all fees, disbursements, and other charges of counsel to be retained by MBL Y in connection with retention, fee, or indemnity issues) incurred in connection with, or arising out of MBL Y's activities under, or contemplated by, MBL Y's engagement.

22. The Debtors paid MBL Y approximately \$175,000.00 for fees and expenses incurred during May 2004. In addition, prior to the Petition Date, the Debtors paid \$500,000.00 to MBL Y as a retainer for MBL Y's fees and expenses. MBL Y will not apply any portion of the retainer as payment for its fees and expenses incurred after the Petition Date, except as authorized pursuant to an order of the Court. The source of the foregoing payments was the Debtors' cash on hand.

23. MBL Y will maintain records in support of any actual and necessary costs and expenses incurred in connection with the rendering of its services in this case. Although

MBLY does not charge for its services on an hourly basis, MBL Y nevertheless will maintain records of time spent by its professionals in connection with the rendering of services for the Debtors by category and nature of the services rendered; provided, however, that MBL Y seeks approval to maintain time records in half-hour increments. Accordingly, to the extent necessary based on the foregoing, the Debtors seek a waiver of the requirements set forth in Local Rule 2016-1(a)(3)(i).

24. The fees and expense reimbursement provisions described above are consistent with normal and customary billing practices for cases of this size and complexity that require the level and scope of services outlined. MBL Y and the Debtors also believe that the foregoing compensation arrangements are both reasonable and market-based.

25. The hours worked, the results achieved and the ultimate benefit to the Debtors of the work performed by MBL Y in connection with this engagement may vary and the Debtors and MBL Y have taken this into account in setting the above fees. In order to induce MBL Y to do business with the Debtors in bankruptcy, the fees were set against the difficulty of the assignment and the potential for failure. Additionally, and in connection therewith, the Debtors have been advised by MBL Y that it will endeavor to coordinate with the other retained professionals in this bankruptcy case to eliminate unnecessary duplication or overlap of work.

26. The Debtors believe that MBL Y's strategic and financial expertise as well as its capital markets knowledge, financing skills, restructuring capabilities and mergers and acquisitions expertise, some or all of which may be required by the Debtors during the term of MBL Y's engagement hereunder, were important factors in determining the Fee Structure and that the ultimate benefit to the Debtors of MBL Y's services hereunder could not be measured merely by reference to the number of hours to be expended by MBL Y's professionals in the performance of such services.

27. The Fee Structure has been agreed upon by the parties in anticipation that a substantial commitment of professional time and effort will be required of MBLY and its professionals, and in light of the fact that such commitment may foreclose other opportunities for MBLY and that the actual time and commitment required of MBLY and its professionals to perform its services hereunder may vary substantially from week to week or month to month.

28. In sum, in light of the foregoing and given the numerous issues which MBLY may be required to address in the performance of its services, MBLY's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for MBLY's services for engagements of this nature in an out-of-court context, the Debtors believe that the Fee Structure is both fair and reasonable under the standards set forth in section 328(a) of the Bankruptcy Code. All compensation and expenses will be sought in accordance with section 328(a) of the Bankruptcy Code, as incorporated in sections 329 and 331 of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and orders of the Court and shall not be subject to the standard of review in section 330 of the Bankruptcy Code.

### **INDEMNIFICATION**

29. The Engagement Letter further provides that the Debtors will indemnify, hold harmless, and defend MBLY and its affiliates and its respective directors, officers, members, managers, shareholders, employees, agents, and controlling persons and its respective successors and assigns (collectively, the "Indemnified Parties") under certain circumstances (such indemnification obligation being referred to as the "Indemnification Provisions") attached to and made a part of the Engagement Letter. These are standard provisions, both in chapter 11 cases and outside chapter 11, and reflect the qualifications and limits on the indemnification

provisions that are customary for MBLY and other similar investment banks as approved in many jurisdictions.

30. The Debtors and MBLY believe that the Indemnification Provisions are customary and reasonable for financial advisory and investment banking engagements, both out-of-court and in chapter 11 proceedings. See, e.g., In re Comdisco, Inc., No 02-C-1174 (N.D. Ill. September 23, 2002) (affirming order authorizing indemnification of Lazard Freres & Co. LLC and Rothschild, Inc. by debtors and official committee of unsecured creditors); In re United Artists Theatre Company, No. 00-3514-SLR (Bankr. D. Del. Dec. 1, 2000) (order authorizing indemnification of Houlihan, Lokey by debtors); In re Joan & David Halpern, Inc., 248 B.R. 43 (Bankr. S.D.N.Y. 2000), *aff'd*, 2000 WL 1800690 (S.D.N.Y. Dec. 6, 2000). The Indemnification Provisions are similar to other indemnification provisions that have been approved by bankruptcy courts. See, e.g., In re Burlington Industries, Inc., No. 01-11282 (RJN) (Bankr. D. Del. May 21, 2003) (order authorizing retention of MBLY on similar terms); In re Oakwood Homes Corporation, No. 02-13396 (PJW) (Bankr. D. Del. July 21, 2003) (order authorizing retention of MBLY on similar terms); In re PC Landing Corp., No. 02-12086 (PJW) (Bankr. D. Del. October 10, 2002) (same); In re Worldcom, Inc., 02-13533 (AJG) (Bankr. S.D.N.Y. January 14, 2003) (order authorizing retention of Lazard Freres & Co. LLC under similar terms); In re Metrocall, Inc., No. 02-11579 (RB) (Bankr. D. Del. July 8, 2002) (order authorizing retention of Lazard Freres & Co. LLC under similar terms); In re Kaiser Aluminum Corporation, No. 02-10429 (JKF) (Bankr. D. Del. March 19, 2002) (same); In re Adelphia Communications Corporation, 02-41729 (REG) (Bankr. S.D.N.Y. September 27, 2002) (same); In re W.R. Grace & Co., No. 01-01139 (JJF) (Bankr. D. Del. June 22, 2001) (order authorizing retention of Blackstone Group under terms of engagement letter, including, among other things, indemnification provisions similar to the Indemnification Provisions.)

**ENGAGEMENT UNDER SECTION 328 IS REASONABLE  
AND APPROPRIATE UNDER THE CIRCUMSTANCES**

31. Section 328 of the Bankruptcy Code provides, in relevant part, that a debtor “with the court’s approval, may employ or authorize the employment of a professional person under section 327 on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). For the reasons set forth in the Application, section 328(a) therefore permits the Court to approve the terms of the proposed engagement of MBLY as set forth in the Engagement Letter, including the Fee Structure and Indemnification Provisions.

32. The Fee Structure appropriately reflects the nature of the services to be provided by MBLY and is consistent with the fee structures typically utilized by leading investment bankers, which do not bill their clients on an hourly basis. Similar monthly fee and transaction fee arrangements have been approved and implemented in other large chapter 11 cases. See, e.g., In re Burlington Industries, Inc., No. 01-11282 (RJN) (Bankr. D. Del. May 21, 2003); In re Oakwood Homes Corporation, No. 02-13396 (PJW) (Bankr. D. Del. July 21, 2003); In re Kaiser Aluminum Corporation, et.al., No. 02-10429 (JKF) (Bankr. D. Del. March 19, 2002) (authorizing retention of Lazard Freres & Co. LLC and subjecting compensation to same standard of review); In re Trans World Airlines, Inc., No. 01-0056 (PJW) (Bankr. D. Del. Jan. 26, 2001) (authorizing retention of Rothschild, Inc., as financial advisors for debtors, under sections 327(a) and 328(a) of the Bankruptcy Code); In re Covad Communications Group, Inc., No. 01-10167 (JJF) (Bankr. D. Del. November 21, 2001) (authorizing retention of Houlihan Lokey with compensation subject to standard of review set forth in Section 328(a)); In re Harnischfeger Industries, et al., No. 99-02171 (PJW) (Bankr. D. Del. Feb. 8, 2000) (authorizing retention of The Blackstone Group L.P. as investment bankers to debtors); In re Casual Male

Corp., No. 01-41404 (REG) (Bankr. S.D.N.Y. March 18, 2001) (authorizing retention of Robertson Stephens, Inc., subject to section 328(a) standard of review). For the reasons set forth in the Application, section 328(a) of the Bankruptcy Code therefore permits the Court to approve the terms of the proposed engagement of MBLY as set forth in the Engagement Letter, including the Fee Structure and Indemnification Provisions.

33. Notwithstanding approval under section 328 of the Bankruptcy Code, MBLY intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure Bankruptcy Rules (“Bankruptcy Rules”), the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 (the “Fee Guidelines”), the Local Rules, and orders of this Court.

34. The Debtors respectfully submit that the terms of the proposed retention are reasonable and based on the customary compensation charged by MBLY and comparably skilled practitioners in matters outside and other than chapter 11 cases, as well as cases under chapter 11, and have been approved and implemented in chapter 11 cases in other jurisdictions. Indeed, the entire engagement as set forth in the Engagement Letter is common within the industry and reflects what is considered to be “market” both in and out of chapter 11 proceedings, in each case, in light of MBLY’s experience in reorganizations and the scope of work to be performed pursuant to its retention. Accordingly, the Debtors respectfully submit that the terms of the proposed engagement of MBLY including, without limitation, the Fee Structure and the Indemnification Provisions, should be approved.

35. The general security retainer received by MBLY is appropriate for several reasons. See In re Insilco Technologies, Inc., 291 B.R. 628, 634 (Bankr. D. Del. 2003) (Carey, J.) (“Factors to be considered, include...whether terms of an engagement agreement reflect

normal business terms in the marketplace;...the relationship between the Debtor and the professionals, *i.e.*, whether the parties involved are sophisticated business entities with equal bargaining power who engaged in an arms-length negotiation[] [and]...whether the retention, as proposed, is in the best interests of the estate[...”]; see also Statements of Bankruptcy Judge Peter J. Walsh, In re CTC Communications Group, Inc., Case No. 02-12873 (PJW) (Bankr. D. Del. May 22, 2003), transcript of hearing held May 22, 2003, at 43 [Docket No. 752] (“I agree and adopt wholeheartedly Judge Carey's decision in the *Insilco* case.”). First, these types of retainer agreements reflect normal business terms in the marketplace. See In re Insilco Technologies, Inc., 291 B.R. at 634 (“[I]t is not disputed that the taking of [security] retainers is a practice now common in the market place.”). Second, both MBLY and the Debtors are sophisticated business entities that have negotiated the Retainer at arm’s length. Third, the retention of MBLY is in the best interests of the Debtors’ estate because the retention agreement and Retainer allow the Debtors to maintain the prepetition relationship established with MBLY. Thus, the Debtors respectfully submit the facts and circumstances of this case support the approval of the Retainer.

#### **NOTICE**

36. Notice of this Motion has been given to (i) the United States Trustee for the District of Maine; (ii) the Debtors’ fifty (50) largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (iii) the administrative agent for the credit facilities of the Pegasus Media & Communications, Inc. and Pegasus Satellite Communications, Inc. (“PSC”); (iv) each of the indenture trustees for each series of notes of PSC and (v) those parties in interest who have filed a Notice of Appearance. The Debtors submit that in light of the nature of the relief requested, no further notice is required.

**NO PREVIOUS RELIEF REQUESTED**

37. No application for the relief requested herein has been made by the Debtors to this or any other court.

WHEREFORE, for the foregoing reasons, the Debtors hereby respectfully request that the Court enter an order approving the retention of MBLY as financial advisors and investment bankers to the Debtors in these chapter 11 cases pursuant to sections 327(a) and 328(a) of the Bankruptcy Code and pursuant to the terms and conditions reflected herein, and grant such other and further relief as may be just and proper.

Dated: Bala Cynwyd, Pennsylvania  
June 4, 2004

PEGASUS SATELLITE COMMUNICATIONS,  
INC.  
(for itself and on behalf of its debtor subsidiaries)  
Debtors and Debtors in Possession



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Ted S. Lodge  
President, Chief Operating Officer and Counsel