

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

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

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

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**APPLICATION FOR ORDER AUTHORIZING THE  
DEBTORS AND DEBTORS IN POSSESSION TO EMPLOY CAPITAL  
MANAGEMENT ASSOCIATES, INC. AS COOPERATIVE ISSUES  
EXPERT 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 Capital Management Associates, Inc. (“CMA”) as cooperative issues expert 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

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<sup>1</sup> The Debtors are: Argos Support Services Company, Bride Communications, Inc., B.T. 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 Broadcast Associates, L.P., Pegasus Broadcast Television, Inc., Pegasus Broadcast Towers, Inc., Pegasus Media & Communications, Inc., Pegasus Satellite Communications, Inc., Pegasus Satellite Television of Illinois, Inc., Pegasus Satellite Television, Inc., Portland Broadcasting, Inc., Primewatch, Inc., PST Holdings, Inc., South Plains DBS, LP., Telecast of Florida, Inc., WDSI License Corp., WILF, Inc., WOLF License Corp., WTLH License Corp.

are set forth in (i) the Affidavit of Ted S. Lodge, President, Chief Operating Officer and Counsel of Pegasus Satellite Communications, Inc., in support of First Day Motions (the “Lodge Affidavit”) and (ii) the affidavit of James Howard Smith, Managing Director of Capital Management Associates, Inc. in Support of Application for Order Authorizing the Debtors and Debtor-in-Possession to Employ and Retain Capital Management Associates, Inc. as cooperative issues expert pursuant to 11 U.S.C. §§ 327(a) and 328(a) (the “Smith Affidavit”), 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.

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 predicate 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.

8. The Debtors maintain an independent retail network through dealer relationships to distribute DIRECTV programming. The Debtors have expanded this network to

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<sup>2</sup> Debtor Pegasus Media & Communications, Inc. also conducts television broadcast operations through twelve (12) subsidiaries, all of which have filed voluntary petitions under chapter 11 and are Debtors in these cases.

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 942 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 CMA as cooperative issues expert for the Debtors, for the purpose of providing various services in connection with issues relating to entities organized on a cooperative basis in these Chapter 11 cases, as more fully described herein and in the Smith Affidavit.

#### **BASIS FOR RELIEF**

11. In light of the size and complexity of these chapter 11 cases and the importance of the Debtors' relationship with the National Rural Telecommunication Cooperative, Inc. (the "NRTC"), an entity organized on a cooperative basis, to the Debtors' continued ability to distribute DIRECTV programming, the Debtors require the services of a seasoned and experienced cooperative issues expert. As such, the Debtors have selected CMA, subject to the approval of this Court, to act as their cooperative issues expert based on CMA's (i) vast experience providing advisory and regulatory consulting services to entities organized and/or operated on a cooperative basis and to entities with an interest in patronizing or otherwise conducting business with such cooperative organizations, (ii) extensive experience providing

such consulting services to supply cooperatives and other parties in interest in bankruptcy and reorganization proceedings, (iii) familiarity with the Debtors' businesses, finances, capital structure and operations, and (iv) familiarity with the unique aspects of the Debtors' relationship with the NRTC.

12. CMA is a well respected consulting firm which provides advice and services to organizations operated on a cooperative basis and to entities with an interest in patronizing or otherwise conducting business with organizations operating on a cooperative basis. CMA's professionals also have extensive experience in providing consulting services to financially distressed companies and to creditors, equity constituencies, and government agencies in reorganization proceedings and complex financial restructurings, both in and out of court. The professionals at CMA are intimately familiar with business, finance, operation, tax, accounting and regulatory matters associated with organizations operating on a cooperative basis.

13. Additionally, CMA has been advising the Debtors over the last three years with respect to various matters pertaining to cooperative organizations. The professionals employed by CMA thus have an in depth understanding of the Debtors' businesses, finances, capital structure and operations. Accordingly, given CMA's ability to provide expert advice regarding issues relating to entities organized and/or operating on a cooperative basis and their familiarity with providing such advice in the context of reorganization proceedings, as well as CMA's familiarity with the Debtors and their businesses, the Debtors believe that CMA is uniquely well-qualified to serve as the Debtors' cooperative issues expert in these chapter 11 cases. Additionally, in light of CMA's expertise and familiarity with the Debtors, the use of

CMA as the Debtors' cooperative issues expert will also be cost effective for the Debtors and their estates.

### **SERVICES TO BE RENDERED**

14. The Debtors anticipate that CMA will provide advice and services in connection with issues relating to entities organized and/or operating on a cooperative basis as needed throughout the course of these chapter 11 cases. In particular, as discussed above, CMA's professionals are extremely familiar with the unique aspects of the Debtors' relationship with the NRTC, a cooperative organization, and the unique operational and organizational attributes of cooperatives such as the NRTC. Subject to further order of the Court, and as set forth in greater detail in the Smith Affidavit, CMA will be engaged to render the following professional Services:

- Providing advice and services in connection with issues related to entities organized and/or operating on a cooperative basis, particularly the NRTC;
- Providing advice regarding issues involving entities that are patrons of organizations that are organized and/or operating on a cooperative basis; and
- Testifying on such matters as requested by the Debtors.

### **DISINTERESTEDNESS OF PROFESSIONALS**

15. To the best of the Debtors' knowledge, information and belief, CMA has no connection with, and holds no interest adverse to, the Debtors, their estates, their creditors or any party in interest herein or their respective attorneys in the matters on which CMA is proposed to be engaged, except that, as set forth in the Smith Affidavit:

- (a) In 1992, CMA's parent, Central Iowa Power Cooperative ("CIPCO"), "joined" the NRTC. In 1996, CIPCO paid to NRTC the sum of \$1,500 which was acknowledged in a letter from NRTC indicating that CIPCO was a "member in good standing." No additional amounts have been paid. As CIPCO has never been and does not intend to be a patron of NRTC, it cannot, by law, be a

“member in good standing.” CIPCO has no activity and no relationship with NRTC. Furthermore CMA has asserted to the Debtors that, CIPCO, as a matter of the operating protocol between CMA and CIPCO, treats CMA at arms’ length and recognizes that “Notwithstanding the affiliation between the Washington D.C. Division and CIPCO, all work product produced by the Washington D.C. Division, client correspondence and client files shall be confidential to the Washington D.C. Division and its clients.”

- (b) From time to time, CMA may perform or may have performed services for, or maintained other commercial or professional relationships with, certain creditors of the Debtors and various other parties adverse to the Debtors, in each case in matters unrelated to these cases.
- (c) From time to time, CMA also may have had dealings on other unrelated matters with certain of the other professionals expected to provide services in these case.

16. CMA has further represented to the Debtors that to the best of its knowledge, no partner, principal or staff person of CMA has any connection with or holds any interest adverse to the Debtors, their estates, their creditors or any other party in interest, or there respective attorneys or accountants, or the Office of the United States Trustee or any person employed in the Office of the United States Trustee, in the matters for which CMA is proposed to be retained except as disclosed in the Smith Affidavit.

17. CMA will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new facts or circumstances are discovered, CMA will supplement its disclosure to the Court.

18. Accordingly, to the best of the Debtors’ knowledge, information and belief, CMA is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code. Moreover, pursuant to section 1107(b) of the Bankruptcy Code, CMA’s representation of the Debtors prepetition would not disqualify it from being retained by the

Debtors pursuant to Section 327(a) of the Bankruptcy Code. The Debtors knowledge, information and belief regarding certain of the matters set forth in this application are based on, and made in reliance upon, the Smith Affidavit.

**PROFESSIONAL COMPENSATION**

19. Section 328(a) 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).

20. CMA is not owed any amounts with respect to its pre-petition fees and expenses.

21. Subject to this Court’s approval, CMA will charge the Debtors for its services in accordance with its ordinary and customary rates for matters of this type in effect on the date such services are rendered. The current hourly rates for CMA professionals who are expected to work on this matter are as follows:

<b><u>Position</u></b>	<b><u>Hourly Rates</u></b>
James Howard Smith, Managing Director	\$325
Howard S. Stone, Managing Director	\$300
Thomas Eddy, Director	\$275
Senior Consultant	\$225—275
Associate	\$225—275
Staff	\$125—200

22. The Debtors paid to CMA approximately \$51,162.55 for fees and expenses during the 12 months preceding the Petition Date. The source of the foregoing payments was the Debtor’s cash on hand. In addition, since February 3, 2003, CMA has been engaged by the Debtors’ bankruptcy counsel, Sidley Austin Brown & Wood LLP (“Sidley”) to advise the Debtors in connection with certain litigation involving cooperative issues. Payments



to CMA in connection with those services were made by the Debtors and included in the above amount.

23. Although the cost of professional fees on a going forward basis cannot be estimated with certainty, it is contemplated that CMA's professional fees will not exceed \$250,000 per year.

### **BILLING AND DISCLOSURE**

24. CMA 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. Additionally, CMA will maintain records of time spent by its professionals in connection with the rendering of services for the Debtor by category and nature of the services rendered, provided, however, that CMA 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).

25. Except as otherwise provided herein, CMA intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the guidelines promulgated by the United States Trustee and the Local Rules and orders of this Court, and pursuant to any additional procedures that may be or have already been established by the Court in this case. In connection therewith, subject to application for and allowance by the Court, CMA will receive reimbursement for reasonable and documented out-of-pocket expenses incurred in connection with services rendered to the Debtors including, without limitation, the reasonable fees and disbursements of CMA's outside counsel, travel, lodging, meals, photocopying, delivery service,

postage, vendor charges and other out of pocket expenses incurred in providing professional services.

26. In accordance with section 504 of the Bankruptcy Code, there is no agreement or understanding between CMA and any other entity, other than a member, partner or regular associate of CMA, for the sharing of compensation received or to be received for services rendered in connection with these proceedings.

27. The Debtors believe that the fees of CMA are fair and reasonable in light of industry practice, market rates both in and out of Chapter 11 cases, CMA's experience in reorganizations, the scope of work to be performed pursuant to CMA's retention and CMA's importance to these cases.

#### **NOTICE**

28. 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 agents for the credit facilities of 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.

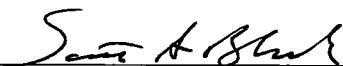
#### **NO PREVIOUS RELIEF REQUESTED**

29. 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 CMA as cooperative issues expert 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: Portland, Maine  
June \_\_\_\_, 2004

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

  
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Scott A. Blank, Esq.  
Senior Vice President, Legal and Corporate  
Affairs, and General Counsel