

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)
_____)	

**MOTION FOR AUTHORITY TO EMPLOY AND COMPENSATE
PROFESSIONALS FOR SPECIFIC SERVICES RENDERED
TO THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS**

Pegasus Satellite Television, Inc. and certain of its subsidiaries and affiliates, each a debtor and debtor in possession herein (collectively, the “Debtors”),¹ by and through their undersigned attorneys, hereby file this motion (the “Motion”) requesting that this Court enter an Order authorizing the Debtors to employ and compensate professionals for specific services rendered in the ordinary course of business. The facts and circumstances supporting this Motion are set forth in the Affidavit of Ted S. Lodge, President, Chief Operating Officer and Counsel of Pegasus Satellite Communications, Inc. dated June 2, 2004, in support of First Day Motions. In further support of this Motion, the Debtors represent as follows:

¹ 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.

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 title 11 of the United States Code (the “Bankruptcy Code”), and motions or applications seeking certain typical “first day” orders, including an order to have these cases jointly administered.

2. The Debtors have continued in possession of their respective properties and have continued to operate 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 and no official committee has yet been established in these cases.

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 section 105(a) of the Bankruptcy Code, and Bankruptcy Rule 2014

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.² 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 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 943 employees.

RELIEF REQUESTED

10. The Debtors retain the services of various professionals from time to time in the ordinary course of operating their business (the "Ordinary Course Professionals"). Exhibit A provides a list of those Ordinary Course Professionals the Debtors seek to retain as of the

² Debtor Pegasus Media & Communications, Inc. also conducts television broadcast operations through

Petition Date. These Ordinary Course Professionals provide services to the Debtors in a variety of discrete matters including, but not limited to, the following areas: regulatory issues, tax issues, employee benefit matters and employee related litigation, intellectual property matters, commercial litigation and real estate matters.

Employment Procedure

11. The Debtors seek leave to continue the employment of such Ordinary Course Professionals post-petition without the necessity of filing formal applications for employment and compensation by each professional pursuant to sections 327, 328, 329 and 330 of the Bankruptcy Code. Because of the large number and geographic diversity of the professionals and the discreet nature of the services performed by such professionals that are regularly retained by the Debtors, it would be unwieldy and burdensome on both the Debtors and this Court to request each such Ordinary Course Professional to apply separately for approval of its employment and compensation. Moreover, the amount of fees paid to the Ordinary Course Professional may be de minimus in any given month but can vary widely from month to month.

12. The uninterrupted services of the Ordinary Course Professionals are vital to the Debtors' continuing operations and their ultimate ability to effectuate a successful chapter 11 process. In addition, the cost of preparing and prosecuting these retention applications and fee applications would be significant and unnecessary because such costs would ultimately be borne by the Debtors' estates. Accordingly, the Debtors request that they be permitted to employ and retain the Ordinary Course Professionals on terms substantially similar to those in effect prior to the Petition Date, but subject to the terms described below.

13. In order to ensure that each of the Ordinary Course Professionals is disinterested and does not represent or hold any interest adverse to the Debtors or their estates

twelve (12) subsidiaries, all of which have filed voluntary petitions under chapter 11 and are Debtors in these cases.

with respect to the matter on which such professional is employed, the Debtors propose that each Ordinary Course Professional be required to file a declaration of disinterestedness (the “Declaration of Proposed Professional”) with the Court, and to serve copies on (i) the Debtors; (ii) the undersigned counsel to the Debtors, (A) Bernstein, Shur, Sawyer & Nelson, 100 Middle Street, P.O. Box 9729, Portland, Maine 04104, Attn: Robert J. Keach, Esq., (B) Sidley Austin Brown & Wood LLP, Bank One Plaza, 10 South Dearborn Street, Chicago, Illinois 60603, Attn: Larry J. Nyhan, Esq. and James F. Conlan, Esq., (iii) the Office of the United States Trustee for the District of Maine (the “US Trustee”); and (iv) the attorneys for any committees that may be appointed pursuant to section 1102 of the Bankruptcy Code and until such time as an official committee of unsecured creditors is appointed, on the Debtors’ fifty (50) largest creditors on a consolidated basis (collectively, the “Notice Parties”). No firm providing services to any Debtor will receive payment for postpetition services rendered until the Declaration of Proposed Professional has been filed with the court and served on the Notice Parties. Each Ordinary Course Professional’s Declaration of Proposed Professional shall be filed and served within the later of (i) thirty (30) days after this Court signs an order granting the relief requested in this Motion, or (ii) thirty (30) days from the date of service of a supplemental list or lists of Ordinary Course Professionals that adds such Ordinary Course Professional. A form of the “Declaration of Proposed Professional” is attached as Exhibit B hereto.

14. The Debtors propose that the Notice Parties shall have fifteen (15) days after the receipt of each Ordinary Course Professional’s Declaration of Proposed Professional (the “Objection Deadline”) to object to the retention of such Professional. The objecting Notice Party shall serve any such objections upon the Ordinary Course Professional and all other Notice Parties on or before the Objection Deadline. If no objection is received from the Notice Parties

within fifteen (15) days after the filing of the Declaration of Proposed Professional, or if such objection is promptly resolved by the Debtors and the objecting party, the Debtors shall be authorized to retain such Ordinary Course Professional as a final matter. If any such objection cannot be promptly resolved, the Debtors may seek an order of the Court approving the retention of such firm as an Ordinary Course Professional as of the Petition Date or any other relief the Debtors deem appropriate.

15. Although certain of the Ordinary Course Professionals may hold small unsecured claims against the Debtors, the Debtors do not believe that any of the Ordinary Course Professionals have an interest materially adverse to the Debtors, their estates, creditors, or other parties in interest. By this Motion, the Debtors are not requesting authority to pay prepetition amounts owed to the Ordinary Course Professionals.

Payment Procedure

16. The Debtors propose that they be permitted to pay, without formal application to the Court by them or by any Ordinary Course Professional, one hundred percent (100%) of the fees and disbursements of each Ordinary Course Professional fifteen (15) days after an appropriate invoice setting forth in reasonable detail the nature of the services rendered by such Ordinary Course Professional has been served on each of the Notice Parties, as long as (x) such fees and disbursements do not exceed \$20,000 per month for any Ordinary Course Professional (the “Monthly Cap”) or \$200,000 per annum for any Ordinary Course Professional (the “Aggregate Cap”) for the duration of these chapter 11 cases, and (y) no written objection to payment of the invoice is made by or received by the Debtors within fifteen (15) days after receipt of the invoice by the Debtors. Any objection by any of the Notice Parties must be served in writing upon the relevant Ordinary Course Professional and upon the other Notice Parties. If

the parties cannot resolve the objection, the Ordinary Course Professional whose fees are objected to may file a request for payment of the disputed amount with the Court.

17. In the event that in any given month, the fees and disbursements of any Ordinary Course Professional exceeds the Monthly Cap applicable to such firm, that Ordinary Course Professional would be required to apply, pursuant to sections 330 and 331 of the Bankruptcy Code, for approval by the Court of all such Professional's fees and disbursements for such month, but would be entitled to an interim payment up to the amount of the Monthly Cap as a credit against the fees and disbursements for such month ultimately allowed by the Court. In the event that the aggregate of fees and disbursements of an Ordinary Course Professional come to exceed the Aggregate Cap for any given year, such Ordinary Course Professional thereafter would be required, on a going-forward basis, to apply for approval by the Court of all its fees and disbursements in compliance with any interim compensation procedures that are approved by this Court as a applicable to the Debtors' retained case professionals.³

18. The Debtors anticipate that they may need the services of other Ordinary Course Professionals not listed on Exhibit A from time to time during these chapter 11 cases. Accordingly, the Debtors seek authority to retain such Ordinary Course Professionals as the need arises. The Debtors propose to file a supplemental list or lists of such additional Ordinary Course Professionals with the Court stating that the Debtors intend to employ additional Ordinary Course Professionals and to serve the list(s) on each of the Notice Parties. The Additional Ordinary Course Professionals shall be subject to the terms of this Motion and any

³ By separate motion filed concurrently herewith, the Debtors seek an administrative order pursuant to sections 331 and 105(a) of the Bankruptcy Code establishing procedures for interim compensation and reimbursement of expenses for professionals.

order granting this Motion, and shall have thirty (30) days from the date of service of the applicable supplemental list to file a Declaration of Proposed Professional.

19. The Debtors propose to file a statement (the “OCP Report”) with the Court and to serve such statement on the United States Trustee beginning with the first submission of the interim fee applications, discussed in the Motion for Administrative Order Under 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals, filed concurrently with the present Motion, and at three month intervals thereafter. The OCP Report shall include the following information of each Ordinary Course Professional: (a) the name of such Ordinary Course Professional, (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the period (i) ending with the month prior to the date of the OCP Report and (ii) beginning at the end of the reporting period covered by the previously filed OCP Report, and (c) the aggregate amount paid as compensation for services rendered and reimbursements of expenses incurred by such Ordinary Course Professional during the pendency of these cases.

20. The foregoing proposed retention and payment plan will not apply to attorneys or other professionals retained or to be retained by the Debtors for purpose of administering these cases pursuant to separate orders of this Court, in accordance with section 327 of the Bankruptcy Code.

RETENTION OF PROFESSIONALS IN THE ORDINARY COURSE OF BUSINESS IS IN THE BEST INTERESTS OF THE DEBTORS’ ESTATES

21. The Debtors submit that the continued employment and compensation of the Ordinary Course Professionals is in the best interests of their estates, creditors and other parties in interest. While some of the Ordinary Course Professionals may wish to continue to

represent the Debtors on an ongoing basis, others may be unwilling to do so if they are unable to be paid on a regular basis. If the expertise and background knowledge of any of these Ordinary Course Professionals with respect to the particular areas and matters for which they were responsible prior to the Petition Date is lost, the Debtors' estates will undoubtedly incur additional and unnecessary expenses, as other professionals without such background and expertise will have to be retained. It is in the best interests of the Debtors' estates and their creditors that the Debtors avoid any disruption in the professional services required by the day-to-day operation of their business.

AUTHORITY

22. The Ordinary Course Professionals will not be involved in the administration of these cases, but rather will provide specialized services to the Debtors that are principally related to the Debtors' ongoing business operations. Consequently, the Debtor does not believe that the Ordinary Course Professionals are technically "professionals," as that term is used in section 327 of the Bankruptcy Code, whose retention must be approved by the Court. See, e.g., Butler v. Indiano, Williams & Weinstein (In re Ponce Marine Farm, Inc.), 259 B.R. 484, 494 (Bankr. D.P.R. 2001) (stating that "[a] professional person is one who plays a central role in the administration of the bankruptcy estate and in the bankruptcy proceedings."); In re That's Entertainment Mkt'g Group, Inc., 168 B.R. 226, 230 (N.D. Cal. 1994) (only the retention of professionals whose duties are central to the administration of the estate require prior court approval under section 327); In re Madison Management Group, Inc., 137 B.R. 275, 283 (Bankr. N.D. Ill. 1992) (same); In re Fretheim, 102 B.R. 298, 299 (Bankr. D. Conn. 1989) (only those professionals involved in the actual reorganization effort, rather than debtor's ongoing business, require approval under section 327).

23. Moreover, relief similar to that sought herein has been granted routinely in other chapter 11 cases in this Circuit. See, e.g., In re Great Northern Paper, Inc., Case No. 03-10048-LHK (Bankr. D. Me., order entered February 21, 2003); In re Arch Wireless, Inc., Case No. 01-47330-HJB (Bankr. D. Mass., order entered December. 18, 2001); In re ACT Manufacturing, Inc., Case No. 01-47641-JBR (Bankr. D. Mass., order entered March 20, 2002). Accordingly, the Court is authorized to grant the relief requested in this Motion and approve the retention of the Ordinary Course Professionals in these cases.

NOTICE

24. 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; (v) those parties in interest who have filed a notice of appearance and (vi) the proposed Ordinary Course Professionals. The Debtors submit that in light of the nature of the relief requested, no further notice is required.

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

WHEREFORE, the Debtors respectfully request that the Court enter an order authorizing the continued employment of professionals in the ordinary course of business, and that the Court grant such other and further relief as is just and proper.

Dated: Portland, Maine
June 8, 2004

SIDLEY AUSTIN BROWN & WOOD LLP
Larry J. Nyhan
James F. Conlan
Paul S. Caruso
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036

-and-

SIDLEY AUSTIN BROWN & WOOD LLP
Ellen R. Moring
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599

-and-

BERNSTEIN, SHUR, SAWYER & NELSON

By: /s/ Robert J. Keach
Robert J. Keach
100 Middle Street
P.O. Box 9729
Portland, ME 04104
Telephone: (207) 774-1200
Facsimile: (207) 774-1127

Proposed Attorneys for Debtors
and Debtors in Possession

EXHIBIT A

ORDINARY COURSE PROFESSIONALS

<u>Ordinary Course Professional</u>	<u>Address</u>	<u>Services Performed</u>
Seyfarth Shaw LLP	815 Connecticut Avenue, NW Suite 500 Washington, DC 20006	Counsel on employment issues
Capell & Howard, P.C.	150 South Perry Street P.O. Box 2069 Montgomery, AL 36102	Counsel for litigation concerning subscriber matters pending in Alabama
Polsinelli, Shalton & Welte	700 West 47 th Street Suite 1000 Kansas City, MO 64112	Employment counsel for Kansas City call center, litigation counsel for matters pending in Kansas and Missouri
Balch & Bingham LLP	1710 Sixth Avenue North Birmingham, AL 35203	Counsel for ongoing litigation concerning dealer matters in Alabama
Lynn, Tillotson & Pinker, LLP	750 North St. Paul Street Suite 1400 Dallas, TX 75201	Counsel for ongoing litigation in Texas
Fleischman & Walsh	1919 Pennsylvania Avenue, NW Suite 600 Washington, DC 20006	FCC counsel with respect to satellite and cable issues
Martinez, Odell & Calabria	Banco Popular Center Sixteenth Floor San Juan, PR 00918	Counsel for termination of Puerto Rico savings plan
Murtha, Cullina, Richter & Pinney LLP	Cityplace I 185 Asylum Street Hartford, CT 06103-3469	Counsel for ongoing litigation in Connecticut

3. “[Firm]”, through me, and members of the firm, have represented and advised the Debtors as _____ with respect to certain aspects of the Debtors’ businesses.

4. The Debtors have requested, and “[Firm]” has agreed, to continue to represent and advise the Debtors pursuant to section 327 of title 11 of the United States Code (the “Bankruptcy Code”) with respect to such matters. Additionally, the Debtors have requested, and _____ proposes, to render the following services to the Debtors:

[insert description]

5. “[Firm]”’s current customary hourly rates, subject to change from time to time, are _____. In the normal course of business, “[Firm]” revises its regular hourly rates on _____ of each year and requests that, effective _____ of each year, the aforementioned rates be revised to the regular hourly rates which will be in effect at that time.

6. In connection with these cases, “[Firm]” has rendered services that have not yet been billed or that have been billed but with respect to which payment has not been received. The value of such services does not exceed \$_____.

7. Except as set forth herein, no promises have been received by “[Firm]” or any partner, auditor or other member thereof as to compensation in connection with these chapter 11 cases other than in accordance with the provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules, orders of this Court, and the Fee Guidelines promulgated by the Executive Office of the United States Trustee.

8. “[Firm]” has no agreement with any entity to share with such entity any compensation received by “[Firm]”.

9. “[Firm]” and its partners, auditors and other members may have in the past represented, currently represent, and may in the future represent entities that are claimants of the Debtors in matters totally unrelated to the matters with respect to which “[Firm]” is to be engaged by the Debtors. “[Firm]” does not and will not hold an interest adverse to the estates in the matters with respect to which it to be engaged.

10. The foregoing constitutes the statement of “[Firm]” pursuant to sections 329 and 504 of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016(b).

11. Neither I, “[Firm]”, nor any partner, auditor or other member thereof, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors.

12. I shall amend this statement immediately upon my learning that (A) any of the within representations are incorrect or (B) there is any change of circumstance relating thereto.

I declare under penalty of perjury that the foregoing is true and correct. Executed this ___ day of _____, 2004.

[NAME]

[FIRM]