

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**SECOND SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF EMERGENCY MOTION FOR RELIEF IN
RESPECT OF VIOLATIONS OF THE AUTOMATIC STAY BY DIRECTV, INC.**

I. PST Is Entitled to Exclusivity Through At Least August 31, 2004 By the Terms of NRTC’s and DIRECTV’s Own Documents and Regardless of Section 13 of the Member Agreements.

PST respectfully directs the Court’s attention to three facets of the evidence and exhibits:

A. “NRTC grants to [PST] the *exclusive* right to market, sell and retain revenue” from the sale of DIRECTV programming in their territories. (Member Agreements ¶2(a), Debtors’ Exs. 1 and 2 (emphasis added).)

B. “NRTC has terminated all the Member Agreements . . . effective as of August 31, 2004.” (Notice of Termination of Member Agreement, Debtors’ Ex. 3.)

C. “*Until [August 31, 2004], NRTC shall act as DIRECTV’s agent to continue to provide services required under the Member Agreements.*” (Notice of Termination of Member Agreement, Debtors’ Ex. 3 (emphasis added).)

Thus, while PST continues to assert that it is entitled to exclusivity through at least 2014 (and will so prove during the cornerstone litigation), PST submits that the foregoing is

sufficient to bring PST's exclusive right to provide DIRECTV service within its territories until August 31, 2004 within the broad ambit of the automatic stay, particularly 362(a)(3), and that the foregoing entitles it to a ruling from this Court that DIRECTV is violating the automatic stay. By entering into the agency relationship with NRTC on June 1, 2004, DIRECTV has both ratified the exclusivity of the Member Agreements and/or agreed to be bound by its agent's agreements to provide services through August 31, 2004.

PST's exclusive rights to distribute DIRECTV programming in its territories are in full force and effect until, at a minimum, August 31, 2004. The purported termination notice sent by the NRTC to Pegasus states in no uncertain terms that "NRTC has terminated all the Member Agreements . . . *effective as of August 31, 2004.*" (emphasis added) That is the end of the matter as to PST's present exclusive rights under the Member Agreements to sell DIRECTV services in its territories. This, standing alone, warrants §362 protection of PST's exclusivity. But it does not stand alone, because the termination letter from the NRTC to PST clearly provides that "*Until such date [i.e., August 31, 2004], NRTC shall act as DIRECTV's agent to continue to provide services required under the Member Agreements.*" Thus, DIRECTV has ratified the exclusivity of the Member Agreements and/or appointed NRTC as its agent for the express purpose of providing the services to which PST is entitled under the Membership Agreements. As such, DIRECTV cannot now take actions that are inconsistent with NRTC's duty to insure and protect PST's exclusivity. Stated differently, DIRECTV cannot both invest NRTC with the power and authority to provide exclusive programming services in accordance with the Member Agreements and, at the same time, contest and erode PST's right to exclusivity

in its territories. It is, accordingly, indisputable that PST's right to exclusivity—at least until August 31, 2004—is clearly protected by the automatic stay.¹

Furthermore, PST's rights to Subscriber information (more specifically described in Section II) are also property of the estate today and similarly should be protected by the automatic stay, as conceded by counsel to DIRECTV at the hearing.² Accordingly, and as further demonstrated below, PST's estate has an interest that is cognizable, and that is protectable under Section 362, in the exclusive distribution rights and the subscriber information now. The unrefuted evidence at the hearing demonstrated that DIRECTV has violated the stay by attempting to obtain possession and/or control of these property rights of the estate. DIRECTV's actions are not permissible under the Bankruptcy Code and must be stopped immediately.³

II. PST Is Entitled to Enforcement of The Automatic Stay to Prevent DIRECTV From Seizing Its Property Rights To Subscriber Information Under The Member Agreements

PST's ownership of Subscriber information under the Member Agreements is coextensive with its rights to exclusivity under those Agreements and the only way to protect Subscriber information is to enforce exclusivity. *First*, as explained below, any household in PST's territories that subscribes to standard programming packages is a "Subscriber" under the Member Agreements regardless of who activates such programming. *Second*, the Member Agreement provides PST with the ownership of all "Subscriber information." Thus, by

¹ Any attempt by NRTC to alter PST's rights under the Member Agreements is also a violation of Paragraph 21 of those Agreements, which provides that the Agreements cannot "be amended or modified in any way" except with PST's written consent.

² Further troubling evidence which demonstrates that no clear distinction can be drawn between the protections of exclusivity and subscriber information is attached as Exhibit A.

³ PST has submitted a revised form of proposed order, which is attached hereto as Exhibit B.

activating Subscribers in PST's territories while the Member Agreements remain in effect, DIRECTV is usurping PST's Subscriber information.

Pursuant to paragraph 20(b) of the Member Agreements, PST owns and controls any "Subscriber information" derived from provision of DIRECTV services. Member Agreement, Paragraph 20(b), as amended (Debtors' Exh. 2). Paragraph 2(a) of the Member Agreements in turn defines "Subscriber" as "[a]ny Committed Member Residence and/or Commercial Establishment, as applicable, which subscribes to Programming." Member Agreement, Paragraph 2(a), as amended (Debtors' Exh. 2). Programming is likewise a defined term. It generally means standard DIRECTV programming services (other than "Non-Select" services such as the NFL Sunday Ticket that DIRECTV focused on at the hearing). *See* Member Agreement, Paragraph 1, as amended ("22 Cable Programming services and all other video, audio, data packages, 'a la carte' programming services and other services which are transmitted by [DIRECTV] over the [DIRECTV] Frequencies to Committed Member Residences").

Committed Member Residences are defined in the exclusivity provision of the Member Agreement. These residences are the households within the exclusive territories "as determined by and limited to the specific residences listed or the specific geographical area described in Exhibit C ___, as appropriate." Member Agreement, Paragraph 2(a), as amended. These are the "blue" areas of the map. *See* Debtors' Exs. 1 and 2. Accordingly, not only does PST have the exclusive right to distribute DIRECTV programming services in its territories, but under the definition of "Subscriber" any household that subscribes to Total Choice or other standard DIRECTV packages in PST's exclusive territories and during the term of the Member Agreements is a "Subscriber" under those Agreements, regardless of who activates the programming service.

DIRECTV conceded at the hearing that it should not have and cannot use PST's Subscriber information. This is a concession mandated by the terms of the Member Agreements. Under paragraph 20(b) of the Member Agreements, PST owns and controls Subscriber information. By incorporating the defined term "Subscriber" to establish the scope of the "Subscriber Information," the Member Agreement provides PST with ownership of information in respect of all "Subscribers" to DIRECTV standard packages in PST territories.⁴

These ownership rights apply even in respect of sales made by DIRECTV itself because the services it is purporting to sell are Programming transmitted to the Committed Member Residences over the DIRECTV Frequencies. Thus, to implement the Subscriber information provisions of the Member Agreement, DIRECTV cannot be allowed to obtain such information and thus should not be allowed to market its services in PST territories during the term of the Member Agreement. That term lasts until at least August 31, 2004.

Notwithstanding these property rights, and as demonstrated during the hearing on June 7, 2004, DIRECTV is using PST's Subscriber information to market and sell DBS services in PST's exclusive territories. *See* Declaration of Pat Nemeth, Mother of Lisa Mesenko, attached hereto as Exhibit A. This constitutes precisely the type of conduct that the automatic stay was designed to prevent.

III. The Court's Decisions in the California Litigation Do Not Affect PST's Rights Under The Member Agreements.

⁴ Under those standards, Subscriber information includes, *inter alia*, Subscribers' names and addresses, any benefits related to the possession of such information or the provision of services to Subscribers, and the electronic Subscriber equipment address. These standards are generally reflected in the provisions of Section 17.02 of the DBS Agreement.

In June 1999, NRTC filed suit against DIRECTV, and PST brought a companion lawsuit shortly thereafter. These lawsuits were consolidated and, for more than four years, PST and NRTC jointly engaged in significant litigation against DIRECTV focused primarily on NRTC's rights under the DBS Agreement (the "California Litigation").⁵ Importantly, none of the Court's decisions in the California Litigation negated or determined PST's rights under its Member Agreements nor its right to seek full performance of the Member Agreements from both NRTC and DIRECTV.

DIRECTV sought summary judgment as to its obligations to provide programming and services to PST for an additional period of time after the expiration of the Member Agreements and NRTC sought to intervene as a necessary party. The Court stated that its actions would not address "any obligations NRTC has or may have to [PST] or the Class, under the Member Agreement or otherwise; [a]ny obligations DIRECTV has or may have in the event it steps into the shoes of NRTC as the provider of DBS Services to [PST] and the Class; or any fiduciary or cooperative obligations to deliver DBS Services which are or may be owed to [PST] and the Class by DIRECTV through NRTC."⁶ As a result, NRTC withdrew its motion to intervene. NRTC's continuing status as a non-party in the PST lawsuit reflects the Court's maintenance of that stance throughout the California litigation.

When PST sought to intervene in the NRTC case to express its concerns regarding a settlement agreement (the "Settlement") that purported to effect PST's rights to continue to receive DBS services from DIRECTV the Court in the California Litigation

⁵ A Class of Plaintiffs, consisting of the remaining DBS Patrons, primarily electric and telephone cooperatives, filed a lawsuit identical to PST's that was consolidated with PST's and NRTC's lawsuits.

⁶ See Order Granting In Part And Denying In Part DIRECTV's Summary Judgment Motion #4

confirmed that the Settlement between DIRECTV and NRTC did not effect PST's rights under the Member Agreements. The Court explicitly rejected the notion that the settlement would – or could – affect PST's rights under the Member Agreements, holding unambiguously that “[t]he settlement may change the Satellite Expiration Date under the DBS Agreement, but it cannot change this date under the Member Agreement.”⁷ The Court repeatedly and unequivocally invoked the principle that the settlement between DIRECTV and NRTC of the litigation involving the DBS Agreement did not affect PST's rights under its Member Agreements.⁸ The Satellite Expiration Date provision is explicitly found in Paragraph 5(c) of the Member Agreements. The exclusivity and subscriber information provisions of the Member Agreements are likewise explicit in the Member Agreements, found in Paragraphs 2(a) and 20(b), respectively.⁹

(May 22, 2003).

⁷ See Order Denying Pegasus' Motion to Intervene at 14 (Nov. 7, 2003).

⁸ See, e.g., *id.* at 11 (“Pegasus’ rights are limited to Pegasus’ Member Agreement between NRTC and Pegasus *which is not affected by the proposed settlement*”) (emphasis added); *id.* at 17 (“[t]he proposed settlement between NRTC and DIRECTV will not affect Pegasus’ rights because its rights stem from its Member Agreement, not the DBS Agreement.”); *id.* at 19 (“[Pegasus’] rights flow directly from Pegasus’ Member Agreement, which is not affected by the proposed settlement.”); *id.* at 21 (“[Pegasus’] rights stem solely from its Member Agreement which is not affected by the settlement.”).

⁹ PST sought reconsideration of the Court's denial of intervention, requesting clarification from that Court as to whether PST could compel performance under the Member Agreements from DIRECTV and NRTC. Again, the Court explicitly refrained from deciding the issue of PST's rights, including its rights to performance of its Member Agreements, stating “[PST's] contractual rights against NRTC and DIRECTV are not at issue in the NRTC Actions and are not part of the case or controversy before this Court.” See Order Denying Pegasus' Motion For Clarification And Reconsideration, Or, In The Alternative, A Stay Pending Appeal (December 11, 2003). The Court went on to state that “a clarification of rights between [PST] and NRTC or DIRECTV under [PST's] Member Agreement is not an issue properly before this Court.” Thus, PST's rights under its Member Agreements remain intact.

Those actions and views framed the Court's final order dismissing PST's remaining claims in the California Litigation. Application of the principles articulated in that final order make clear that exclusivity and ownership of Subscriber information are enforceable rights of PST under the Member Agreements.¹⁰ The Court dismissed a limited number of PST's remaining claims because the Court concluded that PST's rights were "contingent" upon what NRTC received from DIRECTV under the DBS Agreement.¹¹ PST's exclusivity rights and ownership of Subscriber information are thus explicit under the Member Agreements and in no sense contingent upon what NRTC receives. These are direct rights under the Member Agreements that remain whole and unaffected by any decisions in the California Litigation.

IV. PST Will Be Entitled To Rescission Of The Purported Termination of the Member Agreements And, In the Interim, The Automatic Stay Must Be Enforced to Protect PST's Property.

Enforcement of the automatic stay against DIRECTV's conduct is also warranted because the purported termination of the Member Agreements (effective as of August 31, 2004) and the DBS Agreement – upon which DIRECTV seeks to justify its conduct -- is voidable. As will be made clear in the cornerstone litigation that will be brought by PST against the NRTC and DIRECTV, NRTC violated its fiduciary duties to PST when it purported to terminate the

¹⁰ PST does not concede that any of its rights under the Member Agreements are contingent and intends to appeal this and other decisions from the California Litigation.

¹¹ Thus, the Court stated that under Section 2(a) of the Member Agreement, PST "is only entitled to Launch Fees that NRTC has already received from DirecTV." Order at 15 (emphasis in original). And the portion of Section 2(a) that the Court identified (in the next to last sentence of that Section) provides that "NRTC shall pay to Member on a pro rata basis all other net revenues that NRTC receives from [DIRECTV]." See Debtors Exh. 2. This language of 2(a) that the California Court identified stands in stark contrast to the exclusivity provision of 2(a). That provision – found in the first sentence -- constitutes an unequivocal "grant[] to Member" of the "exclusive right to market, sell and retain revenue from Programming." PST's ownership of Subscriber information is equally unambiguous and is in no way contingent. See 20(b) ("Member *has* substantial proprietary interests and rights to Subscriber information" and "NRTC and Member each . . . *covenant*" to restrict its use").

Member Agreements and the DBS Agreement, and DIRECTV aided and abetted those breaches. Because the only way effectively to remedy that misconduct is to rescind the terminations, the automatic stay must be used to preserve the viability of that relief.¹²

A. NRTC Owes Fiduciary Duties To PST And Breached Those Duties By Terminating the DBS Agreement and the Member Agreements.

The fiduciary duties that NRTC owes to PST arise as a matter of law and fact. First, as a matter of law, under the statute pursuant to which NRTC was created, and the NRTC's own Bylaws, NRTC is required to act "for the primary and mutual benefit" of its patrons, including PST. *See* D.C. Code § 29-903 (cooperative associations may only be incorporated "for the *primary and mutual benefit* of the patrons of the association (or their patrons, if any) as ultimate consumers"); NRTC Bylaws art. XII § 1 (NRTC "shall at all times be operated on a cooperative non-profit basis for the *primary and mutual benefit* of its patrons"). As such, NRTC owes fiduciary duties to PST. *See* Restatement (Second) Agency § 13 cmt. a ("The agreement to act on behalf of the principal causes the agent to be a fiduciary, that is, a person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with his undertaking."); Restatement (Second) Torts § 874 cmt. a ("A fiduciary relation exists between two persons when one of them is under a duty to act for . . . the benefit of another upon matters within the scope of the relation."); Restatement (Second) Trusts § 2 cmt. b ("A person in a fiduciary relation to another is under a duty to act for the benefit of the other as to matters within the scope of the relation."). *See also* *Lucianna v. Hip Sing Assoc.*, 256 A.2d 898, 899

¹² As PST conveyed during the hearing on June 7th, NRTC's surrender to DIRECTV of valuable rights under the DBS Agreement can also be unwound as a fraudulent conveyance, particularly since NRTC will be incapable of responding in damages to PST for the huge liability it will be assessed for, *inter alia*, breach of contract and breach of fiduciary duty.

(D.C. App. 1969) (obligation to hold money for the “benefit” of another established fiduciary relationship).

Second, as a matter of fact, NRTC is a fiduciary to PST because under the Member Agreements, NRTC stands in a position of confidence and trust to PST. *See Church of Scientology Int’l v. Eli Lilly & Co.*, 848 F. Supp. 1018, 1026 (D.D.C. 1994) (“Broadly stated, a fiduciary relationship is one founded upon trust or confidence reposed by one person in the integrity and fidelity of another.”); *Cafritz v. Corporation Audit Co.*, 60 F. Supp. 627 (D.D.C. 1945) (fiduciary duty exists in “every possible case in which a fiduciary relation exists in fact, in which there is confidence reposed on one side and the resulting superiority and influence on the other”); Pomeroy, *Equity Jurisprudence* § 956 (“[T]he principle extends to every possible case in which a fiduciary relation exists as a fact, in which there is confidence reposed on one side and the resulting superiority and influence on the other.”). As a fiduciary to PST, NRTC owes PST several specific duties, including but not limited to a duty of loyalty, care, and fairness. *See Restatement (Second) Agency* § 13 cmt. a, §§ 377-398.

Notwithstanding these fiduciary obligations, NRTC completely disregarded PST’s interests when it purported to terminate the DBS Agreement and the Member Agreements. By agreeing with DIRECTV to terminate the DBS Agreement, NRTC made it impossible for it to satisfy its own performance obligations to PST under the Member Agreements and rendered itself insolvent. Moreover, by accepting in excess of \$350 million in exchange for the termination of the DBS Agreement, NRTC acted in its own self-interest as opposed to the interest of its fiduciary, PST. *See, e.g., Willens v. 2720 Wisconsin Avenue Coop. Ass’n, Inc.*, 844 A.2d 1126, 1136 (D.C. 2004) (finding directors of a cooperative to have violated their duty of loyalty); *Wisconsin Ave. Associates, Ltd. v. 2720 Wisconsin Ave. Coop. Ass’n, Inc.*, 441 A.2d

956, 963 (D.C. 1982) (finding that cooperative's directors engaged in self-dealing transaction, in violation of their fiduciary duties).¹³

B. DIRECTV Aided And Abetted NRTC's Breaches.

DIRECTV aided and abetted NRTC's breaches by actively assisting and participating in NRTC's misconduct. A person is liable for aiding and abetting a breach of fiduciary duty when it knowingly encourages or assists another in committing such a breach. *S&K Sales Co. v. Nike, Inc.*, 816 F.2d 843, 848-850 (2nd Cir. 1987) (defendant who entered into agreement with co-defendant that breached co-defendant's duties to plaintiff was liable); *Ehlen v. Lewis*, 984 F.Supp. 5, 10 (D.D.C. 1997) (defendant who knew that co-defendant owed duties to plaintiff but nonetheless assisted co-defendant in breaching those duties was liable).

Here, there can be no doubt that DIRECTV was, and is, aware of the fiduciary duties NRTC owes PST. DIRECTV entered into the DBS Agreement with NRTC with the understanding that NRTC would pass the benefits it received to its members and affiliates, such as PST, under the Member Agreements. DIRECTV also knew that NRTC would render itself incapable of performing its duties to PST under the Member Agreements if it terminated the DBS Agreement. Thus, by "agreeing" with NRTC to terminate the DBS Agreement, DIRECTV aided and abetted NRTC's violation of its fiduciary duties to PST.

¹³ Under District of Columbia law, which governs the Member Agreement, a covenant of good faith and fair dealing is implied in respect of every term of a contract. Under that implied term, a party is not permitted "do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Willens*, 844 A.2d at 1135. Actions by a fiduciary that violate that covenant also give rise to a violation of its fiduciary duties to the other contracting party. *Id.* at 1134 (the resulting claims "overlap"). Termination of a contract that results in such a violation, even under a unilateral right to termination, constitutes such a violation. *Sons of Thunder, Inc. v. Borden, Inc.*, 690 A.2d 575 (N.J. 1997).

C. PST Requires an Equitable Remedy to Prevent Irreparable Harm From NRTC and DIRECTV's Unlawful Agreement.

Where, as here, a fiduciary breaches its duty of loyalty by entering into a self-dealing agreement with a third party, equitable remedies may be invoked to set aside the transaction. *See, e.g.*, Restatement (Second) Trusts § 199 (equitable remedies for a trustee's breach of fiduciary duty); 3 Fletcher Cyc. Corp. § 924 (perm. ed. 2002) (noting that the general rule when a fiduciary enters a self-dealing contract is to "permit the complaining party to obtain a rescission of the contract"); 14 Causes of Action 411 § 36 ("[a] beneficiary of a trust ordinarily has the right to seek rescission of a transaction that involves self-dealing by a trustee"); 90A C.J.S. Trusts § 443 (2003) (noting that a court may set aside a trustee's unauthorized sale which "was not authorized, or which was not made fairly and regularly for a fair and full price, or which was made fraudulently").

The District of Columbia courts, under whose law NRTC is organized, have specifically approved the redress of a fiduciary's breach of its duties through rescission or injunctive relief. In *Wisconsin Ave. Associates*, the D.C. Court of Appeals affirmed the rescission of contractual rights that were created by a fiduciary's self-dealing transaction. 441 A.2d at 961, 968. In fact, although the defendants had argued for complete rescission, the Court of Appeals upheld the trial court's partial rescission because it allowed the court to better "fashion[] an equitable remedy." *Id.* at 968. The trial court had also issued an injunction so as to prevent the sale or lease of the disputed property units. *Id.* The logic of invoking these equitable remedies applies with equal force in this case and they are also available to remedy a fraudulent transfer.

In fact, while equitable remedies are generally appropriate for setting aside a self-dealing arrangement, the need for rescission or an injunction is especially compelling here. If NRTC and DIRECTV are allowed to effectively terminate the DBS Agreement and the Member Agreements, PST will suffer irreparable harm to its business. “If a plaintiff suffers a substantial injury that is not accurately measurable or adequately compensable by money damages, irreparable harm is a natural sequel.” *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996). As in *Ross-Simons*, PST’s “inability to supply [its] products as advertised would wreak substantial (but immeasurable) damage to the goodwill that [PST] painstakingly had created over the years.” *Id.* And whereas “a plaintiff need not demonstrate that the denial of injunctive relief will be fatal to its business,” *id.* at 18, this is precisely the threat that PST faces from NRTC and DIRECTV’s joint effort to destroy PST’s exclusive distribution rights within its territories. PST’s potential injury is also irreparable because the satellite services received from DIRECTV are unique, and “the loss of a unique or fleeting business opportunity can constitute irreparable injury.” *Starlight Sugar, Inc. v. Soto*, 114 F.3d 330, 332 (1st Cir. 1997).

Nor is NRTC in any position to object to this Court’s injunction or rescission of NRTC’s agreement with DIRECTV, given that its own contract—the Member Agreement—provides that NRTC and PST “each shall have the right to obtain injunctive relief, if necessary, in order to prevent the other party from willfully breaching its obligations...or to compel the other party to perform its obligations under this Agreement.” Member Agreements ¶ 17 (“Injunctive Relief”).

Because the equities in this case run strongly in favor of granting equitable relief to PST, this Court should enforce the automatic stay against DIRECTV’s unlawful activities.

V. CONCLUSION

The unrefuted evidence demonstrates that DIRECTV has violated the stay by attempting to obtain possession and/or control of PST's unconditional rights to exclusively distribute DIRECTV programming in its territories and to Subscriber information. DIRECTV's actions are not permissible under the Bankruptcy Code and must be stopped immediately.

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EXHIBIT A

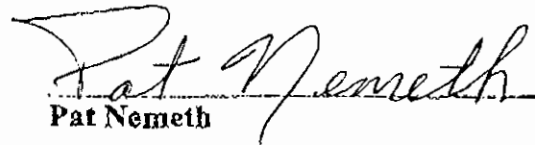
UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

-----)	
To re:)	Chapter 11
)	
PEGASUS SATELLITE TELEVISION, INC., et al.,)	Case No. 04-20878
)	
Debtors.)	Case Nos. 04-20864-04-20868
)	Case Nos. 04-20871-04-20893
-----)	(Jointly Administered)

DECLARATION OF PAT NEMETH

I, Pat Nemeth, based upon my personal knowledge and under penalty of perjury, do declare and state that on June 7, 2004 I received documents entitled "Request to Transfer DIRECTV Service from Pegasus to DIRECTV," "Consent to Transfer DIRECTV Service From Pegasus to DIRECTV," and "Customer Agreement," copies of which are attached hereto, in the United States Mail.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 8th of June, 2004.


Pat Nemeth



**Request to Transfer DIRECTV® Service
From Pegasus to DIRECTV**

Thanks for asking us to close your Pegasus account and open a DIRECTV account for you. We're looking forward to serving you! But first, we need your written authorization.

Please complete the enclosed page and find and attach a recent Pegasus bill. You must include your Pegasus bill for us to process your request.

Send both to **DIRECTV** in the enclosed envelope, or fax them to: 1-800-456-3282.

When we receive your documents, we will call you to confirm your account transfer and schedule an installation appointment if necessary.

At the time we activate your new DIRECTV account, we'll close your Pegasus account. If you are currently leasing equipment from Pegasus and need new equipment, or, if you require an equipment upgrade, we'll ask you to agree to keep a DIRECTV® Total Choice® programming package active for one year. If you are unable to keep this agreement, you may be subject to a cancellation fee of up to \$150.00.

You'll need to choose your programming packages from the enclosed brochure and you will receive your services under the terms of the accompanying DIRECTV Customer Agreement. We may not offer exactly the same package combinations as Pegasus, but we believe most transitioning customers will benefit from the new choices. Any seasonal sports subscriptions you have will continue.

You will be responsible for paying any past due programming fees/balances due to Pegasus on your Final Bill from Pegasus. However, if Pegasus charges you any fee for disconnecting your account, we will offset that with an equal credit on your DIRECTV account. Please save any bills you receive from Pegasus after today so you will have a record of Pegasus charges to submit to DIRECTV to ensure you receive proper credits.

Sincerely,

DIRECTV

066KCONVLTBA

DIRECTV Account Transfer, P.O. Box 025392, Miami, FL 33102-5392
A Unit of The DIRECTV Group, Inc.



**Consent to Transfer DIRECTV® Service
From Pegasus to DIRECTV**

1. Complete the spaces on this page and sign at the bottom.
2. Fax or mail us this page, along with a recent Pegasus bill.

By completing this document you agree:

- To allow DIRECTV to close your Pegasus account and open one with DIRECTV.
- To keep a DIRECTV® Total Choice® programming package active for one year or pay a cancellation fee of up to \$150.00. (Only applies if you currently lease equipment from Pegasus and need new equipment, or, if you require an equipment upgrade).

Name of account holder _____

Account Number _____

Number of receivers you lease from Pegasus _____

Number of receivers you own _____

Account Password (only if you created one with Pegasus Customer Service) _____

() _____ am pm
Best phone number for us to reach you, with best time of day to call.

I hereby designate DIRECTV, Inc. to act as my agent and hereby authorize DIRECTV, Inc. or its authorized agents or representatives ("DIRECTV") to act on my behalf and to take the steps necessary to terminate my Subscriber Agreement and account with Pegasus. I understand that I will remain responsible for payment to Pegasus of all charges accrued through the date of cancellation. I also understand that under my Pegasus Subscriber Agreement, it is possible that Pegasus will not credit me for pre-paid programming services or for seasonal sports packages once the season has started, and Pegasus may charge me an early disconnect fee if I am subject to a programming commitment.

I also authorize DIRECTV to collect any access cards or leased set top boxes (and rentals) provided to me by Pegasus. DIRECTV will either return that equipment to Pegasus on my behalf or pay any access card or leased equipment non-return fees that I may owe Pegasus under my Pegasus Subscriber Agreement.

I understand that DIRECTV, while acting as my agent, does so for the purpose of transferring my direct broadcast satellite service exclusively to DIRECTV and that it is likely to benefit financially from this transaction.

Signature of account holder _____

6644CONVTRMA

DIRECTV Account Transfer, P.O. Box 025592, Miami, FL 33102-5592
A Unit of The DIRECTV Group, Inc.

Send three copies of the demand for arbitration, plus the appropriate filing fee to:

Arbitration Administration
13460 West Road, Suite 1750
Dallas, Texas 75244-0426
(214) 438-8782

Send out copy of the demand for arbitration to the other party.

Waiver of Rights. In the arbitration proceeding, the arbitrator shall have the authority to decide any and all issues that the arbitrator has to decide. The arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. A court may not review any portion of the arbitrator's decision that it finds to be unenforceable.

Enforcement. Notwithstanding the foregoing, if any party based on Section 10(b) above, and if any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. § 606, the Digital Millennium Copyright Act, 17 U.S.C. § 1201, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2512, or any other statute or law governing that Service, may be decided only by a court of competent jurisdiction.

WARRANTY/LIMITATION

Warranty. Service to you will be deemed given when dispatched to the U.S. Mail and addressed to you at your last known address, hand delivered to you or your place of residence, or sent electronically via your DIRECTV email system. Mail notices may be included in our notices to you. We may also provide notice to you by email or telephone, which will be deemed given when a message is left with you or someone answering the telephone at your residence. Your notice to us will be deemed given when we receive them at the address or telephone number set forth on the front page of this Agreement.

Limitation of Liability. The transmission and subsequent use of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 6 shall not be governed by the Federal Arbitration Act.

Assignment of Account. We may assign your account or this Agreement and all other rights obligations hereunder to any third party without notice to you, provided that DIRECTV be notified orally by any provision is deemed by a competent authority to be invalid, the provision will be deemed null and void as if it never existed, and the rest of the agreement will remain enforceable. The terms of this Agreement that operate as if they were never terminated shall continue to apply to you until such time as you notify us in writing.

Other. No representation or warranty is authorized by DIRECTV or its agents or change this Agreement, in no event shall this Agreement, or any other agreement with DIRECTV be modified orally. Any provision is deemed by a competent authority to be invalid, the provision will be deemed null and void as if it never existed, and the rest of the agreement will remain enforceable. The terms of this Agreement that operate as if they were never terminated shall continue to apply to you until such time as you notify us in writing.

THANK YOU!

VERBACUM 10/01
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CUSTOMER AGREEMENT

Effective as of September 1, 2001 until replaced

THIS DOCUMENT RECAPS THE TERMS AND CONDITIONS REGARDING YOUR RECEIPT AND PAYMENT OF DIRECTV SERVICE (AS DESCRIBED IN SECTION 1, ABOVE), AND HOW TO BEST ACCEPT THESE TERMS, PLEASE REVIEW THE IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE IF YOU NEED TO. TO RECEIVE OUR SERVICE, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND, ACCORDINGLY, THEY WILL BE LEGALLY BINDING ON YOU TO VIEW THIS AGREEMENT BY SIGNING YOUR NAME AT THE BOTTOM OF THIS CALL. 1-800-581-0022 TO REQUEST A PRINTED COPY. (WRITE A CHECK/CHECK OR LLAVE AL 1-800-581-0022 PARA SOLICITAR ESTE DOCUMENTO)

CONTACTING DIRECTV:
You may contact us 24 hours a day, any day of the year, by calling 1-800-581-0022 or by writing to:

DIRECTV, Inc.
Customer Service
P.O. Box 82000
Las Vegas, NV 89180

You can also visit our web site at DIRECTV.com.

Thank you for choosing DIRECTV for your television programming Service. DIRECTV provides programming Service to residents of the United States. We do not provide Service to addresses outside of the United States. This is your copy of the Customer Agreement between DIRECTV and you as a customer of DIRECTV. Please keep it for your records.

CUSTOMER AGREEMENT

1. OUR SERVICE

These are the terms on which we will provide you digital satellite entertainment programming (referred to collectively as "Service").

Equipment Choice. We offer a variety of programming packages (at least one of which you have already accepted), service subscriptions and pay per view programming available on special rates. All programming selections have their own rules, terms, and conditions. Information about programming is available on our web site at DIRECTV.com or DIRECTVSPORTS.com. These rules, terms and conditions are incorporated into this Agreement. Some Service is available only if you purchase and subscribe to a minimum level of programming or have your receiver(s) continuously connected to a land-based telephone line.

Optional Pay Per View. You may order pay per view Service by using your on-screen program guide and remote control unit, online at DIRECTV.com or by calling us. To you call to order a pay per view Service, a fee may apply depending

on Section 2. To view your remote control to order pay per view Service, you receiver must be continuously connected to a land-based telephone line. In this way, information about the program that you order is transmitted via the telephone line. During the short transmission period, you may not be able to use the line for other purposes.

Our Programming Choices. You may change your programming selection by notifying us. A fee may apply to such changes (described in Section 2). Some programming may be purchased in minimum blocks of one month or multiple of one month.

Our Programming Changes. Many different and changing considerations affect the availability, cost and quality of programming and customer demand for it. Accordingly, we may reserve the unrestricted right to change, re-arrange, add or delete our programming packages, the schedule in these packages, our prices, and any other Service we offer, at any time. We will endeavor to notify you of any change that is within our reasonable control and to what extent, in most cases, this notice will be about one month in advance. We always have the right to cancel your Service, in whole or in part, if you do not accept the change (see Section 2). If you cancel your Service, a deactivation fee (described in Section 2) may apply. Details, if any, of your account will be posted as described in Section 5. If you do not cancel, your continued use of our Service will constitute your acceptance of the change.

Access Card and Receiver Equipment. You have been provided with a conditional access card that is inserted into your receiver unit (referred to as the "Access Card"). The Access Card and the "Receiving Equipment", which includes a receiver unit, a remote control unit, and a recording device, are necessary to receive our Service. The Access Card will work only on the Receiving Equipment that it came with. Access Cards are non-transferable and will at all times remain the exclusive property of DIRECTV. If you fail to use the original Access Card with your receiver, satellite, receiver, or other, we will replace it, at no cost to you, in the event of unauthorized tampering with or modification of the Access Card and your account is in good standing. A replacement fee will apply (described in Section 2). Replacing with or other unauthorized modification of the Access Card is strictly prohibited and may result in cancellation or other action. DIRECTV reserves the right to cancel or replace the Access Card, and the card will be returned to DIRECTV upon request. If you do not return the Access Card to DIRECTV when you cancel your Service, you may be charged a fee as described in Section 2.

Additional Selections. In addition to the services on your account, you may purchase a separate subscription for each one. Or, if all your receivers are continuously connected to the same land-based phone line, we can "meter" the programming from your primary receiver to your additional receivers and charge you for the additional receiver fee amount (described in Section 2). Pay per view programming cannot be metered and can be viewed only on the receiver for which it is purchased.

Phone Connections. Your receiver unit(s) must always be directly connected to a land-based telephone line to receive certain Service, such as sports subscriptions. We will provide you with a telephone line, and to be substituted to order pay per view Service with your remote control. If it is not so connected, or if it is connected to a line other than the one you tell us, or if the line is not performing according to our requirements, we may deactivate the applicable Service. If you do, you will still be responsible for all Service purchased through the date of deactivation. Your receiver unit(s) must also be connected to the same land-based telephone line in order to be eligible to pay the additional receiver fee rather than purchase a separate subscription for each additional receiver.

Modem Use. We provide Service to Receiving Equipment that is installed in mobile units such as cars, boats and other recreational vehicles. However, without a

permanent land-based phone connection, the Receiving Equipment is not eligible for the additional receiver (described above), pay per view ordering with the remote control, or certain programming such as seasonal sports subscriptions and local regional sports networks.

Public Viewing. We provide Service only for your private non-commercial use, enjoyment, and home viewing. The programming may not be viewed in areas open to the public or managed by commercial establishments. You may not retransmit, forward, or perform the programming, charge admission for its viewing, or transmit or distribute during advertising of its provisions of Section 5, or any programming provider may prosecute violations of the provisions of Section 5, and other applicable laws in any court of competent jurisdiction, under the rules and regulations of the Federal Communications Commission, and other applicable laws.

Blackout. Certain programming will transmit, including some subscription Service, sports events and broadcast network Service, may be limited due to your local reception area. Blackout restrictions are decided by sports leagues and the other entities that own the local broadcast rights. You may view our web site for more blackout information. If you do not receive our programming due to these blackouts, you may be subject to legal action.

Limit of Equipment Installation. You should notify us immediately if your Receiving Equipment is stolen or removed from your premises without your authorization. If you notify us within 10 days after such removal, we will not charge you for any unauthorized use. In any case, we will not charge you for unauthorized use occurring after we receive your notification.

Transfer of Equipment. You should also notify us immediately if you sell or transfer your primary receiver to someone else. We consider you the owner of the Receiving Equipment and the recipient of our programming until we receive your notification, except all periods with the Service is provided in the use of your Receiving Equipment by others with your written consent.

Third-Party Restrictions. It is your responsibility to impose any viewing restrictions on other family members or guests, so you must appropriate the use of our Service to you or anyone else based on the content of our programming.

Change of Address. You must notify us immediately of any change in your name, mailing address, residence address, or telephone number.

2. PAYMENT

In order to receive our Service, you promise to pay us as follows:

1. Equipment. You will pay in advance, at the time in effect of the time, for all Service ordered by you or anyone who uses your Receiving Equipment, with or without your permission, except all periods with the Service is provided.

2. Other. You will pay all taxes and other governmental fees and charges, if any, which are assessed based on your receipt of the Service.

3. Administrative Fees. In order to control the basic charges, which apply to all customers, we charge fees that when in specific circumstances only to those customers responsible for them. This fee is not included, and DIRECTV reserves the right to modify these fees at any additional time. Accordingly, you will pay the following fees when they are applicable:

- (1) Account Activation Fee for any change you make the lesser of (i) up to \$50.00, and (ii) the maximum amount permitted under applicable law to cover a 100% activation of your Service account.

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

_____)	
In re:)	Chapter 11
PEGASUS SATELLITE TELEVISION, INC., et al.,)	Case Nos. 04-20878
Debtors.)	(Jointly Administered)
_____)	

**ORDER ON DEBTORS' EMERGENCY MOTION FOR RELIEF
IN RESPECT OF VIOLATIONS OF THE AUTOMATIC STAY BY DIRECTV, INC.**

Upon the Emergency Motion for Relief in Respect of Violations of the Automatic Stay by DIRECTV, Inc. (the "Motion") of Pegasus Satellite Television, Inc. ("PST") and certain of its subsidiaries and affiliates, each a debtor and debtor-in-possession herein (collectively, the "Debtors"),¹ for entry of an Order finding DIRECTV, Inc. ("DIRECTV") in violation of the automatic stay imposed by 11 U.S.C. § 362(a), and the Court having reviewed the Motion; and having heard the statements of witnesses and counsel regarding the relief requested in the Motion at a hearing before the Court; and finding that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that notice of the Motion and the Hearing was due and proper under the circumstances; and it appearing that granting the relief requested in the Motion is in the best interests of the Debtors,

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.

their estates, and their creditors; and good and sufficient cause appearing therefore; it is hereby ordered as follows:

1. The actions of DIRECTV, Inc. (“DIRECTV”) complained of in the Motion and at the hearing thereon from and after the commencement of the above captioned bankruptcy cases on June 2, 2004, violate the automatic stay imposed by 11 U.S.C. Section 362;

2. Without limiting paragraph 1 of this Order, the automatic stay imposed by Section 362 stays all actions by DIRECTV that are inconsistent with the exclusive right of PST to provide DIRECTV basic programming service within its territories through the term of the Member Agreements.

3. Without limiting paragraph 1 of this Order, the automatic stay imposed by Section 362 stays all actions by DIRECTV that are inconsistent with PST’s ownership of and rights in Subscriber information (as defined under the Member Agreements); such rights include:

- a. The right to preclude DIRECTV from obtaining or using Subscriber information by soliciting to sell, marketing, selling or activating Programming as defined under the Member Agreements, including standard DIRECTV programming packages such as Total Choice, to any Committed Member Residence in PST’s territories.
- b. The right to preclude DIRECTV from sending messages to, or otherwise communicating with, current or former customers of PST, however such messages or communications are delivered, without PST’s written consent.

- c. The right to preclude the sales and customer service representatives of DIRECTV from seeing, accessing, or otherwise utilizing in any way the Debtors' subscriber information, including information concerning the accounts of current customers of the PST without the PST's express written consent.
- d. The right to preclude DIRECTV from mentioning or referencing PST or its affiliates in communications of any form and by any medium with anyone including the public, and PST's customers, potential customers, dealers, and distributors.
- e. The right to preclude DIRECTV from contacting any of the Debtors' customers that subscribe to NFL Sunday Ticket regarding any matter other than their subscription to Sunday Ticket, or regarding the sale of any product other than Sunday Ticket.

5. To assure compliance with paragraph 4 of this Order, DIRECTV is required to maintain a record of all contact DIRECTV may have with persons in Committed Member Residences in PST's territories, (whether by DIRECTV or its representatives), which record will include recordings of all telephonic communications. DIRECTV shall provide PST with a weekly summary of such contact in sufficient detail to enable PST to determine compliance with paragraph 4 of this Order and shall provide the PST with immediate access to

all communications with Committed Member Residences in PST's, including recorded telephone conversations, upon the PST's request so that PST may verify DIRECTV's compliance with the provisions of this order.

Dated:

UNITED STATES BANKRUPTCY JUDGE