

Hearing Date:  
June 7, 2004 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 (JBH)
Debtors. <sup>1</sup>	)	

**DIRECTV'S OPPOSITION TO THE SUPPLEMENTAL EMERGENCY MOTION FOR  
RELIEF FILED BY PEGASUS SATELLITE TELEVISION ET AL.**

<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 Tower, 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.

**1. Introduction**

Pegasus' Second Automatic Stay Memorandum<sup>2</sup>, and the evidence Pegasus offered at the June 7<sup>th</sup> Hearing, confirm the essential facts that require denial of the requested relief. The hearing and briefing were supposed to address application of the automatic stay provision to the conduct of DIRECTV, and not the consequences of DIRECTV's actions. Instead, Pegasus argues for mandatory injunctive relief based on unproven claims that *NRTC* breached its contract with Pegasus or that *NRTC* breached its fiduciary obligations to Pegasus. Assuming that at some future date it is determined that making such claims is in the best interests of the estates and their creditors, Pegasus will then be free to attempt to deliver on its lawyers' bold promises of certain success. Pegasus' property interest in filing such a lawsuit, or the merits of such lawsuit, however, is not at issue here. DIRECTV will focus its brief on the issues relevant to the allegations that DIRECTV violated the automatic stay.

**2. DIRECTV Made No Contractual Promise of "Exclusivity" to Pegasus**

**(a) DIRECTV Is Not Bound By the Member Agreement**

The promise of "exclusivity" Pegasus relies on is a promise made in the contracts between NRTC and Pegasus--the "Member Agreements". See Second Automatic Stay Memorandum at 1; Debtor Exh. 1, 2. The plain language of the Member Agreements makes clear that DIRECTV is **not** a party to those form contracts. See, e.g., Debtors Exh. No. 1 at 1 ("This Agreement is made by and between the NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE, a District of Columbia corporation ("NRTC") and Pegasus Cable Associates, Ltd. ("Member")"). Marshall W. Pagon testified at the June 7<sup>th</sup> Hearing that he signed the Member Agreement on behalf of Pegasus and that he read and

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<sup>2</sup> Pegasus filed a Second Supplemental Memorandum in Support of Emergency Motion For Relief In Respect of Violations of the Automatic Stay By DIRECTV, Inc. ("Second Automatic Stay Memo") on June 8, 2004 and attached a new requested Order as Exhibit B.

understood its provisions, including the integration clause. See Debtor Exh. No. 1 ¶ 21 (“The Agreement and Exhibits constitute the entire agreement between the parties and supersede all previous understandings, commitments and representations concerning the subject matter. Each party acknowledges that the other party has not made any representations other than those that are contained in this Agreement and Exhibits.”)

The contracts specifically included the following term, not mentioned in any of Pegasus’ briefs: “NRTC and [Pegasus] acknowledge and agree that (a) [DIRECTV] is not a party to this Agreement and is not bound by or liable to NRTC or [Pegasus] under the provisions of this Agreement”. Debtor Exh. No. 1 ¶ 26. Mr. Pagon, a sophisticated investment banker, read this provision and was aware of what it said. This language plainly means that DIRECTV “is not bound by or liable to” Pegasus for any promise of exclusivity made by NRTC.

Pegasus, of course, ignores this contract language and relies solely on NRTC’s promise as the source of its assertion that DIRECTV has violated the automatic stay. DIRECTV is not the same as NRTC. In any event, the undisputed evidence demonstrated that NRTC, the only party bound by the promise of exclusivity, is not violating the promise. NRTC is **not** marketing or selling any services in any territory in competition with Pegasus, as both Mr. Pagon and Mr. Watkins testified. Presumably this explains why Pegasus is not alleging any violation of the automatic stay by NRTC.

**(b) Pegasus Has No Property Interest in the Terminated DBS Agreement**

As to the separate and terminated DBS Agreement between DIRECTV and NRTC, Pegasus admits that it is not basing its claim of exclusivity on the promises made by DIRECTV to NRTC in the terminated DBS Agreement. Pegasus’ Second Automatic Stay Memo does not dispute, and therefore concedes, that principles of res judicata and collateral estoppel bar Pegasus from challenging the rulings of the California federal court holding that Pegasus is not a party to the DBS Agreement, is not a third party beneficiary of the DBS Agreement, and has no protectable interest in the DBS Agreement. See May 11, 2004 Order (Opp. Ex. 2) at 2:16-17;

Nov. 10, 2003 Order (Opp. Ex. 5) at 11:13-16, 12:15-17; §18.09 DBS Agreement (Debtor Hearing Ex. 15)). No evidence was offered and no argument is made that would allow Pegasus to enforce any provision of the DBS Agreement regarding exclusive distribution rights.<sup>3</sup>

Moreover, Pegasus introduced *no evidence* challenging the timing of the termination of the DBS Agreement. It is uncontroverted that DIRECTV and NRTC terminated the DBS Agreement on June 1, 2004 and notified Pegasus of that termination on June 2, 2004, prior to Pegasus' bankruptcy filing. See Debtor Hearing Ex. 3; Pagon Test. Furthermore, Pegasus does not challenge the District Court's ruling that DIRECTV and NRTC were free to modify their agreement at any time in writing without the consent of Pegasus. (May 11, 2004 Order (Opp. Ex. 2 at 2:15-16); §18.02 DBS Agreement (Debtor Hearing Ex. 15)). Pegasus neither questions nor contradicts DIRECTV's and NRTC's rights under the California Civil Code and case law to terminate the DBS Agreement voluntarily at any time by a writing. See Mem. In Opp. at 13-14. Finally, Pegasus nowhere disputes the district court's ruling that it would be improper (and even unconstitutional) to enjoin DIRECTV "to provide services to Pegasus based on whatever derivative rights it may have arising from provisions in the DBS Agreement even though (1) Pegasus' right to these services is based on terms of a contract between NRTC and DirecTV *that no longer exists*, (2) Pegasus was not a party to that contract, and (3) DirecTV never contractually agreed to provide these services to Pegasus." May 11, 2004 order (Opp. Ex. 2) at

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<sup>3</sup> After failing to even acknowledge the dispositive rulings in the California litigation, Pegasus' latest brief contains a confusing, irrelevant and frankly inaccurate section attempting to demonstrate that no binding rulings were made affecting the Member Agreements. Because DIRECTV is not a party to or obligated under the Member Agreements, these arguments are irrelevant to whether DIRECTV is violating the automatic stay. In any event, the arguments are plainly false. For example, in an Order dated May 22, 2003, the Court "GRANTS DIRECTV's summary judgment motion as to its counterclaim 1 . . . that Pegasus and the Class have no right of first refusal to have DIRECTV provide them with any services after their Member Agreements expire." The Court also reaffirmed her prior holding "that the Member Agreement is a 'completely integrated agreement' that embodies 'the complete agreement between NRTC and the Members.'" Id. at 17 (citing October 2001 Order). See also, Mem. In Opp., Exh. 5 at 5 (Nov. 7, 2003). ("Pegasus' Member Agreement does not require NRTC to obtain Pegasus' permission before modifying the terms of the DBS Agreement, nor does it provide Pegasus with the right to prevent or object to any modification agreed to by DIRECTV.") (Nov. 7, 2003 Order). Pegasus' discussion of the Court's rulings seems more wishful thinking than analysis and DIRECTV will rely on what was actually held in those cases and leave it to the Court to assess the merits of Pegasus' arguments.

18-19. This is precisely what Pegasus is now asking this Court to do under the automatic stay provision. But, as the District Court held, “Any derivative rights Pegasus may have had under the DBS Agreement . . . expired when the DBS Agreement was amended.” *Id.* at 19:4-6. Clearly any derivative rights Pegasus may have had expired when the DBS Agreement was terminated.

Rather than fight these dispositive rulings, Pegasus argues that *NRTC* breached the Member Agreements or its fiduciary obligations by exercising its right to terminate the DBS Agreement. Pegasus also claims, without evidentiary support, that DIRECTV may be liable for aiding and abetting the supposed breach of fiduciary duty. But even Pegasus acknowledges that such allegations at best give rise to a claim in a lawsuit that the termination is “voidable” and no such claim has been made. Indeed, by arguing that the termination of the DBS Agreement can be “rescinded” or is “voidable” (Second Automatic Stay Memo at 8-13), Pegasus concedes the material fact that the “status quo” at the time of Debtors’ bankruptcy was that the DBS Agreement was terminated and there was no promise by DIRECTV of exclusivity to NRTC and no enforceable obligation of DIRECTV to Pegasus.

(c) **No New Agreement By DIRECTV Promises NRTC Exclusivity**

Apparently recognizing that the contracts in evidence and the testimony established no existing promise of exclusivity by DIRECTV under either the terminated DBS Agreement or the Member Agreement, Pegasus argues for the first time in its Second Automatic Stay Memo that DIRECTV promised “exclusivity” to NRTC in a new contract. *Id.* at 2-3. This latest unsupported claim, based on sheer speculation and made after all evidence was closed, is improper and contrary to the evidence Pegasus adduced, and should be ignored.

Pegasus offered DIRECTV’s press release and it was admitted into evidence. *See* Debtor Exh. No. 5. DIRECTV’s statement makes clear that NRTC and DIRECTV “agreed to end the NRTC’s exclusive DIRECTV service distribution contract effective immediately.” *Id.* Similarly, the Notice of Termination cited by Pegasus contains a very explicit notice of

termination of the DBS Agreement “pursuant to which NRTC obtained an exclusive right to distribute DBS Distribution Services” and states that “all rights and obligations NRTC had under such agreements have been terminated immediately.” See Debtor Hearing Ex. 3, Notice of Termination of Member Agreements. None of the language cited by Pegasus provides NRTC with any exclusive rights during the ninety-day transition period and no evidence exists to support Pegasus’ bald statement to the contrary. Pegasus’ brief confuses the availability of services, such as programming and satellite telemetry and tracking, which DIRECTV has agreed with the NRTC to continue to provide, on a non-exclusive basis, for 90 days, with the contractual obligations of NRTC (not DIRECTV) under the Member Agreements, which limits, among other things, actions of NRTC itself. Nor is there any evidence that DIRECTV assumed, or agreed to be bound by, any of NRTC’s obligations under the Member Agreements. In any event, even if the alleged promise was not pure fiction, Pegasus would have no standing to enforce any such promise. There is no contractual or other restriction on DIRECTV’s right to compete for customers, including against Pegasus.<sup>4</sup>

**3. DIRECTV has not used any of Pegasus’ confidential or proprietary “subscriber information” to solicit customers.**

**(a) DIRECTV Doesn’t Use Pegasus’ Information To Sign Up New Customers**

All of the testimony submitted by Pegasus, both in-person and via declarations, confirmed that for new customers to DIRECTV’s service there is no proprietary Pegasus customer information in existence. Pegasus’ witnesses established that when they called

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<sup>4</sup> In its Supplemental memorandum, Pegasus for the first time introduced a new “agency” theory, which is based on the false premise that DIRECTV authorized NRTC, as its agent, to bind DIRECTV to any obligations under the Member Agreements. Had this argument been raised at the hearing, DIRECTV would have demonstrated the falsity of this theory and its underlying premise. The agreement between DIRECTV and NRTC defining the scope of the services to be provided by DIRECTV during this 90 day post-termination period makes clear that “[n]othing [in the agreement] shall obligate DIRECTV to provide support or services on an exclusive basis” during the ninety-day transition period.

DIRECTV posing as new customers, DIRECTV's customer service representatives requested information from the subscribers; they did not access any information belonging to Pegasus, nor did they misuse any proprietary subscriber information. There can be no claim that DIRECTV is affecting Pegasus' property interests in non-existent customer information, and thus there can be no basis to apply the automatic stay to DIRECTV's contact with customers with whom Pegasus has never had any prior relationship, and who now choose to purchase their television programming from DIRECTV.

(b) **DIRECTV Doesn't Use Pegasus' Information for Existing Pegasus Customers Who No Longer Wish To Be Pegasus Subscribers.**

Pegasus next argues that *any* contact between DIRECTV and any member of the public that even mentions the word "Pegasus" constitutes misuse of Pegasus' proprietary subscriber information.<sup>5</sup> This claim is without support. At best, Pegasus has a property interest in a physical customer list or database that it developed and maintained as confidential. "The significance of a written customer list which is entitled to confidentiality lies in the fact that the employer is regarded as the owner of the written paper which is property of the estate." In re Golden Distributor Ltd. v. Reiss, 122 B.R. 15, 21 (S. D. N.Y. 1990) (citing Glosband v. Watts Detective Agency, Inc., 21 B. R. 963, 973 (D. Mass. 1981)). For this reason, DIRECTV agreed at the hearing that it would not contest application of the automatic stay to a list or other proprietary collection of subscriber information that Pegasus maintains in its possession. That does not mean, however, that Pegasus can bar all competition or solicitations to its customers.

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<sup>5</sup> Pegasus' Amended Proposed Order seeks to bar "DIRECTV from mentioning or referencing PST . . . in communications of any form and by any medium with anyone including the public . . ." See Amended Proposed Order, ¶4.d. This is absurd. According to Pegasus, employees of DIRECTV would practically be barred from saying the word "Pegasus." Despite having the opportunity to do so, Pegasus did not even address the serious Constitutional flaws in its request for a prior restraint of DIRECTV's First Amendment right to free speech. One Bankruptcy Court noted that a "powerful case" must be made by someone asking a court to impose a prior restraint on speech, explaining: "When it comes to placing prior restraints on speech, we believe that courts should proceed with great hesitancy. And after considering all of the evidence, courts should hesitate again." In re Dow Corning Corp., 227 B.R. 111, 127 (E. D. Mich. 1998) (denying motion to impose prior restraint on publicity campaign).

Pegasus has no ownership interest in preventing competition for customer revenues. See, e.g. In re Golden Distributor Ltd., 122 B.R. at 21-22 (“The debtor’s customers cannot be regarded as property of the debtor’s estate within the meaning of 11 U.S.C. § 541 and the defendants’ solicitation of business from such customers does not constitute an act to obtain possession of property of the estate or the exercise of control over property of the estate within the context of the automatic stay as imposed under 11 U.S.C. § 362(a)(3)”)<sup>6</sup>; In re Corrugated Paper Corp. v. Eastern Container Corp., 185 B.R. 667, 671 (D. Mass. 1995) (“customers are neither purchased nor owned. Their continued patronage is an expectancy only.”). DIRECTV, like every other competitor of Pegasus, is free to contact and solicit customers so long as it does not use Pegasus’ proprietary customer list to do so. See, e.g., In re Phoenix Dental Sys., Inc., 144 B.R. 22, 26 (W. D. Penn. 1992) (Dentist who cannot use actual, proprietary customer list of Debtor remains free to advertise his services to the public, and nothing prevents Debtors’ customers from contacting that Dentist as a result of those advertisements). DIRECTV has not used Pegasus’ proprietary customer lists and it agreed that it would not do so.

(c) **Pegasus’ Subscriber Information Rights Are Limited.**

Pegasus exaggerates its contract rights with the NRTC and again tries to hold DIRECTV responsible for NRTC’s contract obligations. First, the Amendment to the Member Agreement cited by Pegasus does not state, as Pegasus now claims, that Pegasus “owns and controls” subscriber information. Rather, the agreement merely provides that “*NRTC* acknowledges that Member has substantial proprietary interests and rights to Subscriber information and agrees to maintain all Subscriber information on a strictly confidential basis.” (Debtor Exh. No. 2, ¶ 8).

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<sup>6</sup> At the hearing it was established that Pegasus’ customers may stop subscribing at any time, either without penalty or by payment of a cancellation fee under certain circumstances. (Pagon Test.); see also Debtor Exh. No. 10, ¶ 5 (“You may deactivate or modify services you receive, or cancel your account, by notifying Pegasus Customer Care.”). As Mr. Pagon himself put it, “It is a free country,” when explaining that Pegasus’ subscribers were not enslaved to purchasing television programming from Pegasus.



Pegasus does not contend that NRTC has violated this contractual promise.<sup>7</sup> And DIRECTV is not bound by NRTC's alleged promises to Pegasus. See Debtor Exh. No. 1, ¶ 26 (DIRECTV "is not bound by or liable to NRTC or Member under the provisions of this Agreement"). Moreover, in footnote 4 of its Second Supplement, Pegasus acknowledges that the standards reflecting ownership of subscriber information are reflected in Section 17.02 of the ***DBS Agreement between NRTC and DIRECTV***. See Debtor Exhibit no. 15, paragraph 17.02. That provision states that "NRTC (and/or the respective Committed Member) and [DIRECTV] shall each own the lists and information (including compilations thereof) regarding respectively the NRTC Subscribers and the [DIRECTV] Subscribers" *id.* NRTC retained ownership interests in subscriber information, and its Member Agreement with Pegasus, far from conceding its ownership interests in such information, merely acknowledges that Pegasus has a joint interest in the information.

Second, Pegasus flatly misstates the scope of its "rights" under the Member Agreement. The Member Agreement does not give Pegasus exclusive rights to, much less ownership of, all information about a subscriber regardless of source. Indeed, Pegasus also agreed that DIRECTV, through its predecessor HCG, also had the same interests and rights to such information when DIRECTV distributed Non Select Services to a subscriber. See Debtor Exh. No. 2, ¶ 8 ("In the event [DIRECTV] distributes Non Select Services to a Subscriber, NRTC and Member recognize that [DIRECTV] shall also have proprietary interests in such Subscriber's information.") Pegasus concedes that from June 1994 until June 1, 2004, DIRECTV was the exclusive distributor of such services *in Pegasus' territory*, and thus DIRECTV has proprietary interests in this very same information.

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<sup>7</sup> Pegasus makes no such claim because paragraph 7(d) of the Member Agreement requires Member to "comply with and be bound. . .by such policies as NRTC may adopt from time to time." Debtor Exh. No. 1, § 7(d). One of those policies provides "that [NRTC] and the DBS Participant shall be entitled to deal with and use any of the Subscriber information under the [Member] Agreement free and clear of any claim of interference with or misappropriation of proprietary interests . . ." Ex. A to Baumann Decl., NRTC DBS Board Policy no. 9, II. C.

While some Pegasus employees did impersonate Pegasus' subscribers to contact DIRECTV (Paula Bryant Test. and Lee Watkins Test.), these employees confirmed that DIRECTV was *not* using existing billing system information to activate new subscribers. In fact, these witnesses were told that to receive service from DIRECTV, they would have to provide their name, address, telephone number, and other information. The DIRECTV customer service representatives also told Pegasus callers that they would need to sign and return a consent form in order to receive all DBS Services directly from DIRECTV. (Id.) In fact, the declaration of Pat Nemeth (mother of Lisa Mesenko) contains the forms in which DIRECTV asks the customer to provide the information necessary to activate a new DIRECTV account. If DIRECTV were simply using Pegasus' confidential information to activate new DIRECTV accounts, these forms would be entirely unnecessary. The testimony of these witnesses disproves, rather than proves, Pegasus' case.<sup>8</sup>

While a substantial portion of Pegasus' in-court presentation was devoted to the consequences of DIRECTV's actions with respect to dealers with whom Pegasus (and not surprisingly DIRECTV) have relationships, Pegasus makes no mention of these dealers in its supplemental submission. The fact is that Pegasus has no proprietary interest in preventing anyone, including DIRECTV, from truthfully communicating with dealers with whom Pegasus might have a contract. And Pegasus presented no evidence to suggest that DIRECTV had provided false information to any dealer.<sup>9</sup>

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<sup>8</sup> None of Pegasus' witnesses explained whether the subscribers they were impersonating had been a direct subscriber of DIRECTV for Non Select Services such as NFL Sunday Ticket. Thus, the subscribers who were impersonated may have already been DIRECTV subscribers. Even if they were not, nothing prevents DIRECTV from obtaining proprietary information from public sources, including from the actual owner of the information.

<sup>9</sup> Pegasus offered testimony about alleged confusion among its dealers, arguing that this would harm the debtor and justified equitable relief. This testimony was irrelevant to the issue of an automatic stay and, had Pegasus sought injunctive relief, would hardly justify the draconian order Pegasus now seeks. As Mr. Watkins testified, any disruption in Pegasus' relationships with dealers are in all likelihood a result of the dealers' concern about the effect of Pegasus' bankruptcy on their business. After all, the dealers' incentives to enroll Pegasus' subscribers is tied to commissions Pegasus pays, and Pegasus' bankrupt financial condition raises legitimate concerns about its ability to compensate dealers.

DIRECTV has never denied that it has communicated with Pegasus subscribers and its own dealers, because DIRECTV has the legal right to do so. In so doing, however, DIRECTV has not used Pegasus' "subscriber information."

**4. Conclusion**

NRTC's alleged breaches of duty do not establish that DIRECTV violated the automatic stay provision and no evidence exists that DIRECTV is attempting to usurp Pegasus' right to file suit. DIRECTV has no obligation to abide by NRTC's promise of exclusivity and the automatic stay does not bar competition. DIRECTV is not obligated to turn away customers, cease advertising, stop talking to customers, or refrain from competing for business simply because Pegasus filed for bankruptcy. The only contract previously binding on DIRECTV that mentions exclusivity was terminated prior to bankruptcy and provides Pegasus with no rights. Nor is an automatic stay necessary to bar DIRECTV from doing what it hasn't done — use Pegasus' subscriber information. DIRECTV respectfully requests that this Court deny Pegasus' emergency motion in its entirety, and on the merits.

Dated: June 10, 2004

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# **EXHIBIT A**

**NATIONAL RURAL TELECOMMUNICATIONS  
COOPERATIVE  
HERNDON, VA**

**DBS BOARD POLICY NO. 9**

**SUBJECT: Marketing Agreement – Qualification Requirements and Termination  
for Non-compliance**

**I. PURPOSE.**

This policy is being adopted by the Board pursuant to the provisions of Section 1, Article IV, of the bylaws of the Association, § 29-1104 of the District of Columbia Cooperative Association Act, and paragraph 7(d) of the standard form of "NRTC/Member Agreement for Marketing and Distribution of DBS Services" (the "Marketing Agreement") in order to further the specified purposes of the Association, in particular with respect to administration of Marketing Agreements. It has previously been an unwritten policy of the Association to only permit participation in Marketing Agreements by those who are Members or Associates<sup>1</sup> of the Association ("DBS Participants"). It is now deemed appropriate to formalize this policy and to address the treatment of any DBS Participant who ceases being such a Member or Associate due to voluntary withdrawal, termination for cause or otherwise (because the provision of DBS services to persons or entities which are not Members or Associates may constitute *ultra vires* activities of the Association).

**II. POLICY.**

- A. A DBS Participant must be either a Member or Associate of NRTC at all times it holds any interest in a Marketing Agreement.
- B. If DBS Participant ceases to be a Member or Associate of NRTC for any reason whatsoever other than in conjunction with a transfer of its Marketing Agreement to another Member or Associate (whether due to voluntary withdrawal from the Association, termination for cause or otherwise), then:
  - 1. Termination of DBS Services: all rights, title and interest of the DBS Participant with respect to the Marketing Agreement shall terminate and revert to the Association which shall be entitled to immediately cease delivery of DBS Services to or for such DBS Participant's account; and
  - 2. Forfeiture of Accrued Unpaid Patronage: all accrued and unpaid patronage of the DBS Participant shall be forfeited at NRTC's discretion, to the extent allowed by law.
- C. The Association and the DBS Participant shall be entitled to deal with and use any of the Subscriber information under the Marketing Agreement free and clear

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<sup>1</sup>As used in this DBS Policy, the term "Associates" has the same meaning as "Affiliates."



of any claim of interference with or misappropriation of proprietary interests; provided, however, in no event shall either party use subscriber information in conflict with its obligations or the other party's rights under the Marketing Agreement.

- D. The Chief Executive Officer of NRTC is hereby delegated the authority to implement the foregoing policies and to approve waivers or variances and to resolve any conflicts associated with its interpretation or implementation.

III. This policy supersedes and cancels all policies in conflict herewith.

Date Adopted: March 4, 1998

X:



Secretary of the Board

**CERTIFICATE OF SERVICE**

I, Debra A. Gerry, hereby certify that I am over eighteen years old and caused a true and correct copy of the above document to be served upon the parties and at the addresses set forth on the Service List attached hereto, either electronically or by first class U.S. mail, postage prepaid, on the 10<sup>th</sup> day of June, 2004.

/s/Debra A. Gerry \_\_\_\_\_

Debra A. Gerry  
Bankruptcy Paralegal

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