

Hearing Date: June 10, 2005
Time: 10:30 a.m.
Place: Portland
Objection Deadline: June 7, 2005
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

MOTION OF THE REORGANIZED DEBTORS AND THE LIQUIDATING TRUSTEE FOR AN ORDER (I) AUTHORIZING THE ASSUMPTION OF A CERTAIN ASSET PURCHASE AGREEMENT BETWEEN PEGASUS SATELLITE COMMUNICATIONS, INC. AND KB PRIME MEDIA LLC DATED AS OF FEBRUARY 17, 2004 (II) GRANTING RELATED RELIEF CONCERNING THE PAYMENT AND APPLICATION OF THE PURCHASE PRICE AND (III) GRANTING SUCH OTHER RELIEF AS IS JUST AND PROPER

Pegasus Satellite Television, Inc. and its subsidiaries and certain of its affiliates, each a Reorganized Debtor herein (collectively, the “Reorganized Debtors”), and the Liquidating Trustee of The PSC Liquidating Trust (collectively the “Movants”),¹ hereby file this motion (the “Motion”) pursuant to sections 105(a) and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for an order (i) authorizing the assumption of an asset purchase agreement (the “KB Lewiston Agreement”) between debtor Pegasus Satellite Communications, Inc.

¹ The Reorganized 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 Country 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., and WTLH License Corp.

(“PSC”), as buyer, and KB Prime Media LLC (“KB Prime”), as seller, for television station WPME (Channel 35), in Lewiston, Maine, (ii) granting related relief concerning the payment and application of the purchase price and (iii) granting such other relief as is just and proper under the circumstances. In support of the Motion, the Movants respectfully represent as follows:

BACKGROUND

1. On June 2, 2004 (the “Petition Date”), the Reorganized Debtors filed petitions for relief under chapter 11 of the Bankruptcy Court in the United States Bankruptcy Court for the District of Maine (the “Court”). On June 4, 2004, the Court entered an order directing joint administration of the Reorganized Debtors’ cases for procedural purposes only.

2. The Reorganized Debtors continued in possession of their respective property and continued to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code throughout their chapter 11 cases.

3. This Court has jurisdiction over this matter pursuant to (i) 28 U.S.C. §§ 157 and 1334 (ii) and the Plan and Confirmation Order (as those terms are defined later herein). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are sections 105(a) and 365 of the Bankruptcy Code and Rule 6006 of the Bankruptcy Rules.

The Reorganized Debtors’ Business

4. As of the Petition Date, the Reorganized Debtors’ principal operating business was their direct broadcast satellite (“DBS”) business. At that time, the Reorganized Debtors were the largest independent distributor of DIRECTV® DBS services with approximately 1.1 million subscribers and the exclusive right to distribute certain DIRECTV® services to approximately 8.4 million rural households in certain territories within 41 states. During the chapter 11 proceedings, this Court entered an order dated August 26, 2004, authorizing the Reorganized Debtors to sell the DBS business to DIRECTV® for approximately

\$988 million. The closing of this sale occurred on or about August 27, 2004.

5. In addition to their DBS business, the Reorganized Debtors (through the Broadcast Debtors²) own and operate broadcast television stations in five markets throughout the United States. Additionally, the Reorganized Debtors have the contractual right to act as the advertising sales agent for one cable television station, as well as the right to supply the programming and operate an additional three television stations owned by KB Prime, including station WPME in Lewiston, Maine, that is the subject of this Motion. The relationship between KB Prime and the Reorganized Debtors will be described in more detail below.

The Debtors' Plan of Reorganization

6. On January 31, 2005, the Reorganized Debtors filed their First Amended Joint Plan of Reorganization (the "Plan") and Disclosure Statement in connection with the solicitation of acceptances of the Plan. On February 9, 2005, this Court entered an order approving the Disclosure Statement, as modified on the record. On April 15, 2005, the Court entered an order ("Confirmation Order") confirming the Plan, as modified by the Confirmation Order. The Plan became effective on May 5, 2005 (the "Effective Date").

7. In addition to the net proceeds from the sale of the DBS business to DIRECTV[®], the assets related to the broadcast television business (the "Broadcast Assets") comprise the vast majority of all the remaining tangible assets that will be administered after the Effective Date by the Reorganized Debtors and/or the Liquidating Trustee³ established under the Plan. Pursuant to paragraph 21 of the Confirmation Order, the Liquidating Trustee has the authority to exercise control over the Broadcast Assets.

² The Broadcast Debtors are: Pegasus Satellite Communications, Inc., Bride Communications, Inc., BT Satellite Inc., HMW, Inc., Pegasus Broadcast Associates, L.P., Pegasus Broadcast Television, Inc., Pegasus Broadcast Towers, Inc., Portland Broadcasting, Inc., Telecast of Florida, Inc., WDSI License Corp., WILF, Inc. WOLF License Corp., and WTLH License Corp.

³ Pursuant to the Plan and Confirmation Order, Ocean Ridge Capital Advisors, LLC was appointed the Liquidating Trustee of The PSC Liquidating Trust established under the Plan.

8. The Broadcast Assets are necessary to the operation of the Reorganized Debtors' broadcast television business, and include, but are not limited to, certain Federal Communications Commission ("FCC") authorizations and licenses, real property, agreements to operate television stations, rights to purchase television stations, time brokerage agreements, lease agreements with respect to studio facilities and other contract rights and working capital.

The Reorganized Debtors' Relationship with KB Prime

9. As noted above, the Broadcast Assets include television stations owned and operated by the Reorganized Debtors in five market areas. In addition, however, based on various prepetition agreements with KB Prime and related persons, certain of the Reorganized Debtors have the right to program and receive advertising revenues from other television stations, the licenses of which are owned directly by KB Prime, as well as the right to purchase those licenses and other broadcast related assets from KB Prime (collectively, the "KB Assets").

10. In particular, KB Prime owns, among other things, licenses to operate full powered television stations, including WPME-TV (Channel 35) in Lewiston, Maine (the "Lewiston Station") and WSWB-TV (Channel 38) in Scranton/Wilkes-Barre, Pennsylvania (the "Scranton Station").⁴ The Reorganized Debtors own and operate television stations in the designated market areas ("DMA") in which KB Prime owns television stations WSBW-TV and WPME-TV.

11. Pursuant to FCC rules and policies, a single entity within a DMA may only own a specified number of television station licenses depending upon the overall number of independently owned stations operating in the DMA. However, the FCC local television ownership rules do not prohibit licensees in one DMA, such as the Reorganized Debtors and KB Prime, from consolidating operations under certain circumstances through time brokerage

⁴ The majority owner of KB Prime is W.W. Keen Butcher ("Butcher"), the step-father of Marshall W. Pagon, the former chairman and former chief executive officer of PSC. The minority owner of KB Prime is Guyon W. Turner ("Turner"). KB Prime, Butcher and Turner are hereinafter collectively referred to as the "KB Parties."

agreements (“TBA”) or similar agreements provided that the licensee of the brokered station retains ultimate control over its station. As of the Petition Date and currently, the Reorganized Debtors were and are parties to TBAs and other agreements with KB Prime pursuant to which the Reorganized Debtors receive certain revenues generated by the Lewiston and Scranton Stations while KB Prime retains ultimate control over those stations.

12. In addition, on April 14, 1998, PSC entered into an option agreement, as amended (the “Option Agreement”), pursuant to which, *inter alia*, PSC agreed to provide collateral to secure certain loans (the “Wachovia Loans”) issued by Wachovia Bank, N.A. (“Wachovia”) to both Butcher and Turner. In turn, Butcher and Turner agreed to contribute the proceeds of the Wachovia Loans to KB Prime and to cause KB Prime to use the Wachovia Loan proceeds for the acquisition and/or operation of KB Stations. In exchange for, among other things, providing the collateral to secure the Wachovia Loans, PSC was granted an exclusive and irrevocable option to acquire any or all broadcast station licenses, permits and/or the equity interests or assets of KB Prime, in whole or in part, exercisable when permitted by the rules, policies or decisions of the FCC.⁵ As of April 30, 2005, the aggregate principal and interest owed by Butcher is approximately \$6,601,269.00 and the aggregate principal and interest owed by Turner is approximately \$96,516.00.

13. On or about November 12, 2004, the Reorganized Debtors filed a motion (the “Wachovia Assignment Motion”) with this Court seeking an order authorizing PSC to take an assignment of the Wachovia Loans from Wachovia and to continue to provide funding thereunder. Pursuant to an order of this Court dated November 19, 2004, the Wachovia Assignment Motion was granted (Docket #756). As a result, the right to receive the amounts due

⁵ Under the Option Agreement, the option price for each KB Prime station is based upon (1) the cost attributed to the applicable station, (ii) compound interest at a rate equal to the borrowing interest rate of KB Prime (2.6% as of December 31, 2003) plus 3%; and (iii) an allocable portion of KB Prime’s corporate expenses. The option price is increased by the amount of any additional borrowings made by Butcher and Turner under the Wachovia Notes to cover specified costs of KB Prime, excluding interest on such notes.

by Butcher and Turner under the Wachovia Loans is now held by the Reorganized Debtors.

14. Significantly, pursuant to the Option Agreement, to the extent PSC exercises its option to purchase any broadcast licenses or permits owned by KB Prime, KB Prime, Butcher and Turner are all obligated to use the proceeds of the sale (less an amount equal to the aggregate federal, state and local income tax payable on the aggregate taxable income recognized by the members of KB Prime not to exceed 25% of the taxable income recognized by members of KB Prime) (the “Net Sale Proceeds”) to repay their obligations under the Wachovia Loans. This is a key feature of the Option Agreement, because it establishes an express mechanism intended to protect the Reorganized Debtors from a situation where they pay the purchase price to KB Prime and KB Prime, Butcher and Turner thereafter fail to repay the obligations due under the Wachovia Loans. Without this feature, the Reorganized Debtors would acquire the station at closing, but would have essentially paid for it twice, once through the payment of the cash to secure the guaranty, and subsequent purchase of, the Wachovia Loans (the proceeds of which were indirectly received by KB Prime), and the second by the payment of the purchase price to KB Prime at closing.

The KB Lewiston Agreement

15. Prior to the Petition Date, PSC exercised its option to purchase certain of the KB Assets, including the WPME-TV (Channel 35) station assets (the “Lewiston Station”).⁶ In particular, prior to the Petition Date, PSC and KB Prime entered into the KB Lewiston Agreement dated February 17, 2004, pursuant to which PSC agreed to purchase licenses, permits, authorizations and certain other assets necessary or useful in the business of the Lewiston Station. The purchase price for the Lewiston Station is estimated at approximately \$3.9 million. The consummation of the sale is conditioned upon the prior consent and approval

⁶ PSC has also exercised an option to purchase the WSWB license (Scranton/Wilkes-Barre) for approximately \$2.1 million from KB Prime. PSC has similarly exercised an option to acquire a construction permit for Hammond, Louisiana (“Hammond”) from KB Prime for approximately \$1.5 million. In addition, PSC holds an option to acquire any or all of the assets of KB Prime.

of the FCC, which consent and approval has been obtained.

16. The Liquidating Trustee believes, after due and reasonable inquiry, that the value of the Lewiston Station materially exceeds the purchase price. Therefore, a sound business reason exists for assuming the KB Lewiston Agreement.

RELIEF REQUESTED

17. By this Motion, the Movants seek the entry of an order, pursuant to §§105 and 365(a) of the Bankruptcy Code, (i) authorizing the assumption of the KB Lewiston Agreement (ii) granting related relief concerning the payment and application of the purchase price and (iii) granting such other relief as is just and proper under the circumstances.

APPLICABLE LAW

Post Confirmation Jurisdiction

18. Pursuant to Section 8.2 of the Plan, the Reorganized Debtors may “assume, assume and assign or reject certain executory contracts and unexpired leases that are the subject of motions filed with the Bankruptcy Court and pending on the Confirmation Date for which the Bankruptcy Court shall retain exclusive jurisdiction.” Moreover, paragraph 13.1 of the Plan and paragraph 26 of the Confirmation Order expressly provide that the Bankruptcy Court shall retain jurisdiction over, among other things, motions to assume, assign or reject executory contracts pursuant to §365 of the Bankruptcy Code.

19. On or about April 13, 2005, prior to the April 15, 2005, Confirmation Date, the Reorganized Debtors filed a “Motion for Order Authorizing the Assumption or Assumption and Assignment of Certain Executory Contracts or Unexpired Leases” (Docket #1217) (the “Global 365 Motion”). A hearing on the Global 365 Motion is scheduled for June 29, 2005. Through the Global 365 Motion, the rights of the Reorganized Debtors and Liquidating Trustee to assume, assume and assign, or reject various executory contracts and leases relating to the operation of the Broadcast Assets are preserved. The KB Lewiston

Agreement is included on Exhibit A-2 of the Global 365 Motion. Moreover, pursuant to paragraph 26 of the Global 365 Motion, the rights of the Reorganized Debtors and Liquidating Trustee to seek authorization to assume and or assign any executory contract, including the KB Lewiston Agreement, prior to the June 29th hearing were preserved.

20. In addition, section 1142(b) of the Bankruptcy Code provides that a bankruptcy court retains jurisdiction to ensure that the terms and provision of a confirmed chapter 11 plan are carried out. *See, In re Johns-Manville Corp.*, 97 Bankr. 174, 180 (Bankr. S.D.N.Y. 1989) (clear intent of section 1142(b) is to assure that the terms and provisions of a confirmed chapter 11 plan are carried out until the plan is completed and the case is closed). More specifically, prior to cases have held that the bankruptcy court retains jurisdiction to approve the sale of a debtor's assets, and that such retention is particularly appropriate where, as here, the Plan expressly provides for the court's continued jurisdiction. *see, e.g., In re Bicoastal Corp.*, 164 B.R. 1009 (Bankr. M.D. Fl. 1993); *see also, In re Chateaugay Corp.*, 201 B.R. 48 66 (Bankr. S.D.N.Y 1996). Accordingly, this Court retains jurisdiction to approve the assumption of the KB Lewiston Agreement and the related relief requested herein concerning the manner of payment and application of the purchase price.

21. The Reorganized Debtors therefore file this Motion in compliance with the Plan and to support the Bankruptcy Court's retention of jurisdiction with respect to the administration of the Broadcast Assets.

Assumption of the KB Lewiston Agreement

22. Section 365(a) and (b) of the Bankruptcy Code authorizes a debtor, subject to the approval of the Bankruptcy Court, to assume any executory contract or unexpired lease, provided that (i) defaults, if any, under such contracts and leases are cured (or adequate assurance of a prompt cure is provided) and, (ii) if a default occurred, adequate assurance of future performance is provided.

23. A debtor's decision to assume or reject an executory contract or unexpired lease is subject to the "business judgment rule" and should not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 318 U.S. 523 (1943) (rejecting the test of whether the executory contract was burdensome in favor of whether rejection is within the debtor's business judgment); *In re Lubrizol*, 756 F.2d at 1046-47. If a debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of the unexpired contract. *Butler v. Resident Care Innovation Corp.*, 241 B.R. 37, 45-46 (D.R.I. 199); *In re Logical Software, Inc.*, 66 B.R. 683, 686-87 (Bankr. D. Mass. 1986).

24. The standard for assuming the KB Lewiston Agreement has been satisfied. As noted above, the Broadcast Assets, including the KB Lewiston Agreement, constitute important assets of the Reorganized Debtors. Assumption of the KB Lewiston Agreement is reasonable and in the best interests of the Reorganized Debtors because it will allow them to obtain ownership of the Lewiston Station, the value of which the Liquidating Trustee believes materially exceeds the purchase price required for its acquisition. Moreover, the Movants are not aware of any monetary defaults under the KB Lewiston Agreement.

25. In addition to, and in conjunction with, the assumption of the KB Lewiston Agreement, the Movants request authorization from the Court allowing them to pay the Net Sale Proceeds to KB Prime by crediting and setting off such amount against the Wachovia Loans. This will assure that (a) the Lewiston Station is transferred to the Reorganized Debtors, (b) the Net Sale Proceeds are paid to the Reorganized Debtors as expressly contemplated by the parties to the Option Agreement and (c) that KB Prime, Butcher and Turner do not divert the sale proceeds for purposes prohibited by their agreement to the detriment of the creditors of the Reorganized Debtors.

NO PRIOR REQUEST AND RESERVATION OF RIGHTS

26. No prior motion for the relief requested herein has been made to this or any other court, except for the Global 365 Motion. The Movants reserve their rights to withdraw and/or modify this Motion.

NOTICE

27. Notice of this Motion has been provided to: (i) all parties on the All Notices List as required by (and as defined in) this Court's Order Establishing Case Management Procedures and Hearing Schedule, dated July 9, 2004; (ii) the non-debtor party to the KB Lewiston Agreement and (iii) the KB Parties.

CONCLUSION

For the reasons stated above, the Movants respectfully request the entry of an order (i) authorizing the assumption of the KB Lewiston Agreement (ii) granting relief concerning the payment and application of the purchase price and (iii) granting such other relief as may be just and proper.

Respectfully submitted,

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Dated: May 25, 2005