

**Hearing Date and Time: To be Set
only if Objections Filed
Objection Deadline: July 11, 2005
Time: 4:00 p.m.
Place: Portland**

**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 WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(b)**

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 345 of title 11 of the United States Code (the “Bankruptcy Code”), the Plan, and the Liquidating Trust Agreement (as defined herein) for an order (i) waiving the investment and deposit requirements of 11 U.S.C. § 345(b) with respect to The PSC Liquidating Trust (the “Liquidating Trust”), and (ii) granting such other relief as is just

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.

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. As part of its first day motions filed on June 3, 2004, the Debtors brought a motion for an order (i) authorizing and approving the Debtors’ continued use of their existing cash management system, (ii) authorizing and approving the Debtors to continue using prepetition bank accounts and business forms, (iii) authorizing and approving the Debtors’ cash management banks to receive, process and pay all checks drawn on the Debtors’ manual payroll and disbursement accounts, (iv) waiving the requirements of 11 U.S.C. § 345 on an interim and final basis to the extent necessary permit the Debtors to continue using existing investment practices, and (v) according administrative expense priority to intercompany claims that arise postpetition (Docket No. 15) (the “Cash Management Motion”). The Court entered orders granting the Cash Management Motion on an interim basis on June 7, 2004 (Docket No. 88), and on a final basis on June 24, 2005 (Docket No. 213) (the “Cash Management Order”).

4. In the Cash Management Order, the Court found, *inter alia*, that “cause exist[ed], within the meaning of Section 345(b) of the Bankruptcy Code to permit the Debtors to invest and deposit funds in accordance with the terms hereof on a final basis” and ordered “that

having shown sufficient cause under § 345 of the Bankruptcy Code, the Debtors are authorized to invest and deposit funds in accordance with the Investment Guidelines, notwithstanding that certain of such guidelines may not strictly comply with the requirements of § 345 of the Bankruptcy Code.” Pursuant to the Cash Management Order, the Debtors continued to use their cash management system and was not required to comply with the requirements of Section 345(b) prior to the Effective Date² of their Plan (as defined below).

5. 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. Pursuant to the Confirmation Order, the Court approved the form of the various documents comprising the Amended Plan Supplement filed with the Bankruptcy Court on April 12, 2005, including the Liquidating Trust Agreement (Docket No. 1209). The Plan became effective on May 5, 2005 (the “Effective Date”). 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 and thereupon executed the Liquidating Trust Agreement.

6. Generally, the Plan provided for the transfer of the Debtors’ assets, including the cash proceeds of the sale of the Debtors’ satellite business, and, potentially, proceeds of a sale of the Debtors’ broadcast television business, into the Liquidating Trust which is charged with resolving claims and making distributions on account thereof. *See Plan* at § 5.4(e). Under the Plan, the Liquidating Trustee is to distribute at least annually, beginning on the

² All capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

Effective Date or as soon thereafter as is practicable, all Liquidating Trust Available Cash on hand and permitted investments, except such amounts as are necessary, *inter alia*, to maintain the Reserves in established by the terms of the Plan. See Plan at § 5.4(m).

7. Section 5.4(f) of the Plan provides that “[t]he Liquidating Trustee may invest the Liquidating Trust Assets and assets in the Reserves (including any earnings thereon or proceeds therefrom) as permitted by section 345 of the Bankruptcy Code or as otherwise approved by the Bankruptcy Court.” Likewise, pursuant to Section 3.02(r) of the Liquidating Trust Agreement, the Liquidating Trustee is expressly authorized but not required, to “invest any moneys held as part of the Liquidating Trust in accordance with the terms of Section 4.05 hereof, limited, however, to such investments that are (a) consistent with the Liquidating Trust’s status as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and which actions are merely incidental to its liquidation and dissolution and (b) permitted by section 345 of the Bankruptcy Code or as otherwise approved by the Bankruptcy Court.”

8. Section 4.05 of the Liquidating Trust Agreement provides that:

... Investments of any moneys held by the Liquidating Trustee shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs; provided, however, that the right and power of the Liquidating Trustee to invest the Liquidating Trust Assets, the proceeds thereof, or any income earned by the Liquidating Trust, *shall be limited to the right and power to invest such Liquidating Trust Assets (pending periodic distributions in accordance with Section 3.07 hereof) in demand and time deposits, such as short-term certificates of deposit, in banks or other financial institutions, or other temporary liquid investments, such as Treasury bills; and provided further*, that the *scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to invest in, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise and as permitted by section 345 of the Bankruptcy Code or as otherwise approved*

by the Bankruptcy Court. Any investment made as provided for herein must mature prior to the date of the next scheduled distribution, but *in no event shall such investment have a maturity date in excess of six (6) months* from the date of the acquisition of such investment. The provisions of Section 11-23 of the Estates, Power and Trusts Law of New York shall not apply to the Liquidating Trust Agreement. (emphasis added).

9. At the current time, the Liquidating Trustee is contemplating the transfer of approximately \$90,000,000 in Liquidating Trust Assets from the Debtors' existing money market accounts to a newly established money market account (the "Liquidating Trust Account") with BancorpSouth, Inc. ("BankcorpSouth"). BankcorpSouth has advised the Liquidating Trustee that a requirement that a surety bond be posted and pledging requirements be met would significantly increase costs with respect to the Liquidating Trust Account and result in lesser rates of return to the Liquidating Trust.

10. Upon information and belief, BancorpSouth is a \$10.8 billion-asset bank holding company operating approximately 250 banking and mortgage locations in Alabama, Arkansas, Louisiana, Mississippi, Tennessee and Texas. See SEC Form 10-Q, filed on behalf of BancorpSouth on May 6, 2005, attached hereto as **Exhibit A**, at 13. In addition to providing traditional banking services, credit cards, mortgages, trust and fiduciary services, the company provides investment services through its subsidiary BancorpSouth Investment Services, Inc. and insurance services through its subsidiary BancorpSouth Insurance Services, Inc. See *id.* at 13-14. BancorpSouth's common stock is traded on the New York Stock Exchange under the symbol BXS.

JURISDICTION

11. This Court has jurisdiction over this matter pursuant to (i) 28 U.S.C. §§ 157 and 1334 and (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 345 of the Bankruptcy Code.

RELIEF REQUESTED

12. By this Motion, the Movants seek the entry of an order, pursuant to sections 105 and 345(b) of the Bankruptcy Code, the Plan, and the Liquidating Trust Agreement waiving the investment and deposit requirements of 11 U.S.C. § 345(b) with respect to The PSC Liquidating Trust.

ARGUMENT

13. Section 105(a) of the Bankruptcy Code provides that [t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the [Bankruptcy Code].” 11 U.S.C. § 105(a). Pursuant to section 105(a) of the Bankruptcy Code, the Court has liberal powers to fashion any order or decree that is in the interest and in furtherance of preserving or protecting the Debtors’ assets, provided such order is not contrary to any provision of the Bankruptcy Code.

14. Section 345 (a) of the Bankruptcy Code provides that a trustee “may make such deposit or investment of the money of the estate ... as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). Pursuant to section 345(b), any deposit or other investment made by a debtor, except those insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States, must be secured by a bond in favor of the United States or by the deposit of securities of the kind specified in 31 U.S.C. § 9303. The purpose of this statute is to guarantee that estate funds are invested prudently by the trustee or debtor-in-possession. It requires the obtaining of a bond or other security for all deposits with FDIC-insured banks to the extent that the funds maintained with any given bank exceed the FDIC-insured limit of \$100,000.

15. Section 345(b) provides further, however, that a bankruptcy court may excuse performance by the debtor under the section “for cause.” 11 U.S.C. § 345(b); *In re Service Merchandise Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999). While “cause” is an undefined term, courts have found guidance in the Congressional history of the amendment to section 345(b) that permitted a waiver of the section’s requirements. *See id.* The Congressional Record contains the following explanatory comments with regard to why the statute was amended:

Section 345 of the Code governs investments of the funds of bankruptcy estates. The purposes is to make sure that the funds of a bankrupt (sic) that are obliged to creditors are invested prudently and safely with the eventual goal of being able to satisfy all claims against the bankrupt estate. Under current law, all investments are required to be FDIC insured, collateralized or bonded. While this requirement is wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, *it can work to needlessly handcuff larger, more sophisticated debtors.* This section would amend the Code to allow the courts to approve investments other than those permitted by section 345(b) for just cause, thereby overruling *In re Columbia Gas Systems, Inc.*, 33 F.3d 294, 1994 WL 463514 (3d Cir. Del.).

H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 4, 1994) (emphasis added). The Congressional intent was to afford Bankruptcy Courts wider discretion to permit the deposit of estate monies that are not fully FDIC-insured, collateralized or bonded, particularly in larger cases involving more sophisticated entities. *See id.*

16. In *Service Merchandise*, the court listed the following factors as a guide for determining whether cause exists for waiving the strictures of § 345(b):

- a. The sophistication of the debtors’ business;
- b. The size of the debtors’ business operations;
- c. The amount of the investments involved;
- d. The bank ratings (Moody’s and Standard & Poor’s) of the financial institutions where the debtor-in-possession funds are held;
- e. The complexity of the case;

- f. The safeguards in place within the debtors' own business that insure the safety of the funds;
- g. The debtors' ability to reorganize in the face of a failure of one or more of the financial institutions;
- h. The benefit to the debtors of allowing the existing investment guidelines to control; and
- i. The reasonableness of the debtors' request for relief from § 345(b) requirements in light of the overall circumstances of the case.

Id. at 496. Bankruptcy courts have routinely granted requests for approval of the continued use of investment and deposit guidelines that do not comply strictly with § 345 of the Bankruptcy Code but that, as here, are nevertheless safe and prudent. *See, e.g., In re Divine Inc.*, Case No. 03-11472 (JNF) (Bankr. D. Mass. 2003); *In re Federal-Mogul Global, Inc.*, Case No. 01-10578 (Bankr. D. Del. Oct 4, 2001); *In re ANC Rental Corp.*, Case No. 01-11200 (Bankr. D. Del. Nov. 13, 2001); *In re NationsRent, Inc.*, Case No. 01-11628 (Bankr. D. Del. Dec. 18, 2001); *In re FFC Holding, Inc.*, Case No. 01-2399 (Bankr. D. Del. July 18, 2001).

17. The *Service Merchandise* court concluded that “cause” existed in that case because the debtors were “large, sophisticated [companies] with a complex cash management system,” with the ability to shift money as needed to ensure the safety of their funds. *Id.* Moreover, the benefits to the debtors of waiving section 345(b)'s requirements far outweighed any potential harm to the estate, and would needlessly handcuff [the] debtors' reorganization efforts.” *Id.* at 896.

18. To require that the requirements of section 345(b) be followed in this case would “needlessly handcuff” the Liquidating Trustee, whose charge is to maximize the value of the Liquidating Trust Assets. Due to the significant value of the Liquidating Trust Assets, the Liquidating Trust would be unable to move funds to more profitable investments if required to strictly adhere to the bonding requirements of section 345(b). In fact, the Liquidating Trustee has been advised by BankcorpSouth that the requirements of section 345(b) would significantly increase costs with respect to the Liquidating Trust Account and result in lesser rates of return to

the Liquidating Trust. The “handcuffing” by section 345(b) will assuredly result in a smaller recovery for the unsecured creditors who hold interests in the Liquidating Trust.

19. Moreover, the Liquidating Trust’s investment activities are made in accordance with the Liquidating Trust Agreement. Pursuant to Section 4.05 of the Liquidating Trust Agreement, the Liquidating Trust can invest only in “demand and time deposits, such as short-term certificates of deposit, in banks or other financial institutions, or other temporary liquid investments, such as Treasury bills...” and that “any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to invest in, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise... .” Moreover, “[a]ny investment made as provided for herein must mature prior to the date of the next scheduled distribution, but in no event shall such investment have a maturity date in excess of six (6) months from the date of the acquisition of such investment.” The Liquidating Trustee proposes to make investments only as permitted by section 4.05 of the Liquidating Trust Agreement. Consistent with the objectives of section 345 and the requirements of the Liquidating Trust Agreements, the Movants respectfully request authority to invest and deposit funds in a safe and prudent manner in accordance with the Liquidating Trust Agreement and with the Reorganized Debtors’ preconfirmation practices, notwithstanding that such investments may not strictly comply in all respects with the strictures of section 345(b) of the Bankruptcy Code.

20. The Liquidating Trust’s bank accounts will be maintained with financially sound financial institutions. Requiring them to issue bonds in favor of the United States, as the statute requires, would cause substantial expense to the Liquidating Trust. The Movants believe such bonds are unnecessary. *See In re S.S. Jupiter Seas, Inc.*, 190 Bankr. LEXIS 5426 (Bankr. S.D. Fla. March 20, 1980) (waiving provisions of 11 U.S.C. § 345(b) requiring bond or deposit

of securities where Bankruptcy Court ordered examiner to set up interest bearing account containing all accumulated cash funds of debtor, other than reasonable operating account, and to pay over such net operating profit to secured creditor seeking relief from 11 U.S.C. § 362 stay, and authorizing examiner to select any deposit which will provide both interest and reasonably prompt liquidity for such purpose). Consequently, the Movants assert that sufficient cause exists to waive the section 345(b) requirements with respect to the Liquidating Trust.

NO PRIOR REQUEST AND RESERVATION OF RIGHTS

21. No prior motion for the relief requested herein has been made to this or any other court, except for the similar relief sought pursuant to the Cash Management Motion. The Movants reserve their rights to withdraw and/or modify this Motion.

NOTICE

22. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of Maine, and (ii) each of the parties on the All Notices List in accordance with (and as defined in) the Order Establishing Case Management Procedures and Hearing Schedule dated July 9, 2004. In light of the nature of the relief requested herein, the Reorganized Debtors and the Liquidating Trustee submit that no further notice is necessary.

CONCLUSION

For the reasons stated above, the Movants respectfully request the entry of an order (i) waiving the investment and deposit requirements of 11 U.S.C. § 345(b) with respect to The PSC Liquidating Trust, and (ii) granting such other relief as may be just and proper.

Respectfully submitted,

LOWENSTEIN SANDLER PC
Kenneth A. Rosen, Esq. (KAR 4963)
Paul Kizel, Esq. (PK 4176)
Jeffrey A. Kramer, Esq. (JK 8278)

Timothy R. Wheeler, Esq. (TW 3466)
65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500 (telephone)
(973) 597-2400 (facsimile)

-and-

**PRETI, FLAHERTY, BELIVEAU,
PACHIOS & HALEY, LLP**

By: /s/ John P. McVeigh
John P. McVeigh, Esq.
One City Center, P.O. Box 9546
Portland, Maine 04112-9546
(207) 791-3000 (telephone)
(207) 791-3111 (facsimile)

*Counsel to The Reorganized Debtors and Liquidating
Trustee of The PSC Liquidating Trust*

Dated: July 1, 2005