

Hearing Date: July 21, 2005
Time: 10:30 a.m.
Place: Portland
Objection Deadline: July 20, 2005
Objection Filing Time: Noon

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 ON SHORT NOTICE FOR AN ORDER IN AID OF CONSUMMATION OF
THE PLAN AND FOR 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 section 105(a) of title 11(the “Bankruptcy Code”), the Debtors’ Joint First Amended Plan of Reorganization dated January 31, 2005, as amended (the “Plan”) and the April 15, 2005 order confirming the Plan (the “Confirmation Order”) for an order in aid of consummation of the Plan and granting such other relief as is just and proper under the circumstances. In support of the Motion, the Movants respectfully represent as follows:

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.

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. 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 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 and other 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.

(collectively, the “Broadcast Assets”) in five markets throughout the United States.

The PCC Class A Common Stock

6. As of the Petition Date, Debtor Pegasus Satellite Communications, Inc. (“PSC”) also owned other miscellaneous assets, including approximately 1.3 million shares (the “PCC Shares”) of the class A common stock (the “Class A Stock”) of Pegasus Communications Corporation (“PCC”). PCC is a Delaware corporation whose shares are registered with the Securities Exchange Commission (the “SEC”) and are publicly traded. As of the Petition Date, PCC was the ultimate parent of the Debtors and the sole shareholder of PSC. PCC was not a debtor in these or any other chapter 11 proceedings. As noted below, as of the May 5, 2005 Effective Date of the Plan, all of PCC’s equity interests in PSC were canceled and as of the Effective Date, PCC had no interest or control of any kind over the Reorganized Debtors, the Trust (as defined herein) or their assets.

7. The PCC Shares represent approximately 11% of the outstanding shares of the PCC Class A Stock. The PCC Shares were originally registered under the Securities Act of 1933, as amended (the “Securities Act”). The PCC Shares were purchased by PSC on the open market in a series of transactions from July, 2002, through November, 2003.

8. There are two shareholders who, in the aggregate, own a substantially greater percentage of the Class A Stock than does PSC. Peninsula Capital Advisors, LLC (“Peninsula”) owns approximately 59.6% and DBS Investors, LLC owns approximately 9%, for an aggregate of nearly 69%. In addition, PCC’s chief executive officer, Marshall Pagon, owns all outstanding Class B common stock of PCC, which is entitled to 10 votes per share. Mr. Pagon currently holds 20.3% of the total common stock of PCC and 66% of the voting power over PCC. Therefore, Mr. Pagon controls the outcome of nearly all matters on which PCC stockholders vote while neither the Reorganized Debtors nor The PSC Liquidating Trust established under the Plan have any control over PCC.

The Plan

9. On January 31, 2005, the Reorganized Debtors filed the Plan and a 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 the Confirmation Order. The Plan became effective on May 5, 2005 (the “Effective Date”).

10. Generally, the Plan provides for the establishment of The PSC Liquidating Trust (the “Trust”) which would, among other things, administer the Liquidating Trust Assets and Remaining Assets for the benefit of Class 3A creditors. Pursuant to the Plan and Confirmation Order, Ocean Ridge Capital Advisors, LLC (the “Liquidating Trustee”) is acting as the Liquidating Trustee of the Trust.

11. Among the Liquidating Trust Assets and Remaining Assets are the PCC Shares. See Plan, §§1.102 and 5.4 (c)(1). Pursuant to the Plan, the Trust is responsible for, among other things, liquidating the Liquidating Trust Assets, including the PCC Shares, as expeditiously as reasonably possible in order to maximize the recovery to creditors. See, Plan, §5.4 (b).

12. As of the Effective Date, the interests of PCC in PSC were canceled. Therefore, since the Effective Date, PCC has had no interests in, or control over, the Trust, the Liquidating Trustee, the Reorganized Debtors, or any of the assets under the ownership or control of the Reorganized Debtors, the Trust or the Liquidating Trustee. Conversely, as noted in ¶ 8 above, neither PSC, the Liquidating Trustee nor the Liquidating Trust have any control over PCC.

RELIEF REQUESTED

13. In furtherance and in aid of consummation of the Plan, the Liquidating Trustee desires to freely sell the PCC Shares in the open market or otherwise. By this

precautionary Motion, the Movants seek the entry of an order confirming that the PCC Shares can be freely sold by the Reorganized Debtors and/or Liquidating Trust pursuant to §4(1) of the Securities Act, without registration under federal or state securities laws and granting such other relief as is just and proper under the circumstances.

BASIS FOR RELIEF

14. The issue before the Court is whether the PCC Shares need to be registered under the Securities Act of 1933 (the “Securities Act”) before sale by PSC or, if such shares are transferred from PSC to the Liquidating Trust, before sale by the Trust. The Liquidating Trustee does not believe such registration is required under the Securities Act. However, as a precautionary matter, the Movants seek authorization from the Court to freely sell the PCC Shares without registration.³

15. Section 5 of the Securities Act contains the Act’s basic prohibition against offers and sales of securities without registration. 15 U.S.C. §77a(5). Section 5 makes it unlawful to sell a security through the means of either interstate commerce or the mails unless a registration statement is in effect with respect to the sale of that security. *Id.* This broad prohibition is applicable to all offers and sales of any security.

16. However, most securities transactions that take place on a daily basis, including millions of transactions on the securities exchanges, are not subject to the Securities Act’s registration requirements because the Securities Act provides a number of exemptions from the operation of §5 and the Securities Act’s registration requirement. Thomas Lee Hazen, Treatise on the Law of Securities Regulation, (5th Ed.) (Thomson/West 2005), Vol. 1, §4.1[1](“Hazen”).

³ Pursuant to paragraph 26 of the Confirmation Order, this Court retained broad jurisdiction pursuant to §§ 105(a) and 1142 of the Bankruptcy Code over all matters arising out of and relating to the Chapter 11 cases and the Plan, including, but not limited to, entry of orders in aid of confirmation and consummation of the Plan.

17. The relevant exemption applicable to the sale of the PCC Shares by either PSC or the Trust is §4(1) of the Securities Act, commonly known as the ordinary trading transaction exemption. 15 U.S.C. §77a(4)(1). Furthermore, Rule 144, which was promulgated by the SEC, offers further guidance with respect to transactions that are exempt under §4(1). 17 C.F.R. §230.144.

18. Section 4(1) provides, in pertinent part, that “[T]he provisions of §5 shall not apply to ... transactions by any person other than an issuer, underwriter, or dealer.” (emphasis added). The relationship between §5 and §4(1) is based on a distinction that is made between a “distribution” of securities and “trading” in securities. A “distribution” or public offering of securities is subject to the registration requirements of §5. Geiger v. SEC, 363 F.3d 481, 484 (D.C. Cir. 2004). On the other hand, everyday trading in securities by a person other than an issuer, underwriter or dealer qualifies for an exemption from registration under §4(1). Accordingly, if the person who intends to sell securities is not an issuer, underwriter or dealer, he is permitted to sell the securities without filing a registration statement under the Securities Act and will not be deemed in violation of §5. Jay William Hicks, Exempted Transactions Under the Securities Act of 1933, (2nd ed.) (Thomson/West 2005), Vol. 7A, Section 9:1 (“Hicks”).

19. As demonstrated below, neither PSC nor the Trust is an issuer, underwriter or dealer with respect to the PCC Shares. Therefore, any sale of the PCC Shares by either PSC or the Liquidating Trust should be deemed to be exempt under §4(1) of the Securities Act.

Neither Reorganized PSC Nor the Trust is an “Issuer” or “Dealer”

20. Generally, it is relatively a routine matter to determine whether an entity is an “issuer” or a “dealer” for purposes of §4(1). An issuer is defined in §2(a)(4) of the Securities Act as a person who issues, or proposes to issue, a security. 15 U.S.C. §77a(2)(a)(4). Section 2(a)(12) of the Act defines a “dealer” to include any person who is “in the business of offering,

buying, selling, or otherwise dealing or trading in securities” issued by others. Hazen, supra, §4.26[1]; 15 U.S.C. §77a(2)(a)(12). Clearly, neither Reorganized PSC nor the Trust is an “issuer” or “dealer” within the meaning of the Securities Act because they are not attempting to issue the PCC Shares nor are they in the business of offering, buying, or selling or otherwise dealing or trading in securities issued by others. Reorganized PSC and/or the Trustee simply own the PCC Shares by virtue of PSC’s prior stock purchases and the provisions of the Plan and they have the responsibility to sell them under the Plan.

Neither Reorganized PSC Nor the Trust is an Underwriter

21. With respect to the definition of an “underwriter,” § 2(a)(11) of the Securities Act provides that an underwriter is anyone who purchases a security from the issuer “with a view [towards] distribution” of that security, as well as anyone who offers to sell or offers for sale for an issuer in connection with the distribution. 15 U.S.C. §77a(2)(a)(11). There are basically three ways to qualify for underwriter status: (1) purchasing from the issuer with a view towards distribution, (2) direct or indirect participation in an underwriting effort, and (3) selling securities on behalf of a control person. Hazen, supra, §4.6[1]. The unifying element in these categories is that there must be a “distribution.” If there is no distribution of securities, no one can be an underwriter. Hicks, supra, §9:17.

22. The term “distribution” is not defined in the Securities Act. However, administrative and judicial interpretations have provided insight into the parameters of the term. The SEC and the courts equate the phrase “public offering” as synonymous with the word “distribution” for purposes of the Securities Act. Geiger v. SEC, 363 F.3d at 484. The term “distribution” connotes a quantitative threshold that must be passed before a public offering can be said to exist. As stated in the preliminary notes to Rule 144: “[t]he larger the amount of the securities involved, the more likely it is that such resales may involve methods of offering and amounts of compensation usually associated with a distribution rather than routine trading transactions.” 17 C.F.R. §230.144. The distribution concept also includes a temporal dimension.

A distribution comprises “the entire process by which in the course of a public offering [a] block of securities is dispersed and ultimately comes to rest in the hands of the investing public.” Geiger v. SEC, 363 F.3d at 484.

23. Because the language and case law involving §2(a)(11) underwriter status, and the scope of the exemption under §4(1), do not offer absolute and clear guidance, the SEC adopted Rule 144. This Rule was adopted to provide more guidance to planners and participants in securities transactions by clarifying the answer to the question of who is an underwriter in certain situations, and thereby defining the scope of the statutory exemption under §4(1). Rule 144 operates as a safe harbor and, as such, is not the exclusive method by which one may comply with §4(1). The rule is a safe harbor for both affiliates of an issuer in selling any stock, whether restricted or unrestricted, and an exemption and a safe harbor for non-affiliates looking to sell restricted securities. Hazen, supra, §4.29.

24. Generally, Rule 144 permits control stock (stock held by an affiliate) or restricted stock (stock acquired from an issuer or affiliate in a chain of transactions not involving a public offering) to be sold if five conditions are met:

- a. There must be current information publicly available about the issuer (Rule 144(c));
- b. a holding period must be satisfied (for restricted stock only Rule 144(d));
- c. a limited volume or amount of securities can be sold (Rule 144(e));
- d. the manner of sale is regulated (Rule 144(f)); and
- e. a notice on a Form 144 must be filed with the SEC in most instances (Rule 144(h)).

However, if restricted stock has been held over two years by a non-affiliate, Rule 144(k) eliminates all other conditions to sell under Rule 144 (i.e., the current public information, volume, manner of sale and notice conditions are eliminated).

25. Since Rule 144 applies somewhat differently to affiliates and nonaffiliates, and since one can have underwriter status by selling for a control person (which is another word for an affiliate), it is necessary to know who is an affiliate or a control person. Affiliate or control status attaches to persons who directly or indirectly control, are commonly controlled by, or are under common control with an issuer (in this case PCC is the issuer). 17 C.F.R. §230.144(a)(1). Rule 405 defines control as the ability to influence, directly or indirectly, management decisions. 17 C.F.R. §230.405. Questions relating to control status are highly factual. Hazen, supra, §4.29. However, common examples of control persons are parent or subsidiary corporations of an issuer, or executive officers or directors of an issuer.

26. Under Rule 144, if the seller is not an affiliate, one must first determine if the seller holds restricted stock. If the seller does not hold restricted stock, no exemption is needed because there has been a registration statement filed somewhere in the chain of transactions whereby the stock moves from the issuer to the investing public, and thus there is no unregistered distribution, there is no sale for a control person and the unaffiliated seller will not be an issuer, dealer or underwriter and may freely trade the shares pursuant to Section 4(1) of the Securities Act. If the nonaffiliate does hold restricted stock, and thus its sale might be deemed part of a chain of transactions by which the stock passes from the issuer to the public without a registration statement, then Rule 144 must be complied with.

27. Restricted securities are defined in Rule 144(a)(3) as including those securities acquired directly or indirectly from an issuer in a non-public offering, as well as securities subject to the resale restrictions imposed by the exemption provided by Regulation D, a regulation which governs private placements and is not applicable here. Hazen, supra, §4.29. The concept is that if there has been no registration of the shares when issued by the issuer or sold by the affiliate or control person, then the resale of those shares could be part of a chain of transactions whereby the stock moves from the issuer to the investing public without registration, which would violate §5.

28. Rule 144 permits a nonaffiliate to sell restricted stock freely if the nonaffiliate has held the stock for greater than two years and if the seller has not been an affiliate for three (3) months. 17 C.F.R. §230.144(k). The rationale for the rule is that the two year holding period has clearly cut off any temporal chain in the distribution process. In other words, anyone willing to hold stock for two years is presumed by the SEC to have had investment intent (the opposite of distributive intent), and so is deemed not to have purchased “with a view [towards] distribution” of that security. 15 U.S.C. 77a(2)(a)(11). If the restricted shares have been held for over one year but less than two years, then the other conditions of Rule 144 must be satisfied by the seller, (i.e., the volume limitations, manner of sale, information and the notice requirements). If restricted shares have been held for less than one year, they may not be sold under Rule 144, as the SEC will not deem the temporal chain to have been broken. In the instant case, the rules involving stock held for less than two years are for the most part irrelevant, as will be demonstrated further below.

The PCC Shares Are Freely Tradable Because Neither Reorganized PSC Nor The Trust In An Affiliate Of PCC And The PCC Shares Are Not Restricted Securities

29. As stated above, the term “restricted securities” is defined in the pertinent part of Rule 144(a)(3) to mean securities acquired directly or indirectly from the issuer or from an affiliate of the issuer in a transaction or chain of transactions not involving any public offering. The PCC Shares at issue here were publicly offered by PCC pursuant to a registration statement and PSC then acquired the PCC Shares on the open market after they had been publicly trading. PSC was formerly a subsidiary (or an affiliate) of PCC. As such, the SEC would treat a subsidiary as an “issuer” to prevent issuers from doing indirectly through subsidiaries what they cannot do directly. SEC Release No. 5306 (Sept. 26, 1972). Thus, prior to May 5, 2005, PSC could not have sold the PCC Shares under §4(1) or Rule 144, as it would have been deemed to be an “issuer.” However, as of May 5, 2005, the Effective Date of the reorganization, PSC was no longer a subsidiary of PCC, nor was PSC any longer controlled by

PCC. Consequently, PSC was no longer an affiliate of PCC as of May 5, 2005, and PSC is currently not an affiliate of PCC. Nor is the Trust an affiliate. The PCC Shares were not acquired from the issuer in a chain of transactions not involving a public offering--a public offering was involved. Accordingly, the PCC Shares are not restricted shares, are not shares held by an affiliate, and should be freely tradable by PSC pursuant to §4(1), as PSC is neither an issuer, a dealer nor an underwriter.

Assuming Arguendo That The PCC Shares Are Restricted Securities The PCC Shares Are Freely Tradable Pursuant to Rule 144(k)

30. Even if the PCC Shares are deemed to be restricted securities, they are freely tradable under Rule 144(k), at least as of August 5, 2005. 17 C.F.R. §230.144(k). As explained above, Rule 144(k) provides that restricted shares become freely tradable if they have been held for over two years by a person who is not an affiliate and who has not been an affiliate of the issuer for a period of three (3) months or more. As noted above, since the May 5, 2005 Effective Date, Reorganized PSC has not been an affiliate of PCC and as of August 5, 2005, it will have been unaffiliated with PCC for three (3) months. Accordingly, at least as of August 5, 2005, PSC and the Trust should be free to sell all of the PCC Shares held by it for over two (2) years under Rule 144(k).

PRIOR REQUEST AND RESERVATION OF RIGHTS

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

NOTICE

32. Notice of this Motion has been provided by overnight mail 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 and (ii) the SEC.

CONCLUSION

For the reasons stated above, the Movants respectfully request the entry of an order in the form submitted herewith granting the Motion.

Respectfully submitted,

LOWENSTEIN SANDLER PC
Kenneth A. Rosen, Esq. (KAR 4963)
Paul Kizel, Esq. (PK 4176)
Jeffrey A. Kramer, Esq. (JK 8278)
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 12, 2005