



Hearing Date:
June 4, 2004 at 10:00 a.m.
PORTLAND

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

MOTION FOR THE ENTRY OF AN ORDER (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICES, AND (II) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE

Pegasus Satellite Television, Inc. and certain of its subsidiaries and affiliates, each a debtor and debtor in possession herein (collectively, the “Debtors”),¹ hereby move this Court for the entry of an order (i) prohibiting the Utility Companies (as hereinafter defined) from altering, refusing or discontinuing service to the Debtors and (ii) establishing procedures for determining requests by the Utility Companies for additional adequate assurance (the “Motion”). The facts and circumstances supporting this motion are set forth in the concurrently filed Affidavit of Ted S. Lodge, President, Chief Operating Officer and Counsel of Pegasus Satellite

¹ The Debtors are: Argos Support Services Company, Bride Communications, Inc., B.T. Satellite, Inc., Carr Rural TV, Inc., DBS Tele-Venture, Inc., Digital Television Services of Indiana, LLC, DTS Management, LLC, Golden Sky DBS, Inc., Golden Sky Holdings, Inc., Golden Sky Systems, Inc., Henry County MRTV, Inc., HMW, Inc., Pegasus Broadcast Associates, L.P., Pegasus Broadcast Television, Inc., Pegasus Broadcast Towers, Inc., Pegasus Media & Communications, Inc., Pegasus Satellite Communications, Inc., Pegasus Satellite Television of Illinois, Inc., Pegasus Satellite Television, Inc., Portland Broadcasting, Inc., Primewatch, Inc., PST Holdings, Inc., South Plains DBS, LP., Telecast of Florida, Inc., WDSI License Corp., WILF, Inc., WOLF License Corp., WTLH License Corp.

Communications, Inc., in Support of First Day Motions. In further support of this Motion, the Debtors respectfully represent as follows:

STATUS OF THE CASE AND JURISDICTION

On June 2, 2004 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title of the United States Code (the "Bankruptcy Code"), and motions or applications seeking certain typical "first day" orders, including an order to have these cases jointly administered.

2. The Debtors have continued in possession of their respective properties and have continued to operate and manage their businesses as debtors in possession pursuant to sections 107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in these cases.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BACKGROUND OF THE DEBTORS

5. Pegasus Satellite Television, Inc. ("PST"), together with its subsidiaries, is the nation's largest independent provider of DIRECTV® programming. Organized in 1996 as a Delaware Corporation, PST is headquartered in Marlborough, Massachusetts. PST is a wholly owned indirect subsidiary of Pegasus Satellite Communications, Inc.

6. The Debtors' principal operating business is its direct broadcast satellite ("DBS") business.² Specifically, the Debtors provide DIRECTV programming services to rural households across the United States and, as of December 31, 2003, had in excess of million subscribers and the exclusive right to distribute DIRECTV services to approximately 8.4 million rural households in certain territories within 41 states.

7 DBS services are digital broadcasting services that require a subscriber to install or have installed a satellite receiving antenna (or dish) and a digital receiver. DIRECTV, in particular, requires subscribers to have a satellite dish, which can be as small as 18 inches in diameter depending on the services received, to which DIRECTV directly transmits programming services via five high power Ku band satellites. The Debtors in turn offer certain core programming packages to subscribers, which vary according to channels delivered and price.

8. The Debtors maintain an independent retail network through dealer relationships to distribute DIRECTV programming. The Debtors have expanded this network to include over 4,000 consumer electronics stores and other independent retailers serving rural areas in the Debtors' service area. Today, the Debtors' retail network is one of the few sales and distribution channels available to digital satellite service providers seeking broad and effective distribution in rural areas throughout the continental United States.

9. As of March 31, 2004, the Debtors had assets aggregating approximately \$1.6 billion related to their DBS business, which generated net revenues of approximately \$831.2 million during calendar year 2003. The Debtors have approximately 943 employees.

RELIEF REQUESTED

² Debtor Pegasus Media & Communications, Inc. also conducts television broadcast operations through twelve (12) subsidiaries, all of which have filed voluntary petitions under chapter 11 and are Debtors in these cases.

10. In the ordinary course of their businesses, the Debtors use gas, water, electric, telephone and other utility services provided by the 93 utility companies listed on Exhibit A attached hereto (the “Utility Companies”).³ Section 366 of the Bankruptcy Code governs the rights and obligations of the Utility Companies as providers of utility services to the Debtors. Pursuant to section 366 of the Bankruptcy Code, such Utility Companies “may alter, refuse, or discontinue service if neither the trustee nor the debtor, within twenty (20) days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date.” U.S.C. § 366(b). The period provided for in section 366 will expire twenty days after the Petition Date, unless extended.

The number of Utility Companies and their various locations make it impracticable within the 20-day period provided for in section 366 of the Bankruptcy Code for the Debtors to contact all of the Utility Companies and to obtain assurances that they will not discontinue services. These services are essential to the Debtors’ ongoing business operations the Debtors cannot provide their services to their customers without the services provided by the Utility Companies. If the Utility Companies are permitted to terminate services twenty days after the Petition Date, the Debtors would be forced to cease doing business, to the severe detriment of their estates, creditors, customers and employees.

³ The Debtors believe the companies listed on the Exhibit A list either are utilities or will likely argue that they are utilities within the meaning of section 366 of the Bankruptcy Code. Section 366 applies to entities that are traditionally viewed as utility companies, such as electricity, water and gas companies who supply services that cannot be readily obtained or replaced elsewhere, or who constitute monopolies with respect to the services that they provide to debtors. See, e.g., One Stop Realtour Place Inc., v. Allegiance Telecom of Pennsylvania, Inc., 269 B.R. 430 (Bankr. E.D. Pa. 2001) (provider of telephone service may be a utility). The Debtors do, however, reserve the right to challenge at a later time whether any of the companies in the Exhibit A list are in fact utility companies. See In re Tel-Central Comm., Inc., 212 B.R. 342 (Bankr. W.D. Mo. 1997) (bankruptcy court made a temporary finding, which could later be revisited, that a telecommunications company was a utility solely for the purpose of establishing adequate assurance).

12. The Debtors submit that it is impracticable and entirely unnecessary to require the Debtors to provide security deposits to the Utility Companies. Prior to the Petition Date, the Debtors had solid payment histories with the Utility Companies, consistently making payments on a regular and timely basis. To the best of the Debtors' knowledge, as of the Petition Date, there were no defaults with respect to utility bills, nor have there been any such defaults historically. In addition, there were no arrearages of any significance, other than amounts not yet due or invoiced. Furthermore, as demonstrated in the Emergency Motion Authorizing Use of Cash Collateral Pursuant to § 363, filed concurrently herewith, the Debtors will have sufficient funds with which to remain current on any postpetition obligations to the Utility Companies.

13. Finally, under section 503(b)(1)(A) of the Bankruptcy Code, post-petition utility charges are actual and necessary expenses of preserving the debtor's estate, and thus the Utility Companies are entitled to an administrative expense priority claim under section 507(a)(1) of the Bankruptcy Code.

4. Accordingly, for the reasons stated above, the Debtors seek immediate entry of an order (the "Order") providing, among other things:

that, absent any further order of this Court, the Utility Companies are forbidden to discontinue, alter or refuse service on account of any unpaid pre-petition charges, or require payment of a deposit or receipt of other security in connection with any unpaid pre-petition charges

ii. that the Debtors will serve the Order on the Utility Companies via first class U.S. Mail or Air Mail (as appropriate), postage paid, within five (5) business days of the Order's date of entry (the "Entry Date"); provided, however, that for any

that, to provide adequate assurance, “[i]t will not be necessary to have a deposit in every case.” H.R. Rep. No. 595, 95th Cong., 1st Sess. 350 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6306.

16. Courts have recognized that, “[i]n deciding what constitutes ‘adequate assurance’ in a given case, a bankruptcy court must ‘focus upon the need of the utility for assurance, and require that the debtor supply *no more than that*, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” Virginia Elec. & Power Co. v. Caldor, Inc. (In re Caldor, Inc.), 17 F.3d 646, 650 (2d Cir. 1997) (emphasis in original) (quoting In re Penn Jersey Corp., 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)); see also In re Penn Central Transp. Co., 467 F.2d 100, 103-04 (3d Cir. 1972) (upholding lower court’s decision not to require debtor to provide utility deposits under Bankruptcy Act where “the likelihood [was] great that the posting of large deposits with all concerned public utilities would jeopardize the continuing operation of the [debtor] merely to give future security to suppliers who already are reasonably protected”). Courts are not required to give the utility companies the equivalent of a guaranty of payment; rather, they must determine that the utility is not subject to an unreasonable risk of non-payment for post-petition services. See e.g., In re Caldor, 117 F.3d 646; In re Sweetwater, 40 B.R. 733, 743-44 (Bankr. D. Utah 1984), aff’d, 57 B.R. 743 (D. Utah 1985); Hennen v. Dayton Power & Light Company (In re Hennen), 17 B.R. 720, 725 (Bankr. S.D. Ohio 1982) (“adequate assurance” does not require “an absolute guarantee of payment”; instead, bankruptcy courts may consider the probability of continued payment through the bankruptcy

other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the *deposit or other security* necessary to provide adequate assurance of payment.

U.S.C. § 366(b) (emphasis added).

case) (citations omitted); In re George C. Frye Co., 7 B.R. 856, 858 (Bankr. D. Me. 1980) (debtor is required to demonstrate only that “utility is not subject to an unreasonable risk of future loss”) (citations omitted). See also, In re KeyData Corp., 12 B.R. 156 (B.A.P. Mass. 1981) (same).

7. Relief similar to that requested herein has been granted by this circuit in other large chapter cases. See, e.g., In re Great Northern Paper, Inc., Case No. 03-10048-LHK (Bankr. D. Me., order entered February 6, 2003); In re Act Manufacturing Inc., Case No. 01-47641-JBR (Bankr. D. Mass., order entered January 22, 2002); In re Malden Mills Industries, Inc., Case No. 01-47214-JBR (Bankr. D. Mass., order entered December 18, 2001); In re Trendlines, Inc., Case No. 00-15431-CJK (Bankr. D. Mass., order entered September 27, 2000).

18. The Debtors represent that they will pay all undisputed utility bills for post-petition service when due, as the Debtors’ cash on hand on the Petition Date, augmented by the funds that will become available through the Debtors’ normal business operations, will be sufficient to permit the Debtors to operate their business in the ordinary course during the pendency of these cases. Such cash reserves should enable the Debtors to timely pay all post-petition bills for services rendered by the Utility Companies as they become due in accordance with their normal terms. The Debtors’ history of timely payment, the Debtors’ current and projected financial status, the security deposits made pre-petition to many of the Utility Companies, and the administrative expense priority afforded to the Utility Companies for post-petition services together constitute adequate assurance of payment, and no deposit or other security is required.

19. The Debtors also propose that their adequate assurance method be without prejudice to the rights of any of the Utility Companies to request additional assurance, and that any burden of proof shall remain unaffected by approval of the method proposed herein.

20. The Debtors' proposed method of furnishing adequate assurance of payment for post-petition utility services is in keeping with the spirit and intent of section 366 of the Bankruptcy Code, is not prejudicial to the rights of any of the Utility Companies, and is in the best interest of the Debtors' estates.

NOTICE

21. Notice of this Motion has been given to (i) the United States Trustee for the District of Maine; (ii) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis, as identified in their chapter petitions; (iii) the administrative agents for the credit facilities of Pegasus Media & Communications, Inc. and Pegasus Satellite Communications, Inc. ("PSC") and (iv) each of the indenture trustees for each series of notes of PSC. The Debtors submit that in light of the nature of the relief requested, no further notice is required.

22. No previous application for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just and proper.

Dated: Portland, Maine
June 2, 2004

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