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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

**MOTION FOR ORDER AUTHORIZING: (I) PAYMENT OF PREPETITION EMPLOYEE WAGES, SALARIES AND RELATED ITEMS; (II) REIMBURSEMENT OF PREPETITION EMPLOYEE BUSINESS EXPENSES; (III) PREPETITION CONTRIBUTIONS AND PAYMENT OF MEDICAL AND SIMILAR BENEFITS; (IV) PAYMENT OF WORKERS' COMPENSATION OBLIGATIONS; (V) PAYMENTS FOR WHICH PAYROLL DEDUCTIONS WERE MADE; (VI) PAYMENT OF ALL COSTS AND EXPENSES INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (VII) THE CONTINUATION OF CERTAIN EMPLOYEE PROGRAMS**

Pegasus Satellite Television, Inc. and certain of its subsidiaries and affiliates, each a debtor and debtor-in-possession herein (collectively, the "Debtors"),[1] hereby file this motion (the "Motion") requesting that this Court enter an Order: (i) authorizing the Debtors, in accordance with their stated policies and in their sole discretion, to (a) pay all prepetition employee wages, salaries, contractual compensation, sick pay, personal pay, holiday pay, vacation pay, bonuses and other accrued compensation, (b) make all payments for which employee payroll deductions were made, (c) reimburse all prepetition employee business

[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.

expenses, (d) make prepetition contributions and pay benefits under certain employee benefit plans, (e) honor workers' compensation obligations, (f) pay other miscellaneous employee-related costs, (g) pay all processing costs and administrative expenses incident to the foregoing payments and contributions, and (h) continue employee programs with respect to vacations, sick, personal and holiday leave and certain health, welfare, savings and other benefit programs; and (ii) authorizing and directing applicable banks and other financial institutions to honor and pay all related checks and transfers drawn on the Debtors' payroll and other disbursement accounts to make the foregoing payments, and ratifying such actions to the extent any prepetition payroll checks cleared prior to the entry of this order. 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 Communications, Inc., in Support of First Day Motions. In further support of this Motion, the Debtors represent as follows:

## STATUS OF THE CASE AND JURISDICTION

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

2. The Debtors are continuing in possession of their properties and are operating and maintaining their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner in these cases, and no official committees have yet been appointed by the Office of the United States Trustee.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. 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 predicate for the relief sought herein is §§ 105(a) and 507(a) of the Bankruptcy Code.

## 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 1.1 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 942 employees.

## RELIEF REQUESTED

10. The Debtors employ 329 salaried employees and 613 hourly employees (collectively, the "Employees"). The continued and uninterrupted service of the Employees is essential to the Debtors' continuing operations and a successful chapter 11 process. To minimize the personal hardship the Employees will suffer if prepetition Employee-related obligations are not paid when due, and to maintain the Employees' morale during this critical time, the Debtors, by this Motion, seek authority: (i) to pay all prepetition Employee claims for wages, salaries, contractual compensation, bonuses, sick pay, personal pay, holiday pay, vacation pay and accrued compensation; (ii) to make all payments for which Employee payroll deductions were made; (iii) to reimburse all prepetition Employee business expenses; (iv) to make prepetition contributions and pay benefits under certain Employee benefit plans; (v) to honor workers' compensation obligations; (vi) to pay other miscellaneous Employee-related costs; and (vii) to continue Employee programs with respect to vacations, sick, personal and holiday leave and certain health, welfare, savings and other benefit programs as described more fully below (collectively, the "Employee Programs").

11. The Debtors also (i) request the Court to authorize and direct applicable banks and other financial institutions to receive, process, honor and pay all prepetition checks

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[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.

and transfers drawn on the Debtors' payroll accounts to make the foregoing payments, and (ii) seek authority to pay all processing costs and administrative expenses related to the foregoing payments. The Debtors believe that, with the exception of their self-insured programs for Health Benefits (as such term is defined below), any payments that will be made in connection with prepetition wages, salary, other compensation and benefit programs, will not exceed the sum of $4,925 per employee allowable as a priority claim under sections 507(a)(3) and (4) of the Bankruptcy Code.

## SUMMARY OF THE DEBTORS' PREPETITION EMPLOYEE OBLIGATIONS

### Wages, Salaries, and Other Compensation

12. The average monthly payroll for the Debtors' salaried and hourly Employees is approximately $3.2 million.[3] The Employees are paid through a bi-weekly payroll cycle where certain Employees are paid one week in arrears and certain Employees are paid in-real-time (current) terms. The Debtors employ the services of Ceridian Corporation ("Ceridian") to calculate and issue the Employees' paychecks and direct deposits. These paychecks and direct deposits are drawn on Ceridian bank accounts. The Debtors most recently paid Ceridian in the normal course of business on June 2, 2004. By this Motion, the Debtors seek authority to pay all outstanding unpaid wages, salaries and other compensation owed to the Employees and to the Contract Workers aggregating approximately $293,000.

### Vacation, Sick, Personal Leave and Holidays

13. The Employees are covered by the Debtors' vacation policy (the "Vacation Policy"). Under the Vacation Policy, full-time Employees are eligible for up to four weeks of paid vacation annually depending upon the number of hours worked, position, and number of years of credited service. Part-time Employees accrue vacation time on a pro-rated

[3] This amount includes seven (7) contract workers who provide certain financial services to the Debtors (the "Contract Workers").

basis in accordance with the number of hours worked during a pay period (excluding overtime hours), not to exceed ten (10) days per calendar year. The Employees, subject to approval, may carry over up to five (5) accrued and unused vacation days to the next calendar year. Upon termination of their employment, the Employees are entitled to a cash payout for any accrued and unused vacation time. The total annual cost to the Debtors for the Employees' vacation time under the Vacation Policy is approximately $1.3 million. The Debtors do not anticipate a payout for unused vacation days as of the Petition Date.

14. The Debtors also provide full-time and part-time Employees with sick pay benefits in the event that an Employee becomes ill and is unable to work. Regular, full-time Employees accrue sick time each pay period in accordance with the number of hours they are scheduled to work per week, up to a maximum of five (5) days per calendar year. Part-time Employees accrue sick time on a pro-rated basis in accordance with the number of hours they work during the pay period (excluding overtime hours), not to exceed five (5) days per calendar year. In addition to sick leave, full and part-time Employees receive up to four (4) personal days per calendar year. The total annual cost to the Debtors for the Employees' sick and personal leave is approximately $600,000 and $475,000, respectively for an aggregate of $1.075 million, and is included in gross payroll. Accrued and unused sick and personal days do not carry over to the following calendar year, and Employees are not entitled to a cash payout for such accrued and unused time upon termination of their employment or otherwise.

15. Employees have the following paid holidays each year: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. If an hourly Employee is scheduled to work one of these holidays, the Employee is entitled to receive holiday pay equal to one day's pay in addition to the Employee's otherwise applicable hourly salary for that day.

16. By this Motion, the Debtors seek authority to honor all liabilities to their Employees that arose under their vacation, sick, personal leave policies and holiday pay prior to the Petition Date. The Debtors anticipate that their Employees will utilize any accrued vacation, sick or personal leave in the ordinary course of business, without resulting in any material cash flow requirements beyond the Debtors' normal payroll obligations.

**Reimbursable Business Expenses**

17. In the ordinary course of the Debtors' business, Employees may incur a variety of business expenses that are typically reimbursed by the Debtors pursuant to their normal business practices. The reimbursable business expenses incurred by the Employees include business travel expenses and entertainment expenses (collectively, the "Reimbursable Business Expenses"). All Reimbursable Business Expenses were incurred with the understanding that they would be reimbursed by the Debtors. As of the Petition Date, the Debtors estimate that there are no monies owing with respect to Reimbursable Business Expenses. Nevertheless, by this Motion, the Debtors seek authority to pay all prepetition Reimbursable Business Expenses in the ordinary course of business.

**Insurance Benefits**

18. In the ordinary course of their business, the Debtors provide medical, prescription drug, dental and vision insurance, life insurance, long-term disability, accidental death and dismemberment insurance and other related insurance to their Employees.[4]

[4] The Debtors' Insurance Benefits described in this section are provided pursuant to certain contracts between Pegasus Communications Corporation ("PCC") and the relevant third-party insurance provider. Aggregate amounts referenced herein incorporate amounts in connection with providing insurance benefits to the Debtors' Employees as well as employees of the Debtors' non-debtor affiliates. The allocation of such costs will be addressed in the Debtors' Motion to Continue Performing Under the Support Services Agreement (the "Support Services Agreement") between Operating Affiliates (as defined therein) and Pegasus Communications Management Company ("PCMC") (the "Support Services Motion") filed concurrently herewith.

A. Medical, Prescription Drug, Dental and Vision Programs

19. The Debtors provide their full-time Employees -- at a substantially reduced cost -- with certain medical, prescription drug, dental and vision insurance programs through various providers (collectively, the "Health Benefits"). Specifically, full-time Employees, who have served two full calendar months, are offered (i) medical insurance and prescription drug coverage benefits through Independence Blue Cross,[5] (ii) dental insurance benefits through Aetna, and (iii) vision insurance benefits through HighMark Blue Shield. The majority of the Health Benefits are self insured with premiums being paid by PCMC on behalf of the Debtors and reimbursed by the Debtors in accordance with the terms of the Support Services Agreement.

20. The average monthly cost for all these Health Benefits is approximately $437,500 (comprised of $360,000 for medical insurance, $40,000 for prescription drug coverage, $30,000 for dental insurance benefits, $7,500 for vision insurance benefits) of which approximately 26% is withheld from Employee payroll on average as their required contributions to the various Health Benefit plans. The largest portion of such amount relates to monthly claims made in respect of medical insurance, which typically runs three months in arrears. Thus, as of the Petition Date, the Debtors estimate that accrued payables with respect to the Health Benefit plans may aggregate approximately $1.6 million to be paid over time in the ordinary course.

B. Life and Disability Insurance Programs

21. The Debtors provide their active full-time Employees with certain life and disability insurance programs. Particularly, Employees, who have been employed for two full

[5] PCMC, partially on behalf of the Debtors, is required to maintain a cash reserve with Independence Blue Cross in connection with insurance benefits provided. As of the Petition Date, PCMC, partially on behalf of the Debtors, has posted a reserve of approximately $823,000. Also, because the Debtors are self-insured, Independence Blue Cross requires that the Debtors carry stop-loss insurance. The Debtors maintain such insurance through Lincoln Re Management Services ("Lincoln"). As of the Petition Date, the Debtors have no amounts owing to Lincoln.

calendar months and who work a minimum of 35 hours per week, are offered (i) life and accidental death and dismemberment insurance and (ii) long term disability insurance, both of which are underwritten by Unum Life Insurance Company of America ("Unum Life"). Those insurance policies are 100% employer paid and begin on the first of the month after two full calendar months of employment for eligible Employees. As of the Petition Date, the Debtors have no amounts owing to Unum Life.

C. Other Insurance Benefits

22. The Debtors also offer their active full-time Employees certain other optional insurance benefits which are wholly paid by the Employees choosing to enlist such benefits. Specifically, the Debtors offer term life insurance, whole life insurance, dependent life insurance, critical care insurance and short-term disability insurance, all of which are provided by UnumProvident Corporation. Those benefits begin on the first of the month after two full calendar months of employment for eligible Employees, with applicable premium amounts being withheld by the Debtors from their Employees' paychecks and subsequently forwarded to the appropriate third-party recipients. The Debtors believe that, as of the Petition Date, there are no amounts owing to UnumProvident Corporation.

23. By this Motion, the Debtors seek authority to (i) pay all amounts due and owing as of the Petition Date for Employee medical and insurance benefits, and (ii) continue such benefits post-petition.

**Savings Plan**

24. The Debtors have a defined savings plan for their Employees, which is qualified under section 401(k) of the Internal Revenue Code (the "Savings Plan"). The Saving Plan is administered by Prudential Investment Management Services LLC. All active Employees who have completed at least one full calendar month of service following their date of hire are eligible to participate in the Savings Plan. Pursuant to the Savings Plan, the Debtors

deduct the appropriate amounts from each participating Employee's payroll check and transfer the withheld funds to the plan trustee. Additionally, under the Savings Plan, the Debtors provide matching contributions, in PCC common stock, equal to 100% of each participating Employee's pre-tax contribution up to 6% of the Employee's annual base salary.[6] The Debtors believe that, as of the Petition Date, no amounts are owing with respect to amounts deducted from their Employees' paychecks but not yet remitted to the third-party recipients, and all matching contributions with respect to such deductions have been made.

25. By this Motion, the Debtors seek authority to continue the Savings Plan and to pay all amounts associated therewith in the ordinary course of the Debtors' business.

**Employee Stock Purchase Plan**

26. The Debtors offer their Employees, following thirty (30) days of employment, the opportunity to participate in their employee stock purchase plan (the "Stock Purchase Plan").[7] Pursuant to the Stock Purchase Plan, which is administered by Wachovia, eligible Employees may opt to purchase stock in PCC, at a 15% discount, in an amount of up to 10% of their basic rate of compensation for each payroll period. The Debtors deduct the after-tax amount of such contribution from each participating Employee's payroll check and on or around the last business day of a calendar quarter, the contribution amount deducted from a participating Employee's paycheck is applied towards the purchase of PCC stock. As of the Petition Date, the estimated contribution amount deducted from paychecks of Employee's participating in the Stock Purchase Plan, but not yet applied towards the price of PCC stock is approximately $24,000.

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[6] PCC will be paid for the value of the PCC shares granted under the Debtors' Savings Plan. Such payment may occur via a credit to PCC under the Support Services Agreement and a corresponding debit to the relevant Debtor under such Agreement.

[7] PCC will be paid for the value of the PCC shares granted under the Debtors' Stock Purchase Plan. Such payment may occur via a credit to PCC under the Support Services Agreement and a corresponding debit to the relevant Debtor under such Agreement.

27. By this Motion, the Debtors seek authority to continue the Stock Purchase Plan and to pay all amounts due and owing thereunder as of the Petition Date.

**Workers' Compensation Obligations and Related Insurance**

28. Under the laws of the various jurisdictions in which they operate, the Debtors are required to maintain workers' compensation policies and programs to provide Employees with workers' compensation coverage for claims arising from or related to their employment with the Debtors.[8] Accordingly, the Debtors maintain workers' compensation programs in all states in which they operate, pursuant to the applicable requirements of local law.

29. The Debtors currently insure their workers' compensation liabilities pursuant to a policy between PCC and Hartford Underwriters Insurance Company ("Hartford").[9] Pursuant to the policy, Employees seeking reimbursement for work-related injuries file an incident report with the Debtor entity where such injury occurred. Hartford, in turn, investigates and determines which claims are meritorious. Currently, there are six workers' compensation claims pending against the Debtors, reserved at total of $45,346. Because the Hartford policy does not have a cap or deductible, as of the Petition Date, there are no amounts owing by the Debtors with respect to workers' compensation claims.

30. By this Motion, the Debtors seek authority to continue their workers compensation policy and to pay all amounts associated therewith in the ordinary course of the Debtors' business.

**Severance Benefits**

31. The Debtors provide certain severance benefits (the "Severance Plan") to their Employees who have been involuntarily terminated for reasons other than unsatisfactory

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8 Certain of the costs associated with the workers' compensation coverage are allocated among the Debtors pursuant to the terms of the Support Services Agreement.

9 In North Dakota and Ohio, which are monopolistic states, coverage is provided through the State.

performance. The applicable amount of severance benefit under the Severance Plan is as follows: (i) non-exempt staff is two weeks of base pay for each year of service with a minimum of two weeks; (ii) exempt staff is two weeks of base pay for each year of service with a minimum of four weeks; (iii) manager is 13 weeks of base pay; (iv) director is 26 weeks of base pay; (v) vice president is 52 weeks of base pay, (vi) senior vice president and above -- are determined on an individual basis but typically range from 18 to 24 months of base pay. The Debtors are currently paying severance benefits for three (3) former employees and as of the Petition Date, the estimated outstanding liability with respect to same is approximately $20,000.

32. By this Motion, the Debtors seek authority to (i) pay all amounts due and owing as of the Petition Date under the Severance Plan, (ii) and continue the Severance Plan solely with respect to staff (the "Staff Severance Plan"), and (iii) honor any obligations arising under the Staff Severance Plan owed to the Employees after the Petition Date.[10]

33. The Debtors believe that continuing their Staff Severance Program is vital to the retention of such Employees and any interruption in this program would severely harm the Debtors' estates. The majority of the Employees eligible for the Staff Severance Program work in the Debtors call centers which directly service the Debtors' customer base and are thus critical to the Debtors' operations.

34. Because call center representatives are among the lowest paid employees in any business, such employees are primarily concerned with ensuring that they can meet the financial obligations for themselves and their families. Moreover, since there are few, if any, barriers to leaving this type of job, turnover among this group of Employees could be higher than other employee groups because of the uncertainties of bankruptcy and because customer care jobs are relatively easy to find in the Debtors' operational locations. Accordingly, without the

[10] The Debtors are seeking authority to continue the Severance Plan with respect to their remaining Employees pursuant to a Motion Authorizing the Assumption of the Debtors' Incentive Programs and Management Severance Program.

continuation of the Staff Severance Program, certain Employees may seek more certain, alternative employment, and, thus, maintaining the Staff Severance Program is critical to the Debtors' business operations going forward.

**Payroll Taxes and Deductions**

35. The Debtors make bi-weekly payments to Ceridian to cover all outstanding tax obligations relating to employee and employer payroll taxes. Ceridian is responsible for filing and making payments to the appropriate federal, state and local taxing authorities. The estimated amount of the Debtors' accrued employee and employer payroll taxes which have not been forwarded to Ceridian as of the Petition Date is approximately $74,000. The employee portion is included in the gross pay of the Employees.

36. By this Motion, the Debtors seek authority to pay any accrued and unpaid prepetition payroll taxes and continue to forward all postpetition payroll deductions to the appropriate parties.

**Other Benefits**

37. The Debtors provide a number of other miscellaneous benefits (collectively, the "Miscellaneous Benefits") to certain Employees. Specifically, the Debtors offer their new full-time Employees 50 options on PCC stock and their part-time Employees 25 options.[11] Additionally, the Debtors offer their full-time Employees who have been employed one year, an educational assistance program of up to $2,500 per calendar year to pursue career-related educational course work at accredited institutions. The Debtors also provide their Employees with an assistance program offering confidential counseling services. Moreover, the Debtors offer qualified Employees paid leave for jury duty, bereavement and certain military

[11] PCC will be paid for the value of the PCC options, based upon the application of the Black-Scholes model or another appropriate option pricing model. Such payment may occur via a credit to PCC under the Support Services Agreement and a corresponding debit to the relevant Debtor under such Agreement.

duties. The Debtors believe that there are no amounts owing as of the Petition Date for the Miscellaneous Benefits.

38. By this Motion, the Debtors seek authority to pay any outstanding prepetition obligations for any Miscellaneous Benefit and to continue these benefits programs postpetition.

39. In addition, the Debtors request authorization to pay the various costs incident to maintaining, or paying third parties to maintain and provide, record keeping and other administrative services relating to the various Employee benefits programs identified in this Motion that may be outstanding as of the Petition Date (the "Prepetition Processing Costs"). The Debtors believe that as of the Petition Date, there are no monies owing with respect to the Prepetition Processing Costs.[12]

**Authority for Banks to Honor and/or Reissue Checks**

40. The Debtors further request that all applicable banks and other financial institutions be authorized to receive, process, honor and pay any and all checks and transfers drawn on the Debtors' dedicated payroll accounts, whether such checks were presented before, or are presented after, the Petition Date. Subject to this Court's approval of this Motion and the related first-day motion authorizing the continuation of the Debtors' cash management system, the Debtors' banks have agreed to keep the Employee payroll accounts open to ensure that the Employees' paychecks do not bounce.

41. Accordingly, by this Motion, the Debtors seek (i) authorization for, and/or ratification of, their banks' honoring of prepetition payroll checks and transfers on or after the Petition Date, (ii) authorization for their banks to process and honor all other checks issued for payments approved by this Motion and, (iii) authorization to reissue checks for payments approved by this Motion where the check therefore is dishonored postpetition.

[12] Certain of the costs associated with the Prepetition Processing Costs are allocated among the Debtors

## JUSTIFICATIONS FOR GRANTING REQUESTED RELIEF

42. The Debtors seek the relief requested in this Motion because any delay in paying the Employee-related compensation, deductions, reimbursement and benefit plans described herein (collectively, the "Employee Obligations") could severely disrupt the Debtors' relationship with the Employees and irreparably impair the Employees' morale at the very time that their dedication, confidence and cooperation are most critical. The Debtors face the risk that their operations may be severely impaired if the Debtors are not immediately granted authority to pay the Employee Obligations. At this critical stage, the Debtors simply cannot risk the substantial disruption of their business operations that would attend any decline in workforce morale attributable to the Debtors' failure to pay the Employee Obligations in the ordinary course of their businesses.

43. If the relief requested herein is not granted, the Employees would suffer great hardship and, in many instances, financial difficulties, since these monies are needed to enable them to meet their personal obligations. In addition, without the requested relief, the Debtors' stability would be undermined by the potential threat that otherwise loyal Employees at all levels would seek other employment.

## RELEVANT STATUTORY AUTHORITY

44. Pursuant to section 507(a)(3) of the Bankruptcy Code, each Employee may be granted a priority claim for:

> allowed unsecured claims, but only to the extent of $4,925 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for–
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> (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

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pursuant to the terms of the Support Services Agreement.

> (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services, for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor…

11 U.S.C. § 507(a)(3).

45. Likewise, under section 507(a)(4) of the Bankruptcy Code, Employees may ultimately be granted a priority claim for:

> allowed unsecured claims for contributions to an employee benefit plan –
>
> (A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only
>
> (B) for each such plan, to the extent of –
>
> > (i) the number of employees covered by each such plan multiplied by $4,925; less
> >
> > (ii) the aggregate amount paid to such employees under paragraph (3) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

11 U.S.C. § 507(a)(4).

46. With the exception of the Health Benefits, the amount of prepetition wages, salary, other compensation, and benefits that an Employee may receive under the benefits programs that is owing, and will be paid, to any one Employee will not exceed the sum of $4,925 allowable as a priority claim under sections 507(a)(3) and (4) of the Bankruptcy Code.

47. Numerous courts, including the courts in this District, have recognized the validity of the foregoing justifications for allowing debtors to pay prepetition compensation, deductions and benefits and, as a result, routinely have granted relief similar to that requested herein. See, e.g., In re Bookland of Maine, Case No. 00-20605 (Bankr. D. Me. May 5, 2000); In re Talk America, Inc., Case No. 99-20765 (Bankr. D. Me. May 20, 1999).

48. Because retaining the Employees is critical to the continued business operation of the Debtors in these cases, this Court should exercise its equitable powers to permit payment of the Employee Obligations under section 105(a) of the Bankruptcy Code. Numerous courts have authorized a debtor in possession to pay certain creditors' prepetition claims in similar contexts under section 105(a), which provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The purpose of section 105(a) is "to assure bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 Collier on Bankruptcy ¶ 105.01, at 105-5-6 (15th ed. rev. 2004).

49. In In re Ionosphere Clubs, Inc., 98 B.R. 174 (Bankr. S.D.N.Y. 1989), for example, the court permitted the debtor corporation to pay its current employees' pre-bankruptcy wages, salaries, medical benefits and business expense claims. See id. at 175 (discussing grant of requested relief as necessary to preserve the business and contrasting the union's request on behalf of striking workers). Judge Lifland stated that the bankruptcy court's equitable powers under section 105(a) may be used to effectuate a restructuring of the company's finances to provide jobs for its employees. See id. at 177 (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 16 (1977)). Moreover, Judge Lifland indicated that the payments to current employees, authorized pursuant to a previous order of the Court, fell under the "necessity of payment" rule, first enunciated by the Supreme Court in Miltenberger v. Logansport, C. & S. W. R. Co., 106 U.S. 286 (1882). See In re Ionosphere Clubs Inc., 98 B.R. at 175-76.

50. Other courts also have permitted a debtor in possession to pay pre-bankruptcy wage, salary, expense and benefit claims on the ground that payment of such pre-bankruptcy claims was necessary to effectuate a successful reorganization. See, e.g., Michigan Bureau of Workers' Disability Compensation v. Chateaugay Corp (In re Chateaugay Corp.), 80 B.R. 279 (S.D.N.Y. 1987) (approving bankruptcy court order authorizing debtor to pay

certain pre-bankruptcy wages, salaries, employee reimbursement expenses and benefits, including payments on workers' compensation claims); In re Gulf Air, Inc., 112 B.R. 152 (Bankr. W.D. La. 1989) (authorizing debtor-in-possession to pay pre-petition employee wages and benefits, and health, life and workers' compensation insurance premiums).

51. This Court also has invoked its equitable powers under section 105(a) of the Bankruptcy Code to authorize the payment of pre-petition employee claims when non-payment or delay would damage a debtor's business or its ability to reorganize. See, e.g., In re Bookland of Maine, Case No. 00-20605 (Bankr. D. Me. May 5, 2000); In re Talk America, Inc., Case No. 99-20765 (Bankr. D. Me. May 20, 1999).

52. Granting this Motion is consistent with the policies of the Bankruptcy Code and is authorized by section 105. Few employees will continue to work for an entity that has filed a bankruptcy petition without assurance that they will be timely paid. The most critical employees tend to be the ones most able to secure new positions. Moreover, the payment of the Employee Obligations will not prejudice the Debtors' other creditors because, with the exception of the Health Benefits, all unpaid amounts would give rise to priority claims under sections 507(a)(3) and (4) of the Bankruptcy Code.

53. Payment of the costs associated with the Employee Obligations is justified on several grounds. First, a failure to pay any of the Prepetition Processing Costs might disrupt services of third-party providers with respect to Employee Obligations, as well as similar postpetition payments. The Debtors wish to avoid even temporary disruption of such services.

54. In addition, such program administration charges may be entitled to priority under section 507(a)(4) of the Bankruptcy Code. See Allegheny Int'l Inc. v. Metropolitan Life Insur. Co., 145 B.R. 820 (W.D. Pa. 1992). In Allegheny, the court held that the prepetition claims of a medical benefits plan administrator for, among other things, fees charged for performing administrative, actuarial and claims services in connection with the

medical benefits plans of a chapter 11 debtor were entitled to priority under section 507(a)(4) of the Bankruptcy Code. Id. at 822-23 ("It would be useless to prioritize expenses for contributions to an employee benefit plan and not prioritize the expenses necessary to administer those plans"). As such, amounts paid on account of such prepetition processing costs may not otherwise be available for distribution to unsecured creditors.

55. Nothing in this Motion shall be construed as a request for authority to assume any executory contract under section 365 of the Bankruptcy Code.

## NOTICE

56. 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 11 petitions; (iii) the agent for the Pegasus Media & Communications, Inc. credit facility; (iv) the attorneys for the lenders to the Pegasus Satellite Communications, Inc. ("PSC") credit facility; and (v) 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.

## NO PREVIOUS RELIEF REQUESTED

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

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto (i) authorizing the Debtors, in accordance with their stated policies and in their sole discretion, to (a) to pay all prepetition Employee claims for wages, salaries, contractual compensation, bonuses, sick pay, personal pay, holiday pay, vacation pay and accrued compensation, (b) make all payments for which Employee payroll deductions were made, (c) reimburse all prepetition Employee business expenses, (d) make prepetition contributions and pay benefits under certain Employee benefit plans, (e) honor workers' compensation obligations, (f) pay other miscellaneous Employee-related costs, (g) pay all processing costs and administrative expenses incident to the foregoing payments and contributions, and (h) continue the Employee Programs; and (ii) authorizing and directing applicable banks and other financial institutions to honor and pay all related checks and transfers drawn on the Debtors' payroll and other disbursement accounts to make the foregoing payments, and ratifying such actions to the extent any prepetition checks for such amounts cleared prior to the entry of this order and granting such other and further relief as is just and proper.

Dated: Portland, Maine
June 2, 2004

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