

Hearing Date:
July 22, 2004 at 10:30 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.)	(Jointly Administered)
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**MOTION OF DEBTORS FOR AN ORDER EXTENDING THE TIME
TO ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL
PROPERTY PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE**

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, pursuant to section 365(d)(4) of title 11 of the United States Code (the “Bankruptcy Code”), enter an order granting a three (3) month extension of the time for the Debtors to assume or reject any of the leases, subleases or other agreements to which any of the Debtors are a party that may be considered unexpired leases of nonresidential real property (collectively, the “Real Property Leases”), through and including November 1, 2004. In support of this Motion, the Debtors respectfully represent as follows:

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.

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 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 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. On June 10, 2004 the United States Trustee appointed an official committee of unsecured creditors pursuant to section 1102(a) of the Bankruptcy Code (the “Creditors Committee”).

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 and legal predicate for the relief sought herein is section 365(d)(4) 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

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.

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 942 employees.

**REQUEST FOR AN EXTENSION OF THE DEBTORS' DEADLINE
TO ASSUME OR REJECT THEIR REAL PROPERTY LEASES**

10. By this Motion, the Debtors request the entry of an order, pursuant to section 365(d)(4)³ of the Bankruptcy Code, granting a three (3) month extension of the sixty-day period to assume or reject non-residential real property leases (the “Sixty-Day Period”), through and including November 1, 2004. The Sixty-Day Period currently expires on August 1, 2004. Such an extension would be subject to and without prejudice to the rights of the Debtors to request a further extension of the time to assume or reject the Real Property Leases.

11. This motion is filed pursuant to section 365(d)(4) of the Bankruptcy Code which permits bankruptcy courts to grant, for cause, extensions of the Sixty-Day Period. In re Channel Home Ctrs., Inc., 989 F.2d 682, 687-88 (3d Cir. 1993), cert. denied, 510 U.S. 865 (1993); In re Casual Male Corp., 120 B.R. 256 (Bankr. D. Mass. 1990). The primary purpose of section 364(d)(4) is “to protect lessors...from delay and uncertainty by forcing a trustee or a debtor in possession to decide quickly whether to assume unexpired leases.” In re American Healthcare Management, Inc., 900 F.2d 827, 830 (5th Cir. 1990). In enacting section 365(d)(4) of the Bankruptcy Code, Congress recognized “that in some cases sixty days will not be enough time for bankrupt lessees to decide whether to assume or reject leases. In those circumstances, upon adequate demonstration of cause, bankruptcy courts may grant lessees extensions of time in which to assume or reject. Id. As one prominent decision recognized, “nothing prevents a bankruptcy court from granting an extension because a particular debtor needs additional time to

³ Section 365(d)(4) provides:
Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected and the trustee shall immediately surrender such nonresidential real property to the lessor.
11 U.S.C. § 365(d)(4) (emphasis added).

determine whether the assumption or rejection of particular leases is called for by the plan of reorganization that it is attempting to develop.” Channel Home Ctrs., 989 F.2d at 689.

12. Moreover, numerous courts in the First Circuit and elsewhere have routinely granted long extensions in large and complex chapter 11 cases roughly comparable to the Debtors’ cases. See, e.g., In re Merrimac Paper Company, Inc., et al., Case No. 03-41477 (JBR) (Bankr. D. Mass. Sept. 12, 2003) (extending period for assumption or rejection until 9 months after the petition date); In re Divine, Inc. et al., Case No. 03-11472 (JNF) (Bankr. D. Mass. Aug. 25, 2003) (extending period for assumption or rejection until 8 months after the petition date); In re Victoria Station, Inc., 88 B.R. 231, 236-37 (granting multiple extensions of time to assume or reject leases); In re Federal Mogul Global, Inc., T&N Limited, et al., Case No. 01-10578 (AMW) (Bankr. D. Del. May 25, 2004) (extending the current period for assumption or rejection through August 1, 2004, 29 months after the petition date); In re BRAC Group, Inc. (f/k/a Budget Group, Inc.), et al., Case No. 02-12152 (MFW) (Bankr. D. Del. May 12, 2004) (extending period for assumption or rejection until 22 months after the petition date); In re WorldCom Inc., et al., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Sept. 22, 2003) (extending period for assumption or rejection until 13 months after the petition date); In re Adelphia Communications Corporation, et al., Case No. 02-41729 (REG) (Bankr. S.D.N.Y. June 15, 2004) (extending the current period for assumption or rejection until over 26 months after the petition date).

13. Since the Petition Date, the Debtors’ management and professionals have been consumed with (i) obtaining interim and final approval of the first day motions, (ii) addressing numerous litigation matters involving the purported termination of the Debtors’ exclusive rights to distribute DIRECTV programming in their exclusive territories and

DIRECTV Inc.'s attacks on the Debtors' subscriber base, (iii) responding to information requests and concerns of the Committee and various creditor constituencies, and (iv) handling the typical business emergencies that occur immediately following the commencement of a chapter 11 case of a large company. As a result, the Sixty-Day Period has not proved to be a sufficient amount of time for the Debtors to determine whether to assume or reject the Real Property Leases.

14. Pending the Debtors' election to assume or reject the Real Property Leases, the Debtors will perform all of their undisputed obligations arising from and after the Petition Date in a timely fashion, including the payment of postpetition rent due, as required by section 365(d)(3) of the Bankruptcy Code. As a result, although the lessors to the Real Property Leases have not expressly consented to the relief requested herein, there should be little or no prejudice to such lessors as a result of the requested extension.

15. Moreover, the requested extension should be granted so the Debtors may preserve the maximum flexibility in restructuring their business. This flexibility is needed given the current uncertainty regarding the purported termination of the Member Agreements with the National Rural Telecommunications Cooperative (the "NRTC") on August 31, 2004 and the outcome of the Debtors' adversary proceeding against the NRTC and DIRECTV, Inc. and the related appeal before the United States District Court for the District of Maine. In the absence of an extension of the Sixty-Day Period, the Debtors could be forced prematurely to assume Real Property Leases that would later be burdensome or unnecessary, giving rise to large potential administrative claims against the Debtors' estates and hampering the Debtors' ability to reorganize successfully. Alternatively, the Debtors could be forced prematurely to reject Real Property Leases that would have been of benefit to the Debtors' estates, to the collective

detriment of all stakeholders. Rather than risk such outcome, the extension requested herein should be granted.

NOTICE

16. Notice of this Motion has been given to (i) all of the applicable landlords involving the Real Property Leases; (ii) the Office of the United States Trustee; (iii) proposed counsel to the Creditors Committee; and (iv) those parties in interest who have filed a notice of appearance. The Debtors submit that in light of this Court's Order Establishing Notice and Service Requirements in Debtor's Chapter 11 Cases dated June 7, 2004 and the nature of the relief requested, no further notice is required.

NO PRIOR REQUEST

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

WHEREFORE, the Debtors respectfully request that the Court enter an order: (i) granting the Debtors an extension of time pursuant to 365(d)(4) of the Bankruptcy Code to assume or reject all Real Property Leases through and including November 1, 2004, subject to and without prejudice to the right of the Debtors to seek further extensions of time; and (ii) granting such other and further relief as the Court may deem proper.

Dated: Portland, Maine

July 7, 2004

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