

Hearing Date:
June 7, 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 Nos. 04-20878 |
| Debtors.) | (Joint Administration Requested) |
| _____) | |

**EMERGENCY MOTION FOR RELIEF IN RESPECT
OF VIOLATIONS OF THE AUTOMATIC STAY BY DIRECTV, INC.**

Pegasus Satellite Television, Inc. and certain of its subsidiaries and affiliates, each a debtor and debtor-in-possession herein (collectively, the “Debtors”),¹ file this motion (the “Motion”) requesting that the Court enter an Order finding DIRECTV, Inc. (“DIRECTV”) in violation of the automatic stay imposed by 11 U.S.C. § 362(a).² In support of this Motion, the Debtors represent as follows:

JURISDICTION, VENUE AND STATUTORY PREDICATES

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”). The Debtors are continuing in possession of their properties and are

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.

² The relief requested in this motion is without prejudice to the Debtors’ rights to request damages relating hereto at a future date.

operating and maintaining their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. 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.

3. 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 11 U.S.C. § 362.

BACKGROUND TO THE MOTION

A. The DBS Agreement

4. In 1994, DIRECTV launched the first direct broadcast satellite (“DBS”) service in the United States. DIRECTV, now controlled by News Corporation Limited, currently offers in excess of 800 entertainment channels of near laser disc quality video and compact disc quality audio programming to subscribers throughout the United States. Pursuant to that certain DBS Distribution Agreement entered into in 1992 and amended in 1994 (the “DBS Agreement”) between the National Rural Telecommunications Cooperative (“NRTC”) and DIRECTV, NRTC, on behalf of its members and affiliates, obtained the exclusive rights to distribute DIRECTV programming and services in certain territories in the rural United States for a period variously estimated to last until at least 2014 or 2016.³ In exchange for these exclusive distribution rights,

³ The term of the exclusive rights is tied to the useful life of satellites providing the DIRECTV services. DIRECTV's estimate of that useful life has varied from time to time.

the 252 members and affiliates of NRTC participating in the DBS project (the “DBS Patrons”)⁴ invested \$110 million to construct and launch the DIRECTV satellite system. The DBS Patrons also agreed to pay to DIRECTV on a recurring basis specified costs associated with providing DIRECTV service to their customers as well as a portion of the revenue collected from these customers.

B. The Member Agreements

5. Each of the 252 DBS Patrons and NRTC entered into identical NRTC/Member Agreements for Marketing and Distribution of DBS Services in 1992 and 1993, and executed identical amendments in 1994 (the “Member Agreements”). Pegasus Satellite Television, Inc. (“Pegasus Satellite Television”) acquired the largest exclusive distribution territory at the inception of the project, comprising the exclusive rights to distribute DIRECTV services in four New England states serving approximately 500,000 households. Through acquisitions of other DBS Patrons between 1996 and 2001, representing an additional \$2 billion investment, Pegasus Satellite Television, together with its subsidiaries, is currently the largest DBS Patron, holding 160 Member Agreements, which provide the exclusive rights to distribute DIRECTV services to approximately 8.4 million rural households in certain specific territories within 41 states. Pegasus Satellite Television serves approximately 1.1 million subscribers in these territories.

C. Purported Termination of the DBS Agreement

6. On June 2, 2004, the Debtors received notice from the NRTC that on June 1, 2004, NRTC and DIRECTV purported to terminate the DBS Distribution Agreement, as

⁴ NRTC, as a cooperative, exists to support the businesses of its members and affiliates, who are referred to as patrons. Under the cooperative form of operation, the patrons are the owners of NRTC and furnish it with capital to

amended between NRTC and DIRECTV. The notice also purported to terminate the Debtors' Member Agreements effective August 31, 2004. The Debtors also received from DIRECTV an offer to acquire the Debtors' 1.1 million subscribers, which the Debtors flatly rejected. This purported termination was invalid.

7. Within the last forty-eight hours and since the filing of the Debtors' bankruptcy petitions, DIRECTV has engaged in activities that are in clear violation of the Debtors' exclusive distribution rights and section 362 of the Bankruptcy Code. On June 3, 2004, the Debtors sent to DIRECTV a cease and desist letter demanding that DIRECTV stop its unlawful conduct (attached hereto as Exhibit A, the "Cease and Desist Letter"). DIRECTV has not responded to this letter. Upon information and belief, DIRECTV is conducting sales activities in the Debtors' exclusive territories in violation of the Debtors' exclusive distribution rights and the automatic stay. These activities include selling DIRECTV services directly to subscribers within the Debtors' exclusive territories.

8. In support of its sales efforts, DIRECTV has launched at least three lines of attack with respect to these subscribers through television broadcast, internet and call center messages, each of which is aimed at destabilizing the Debtors' relationships with their subscribers and encroaching upon the Debtors' exclusive territories. First, DIRECTV has contacted the Debtors' subscribers located in the Debtors' exclusive territories through messaging on television stations broadcasted into homes in the Debtors' territories, which messages inform the viewer that the Debtors and DIRECTV are going to be ending their relationship with each other. A photocopy of a photograph of the message is attached hereto as Exhibit B. DIRECTV has instructed the viewers to tune into this special channel by scrolling

conduct operations on their behalf.

messages across television programs on other channels. Second, DIRECTV's website contains a similar message to that contained on the special broadcast channel and informs subscribers that its relationship with the Debtors is ending. Third, DIRECTV's customer service line contains a pre-recorded message informing subscribers that DIRECTV will be transitioning their accounts with the Debtors in the near future. DIRECTV has further instructed those subscribers who call in with respect to the broadcast or internet messaging that they will deliver an information kit and/or email explaining the transition to those subscribers.

9. DIRECTV is also attempting to derail the Debtors' relationships with their dealers. The Debtors have a network of over 4,000 independent dealers who distribute the Debtors' satellite programming services. DIRECTV is contacting the dealers directly and through the use of so-called "blast fax" communications. A copy of the "blast fax" is attached hereto as Exhibit C. This fax advises dealers that the agreements between the NRTC and its members and affiliates is ending and indicates that the NRTC's exclusive boundaries will be changing. This infusion of negative messaging into the marketplace, if not stopped immediately, will cause a systematic breakdown of the Debtors' dealer network and customer relationships.

10. Each of the instances detailed above constitute clear violations of the automatic stay. The Debtors have the exclusive right to sell DIRECTV in their territories under the Member Agreements. DIRECTV is soliciting the Debtors' customers in their territories in flagrant violation of the automatic stay, particularly section 362(a)(3). The Debtors' exclusive distribution rights under the Member Agreements are property of their estates pursuant to section 541(a) of the Bankruptcy Code. Accordingly, the Debtors request that the Court order DIRECTV to discontinue its interference with the Debtors' exclusive distribution rights under the Member Agreements. The Court has the power to enforce the automatic stay by enjoining

further interference with the Debtors' rights by DIRECTV.⁵ See, e.g., Bessette v. Avco Financial Serv., Inc., 230 F.3d 439, 444-45 (1st Cir. 2000) (“a court is well within its authority if it exercises its equitable powers to enforce a specific code provision . . .”).

11. “The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws.” S. Rep. No. 95-989, at 54-55, reprinted in 1978 U.S.C.C.A.N. 5787, 5840-41 (1978). Section 362(a)(3) provides that the filing of a bankruptcy petition operates as a stay against “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3); see also Carroll v. Tri-Growth Centre City, Ltd. (In re Carroll), 903 F.2d 1266, 1270-71 (9th Cir. 1990) (finding management agreement to be property of the debtor’s estate and thus protected by the automatic stay); American Cent. Airlines, Inc. v. O’Hare Reg’l Carrier Scheduling Comm. (In re American Cent. Airlines, Inc.), 52 B.R. 567, 571 (Bankr. N.D. Iowa 1985) (finding certain landing slots to be property of the estate, and the defendant’s reallocation of such slots to be an “unlawful act to obtain possession of property of the estate” under section 362(a)(3) of the Bankruptcy Code). The Debtors’ exclusive distribution rights under the Member Agreements are valuable property of the bankruptcy estate. Any act by DIRECTV to obtain control over the Debtors’ exclusive territories is a violation of the express provisions of the section 362.

⁵ Proceeding by motion, rather than by adversary proceeding pursuant to Bankruptcy Rules 7001 et seq., is proper under the circumstances, given DIRECTV’s ongoing and damaging violations of the automatic stay. See In re Timbs, 178 B.R. 989, 994 (Bankr. E.D. Tenn. 1994) (although damages and other relief sought for violation of the automatic stay could be technically construed as covered by Bankruptcy Rule 7001, numerous courts have ruled otherwise and have permitted relief to be obtained by motion); In re Hooker Investments, Inc., 116 B.R. 375, 378 (Bankr. S.D.N.Y. 1990) (holding that the imposition of sanctions under 11 U.S.C. § 362(h) may be sought by motion rather than by adversary complaint). Indeed, if the Debtors are denied immediate relief with respect to these actions, the value of the Debtors’ estates may be irreparably damaged as DIRECTV’s statements and actions erode the Debtors’ dealer, employee and customer base.

NOTICE

12. Notice of this Motion has been given to (i) the United States Trustee for the District of Maine; (ii) the attorneys for DIRECTV; and (iii) those parties that have filed notices of appearance. The Debtors submit that in light of the nature of the relief requested, no further notice is required.

NO PRIOR REQUEST

13. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, the Debtors request that the Court enter an order directing DIRECTV to discontinue and/or refrain from the conduct detailed in the Cease and Desist Letter and other further actions to sell DIRECTV programming services in the Debtors' territories, and grant such other and further relief as the Court deems just and proper.

Dated: Portland, Maine
June 4, 2004

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Proposed Attorneys for Debtors
and Debtors in Possession

EXHIBIT A



VIA HAND DELIVERY & FACSIMILE

June 3, 2004

DIRECTV, Inc.
The DIRECTV Group, Inc.
2230 E. Imperial Highway
El Segundo, CA 90245
Attention: Chase Carey, President and Chief Executive Officer

National Rural Telecommunications Cooperative
2121 Cooperative Way
Suite 500
Herndon, VA 20171
Attention: B.R. Phillips, III, President and Chief Executive Officer

Re: Notification of Chapter 11 Bankruptcy Filing; Cease and Desist

Dear Messrs. Carey and Phillips:

We are writing to advise you that Pegasus Satellite Television, Inc. and certain of its affiliates (“Debtors”) that are parties to NRTC/Member Agreements for the Marketing and Distribution of DBS Services, as amended (“Member Agreements”), have filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

We are also writing to demand that DIRECTV, Inc. (“DIRECTV”) and its affiliates immediately cease and desist from engaging in unlawful conduct which violates the exclusive distribution rights of Debtors under the Member Agreements. In particular, we understand that DIRECTV has engaged in the following activities in the past twenty-four (24) or so hours:

1. DIRECTV is contacting our subscribers through messaging on Channel 205 that informs Debtors’ subscribers that Debtors and DIRECTV are going to be ending their relationship. DIRECTV is also contacting Debtors’ subscribers through messaging on other channels advising them to tune into Channel 205.
2. DIRECTV’s website contains the same message as Channel 205.
3. DIRECTV has established a pre-recorded message on its customer service IVR system that DIRECTV will be transitioning Debtors’ subscriber accounts in the very near future.
4. DIRECTV customer service is informing Debtors’ subscribers who call in response to the Channel 205 and website messaging or otherwise that DIRECTV will deliver an information kit and /or email explaining the transition.

Letter to DIRECTV/NRTC

June 3, 2004

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4. DIRECTV customer service is informing Debtors' subscribers who call in response to the Channel 205 and website messaging or otherwise that DIRECTV will deliver an information kit and /or email explaining the transition.
5. DIRECTV customer service has indicated that DIRECTV intends in the near future to roll over all Debtors' subscribers to DIRECTV service and "cut-out the middleman."
6. DIRECTV telephone sales representatives have been advising new subscribers residing in Pegasus' exclusive territories that they can immediately sign up for DIRECTV programming through DIRECTV.
7. DIRECTV is contacting Debtors' dealers, directly, indirectly and through a "blast fax" communication, and has been informing those Dealers that the Debtors' relationship with DIRECTV is ending and in some cases advising them that they need to start selling for DIRECTV.
8. DIRECTV is contacting Debtors' distributors and informing them that Debtors' relationship with DIRECTV is ending or has ended.
9. DIRECTV has contacted at least one of Debtors' Assistant Sales Managers and asked that individual to turn over the Debtors' dealer lists to DIRECTV.
10. DIRECTV has offered at least one dealer coop advertising funds to assist that dealer in targeting Debtors' territories.

The foregoing activities are very serious violations of Debtors' exclusive DIRECTV distribution rights and the provisions of Section 362 of the Bankruptcy Code. We demand that you immediately desist, and confirm to us your agreement to do so, or we will seek appropriate remedies and sanctions. We also demand that NRTC honor its obligations under the Member Agreements and take all steps necessary to halt these violations of Debtors' exclusive distribution rights.

Sincerely,



Ted S. Lodge,
President and Chief Operating Officer

cc: Larry Hunter, Esquire
Executive Vice President and General Counsel, The DIRECTV Group, Inc.
Steve Ryan, Esquire
General Counsel, National Rural Telecommunications Cooperative

EXHIBIT B

Exciting news for DIRECTV Customers served by Pegasus!

Pegasus and DIRECTV are going to be ending their relationship, which upon completion will provide a better overall DIRECTV experience to you.

We want to assure you, however, that in the interim, your DIRECTV Service will remain uninterrupted no matter what you hear or read, and there's no need for you to do anything in order to continue receiving your service.

As more information becomes available it will be posted here on channel 205 and on our website at www.directv.com/Pegasus. Stay tuned!

Sincerely,
DIRECTV

Panasonic

EXHIBIT C



IMPORTANT DIRECTV/NRTC ANNOUNCEMENT

DIRECTV AND NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE END NRTC'S EXCLUSIVE DISTRIBUTION AGREEMENT

June 2, 2004

Dear DIRECTV Retailer:

DIRECTV is pleased to announce that it and the National Rural Telecommunications Cooperative (NRTC) have agreed to end the NRTC's exclusive DIRECTV service distribution contract effective immediately. As a result, the NRTC's separate agreements with its members and affiliates have also been terminated with an effective date of 90 days from today (August 31, 2004).

We have reached a new agreement with the NRTC that will enable DIRECTV and NRTC to compete more effectively with other multi-channel video providers in rural America. Under this new agreement, NRTC members may return their subscribers and territories to DIRECTV and execute new, non-exclusive retail and service provider agreements with DIRECTV, or, continue as an exclusive provider of DIRECTV service in their territories through June 30, 2011.

For now, please continue to conduct your DIRECTV business as usual. Activations in NRTC territory will NOT be eligible for compensation from DIRECTV at this time. However, as we continue to work with the NRTC and as its members make their elections, we will be notifying you of future changes to NRTC exclusive territory boundaries.

If you have customers in NRTC territories, including territories served by Pegasus, be assured that they will continue to receive their DIRECTV service uninterrupted. Customers in NRTC territories will not need to do anything in order to continue receiving service.

Thank you for your continued support of DIRECTV. We believe this change will benefit both our customers and our retailers by simplifying our business. Please read the following press release for additional details and comments from Steve Cox, Executive Vice President of Sales, Distribution and Business Development.

NEWS RELEASE



DIRECTV and National Rural Telecommunications Cooperative End NRTC's Exclusive Distribution Agreement

New Agreement Will Benefit Customers, Help Competition in Rural America

EI SEGUNDO, CA., June 2, 2004 – DIRECTV Inc., a unit of The DIRECTV Group, Inc. (NYSE: DTV) and provider of the nation's leading digital multichannel television service, announced today that it and the National Rural Telecommunications Cooperative (NRTC) have agreed to end the NRTC's exclusive DIRECTV service distribution contract effective immediately. Since 1994, the NRTC has had exclusive rights to distribute most DIRECTV services in rural NRTC territories.

In connection with this agreement, the NRTC's separate agreements with its members and affiliates, including Pegasus Satellite Television, Inc., for sale of DIRECTV services, have been terminated, with an effective date of 90 days from today. The NRTC and DIRECTV have further agreed to enter into a new relationship that will provide NRTC members an opportunity to continue to participate as non-exclusive DIRECTV retailers and service providers.

Until the effective date of the member and Pegasus contract terminations on Aug. 31, 2004, DIRECTV will provide services through the NRTC to its members and Pegasus so that DIRECTV service to customers in NRTC territories will not be disrupted.

"We believe that terminating the NRTC's exclusive distribution agreement is in the best interest of consumers and all parties involved," said Steve Cox, executive vice president, Sales, Distribution and Business Development, DIRECTV, Inc. "With the

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DIRECTV/NRTC Agreement

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settlement of the disputes with the NRTC and its members last year by mutual agreement and the subsequent successful conclusion of DIRECTV's litigation with NRTC affiliate Pegasus, the time was right for the NRTC and DIRECTV to reach this new agreement.

"Management of both the NRTC and DIRECTV recognized that creating an artificial divide between rural America and the rest of the country for distribution of some DIRECTV services made the DIRECTV service less competitive with other multichannel video providers," said Cox. "Furthermore, we have seen the number of subscribers to DIRECTV services in territories covered by the NRTC agreement steadily decline—primarily in Pegasus territories—in the last few years. We believe the termination of the old distribution arrangement will allow DIRECTV and NRTC to reverse this trend and compete more effectively in rural America. This can only be beneficial to consumers."

NRTC members, but not affiliate Pegasus, also will have the option to either enter into direct contracts with DIRECTV to continue as an exclusive provider of DIRECTV service in their territories through June 30, 2011, or, to sell the contract rights to DIRECTV that were negotiated as part of their litigation settlement. "Providing these options to the NRTC members who agreed to settle their disputes with DIRECTV assures them that they will receive the benefits of the settlement while providing them with attractive alternatives to continuing marketing and selling DIRECTV services," said Cox.

Although Pegasus rejected the litigation settlement, and had its claims dismissed last month, DIRECTV has simultaneously made a cash offer to Pegasus—payable in either a lump sum or monthly payments—if Pegasus agrees to an orderly transfer of its subscribers to DIRECTV that is completed before Aug. 31, 2004. "While neither the NRTC nor DIRECTV has an obligation to Pegasus on account of the termination of its contracts, DIRECTV has extended an offer that we believe is fair and reasonable," said Cox. "We are excited about this new chapter in DIRECTV's business, which will allow

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us to cohesively market our service to consumers in NRTC territories and to incrementally expand our owned-and-operated subscriber base.”

Through the end of the first quarter of 2004, the NRTC, its members and Pegasus provided DIRECTV service to approximately 1.5 million customers.

This release may contain certain statements that we believe are, or may be considered to be, "forward looking statements" within the meaning of various provisions of the Securities Act of 1933 and of the Securities Exchange Act of 1934. Such forward-looking statements can generally be identified by use of statements that include phrases such as "believe," "expect," "anticipate" or other similar words or phrases. Similarly, statements relating to future events also are forward-looking statements. All of these forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from the future results expressed or implied by the forward-looking statements due to various factors, including the outcome of any appeal which might be filed, other litigation which might be initiated or regulatory factors. More detailed information on the matters referred to in this release, including litigation and other potential factors which could affect the rights or obligations of DIRECTV, Inc., is contained in the filings of The DIRECTV Group, Inc. and DIRECTV Holdings LLC with the U.S. Securities and Exchange Commission.

DIRECTV is the nation's leading digital multichannel television service provider with more than 12.6 million customers. DIRECTV and the Cyclone Design logo are registered trademarks of DIRECTV, Inc., a unit of The DIRECTV Group, Inc. (NYSE: DTV). The DIRECTV Group is a world-leading provider of digital multichannel television entertainment, broadband satellite networks and services, and global video and data broadcasting. The DIRECTV Group is 34 percent owned by Fox Entertainment Group, which is approximately 82 percent owned by News Corporation Ltd.

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