

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF MAINE
PORTLAND DIVISION

IN THE MATTER OF:

CASE NO. 04-20878
(Jointly Administered)

PEGASUS SATELLITE TELEVISION, INC., ET AL

DEBTOR

CHAPTER 11

OBJECTION OF TEXAS AD VALOREM TAX AUTHORITIES TO THE MOTION FOR ENTRY OF AN ORDER... (I) APPROVING GLOBAL SETTLEMENT... AND (II) AUTHORIZING AND APPROVING IN CONNECTION THEREWITH A SALE, TRANSFER AND CONVEYANCE OF CERTAIN ASSETS OF THE DEBTORS TO DIRECTTV, INC.

TO THE HONORABLE BANKRUPTCY JUDGE:

NOW COME County of Anderson, Elgin ISD, McDade ISD, Smithville ISD, County of Burnet, County of Calhoun, County of Comanche, City of DeLeon, DeLeon ISD, County of Crockett, County of Denton, County of Eastland, City of Gorman, Gorman ISD, County of Guadalupe, County of Harrison, Harrison CAD, County of Hays, County of Henderson, County of Hill, Hill CAD, County of Kendall, Kerrville ISD, Center Point ISD, Kimble CAD, County of Leon, Centerville ISD, Buffalo ISD, County of Lynn, Iraan-Sheffield ISD, County of Runnels, City of Winters, Taylor CAD, Terrell County, County of Van Zandt, County of Wilbarger, Wilbarger CAD, Archer County, Austin CAD, Bexar County, Blanco CAD, Brown CAD, Buena Vista ISD, Coleman County TAD, Concho CAD, Corsicana ISD, City of Del Rio, City of Denton, Dewitt County, Ellis County, City of Frankston, Frankston ISD, Gonzales County, Hopkins County, Houston CAD, Ingram ISD, Jack CAD, Jack County, Jackson County, Karnes City ISD, Karnes County, Kaufman County, Kinney CAD, Lamb County, Lampasas CAD, Lavaca County, Lavaca CAD, Lee County, Llano County, Madison County, Matagorda County, McCulloch CAD, Medina ISD, Melissa ISD, Montague County, Navarro County, Normangee ISD, Pecos County, Polk County, Refugio County, Shelby County, Spring Hill ISD, Sulphur Springs ISD, Tarrant County

Trinity County, Trinity/Groveton Tax Office, Val Verde County, Wilson County, City of Yoakum, Yoakum ISD hereinafter referred to as Texas Ad Valorem Tax Authorities, and file their Objection to the Motion for Entry of an Order...(I) Approving Global Settlement... and (II) Authorizing and Approving in Connection Therewith a Sale, Transfer and Conveyance of Certain Assets of the Debtors to DirectTV, Inc. and would show the Court the following:

I.

The Texas Ad Valorem Tax Authorities are political subdivisions of the State of Texas, duly authorized to assess and collect taxes.

II.

As of January 1, 2004, personal liability and a first priority lien for the 2004 tax year arose on the Debtor's property described as business personal property. Texas Prop. Tax Code §§ 32.01, 32.05, 32.07. There are also very minimal delinquent property taxes for the tax years 1998 and 2001 reflected on certain of the tax jurisdictions' rolls. These property taxes were duly assessed in accordance with the laws of the State of Texas and constitute valid, liquidated secured claims against the Debtor's property and are entitled to priority over other secured claims under 11 U.S.C.A. § 506.

III.

The Tax Authorities' claims are not adequately protected if their liens merely attach to sale proceeds which are generally available to the Debtor to spend at its discretion. Unless the liens for the 2004 taxes are expressly retained on the property being conveyed, or an appropriate segregated account of proceeds is established to which their liens are attached, it may prove impossible for Texas Ad Valorem Tax Authorities to collect the 2004 taxes.

IV.

The laws of the State of Texas, Property Tax Code, Section 32.05(b), give the tax liens securing the property taxes superiority over the lien of any other claim or lien against this property. This tax claim is entitled to priority as a secured claim, and over other secured claims, according to the Bankruptcy Code U.S.C.A. Section 506. *Stanford v. Butler*, 826 F.2d 353 (5th Cir. 1987). The tax liens of the Tax Jurisdictions take priority over the claim of any holder of a lien on property encumbered by the tax liens, whether or not the debt or lien existed before the attachment of the tax

liens. Texas Property Tax Code §32.05 (b); Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W. 2d 841 (Tex. App. 1995) (bank's foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing unit's statutory tax lien). The tax lien arises on January 1 of each tax year and "floats" to after acquired property. City of Dallas v. Cornerstone Bank, 879 S.W. 2d 264 (Tex. App. - Dallas 1994). The tax lien is a lien in solido and is a lien on all personal property of the Debtor. In re Universal Seismic, 288 F.3d 205 (5th Cir. 2002). The tax lien is also unavoidable. In re: Winns, 177 B.R. 253 (Bankr. W.D. Tex. 1995).

V.

WHEREFORE, Texas Ad Valorem Tax Authorities pray that the Court order the express retention of their property tax liens on the property being conveyed, the appropriate segregation of proceeds to secure these tax claims, or other provisions to assure the security and timely satisfaction of their secured claims, and further request other and such relief as is just and proper.

Dated: August 20, 2004

Respectfully submitted,

/s/ Michael Reed

Michael Reed
State Bar Number 16685400
McCreary, Veselka, Bragg & Allen, P.C.
P. O. Box 26990
Austin, Texas 78755
(512) 451-9000 Phone
(512) 454-1881 Fax
mreed@mvalaw.com

/s/ Elizabeth Weller

Elizabeth Weller
Tex. Bar No. 00785514
Linebarger Goggan Blair & Sampson, LLP
2323 Bryan St. #1600
Dallas, TX 75201
(469)221-5075 Phone
(469)221-5002 Fax
BethW@publicans.com

Attorneys for Texas Ad Valorem Tax Jurisdictions

CERTIFICATE OF SERVICE

I hereby certify that I have placed a copy of the above Objection to the Sale to the following parties and to parties listed on the Court's Notice of Electronic Filing on August 20, 2004, by First Class U. S. Mail, Facsimile or by Electronic Mail.

/s/ Michael Reed

Michael Reed

Pegasus Satellite Television, Inc.
213 Felton Street
Marlborough, MA 01752

Robert J. Keach, Esq.
Bernstein, Shur, Sawyer, and Nelson
100 Middle Street, 6th Floor
PO Box 9729
Portland, ME 04104
Fax: 207-774-1127

Michael A. Fagone
Bernstein, Shur, Sawyer, and Nelson
100 Middle Street, 6th Floor
PO Box 9729
Portland, ME 04104
Fax: 207-774-1127

Larry J. Nyhan
Sidley, Austin, Brown & Wood LLP
10 South Dearborn St.
Chicago, IL 60603
Fax: 312-853-7036

Thomas H. Yancey
Guy S. Neal
Sidley, Austin, Brown & Wood LLP
1501 K Street NW
Washington, DC 20005
Fax: 202-736-8711
gneal@sidley.com