Hearing Date: August 25, 2004 at 10:30 a.m.
Objection Deadline: August 20, 2004 at 5:00 p.m.
PORTLAND

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MEMORANDUM OF LAW IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363 AND 1146(c) AND BANKRUPTCY RULE 9019 (I) APPROVING GLOBAL SETTLEMENT BY AND AMONG THE DEBTORS AND DEBTORS IN POSSESSION, PEGASUS COMMUNICATIONS CORPORATION AND OTHER NON-DEBTOR AFFILIATES, DIRECTV, INC., THE DIRECTV GROUP, INC., NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE, AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND (II) AUTHORIZING AND APPROVING IN CONNECTION THEREWITH A SALE, TRANSFER AND CONVEYANCE OF CERTAIN ASSETS OF THE DEBTORS TO DIRECTV, INC.

The Official Committee of Unsecured Creditors (the "Committee") of Pegasus Satellite Television, Inc. and its affiliated debtors (collectively, the "Debtors" or "Pegasus"), by and through its undersigned counsel, hereby submits this memorandum of law (the "Memorandum")[1] in support of the Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 1146(c) and Bankruptcy Rule 9019 (I) Approving Global Settlement Agreement by and Among the Debtors and Debtors in Possession, Pegasus Communications Corporation and Other Non-Debtor Affiliates, DIRECTV, Inc., the DIRECTV Group, Inc., National Rural Telecommunications Cooperative, and the Official Committee of Unsecured Creditors, and (II)

[1] The Committee is filing this Memorandum on the deadline to file objections to the Motion. To the extent any party files additional pleadings in opposition to the releif requested in the Motion, the Committee respectfully reserves the right to supplement this Memorandum or file a reply with respect thereto.

Authorizing and Approving in Connection Therewith a Sale, Transfer and Conveyance of Certain Assets of the Debtors to DIRECTV, Inc. (the "Motion").[2] In support of the Motion, the Committee respectfully represents as follows:

PRELIMINARY STATEMENT

1. A fundamental premise of chapter 11 is that a debtor and a creditors' committee owe a fiduciary duty to their respective stakeholders to maximize the value of the estate. Often, achieving this result can be accomplished in a variety of ways, including through a restructuring of the debtor's capital structure and the filing of a conventional plan of reorganization, a sale of the debtor's assets or a settlement of complex litigation involving the debtor and its business operations. While the correct path to maximize value may not be always obvious at the outset, such path usually becomes apparent during the course of a chapter 11 proceeding -- sometimes sooner, rather than later.

2. Here, the Debtors, with the active involvement of the Committee, have now chosen the correct path toward value maximization. Rather than pursuing what had proved to be a failed litigation strategy, the Debtors now seek to maximize the value of their estates though the implementation of an integrated global settlement with DIRECTV, NRTC, PCC and the Committee, which ensures that maximum ***guaranteed*** value is obtained for the largest portion of these estates, the Debtors' Satellite Assets – assets that could be rendered valueless as soon as August 31, 2004. In light of the facts and circumstances of these cases, the pursuit of the highest and guaranteed return provided by the Global Settlement is the most appropriate exercise of the Debtors' and Committee's fiduciary duties. Any other action would be an abrogation of such duties.

[2] Terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

3. As the Court is fully aware, as a result of a series of adverse rulings in both this Court and, pre-bankruptcy, in the California Litigation, Pegasus' primary business – the distribution of DIRECTV DBS Services – faces an uncertain future on August 31, 2004. On such date, Pegasus' ability to continue to distribute DIRECTV DBS Services to its approximately 1.1 million subscribers may cease as a result of DIRECTV and NRTC's termination of the DBS Agreement and the Member Agreement.

4. Concerned about the desperate situation facing the Debtors and these estates as a result of recurring litigation defeats, increasing customer defections and the looming August 31 termination date, in mid-June, the Committee, the statutory fiduciary representative for all of the Debtors' unsecured creditors, commenced negotiations with DIRECTV, NRTC and the Debtors' secured lenders (the "Secured Lenders") in an effort to determine if a consensual resolution to the myriad of disputes among Pegasus, DIRECTV and NRTC could be achieved.[3] In early July, as the foundation for a consensual transaction began to take hold, the Committee approached the Debtors and encouraged them to abandon their litigation strategy and to immediately engage in global settlement discussions with DIRECTV, NRTC and the Committee. The Debtors joined the discussions, which quickly evolved into extensive, protracted negotiations over the terms of a global settlement among the Debtors, the Committee, DIRECTV, NRTC and PCC. These negotiations culminated in the execution of the Settlement Agreement, the Asset Purchase Agreement and the Cooperation Agreement, which, collectively, will net these estates in excess

[3] Contemporaneously with its negotiations with DIRECTV and NRTC, the Committee approached EchoStar Communications Corporation ("EchoStar"), the only other potential bidder for the Satellite Assets, to discuss terms of a potential transaction pursuant to which the estates would transfer Pegasus' Subscriber Information to Echostar for use in connection with Echostar's DISH Network. These discussions, however, were not productive as Echostar was unwilling to guarantee the estates a purchase price that would provide a significant recovery to unsecured creditors.

of $875 million in exchange for what can only be characterized as "wasting" assets and the release of uncertain litigation claims.

5. Notwithstanding the cumulative view of the Debtors, the Committee and the Secured Lenders that the Global Settlement represents an exceptional result for Pegasus and the best way to maximize recovery for the Debtors and their stakeholders, a single holder of Pegasus' subordinated notes is seeking to derail the Global Settlement. D.E. Shaw Laminar Portfolios, L.L.C. ("DE Shaw") -- a member of the Committee who participated in substantially all of the negotiations with DIRECTV and Echostar -- apparently unhappy with its purchase of approximately $42 million in subordinated, out-of-the-money, debt securities, filed a meritless objection to the Global Settlement (the "Objection"). The Objection appears to be a last ditch effort to coerce a recovery from the Debtors' senior creditor constituencies that, as a matter of contract and law, DE Shaw is not entitled to receive. The Objection can be boiled down to essentially two arguments: (i) that the Satellite Assets should be subject to an auction and (ii) that the releases provided for in the Global Settlement are inappropriate. DE Shaw ignores the exigent circumstances confronting these Debtors, making an auction, which the Committee believes is unnecessary, impractical at best. Most importantly, DE Shaw's position ignores the realities of these cases and the importance of the certainty achieved by the Global Settlement – that the unsecured creditors of these estates are assured recoveries of hundreds of millions of dollars. Without the Global Settlement, a result DE Shaw seeks by filing the Objection, unsecured creditors likely would be deprived of the recovery that the Debtors and the Committee have worked so hard to achieve. With nothing to lose, DE Shaw wishes to take all creditors down with them. Such actions should not be countenanced by a Court of equity, especially when faced with the compelling resolution of the disputes found in the Global Settlement.

6. The Global Settlement evidences a single, complex integrated transaction, which, among other things:

- contemplates the transfer of the Satellite Assets to DIRECTV, which will result in the estates' receipt of a net purchase price of approximately $875 million and will provide sufficient value to satisfy the Secured Lenders' claims in full and yield significant recoveries to unsecured creditors;
- resolves the Adversary Proceeding; and
- resolves all claims among the Debtors, on the one hand, and PCC and the other Pegasus Non-Debtors, on the other.

7. The expedited resolution of the complex legal and factual disputes in accordance with the terms of the Global Settlement is fair, equitable and necessary to ensure that maximum value is obtained for the Debtors' Satellite Assets. The Global Settlement's guaranteed return of hundreds of millions of dollars to the unsecured creditors of these estates, who, in the absence of such settlement would receive ***no*** recovery, is the correct path toward value maximization and mandates the Committee's support of such settlement. The Committee respectfully submits that this Court overrule DE Shaw's misplaced objection and approve the Global Settlement.

BACKGROUND

8. 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").

9. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

10. On June 10, 2004, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee for the District of Maine appointed the Committee.

The DBS Agreement/Member Agreement

11. Prior and subsequent to the Petition Date, Pegasus was, and continues to be, primarily engaged in the business of providing direct broadcast satellite television ("DBS") services in certain territories in predominantly rural areas in the United States through the Member Agreement with NRTC. NRTC obtained the exclusive right to distribute DBS Services in certain territories throughout rural areas of the United States for a specified period of time pursuant to that certain Direct Broadcast Services Distribution Agreement (the "DBS Agreement") dated as of April 10, 1992, among Hughes Communications Galaxy, Inc. ("HCG"), the predecessor in interest to DIRECTV, and NRTC.

12. After entering into the DBS Agreement with DIRECTV, NRTC entered into separate Member Agreements for Marketing and Distribution of DBS Services with NRTC members and affiliates. Such an agreement was entered into between NRTC and Pegasus Cable Associates, Ltd. ("Pegasus Cable"), one of the Debtors, on June 24, 1993 (the "Member Agreement"). Pursuant to the Member Agreement, NRTC granted Pegasus Cable the right to market and sell DBS Services in certain specific territories to the extent such rights were granted to NRTC by DIRECTV under the DBS Agreement. In addition, Pegasus Cable obtained certain rights to sell certain programming services provided by DIRECTV pursuant to the Seamless Agreement.

The Debtors' Prepetition Debt Structure

13. As of March 31, 2004, the Debtors had outstanding indebtedness of approximately $1.5 billion. The Debtors' prepetition debt structure is comprised of the following:

a. Senior Secured Bank Debt. Debtor Pegasus Media & Communications, Inc. ("PMC") is party to two credit facilities that provided it with approximately $410 million in borrowing capacity in the form of (i) a revolving credit facility, and (ii) a term loan facility. As of the Petition Date, approximately $409.8 million in aggregate principal amount was outstanding under PMC's prepetition credit facilities. PMC's obligations under these prepetition credit facilities are (i) secured by first liens on substantially all of PMC's assets, including the equity of substantially all of PMC's Debtor and non-Debtor subsidiaries, and (ii) guaranteed by substantially all of PMC's Debtor and non-Debtor subsidiaries.

b. Junior Secured Bank Debt. Debtor Pegasus Satellite Communications, Inc. ("PSC") is a party to a prepetition term loan facility. As of the Petition Date, approximately $104.4 million in aggregate principal amount was outstanding under the prepetition term loan facility. PSC's obligations under the prepetition term loan facility are secured by a second lien on the stock of PMC and a first and second lien on certain PSC collateral bank accounts, the balances of which were zero as of the Petition Date.

c. Unsecured Funded Debt. PSC has approximately $941 million in aggregate principal amount of unsecured funded debt comprised of, among other things, (i) senior notes with varying interest rates and maturities in an aggregate principal amount of approximately $771 million as of the Petition Date (collectively, the "Senior Notes"), and (ii) senior subordinated notes in an aggregate principal amount of approximately $126 million (collectively, the "Subordinated Notes"). According to section 10.01 of the Indenture dated as of May 31, 2001 relating to the Subordinated Notes (the "Subordinated Indenture"), each holder of Subordinated Notes, by accepting the note, agreed that the indebtedness evidenced thereby is subordinated in right of payment, "to the prior payment in full of all Senior [Notes] … and that

the subordination is for the benefit of the holders of Senior [Notes]." See Subordinated Indenture at ¶ 10.01(a). The Subordinated Indenture further provides that, in the event of a bankruptcy, holders of Senior Notes are entitled to receive payment in full of all obligations due in respect thereof (including interest accruing after the commencement of any such proceeding at the rate specified in the applicable indenture) before the holders of Subordinated Notes are entitled to receive any payment on account of their notes. See Subordinated Indenture at ¶ 10.03(i).

Events Leading to the Commencement of the Chapter 11 Cases

14. The primary factors leading to the commencement of the Debtors' chapter 11 cases stem from the following series of events involving the Debtors, DIRECTV and NRTC:

a. The California Litigation. On or about June 3, 1999, and August 27, 1999, NRTC filed two lawsuits against DIRECTV seeking damages and declaratory relief relating to certain disputes over the supply of programming and reimbursement of fees under the DBS Agreement.

On or about February 10, 2000, Pegasus filed an amended complaint against DIRECTV and HCG (the "Pegasus California Complaint") alleging claims including intentional interference with contractual relations, intentional interference with prospective and existing economic relationships, violations of the California Business and Professions Code, misappropriation of trade secrets and declaratory relief relating to the Member Agreement. Approximately two weeks later, North Central Telephone Cooperative and the Iowa Lakes Electric Cooperative, each a member of NRTC, on behalf of a class of plaintiffs consisting of approximately 20% to 25% of NRTC members (but not including the Debtors) (the "Class"), filed two lawsuits against DIRECTV and HCG alleging claims that mirrored those brought in the Pegasus California Complaint. These lawsuits (collectively, the "California Litigation") were consolidated in the Central District of California (the "California Court").

On or about May 22, 2003, the California Court granted DIRECTV's motion for summary judgment on Pegasus' claims for intentional interference with contractual relations and intentional interference with prospective economic advantage, holding that the claims failed as a matter of law because DIRECTV had a direct interest and/or involvement in the relationships it had allegedly interfered with. See National Rural Telecommunications Cooperative v. DirecTV, Inc., (Cent. D. Cal. May 22, 2003) at 22-23. The California Court also dismissed portions of Pegasus' claim for violation of the California Business and Professions Code. See id. at 46-47.

On August 5, 2003, just nine days prior to the date that the remainder of the California Litigation was set to go to trial, NRTC and DIRECTV entered into a settlement agreement that resolved the claims brought by NRTC and the Class (the "California Settlement"). Pegasus was eligible to partake in the California Settlement until March 8, 2004, but elected not to participate. The California Settlement provided for, among other things, (a) the establishment of a new DBS Agreement and new Member Agreements; (b) a modification to the expiration date of the initial term of the DBS Agreement to the later of (i) the date that the orbital satellite enabling the transmission of the DBS Services is removed from its assigned orbital location under certain conditions or (ii) June 30, 2008; and (c) a purchase price for DIRECTV's acquisition of subscribers from NRTC members or affiliates.

After deciding not to participate in the California Settlement, Pegasus attempted to prevent any amendments to the DBS Agreement. Pegasus' initial efforts to prevent the California Settlement from taking effect failed when the California Court held that Pegasus lacked standing to contest the California Settlement. Subsequently, Pegasus sought to intervene in the lawsuits between NRTC and DIRECTV for the sole purpose of opposing the California Settlement, which effort was summarily rejected by the California Court. See Nat'l Rural

Telecom. Coop. v. DIRECTV, Inc., 319 F. Supp. 2d 1094, 1099 (C.D. Cal. 2003). Significantly, the Court based its holding on the fact that "when Pegasus entered into its Member Agreement, it had the DBS Agreement and knew that the contract expressly disavowed any third party beneficiaries. Pegasus entered into its Member Agreement with full knowledge that it would not be a third party beneficiary to the DBS Agreement" and, thus, Pegasus did not have the right to contest an amendment to the DBS Agreement.

On January 5, 2004, the California Court approved the terms of the California Settlement after finding that the terms thereof were "fair, just, reasonable and adequate."

On or about May 11, 2004, the California Court granted DIRECTV's motion to dismiss Pegasus' remaining claims. With respect to the claims for declaratory relief, the California Court held that Pegasus lacked prudential standing to bring those claims because it asserted rights belonging to NRTC. See Pegasus Satellite Television, Inc. et al. v. DIRECTV, Inc., (Cent. D. Cal. May 11, 2004) at 12. Pegasus has appealed the California Court's determinations, which appeal remains pending.

b. Termination of the DBS Agreement. On June 1, 2004, NRTC and DIRECTV agreed to terminate the amended DBS Agreement, effective immediately. In connection therewith, DIRECTV committed to pay NRTC $4.4 million per month through June 30, 2011, with the potential for another lump sum payment of $14 million upon satisfaction of certain conditions. DIRECTV also offered to enter into contracts directly with NRTC members, with the exception of the Debtors, to continue to serve as their exclusive provider of DBS Services until June 30, 2011. DIRECTV subsequently offered to purchase NRTC's members' rights to distribute DBS Services for $875 to $1,050 per subscriber, while offering to purchase the

Debtors' subscribers for $675 per subscriber. DIRECTV's respective offers were to remain open until June 30, 2004. Pegasus did not accept the offer.

c. Termination of Member Agreement. On June 1, 2004, NRTC terminated the Member Agreement, effective as of August 31, 2004. Thus, as of August 31, 2004, Pegasus will no longer have the right to distribute DBS Services to its subscribers.

d. The Seamless Litigation Judgment. On or about June 19, 2001, DIRECTV brought claims in the Superior Court of California for Los Angeles for breach of contract and an accounting against Pegasus for violations of a joint marketing agreement. Pegasus removed the case to the United States District Court for the Central District of California (the "Seamless Litigation"). Pegasus denied DIRECTV's allegations and filed counterclaims against DIRECTV for compensatory and punitive damages and for rescission for fraud, misrepresentation, breach of contract and breach of the implied covenant of good faith and fair dealing.

On April 14, 2004, a jury returned a verdict in favor of DIRECTV on two of its causes of action. The jury awarded DIRECTV damages in the amount of $51,499,999.00, and the District Court awarded DIRECTV prejudgment interest in the amount of $10,699,601.32. Judgment was entered by the District Court in the Seamless Litigation in the amount of $62,586,479.43 on or about May 21, 2004 (the "Seamless Litigation Judgment"). Pegasus has appealed the Seamless Litigation Judgment, which appeal remains pending.

e. The Best Efforts Litigation. On or about June 2, 2004, DIRECTV filed a complaint against PCC and Pegasus in the United States District Court for the Central District of California (the "Best Efforts Litigation"), seeking (a) preliminary and permanent injunctive relief to prevent unauthorized use by Pegasus of DIRECTV's trademarks, and (b) monetary damages for alleged violations by Pegasus of obligations under the Member Agreement to use its best

efforts in marketing DIRECTV services. Further proceedings in the Best Efforts Litigation have been stayed due to the commencement of these chapter 11 cases.

Pre-petition Transactions with PCC and Other Pegasus Non-Debtors

15. During the period February 22, 2001 through the Petition Date, the Debtors had substantial and continuing business transactions with their ultimate parent company, PCC, and other non-Debtor affiliates. Set forth below are the principal transactions that occurred during such period:

- The 2001 Reorganization. In 2000, Pegasus Satellite Communications, Inc. ("PSC"), then named Pegasus Communications Corporation, determined that, as constituted, PSC would be unable to meet its future operational and financing needs and that a corporate reorganization would be necessary. In that regard, on February 22, 2001, all common and preferred equity of PSC was exchanged for identical preferred and common equity of PCC, then newly formed to act as a public holding company (the "2001 Reorganization"). As a result of the 2001 Reorganization, PCC replaced PSC as the ultimate public parent corporation of the Debtors. PSC remained liable on the public debt securities that it had issued prior to the 2001 Reorganization. As part of the 2001 Reorganization, PSC transferred certain other assets to Pegasus Development Corporation.

- 2002 Transactions. For the year ended December 31, 2002, PSC made net cash dividends to PCC of $148,795,000. Contemporaneously with a $122 million dividend distributed to PCC during the second quarter of 2002, PSC re-borrowed $113,732,000 of the $122 million, as evidenced by an intercompany note (the "PCC Note"). The PCC Note matures on June 30, 2007. Interest on the PCC Note is payable quarterly and the interest rate is related to the rate paid by PMC on its term loan facility, plus 1%. During fiscal year 2002, the principal on the PCC Note was reduced by $58,482,000 (a portion of which appears to have been a capital contribution from PCC to PSC).

- 2003 Transactions. During the first quarter of 2003, PSC had net borrowings from PCC (unrelated to the PCC Note) of $6,891,000. During the first nine months of 2003, PSC purchased 297,460 shares of PCC Class A Preferred Stock for $5.5 million and, thereafter, 29,100 additional shares for $532,000 during fiscal 2003. For the year ended December 31, 2003, PSC paid $18,092,000 of principal on the PCC Note, such that the loan balance was $45,724,000 at year end.

- 2004 Transactions. As of the quarter ended March 31, 2004, PSC paid $7,321,000 of principal on the PCC Note. As of the Petition Date, $28,100,000 remained outstanding on the PCC Note.

- Other Transfers. (i) On July 24, 2001, PSC transferred to PCC PSC's membership interest in Pegasus Guard Band, LLC (a licensee with respect to certain broadcast frequencies); (ii) on April 11, 2002, PSC transferred to PCC approximately 7% of the equity of Pegasus Communications Holdings, Inc. in the form of non-voting common securities; and (iii) on May 8, 2002, PSC transferred to PCC the stock of Pegasus Real Estate Company (which owns PCC's headquarters building).

Post-Petition Events

16. The Automatic Stay Violation Motion. On June 4, 2004, Pegasus filed its Emergency Motion for Relief in Respect of Violations of the Automatic Stay by DIRECTV, Inc. (the "Stay Violation Motion"). Pursuant to the Stay Violation Motion, Pegasus alleged that DIRECTV had violated the automatic stay provisions of Bankruptcy Code section 362(a) by, among other things, (a) marketing and selling DIRECTV DBS Services to Pegasus' active subscribers; (b) converting or enabling the conversion of Pegasus' subscribers to DIRECTV subscribers; and (c) using Pegasus' proprietary Subscriber Information to effectuate the foregoing, each of which DIRECTV was prohibited from doing while the DBS Agreement was in effect. Ruling in uniformity with the California Court, on June 10, 2004, this Court found that (i) Pegasus had no ability to prevent DIRECTV and NRTC from terminating the DBS Agreement, (ii) Pegasus was not a third party beneficiary of the DBS Agreement, and (iii) NRTC had the ability to terminate the Member Agreement upon termination of the DBS Agreement. Accordingly, this Court held that there was no violation of the automatic stay as a result of DIRECTV's marketing and selling of DIRECTV DBS Services in Pegasus' territories.[4]

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[4] The Court did find a violation of the automatic stay in connection with DIRECTV's use of Pegasus' proprietary Subscriber Information.

17. The Adversary Proceeding. On June 14, 2004, the Debtors filed a complaint against NRTC, NRTC's directors and officers, DIRECTV and certain of DIRECTV's directors and officers (the "Adversary Complaint"). The Adversary Complaint reiterates several of the claims that were brought by Pegasus in the California Litigation and, among other things, seeks rescission of the California Settlement.

18. Also on June 14, 2004, Pegasus moved for a temporary restraining order or, in the alternative, a preliminary injunction in the Adversary Proceeding (the "TRO Motion") requesting, among other things, that the Court (a) compel NRTC to provide Pegasus with the exclusive right to market and sell DBS Services in its territories pursuant to the Member Agreement; (b) enjoin NRTC and DIRECTV from terminating the DBS Agreement and the Member Agreement; (c) enjoin DIRECTV from soliciting Pegasus' subscribers; (d) compel DIRECTV and NRTC to direct Pegasus' subscribers who contact them to contact Pegasus for service; and (e) enjoin DIRECTV from broadcasting messages to or otherwise contacting any of Pegasus' subscribers.

19. On June 21, 2004, this Court denied the TRO Motion on the ground that Pegasus' "demonstration of success on the merits is underwhelming in this case and, indeed, sufficiently underwhelming as not to carry the day." Transcript of In-Court Telephonic Hearing Before the Hon. James B. Haines, Jr., June 21, 2004 at 6 (hereinafter, the "June 21 Tr. at __"). In reaching its conclusions, this Court noted that: (a) DIRECTV and NRTC had the right to terminate the DBS Agreement; (b) NRTC, by virtue of the termination of the DBS Agreement, had the right to terminate the Member Agreement; (c) Pegasus cannot argue that DIRECTV's and NRTC's agreed-upon changes to the DBS Agreement constitute tortious interference with the Member Agreement; (d) the implied covenant of good faith and fair dealing cannot eliminate a direct

contractual right; (e) NRTC does not owe a fiduciary duty to Pegasus; and, thus, (f) DIRECTV was not aiding and abetting NRTC's purported violation of its fiduciary duties to Pegasus.[5]

Negotiations Regarding the Global Settlement

20. Almost immediately following the appointment of the Committee, the Committee and the Secured Lenders held discussions with DIRECTV and NRTC to ascertain whether a consensual resolution to the issues raised in the California Litigation and the Adversary Proceeding could be accomplished. These sessions were attended by professionals for each of the foregoing parties, in addition to individual Committee members and business representatives for certain parties to the Global Settlement.

21. As the discussions with DIRECTV and NRTC progressed, the Debtors and PCC (at the insistence of DIRECTV) joined the settlement discussions. The negotiations, which were conducted at arm's length and were at varying times contentious, centered on the parties' desire to achieve a global settlement that (a) would have the support of the Debtors' primary creditor and equity constituencies, and (b) would adequately account for the claims and potential claims of the various constituents. These discussions culminated in the execution of documents necessary to effectuate the Global Settlement.

22. Contemporaneously with these discussions, the Committee, on its own accord, held discussions with representatives of Echostar to ascertain its interest in a potential acquisition of the Debtors' Subscriber Information. The Committee's discussions with Echostar, which were attended by certain Committee members, including DE Shaw, were not productive as Echostar was unwilling to guarantee (a) a purchase price that even remotely approached the amount DIRECTV was willing to pay in connection with the Global Settlement or (b) a

[5] The Court did state that Pegasus may be able to assert a claim against NRTC related to NRTC's failure to abide by its obligation to provide Pegasus with the exclusive right to market and sell DBS Services in its territories, but only with respect to the period from June 1, 2004 to August 31, 2004.

transaction that had a reasonable opportunity of delivering more value to the estates than the Global Settlement.

Terms of the Global Settlement

23. The salient terms of the Global Settlement are as follows:

- Sale of Substantially All of the Debtors' Satellite Assets. The Debtors have agreed to the sale, transfer and conveyance of substantially all of the Debtors' Satellite Assets to DIRECTV for approximately $938 million, subject to certain adjustments set forth in the Asset Purchase Agreement. The final purchase amount will be adjusted in the following manner: (i) a reduction of approximately $63 million will be taken to reflect the amount owed by the Debtors to DIRECTV in respect of the Seamless Litigation Judgment; (ii) increased by approximately $16.8 million to account for cash patronage distributions for 2003 and 2004 and amounts owed under the Cooperation Agreement; and (iii) increased or decreased on account of certain other adjustments, including working capital adjustments, as set forth in the Asset Purchase Agreement.

- The Satellite Assets to be acquired by DIRECTV include the following: (i) all Subscriber Information; (ii) all DIRECTV equipment and any rights to bill and collect from subscribers for non-return fees in connection with DIRECTV equipment; (iii) certain leases as specified in the Asset Purchase Agreement; (iv) furniture and equipment; (v) the Member Agreement, the Seamless Agreement and certain contracts set forth in the Asset Purchase Agreement and all rights thereunder; (vi) all rights to receive cash patronage from NRTC in an amount up to the Patronage Amount (DIRECTV will pay Pegasus all amounts currently due to Pegasus in respect of cash patronage distributions for 2003 and 2004 and be assigned Pegasus' rights to receive same from NRTC); and (vii) all accounts receivable and unearned revenue of the Debtors related to the DBS activities as of the closing date of the Settlement Agreement.

- Dismissal of Pending Litigation. No later than five days after the effective date of the Global Settlement (the "Effective Date"), all motions, contested matters, adversary proceedings, pending appeals, and pre-petition actions involving the DIRECTV parties will be dismissed with prejudice as to all parties. Such dismissal will not affect or impair the rights that any party may have under the documents executed in connection with the Global Settlement.

- Release of Claims. Upon closing of the Settlement Agreement, the Debtors will receive from DIRECTV a general release of all claims, including claims with respect to the Seamless Litigation Judgment and any other pending litigation between the parties. The Debtors will also receive

a general release of all claims from NRTC. In addition, the Debtors will receive a general release of all claims held by the Pegasus Non-Debtors, except for claims arising after the Petition Date. This includes an aggregate claim for approximately $28.1 million due on the Petition Date under an intercompany note issued by PSC and other inter-company receivables due from the Debtors.

- The Debtors will release DIRECTV and NRTC from any and all claims arising prior to the Effective Date, except for certain retained claims. The Debtors will also provide a general release of any and all claims held against Pegasus Non-Debtors prior to the Effective Date.

- Retention of Distribution Rights under Patronage Certificates. As a consequence of NRTC's termination of the Member Agreement with the Debtors, NRTC's bylaws provide that the Debtors would lose any rights to receive payments with respect to the Patronage Certificates. Pursuant to the Settlement Agreement, NRTC has agreed that it will not deem the Debtors' rights under the Patronage Certificates to be forfeited despite the termination of the Member Agreement and any termination of the Debtors as members of NRTC. NRTC has agreed that the Patronage Certificates will not be subject to discriminatory treatment, subordination or distribution rights that are in any way inferior to the certificates held by other members of NRTC. Consequently, under the Settlement Agreement, the Patronage Certificates will remain in full force and effect after August 31, 2004. The face amount of the Patronage Certificates that would otherwise be subject to forfeiture absent the Global Settlement is approximately $89 million.

- Sale of Broadcast Assets: In connection with the Global Settlement, the parties have agreed to immediately commence a sale and auction process in connection with the Debtors' disposition of the assets of PBT and its subsidiaries and the assets of the other Debtors used or necessary to the operation of the Debtors' broadcast business (collectively, the "Broadcast Assets"). In that regard, on or about July 30, 2004, PCC, the Committee and certain members of the Committee entered into that certain Letter Agreement, pursuant to which the parties agreed to enter into an asset purchase agreement, pursuant to which PCC will acquire the Broadcast Assets in a transaction pursuant to sections 363 and 365 of the Bankruptcy Code, or (ii) the stock of Reorganized PSC pursuant to a plan of reorganization for the Debtors, in each case in exchange for $75 million in cash, but subject to higher and better offers.

ARGUMENT

I. THE GLOBAL SETTLEMENT IS FAIR AND EQUITABLE AND IN THE BEST INTERESTS OF THE ESTATES

24. The Global Settlement is fair and equitable, in the best interests of the estates and satisfies the requirements of Bankruptcy Rule 9019. The Global Settlement provides for the settlement of continuing and prospective litigation over the termination of the DBS Agreement, the termination of the Member Agreement, the termination of the Seamless Agreement, breaches of duty allegedly owed by DIRECTV and NRTC to Pegasus and common law claims and causes of action arising in connection with the foregoing. In addition, the Global Settlement encompasses a complete resolution of any and all claims and causes of action by and against the Debtors, on the one hand, and the Pegasus Non-Debtors, on the other. Given (i) the continuing, and potential for additional, complex, protracted, uncertain and expensive litigation over these and other issues, (ii) the substantial negative risks associated with the threatened August 31st termination date of the Member Agreement, and (iii) the dissipating value of these estates, the Debtors, the Committee, the Pegasus Non-Debtors (including PCC), DIRECTV and NRTC agreed to the Global Settlement. Most importantly, the Global Settlement provides funds necessary to pay the Secured Lenders in full, with hundreds of millions of dollars left over to provide a significant distribution to the unsecured creditors of these estates.

25. Courts, as a general rule, favor compromises, as compromises facilitate a debtor's reorganization. In re Greenacre, 103 B.R. 1 (Bankr. D. Me. 1989). A debtor entering into compromises and settlements with respect to complicated factual and legal disputes furthers the general public policy favoring settlements. See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (stating that compromises are a normal part of a reorganization); In re Allegheny Int'l, Inc., 118 B.R. 282, 309 (Bankr. W.D. Pa.

1990) (finding that the benefits of settlement include, among other things, (i) the elimination of substantial expenses to the estate that otherwise would be incurred if the litigation continued through trial and subsequent appeal; (ii) the elimination of the risk of a verdict unfavorable to plaintiffs if the litigation should proceed to trial; (iii) the ability to proceed with the reorganization without the risk of delay arising from the litigation; and (iv) the significant monetary concessions by the parties).

26. Pursuant to Bankruptcy Rule 9019, following a "motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019. The determination of whether to approve a settlement under Bankruptcy Rule 9019 is within the sound discretion of the bankruptcy judge. See Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995); In re Anolik, 107 B.R. 426, 429 (Bankr. D. Mass. 1989). In making this determination, the bankruptcy court should approve a settlement where it is "supported by adequate consideration, is 'fair and equitable,' and is in the best interest of the estate." Hill v. Burdick (In re Moorhead Corp.), 208 B.R. 87, 89 (B.A.P. 1st Cir. 1997). The bankruptcy court is not required to determine the questions of law and fact raised by the issues to be settled but, rather, to determine whether the settlement "fall[s] below the lowest point in the range of reasonableness." Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983); In re Hydronic Enter., Inc., 58 B.R. 363, 366 (Bankr. D.R.I. 1986). First Circuit courts generally refer to this analysis as the "best interest" test. See, e.g., In re Wiesner, 267 B.R. 32, 38 (Bankr. D. Mass. 2001); Jeffrey v. Desmond, 70 F.3d at 185.

27. To determine whether the proposed settlement satisfies the "best interest" test, courts consider the following factors:

a) the probability of success in the litigation being compromised;

b) the difficulties, if any, that may be encountered in collection;

c) the complexity of the litigation along with the expense, inconvenience and delay required in pursuing it; and

d) the paramount interest of the creditors and proper deference to creditors' views.

See, e.g., Jeffrey v. Desmond, 70 F.3d at 185; In re Wiesner, 267 B.R. at 38. These factors ensure that courts considering whether to approve a motion under Rule 9019 "do more than give 'mere boilerplate approval' " to settlement requests. In re GHR Cos., 50 B.R. 925, 931 (Bankr. D. Mass. 1985); In re Anolik, 107 B.R. at 429. When considering these factors, "the court should avoid second-guessing the [debtor in possession] in the exercise of his business judgment but rather should endeavor to ascertain whether the terms of the [debtor's] proposed settlement fall below the lowest range of reasonableness." Morris v. Nat'l Union Fire Ins. Co. (In re Eastwind Group, Inc.), 303 B.R. 743, 750 (Bankr. E.D. Pa. 2004). There is no need "to satisfy each of these factors, provided that the factors as a whole favor approving the settlement." In re Pac. Gas & Elec. Co., 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004). Among other factors, when exercising its discretion to approve a Bankruptcy Rule 9019 settlement, the bankruptcy court may consider the experience and competency of counsel supporting the settlement. See Nellis v. Shugrue, 165 B.R. 115, 122 (Bankr. S.D.N.Y. 1994).

28. There is no doubt that the Global Settlement easily meets these requirements. The premise of the Global Settlement is the resolution of complex and heavily litigated legal and factual issues. By effectuating the Global Settlement, the Debtors and the Committee are (i) removing the single largest obstacle to the success of these cases and (ii) enabling substantial value for the benefit of creditors to be obtained for the Debtors' primary assets which, for all practical purposes, may be substantially worthless less than two weeks from today. Due to the complexity of the issues settled in connection with the Global Settlement, as discussed below:

(a) it is not possible to determine with any certainty (at least not a certainty favorable to the Debtors) the likelihood of success in litigating the issues; and (b) litigating the issues would (i) indefinitely delay these cases, thereby resulting in an attendant erosion of the limited value that would remain in these estates; (ii) add innumerable costs to the Debtors' estates to the detriment of all creditors; and (iii) jeopardize any unsecured creditor recoveries in these cases. The Global Settlement was thoroughly negotiated and reviewed by the Debtors, the Committee, the Secured Lenders, DIRECTV, the Pegasus Non-Debtors and NRTC, is in the best interests of the Debtors' estates and falls well above the lowest point in the range of reasonableness. As such, the Global Settlement should be approved.

A. The Debtors' Probability of Success in Litigation Against DIRECTV and NRTC, as Well as Against PCC is Unclear

29. The litigated outcome of the Debtors' pending actions against DIRECTV and NRTC, based on the prior decisions in the California Litigation, as well as the decisions of this Court, is uncertain, at best. Additionally, the litigated outcome of the Debtors' potential causes of action against PCC, which will require intense and complex factual and legal analysis, is not without doubt and would, at best, provide a recovery that pales in comparison to the Global Settlement. When measured against the certainty afforded by the Global Settlement and the recoveries provided to unsecured creditors thereby, approval of the Global Settlement is warranted.

30. <u>Disputes Regarding Pegasus' Exclusive Right to Distribute DBS Services and Termination of the DBS Agreement and Member Agreement</u>. There are two primary pending litigations that rise to the forefront of the disputes among the Debtors, on the one hand, and NRTC and DIRECTV, on the other: the California Litigation and the Adversary Proceeding.

31. The Debtors' track record in these proceedings casts significant doubt over the likelihood that they would ever succeed in the pending appeals or in the Adversary Proceeding. In its opinion denying the Debtors' application for a temporary restraining order in connection with the Adversary Proceeding, which seeks to prevent the termination of the Member Agreement and the Seamless Agreement and revert to the *status quo ante*, this Court stated:

> I conclude there's been no likelihood of success on the merits under a business tort theory, under an implied covenant of good faith and fair dealing, under a breach of fiduciary duty, and aiding and abetting theories. And as I've indicated already, the nature of the injunctive relief sought is, to my mind, broad and retroactive in character and functions in a way that's at odds with the accepted role of interlocutory injunction relief to maintain the status quo.

June 21 Tr. at 13-14. This Court also stated that: "In light of Judge Baird's decision of May 22, 2003, in the U.S. District Court for the Central District of California, and his subsequent opinions which all follow logically consistently from his conclusion articulated on May 22, Pegasus cannot argue that the DIRECTV-NRTC settlement and modification of the DBS [Agreement] constitutes a tortious interference with contract rights for economic relations. And the same principles would extend to and foreclose any claim that their termination of the DBS [Agreement] was impermissible as to Pegasus." Id. at 7. These are just a sampling of the most probative examples of the absence of the Debtors' likelihood to succeed in the Adversary Proceeding and magnify the need for the proposed Global Settlement.

32. In an apparent acknowledgement of the weakness of its position, DE Shaw fails to devote a single word in its Objection to the status of the Debtors' litigations against DIRECTV and NRTC. This blatant disregard for the facts belies DE Shaw's allegations of bad faith and breach of fiduciary duty on the part of the Debtors and the Committee in prosecuting the Motion. Rather, DE Shaw's main bases for its Objection are the absence of a public auction for the

Satellite Assets and the inappropriate settlement of the Debtors' claims against PCC. As discussed in greater detail below, as a result of a number of factors, including the pending August 31st termination date, an auction is not a practical option for these Debtors and would, based upon the Committee's discussions with Echostar, be extremely unlikely to result in an increased purchase price for the Satellite Assets. Additionally, the potential causes of actions of the Debtors against PCC are complex and uncertain. However, even if such causes of actions were "slam-dunks," the net proceeds realizable from such claims pale in comparison to the proceeds to be received by the Debtors' unsecured creditors from the Global Settlement.

33. It is obvious why DE Shaw has chosen not to discuss the Debtors' potential for success in their litigation with DIRECTV and NRTC -- the reality is that, based on the rulings to date in the California Litigation, the Adversary Proceeding and with respect to the Stay Violation Motion, the prospect of a successful outcome for the Debtors in these litigations is tenuous, at best.

34. Potential Causes of Action Against PCC and the Other Pegasus Non Debtors. The Committee has raised the possibility that claims and/or causes of action may exist in favor of the Debtors' estates against PCC and the other Pegasus Non-Debtors. The potential actions arise principally out of the 2001 Reorganization, the 2002 cash dividends to PCC and the corresponding $114 million loan from PCC back to PSC contemporaneously therewith. Nevertheless, for the reasons discussed below, the Committee believes that compromising these potential causes of action is appropriate in connection with the Global Settlement.

35. DE Shaw asserts that the Debtors are giving up "valuable assets" by releasing claims against various non-debtor affiliates of the Debtors. See Objection at ¶ 13. However, DE Shaw provides no substantive analysis of the nature of these claims, and does not discuss the

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legal or factual showings necessary for the Debtors to prevail on such claims, the Debtors' likelihood of success, or the cost and time involved in such complex litigation.

36. DE Shaw's conclusory allegation that payments from the Debtors to the Pegasus Non-Debtors can "likely" be recovered as fraudulent transfers grossly oversimplifies the law of fraudulent conveyance as it applies to the facts of these cases, and is extremely misleading. In reality, the issue of whether a fraudulent conveyance claim may be brought in relation to these transfers is highly complex.

37. Under the Bankruptcy Code and applicable fraudulent conveyance law, a debtor in possession or estate representative may avoid conveyances lacking "reasonably equivalent value." See Uniform Fraudulent Transfer Act ("UFTA") § 4(a), (b); 11 U.S.C. §§ 544, 548. The standard for determining "reasonably equivalent value" has been described as a "measurement test" by which a court, on a case by case basis, compares what was given with what was received at the time the transfer was made, taking into account the totality of the circumstances surrounding the transaction. See e.g., In re Tri-Star Technologies Co., Inc., 260 B.R. 319, 325 (Bankr. D. Mass. 2001); Coan v. Fleet Credit Card Servs. (In re Guerrera), 225 B.R. 32, 36 (Bankr. D. Conn. 1998).

38. Additionally, even if the transferor did not receive reasonably equivalent value or fair consideration, one of the following factors must also exist in order for a fraudulent conveyance claim, such as that suggested by DE Shaw, to succeed: (a) the transferor was insolvent either before or after as a result of the conveyance; (b) as a result of the conveyance, the transferor retained unreasonably small capital to conduct its business; or (c) the transferor intended to incur, or believed that it would incur, debts beyond its ability to pay as such debts mature. See 11 U.S.C. § 548; UFTA § 4(a). Accordingly, any fraudulent transfer claim that the

estates could bring will center on whether the Debtors were insolvent, or left with unreasonably small capital to continue as a going concern, at the time of or following a transfer.[6]

39. Determination of the Debtors' solvency at any given time is extraordinarily difficult, as it turns in significant part on the complex issue of when Pegasus' key asset, the Member Agreement, terminates.[7] After years of complex and expensive litigation in California aimed at discerning, among other things, the term of the Member Agreement, the issue is still unresolved with respect to Pegasus.[8] Any potential fraudulent conveyance claim that the estates could bring would necessarily involve significant time and expense examining this contentious and complex issue. To prevail on the claims, the Debtors would be required to conduct lengthy, timely and costly discovery, which would likely include extensive expert testimony. As a result of the complexity involved in determining the necessary solvency issues, the outcome of such

[6] The debtor's financial condition is measured at the time of the transfer. See In re Tri-Star Techn. Co., Inc, 260 B.R. 319, 325 (Bankr. D. Mass 2001). Two basic standards are generally used to determine a debtor's solvency: (a) the "reconstituted balance-sheet test" that examines whether a debtor's entire property and assets are sufficient to pay its debts; and (b) the "cash flow" test that analyzes a debtor's ability to pay debts as they become due. However, determination of fair valuation is an inexact science and may at times be impossible. Courts are generally in agreement, however, that "book value" does not necessarily establish "fair saleable value." See Lids Corp. v. Marathon Inv. Ptrs., L.P. (In re Lids Corp.), 281 B.R. 535, 540 (Bankr. D. Del. 2002) (noting that "balance sheet test" is a misnomer because the test is based on fair valuation, not on GAAP); see also Lawson v. Ford Motor Co. (In re Roblin Indus., Inc.), 78 F.3d 30, 36 (2d Cir. 1996) ("[W]hile book values alone may be inappropriate as a direct measure of the fair value of property . . . such figures are, in some circumstances, competent evidence from which inferences about a debtor's insolvency may be drawn."); Branch v. Ernst & Young U.S., 311 F.Supp.2d 179, 183 (Bankr. D. Mass. 2004). Specifically, the market value of assets may be more or less than their book value.

[7] The receipt of termination notices from NRTC and DIRECTV postdate the substantial majority of Debtors to Pegasus Non-Debtors transfers.

[8] DIRECTV's position in the California Litigation was that the Member Agreement terminates when the DBS-1 satellite is removed from its orbital location. NRTC v. DIRECTV, May 9, 2001 at 4. Alternatively, Pegasus, as well as NRTC and the Class, argued that the termination date of the Member Agreement as defined by the agreement is ambiguous. One reasonable interpretation, Pegasus argued, is that the Member Agreement terminates when the satellite on which the transponder capacity is located is removed from its orbital location. This issue was resolved as between the Class, NRTC and DIRECTV under the California Settlement. However, Pegasus' rights on this issue were not affected by the settlement: "The settlement may change the Satellite Expiration Date under the DBS Agreement, but it cannot change this date under the Member Agreement. Pegasus' argument that the settlement agreement will affect the term of its Member Agreement is without merit." NRTC v. DIRECTV, November 10, 2003 at 15. Pegasus' claims for declaratory relief on the term of the Member Agreement were subsequently dismissed because the California Court held that Pegasus did not have standing to bring the claims.

litigation is far from certain.[9] Most importantly, even if the outcome of these actions were not free from doubt, the amounts at issue pale in comparison to the amount that these estates will receive from the Global Settlement. As DIRECTV and NRTC have required the participation of the Pegasus Non-Debtors in the Global Settlement, the settlement of these causes of action have become a required element of such settlement. The Debtors and the Committee, in the exercise of their fiduciary duties, have determined that the settlement of these causes of action, which if successful, would not provide enough recoveries to satisfy even 50% of the Secured Lenders claims, are entirely appropriate given the magnitude of recoveries to unsecured creditors that will be generated from the Global Settlement. Accordingly, settling these potential claims in the context of the Global Settlement is fair and reasonable.

B. The Complexity of the Litigation Involved and the Attendant Expense, Inconvenience and Delay if the Litigation is Pursued Warrant Approval of the Global Settlement

40. A detailed account of the procedural history of the pending litigation in this case is provided above. Even a cursory review of the causes of actions, appeals, counterclaims and the numerous agreements on which each action is based provide insight into the complexity and magnitude of the pending proceedings yet to be decided in the various litigation matters involving the numerous parties in interest.

41. If DE Shaw's Objection were sustained and the Motion denied, the Debtors would be forced into a quagmire of litigation and appeals in which the only guaranteed result would be a steady drain of estate resources that would otherwise be distributed to the creditors of these

[9] In addition to the possible avoidance of transactions with PCC pursuant to applicable fraudulent transfer law, such transactions may also be subject to avoidance as preferential transfers under Bankruptcy Code section 547. To the extent such actions were commenced, the same issues with respect to solvency would arise. In addition, PCC would assert defenses to such transfers under applicable provisions of the Bankruptcy Code including, without limitation, provisions excepting transactions made in the ordinary course of business and subsequent transfers of new value from preference exposure, which would undoubtedly add additional expense, complexity and uncertainty to the litigation with PCC See, generally, 11 U.S.C. § 547.

estates. If the Global Settlement is approved, however, the proposed settlement guarantees that within five days after the Effective Date, all pending appeals, adversary proceedings, pre-bankruptcy actions and other pending motions and contested matters involving the DIRECTV parties will be dismissed, with prejudice. Settlement Agreement at ¶1(a). Likewise, litigation with respect to claims by and against the Pegasus Non-Debtors would include protracted discovery of the documentation supporting each intercompany claim, as well as multi-faceted solvency analyses. Litigating these issues would be further complicated by the timing of the events related to the solvency analyses including, without limitation, the impact of the termination of the DBS Agreement and Member Agreement to such analyses.

42. Courts have approved settlements which prevent the assets of the estate from being unnecessarily applied to litigation that would be obviated by a settlement benefiting the entire creditor body. For example, in In re WorldCom, Inc., in approving a settlement with a lender the court stated that it "avoids costly and time-consuming litigation, paving the way toward achieving a successful reorganization of the Debtors. The avoidance of long and complicated litigation is one of the principal rationales for debtors entering into settlements with creditors." In re WorldCom, Inc., No. 02-13533, 2003 Bankr. LEXIS 1401, at *131 (Bankr. S.D.N.Y. Oct. 31, 2003) (approving settlements that provide a resolution to complex litigation likely to involve the estate in numerous appeals); see also In re Baldwin United Corp., 43 B.R. 888, 907 (Bankr. S.D. Ohio 1984) (noting the beneficial effects of resolving certain "no-win disputes" and relieving the estate of an "enormous financial burden" along with preventing the "distraction and drain of human resources attendant with these suits"). Courts in the First Circuit likewise balance "the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." Jeffrey v. Desmond, 70 F.3d at 185.

43. In this case, approval of the Motion will provide tremendous benefit to the Debtors and their creditors, and will greatly enhance the Debtors' ability to satisfy the claims of their creditors. Many of the obstacles presently blocking the path to a swift, successful conclusion to these cases and a meaningful distribution to creditors will be mooted with the approval of the Global Settlement and result in the avoidance of unnecessarily draining estate assets in complex, expensive, inconvenient and likely unsuccessful litigation.

C. The Paramount Interests of Creditors and Proper Deference to their Views Favors Approval of the Global Settlement

44. The paramount interest of creditors, and the proper deference to their views, is the most probative, important and primary factor in dispute in the instant case. Notwithstanding DE Shaw's protestations to the contrary, the creditors in these cases have two choices: (i) a guaranteed net purchase price of in excess of $875 million for the Debtors' Satellites Assets and resolution of all material pending litigation among the Debtors, DIRECTV, NRTC and PCC or (ii) the pursuit of speculative lawsuits, with the only guarantee being that substantial additional legal and ancillary fees will be generated with no guarantee of any recovery for ***any*** creditors in these cases. The choice is clear. Indeed, contrary to DE Shaw's allegations, the failure of the Committee and the Debtors to seek approval of the Global Settlement could very well be a breach of fiduciary duty.

45. This case involves Debtors whose assets are the quintessential "melting ice cube." Based on the termination of the DBS Agreement, Member Agreement and the Seamless Agreement, the Debtors' principle assets after August 31, 2004 would be (a) speculative causes of action against NRTC and DIRECTV, the central components of which have already been decided against the Debtors, (b) complex, indeterminate, unquantifiable claims against PCC and (c) the Broadcast Assets. Set against this backdrop, it is evident that the Global Settlement is the

estates' best and only option for maximizing the value of the Debtors' assets and providing guaranteed returns to the unsecured creditor body. Not surprisingly, it is a solitary out-of-the-money creditor, with nothing to lose, that is willing to risk the recoveries of all other creditors in pursuit of an unrealistic dream of value slipping to subordinated debt holders in these cases. DE Shaw's actions can be described as nothing short of extortion.

46. DE Shaw bases its Objection on the following unsubstantiated propositions: (i) the transfer of the Satellite Assets to DIRECTV should not be accomplished absent a public auction; (ii) the Global Settlement as a whole constitutes a *sub rosa* plan of reorganization; and (iii) the contemplated sale of the Broadcast Assets to PCC involves a deflated price and bidding terms that do not promote competitive bidding. Each of these bald assertions is completely without merit.

II. THE SALE OF THE SATELLITE ASSETS TO DIRECTV PURSUANT TO THE GLOBAL SETTLEMENT IS APPROPRIATE

47. It is not uncommon for a Bankruptcy Rule 9019 settlement to encompass a transaction involving the transfer of a debtor's assets under Bankruptcy Code section 363. See, e.g., In re Smart World Techn., LLC, 2004 WL 118328 (Bankr. S.D.N.Y. May 19, 2004) (approving sale of subscribers to appellee in adversary proceeding in connection with settlement by and among the creditors' committee, certain secured creditors and the appellee over objection of debtor-appellant); In re Allegiance Telecom, Inc., Case No. 03-13057 (RDD) (Bankr. S.D.N.Y. Apr. 6, 2004) (approving sale of debtor's assets in connection with Bankruptcy Rule 9019 settlement); In re Enron Corp., 2003 WL 31755006 (Bankr. S.D.N.Y. July 28, 2003) (approving sale of assets under Bankruptcy Code section 363 sale in connection with Bankruptcy Rule 9019 settlement).

48. Bankruptcy Code section 363(b)(1) provides, in pertinent part, that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize transactions pursuant to section 363(b)(1). Under the former Bankruptcy Act, and in the early days of the Bankruptcy Code, some courts held that sales of all or substantially all the assets of an estate should not be approved by the court absent an emergency necessitating such sale. See e.g., In re White Motor Credit Corp., 14 B.R. 584, 590 (Bankr. N.D. Ohio 1981) (holding that Bankruptcy Code section 363(b) authorizes sale of all or substantially all the assets of the estate in an emergency situation). The case law "under section 363's predecessors used terms like 'perishable,' 'deteriorating,' and 'emergency' as guides in deciding whether a debtor's property could be sold outside the ordinary course of business." In re Lionel Corp., 722 F.2d 1063, 1070-71 (2d Cir. 1983).

49. While each of the foregoing adjectives adequately describes the predicament that these Debtors face and the need for an expedient resolution to the issues compromised in connection with the Global Settlement, "perishable, "deteriorating" and "emergency" do not depict the current state of law with respect to Bankruptcy Code section 363 sales. Indeed, Lionel, the seminal case establishing the standard for a bankruptcy court's review of a proposed sale of assets, provides that the sale of all or substantially all of a debtor's assets need not be predicated upon an emergency situation. Id. at 1069 (holding that the Bankruptcy Code does not require emergency or perishability before disposition of the property); In re Naron & Wagner, Chartered, 88 B.R. 85, 88 (Bankr. D. Md. 1988) ("There is no requirement that only an emergency will permit a chapter 11 debtor's preconfirmation use of Section 363(b) . . . ").

Rather, there only needs to "be some articulated business justification" for using, selling, or leasing a debtor's property outside the ordinary course of business for the court to allow such disposition. In re Lionel Corp., 722 F.2d 1063, 1070-1071 (holding that a judge determining a § 363(b) application must find from the evidence presented before him a good business reason to grant the application); Stephens Inds. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (holding that "bankruptcy court can authorize a sale of all a chapter 11 debtor's assets under § 363(b)(1) when a sound business purpose dictates such action"); In re Continental Airlines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986) ("[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); In re Aerovox, 269 B.R. 74, 80 (Bankr. D. Mass. 2001) (holding that there must be a sound business justification for approval of a Bankruptcy Code section 363 sale).

50. A section 363 sale can be conducted either through a public auction or a private transaction. See Fed. R. Bankr. P. 6004. It is widely held that bankruptcy courts are accorded wide latitude to approve a public or private sale of all or substantially all the estate's assets. See e.g., In re Aerovox, 269 B.R. at 80 (holding that a trustee may use, sell, or lease property of the estate outside the ordinary course of business providing "a sound business purpose justifies such action."); In re WHET, 12 B.R. 743, 750 (Bankr. D. Mass. 1981) ("Section 363 does not limit the quantity of property which may be sold by the trustee and case law interpreting § 363(b) is clear that the broad wording of this provision contemplates a sale of even all the debtor's assets."). Furthermore, a debtor's decision to sell its assets should be approved as sound unless it is "shown to be 'so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, or whim, or caprice.'" In re Aerovox, 269 B.R. at 80 (quoting In re Logical Software, 66 B.R. 683, 686 (Bankr. D. Mass. 1986)). See also In re Lionel Corp.,

722 F.2d at 1069 ("First and foremost is the notion that a bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the Code."); In re Raytech Corp., 190 B.R. 149, 151-52 (Bankr. D. Conn. 1995) (discussing the broad discretion of the bankruptcy court when determining whether to approve sale of assets of estate outside of the ordinary course of business).

51. The Lionel Court listed the following salient factors to guide a bankruptcy court's analysis of a debtor's business judgment in connection with a section 363 sale: (i) the proportionate value of the asset to the estate as a whole; (ii) the amount of elapsed time since the filing; (iii) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (iv) the effect of the proposed disposition on future plans of reorganization; (v) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; and (vi) most importantly, whether the asset is increasing or decreasing in value. In re Lionel Corp., 722 F.2d at 1071. Further, "this list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge." Id. at 1071.

52. While every party in interest has the right to be heard in connection with a proposed 363 sale, the size of a creditor's claim and its opposition to the transaction does not result in deference to such creditor, especially where the official creditors committee, the statutory fiduciary representative for all unsecured creditors, vociferously supports the transaction. In re Lee Way Holding Co., 120 B.R. 881, 903-904 (Bankr. S.D. Ohio 1990). In Lee Way Holding, one of the estate's largest creditors, PepsiCo, filed an objection to a proposed global settlement agreement. In discussing the merits of the objection, the court noted that PepsiCo was one of the only creditors to file an objection to the motion. The court emphasized that although creditors "are entitled to voice their views on the proposed settlement," "an

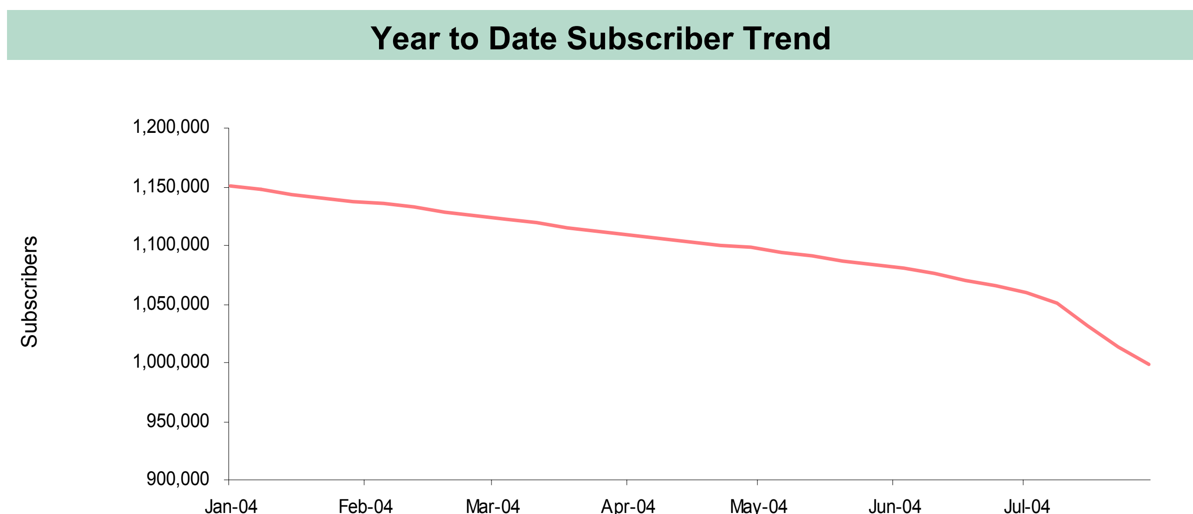
objection by the largest creditor does not necessarily control the decision of the court." In re Lee Way Holding Co., 120 B.R. at 904.

53. The Lee Way Court indicated that, instead of being swayed by the arguments of a lone objector, it found the creditors' committee's support of the settlement far more persuasive. The court elaborated that the committee's support of the motion was particularly significant because "the Committee is vested with the responsibility of representing the interests of ***all*** [unsecured] creditors and the Court is not willing to assume that they have not adequately done so." In re Lee Way Holding. 120 B.R. at 904 (emphasis added).

54. In the instant case, not only did the Debtors exercise their sound business judgment and faithfully acquit their fiduciary duties to the estates, but all other major constituencies strongly support the proposed sale of the Satellite Assets as a component of the Global Settlement. First, the Committee, which actively participated in all steps of the negotiation process in acquitting its fiduciary duty to ***all*** unsecured creditors, fully supports the Global Settlement. Second, the Secured Lenders have thoroughly analyzed the proposed transaction and agree that the Debtors (and the Committee) properly exercised their business judgment. Indeed, the only party questioning the Debtors' business judgment is a single holder of subordinated notes, ***which stands to gain nothing under any conceivable sale or plan***. DE Shaw's objection should be seen for what it is: a bad faith attempt to highjack the settlement process in order to coerce a payment from the Debtors' estates.

55. Here, the proposed sale of the Debtor's Satellite Assets pursuant to the Global Settlement is clearly justified, and a close review of the facts of this case reveals that the Debtors' decision to sell the Satellite Assets is an exercise of their sound business judgment.

56. First, Pegasus' prized asset – its subscriber base – is rapidly eroding. Pegasus has experienced substantially higher customer churn rates since the Petition Date than at any time prior thereto. As the chart below reflects, as of January 2004, Pegasus had approximately 1,150,000 subscribers. Since then, however, Pegasus has lost approximately 150,000 subscribers – a churn of in excess of 13% of its customer base. Moreover, since the Petition Date, Pegasus has seen its weekly customer churn increase by a magnitude of 130% as compared to pre-Petition Date averages.



57. Second, and exponentially more ominous, is the fact that Pegasus may lose its ability to distribute DIRECTV programming as of August 31, 2004. This will result in a precipitous drop in the value of the Debtors' estate. Action in the face of such an imminent threat alone is an exercise of sound business judgment. See, e.g., In re Thrifty Liquors, Inc., 26 B.R. 26, 28 (Bankr. D. Mass. 1982) ("The continuing erosion of the Debtor's assets and the severe diminution in the value of those assets which is likely to occur in the future constitutes an emergency situation justifying the [] decision and warranting the Court's authorization of the sale of all the Debtor's assets at this time . . . ").

58. DE Shaw's assertion that the Global Settlement stifles potential competing bids is also misplaced. Section 8.7 of the Asset Purchase Agreement clearly states that: "[A]t any time prior to obtaining the Approval Order, in response to an unsolicited proposal for or inquiry that [Debtors] believe reasonably could lead to a proposal for a Covered Transaction which was made prior to or after the date hereof, [Debtors] may furnish information with respect to the [Debtors] to the Person making such proposal or inquiry pursuant to a customary confidentiality agreement . . ." Asset Purchase Agreement, § 8.7. Finally, though DE Shaw notes that "the Debtors are precluded from soliciting more favorable proposals," Objection ¶ 15, nothing prevents the Debtors from addressing unsolicited proposals and nothing prevents the Committee from soliciting new proposals. Indeed, to the extent another party miraculously appears with a competing offer that is more beneficial to the estates, the Asset Purchase Agreement may be terminated by the Debtors and the Committee without penalty. See Asset Purchase Agreement, § 4.4 ("[t]his Agreement may be terminated prior to the Closing as follows: by Sellers or Purchaser, if (i) any Seller enters into a definitive agreement with respect to a Covered Transaction or (ii) the Bankruptcy Court enters an order which approves a Covered Transaction"). Accordingly, if another market participant wishes to make an offer for the Satellite Assets, it is certainly not precluded from doing so and the estate is not precluded from analyzing or accepting such offer.

59. The stark reality, however, is that the Debtors cannot obtain the value they will receive pursuant to the Global Settlement from any other entity. First and foremost, the market for the Satellite Assets is remarkably limited. DIRECTV is the market leader among DBS providers with a 53% market share or roughly 12.2 million subscribers as of year ended 2003. Echostar, the only other DBS provider with a significant market share, had subscribers

constituting 40% of the market at year end. The practicality of the situation is that cable providers, the only other logical potential bidders for the Satellite Assets, do not have the infrastructure to effectively integrate a large number of satellite subscribers. As any true competitive bidder for the Satellite Assets must be able to integrate Pegasus' subscribers economically, DIRECTV and Echostar are the only viable bidders. Echostar's subscriber acquisition costs with respect the Satellite Assets would be significantly higher than DIRECTV's costs, which explains, in part, Echostar's underwhelming interest to date in acquiring the Satellite Assets. It should not be lost on this Court that since Echostar (a) is the only other legitimate potential buyer on the market, (b) was approached regarding a potential transaction by the Committee on multiple occasions prior to the filing of the Motion and (c) made a substantially less attractive offer for the Satellite Assets than DIRECTV, an auction is unnecessary and would only serve to further waste the Debtors' deteriorating resources.

60. Even assuming there were other interested bidders in the marketplace (in addition to DIRECTV and, possibly, Echostar), the impediments erected in this particular case as a result of the imminent termination of services suggest that no sale to a third party could be effectuated in a cost efficient manner, let alone seamlessly. Indeed, any potential sale of the Debtors' DBS business to an entity other than DIRECTV would undoubtedly be embroiled in extensive litigation as DIRECTV maintains that the Debtors cannot effectuate a sale of the Satellite Assets to a third party without DIRECTV's consent. DIRECTV alleges that it owns certain historical and current account information with respect to a variety of categories of subscriber information under the Member Agreement and the DBS Agreement. It is DIRECTV's position that without its consent, the Debtors are precluded from transferring any such subscriber information to a third party and any effort to do so would result in hotly contested litigation.

61. DIRECTV also alleges that it owns the historical and current account information in a joint billing system with Pegasus and that Pegasus' proprietary interest in such information would revert back to DIRECTV upon termination of the DBS Agreement, such that the Pegasus would be prohibited from transferring such information to third parties for a period of five years after the termination of the DBS Agreement.[10]

62. As evidenced by the foregoing, the sale of the Satellite Assets in accordance with the terms of the Global Settlement is a sound exercise of the Debtors' business judgment and represents the best opportunity for these estates to realize maximum value for the Satellite Assets.

A. The Global Settlement Does Not Amount to a *Sub Rosa* Plan of Reorganization

63. In addition to the contention that an auction should be conducted in connection with the disposition of the Debtors' Satellite Assets, DE Shaw also disputes the propriety of the transactions contemplated in the Global Settlement on the ground that, collectively, they constitute a *sub rosa* plan of reorganization that is not in the best interests of creditors and is prohibited by applicable law. D.E. Shaw's Objection on this ground is unsupportable.

64. The seminal case addressing *sub rosa* plans of reorganization is In re Braniff Airways, Inc., 700 F.2d 935 (5th Cir. 1983). In Braniff, a debtor airline sought approval of a settlement agreement that provided for the sale of cash, airplanes, leases, and landing slots to another airline in exchange for travel scrip, unsecured notes, and a profit-sharing in the buyer's business. The agreement further provided: (i) that the travel scrip could only be used by former employees, shareholders, or, in some cases, unsecured creditors, and only in connection with the debtor's reorganization; (ii) that secured creditors ***must*** vote a portion of their deficiency claim in

[10] The Debtors maintain that they have an unfettered right to use and transfer an exclusive interest in the Subscriber Information. However, litigation regarding this dispute is rendered unnecessary as a result of the Global Settlement.

favor of any plan supported by the unsecured creditors committee; and (iii) for a release of claims by all parties against Braniff, its secured creditors, and its officers and directors. The Braniff Court determined that the settlement agreement too nearly approximated an actual plan of reorganization that circumvented the procedures dictated by chapter 11 and refused to approve the settlement.

65. Three specific aspects of the settlement agreement led to the court's decision. First, exchanging the debtor's assets for the travel scrip with allocation restrictions had "the practical effect of dictating some of the terms of any future reorganization plan." In re Braniff, 700 F.2d at 940. Second, restricting the voting rights of all secured creditors through an agreement among the debtor and certain creditors was an action outside the purview of Bankruptcy Code section 363(b). Third, the broad release provisions requiring ***all*** creditors to grant releases to specific parties were found to be outside the scope of Bankruptcy Code section 363(b). Thus, the Braniff Court highlighted three factors for courts to consider in determining if a settlement encompasses a *sub rosa* plan: (i) does the settlement effectively dictate the terms of a reorganization plan; (ii) does the settlement restructure the rights of creditors (i.e., require the votes of creditors pursuant to agreements with the debtor); and (iii) does the settlement release claims of all parties against the debtors and third parties.

66. Whether a transaction amounts to a *sub rosa* plan was revisited by the Fifth Circuit in In re Continental Airlines, Inc., 780 F.2d 1223 (5th Cir. 1986), where the court placed the burden on the party objecting to the proposed transaction to identify specific terms of the proposed transaction that constituted a *sub rosa* plan. In Continental Airlines, the debtor sought authority to lease two aircraft, arguing that it would enhance profitability and increase the asset value of its Pacific operations. In vacating the decision of the bankruptcy and district courts

approving the transaction, the Fifth Circuit held, "[w]hen an objector to a proposed transaction under § 363(b) claims that it is being denied certain protection because approval is sought pursuant to § 363(b) instead of as part of a reorganization plan, the objector must specify exactly what protection is being denied." In re Continental Airlines, 780 F.2d at 1228.

67. In support of its conclusion that the Global Settlement amounts to a *sub rosa* plan, DE Shaw asserts that (a) the transactions contemplated by the Global Settlement encompass an inappropriate sale of substantially of the Debtors' assets and will leave the estates with nothing to reorganize and (b) certain creditors (DIRECTV, NRTC and PCC) are being preferred over other creditors (*i.e.*, DE Shaw) and (ii) the priority of creditors' claims are being reordered.

B. The Sale of the Satellite Assets Is Appropriate

68. As discussed in detail above, numerous courts within this Circuit and in other Circuits have established that sales of estate assets prior to confirmation of a plan of reorganization are appropriate if the sale is reasonable and in the best interest of the estate. See In re Coastal Cable T.V., Inc., 24 B.R. 609, 611 (B.A.P. 1st Cir. 1982) (authorizing sale of debtor's only asset prior to confirmation of a plan of reorganization) vacated on other grounds by In re Coastal Cable T.V., Inc., 709 F.2d 762 (1st Cir. 1983); In re Charlesbank Laundry Co., 37 B.R. 20, 22 (Bankr. D. Mass. 1983) ("A sale of all assets is appropriate if the provisions of 11 U.S.C. Section 363 are followed, the bid is fair and reasonable and the sale is in the best interest of the estate and creditors."); In re Ionosphere Clubs, Inc., 184 B.R. 648, 653 (Bankr. S.D.N.Y. 1995) (["C]ourts consistently have acknowledged that assets of an estate can be sold prior to the confirmation, or even filing, of a plan."); In re Naron & Wagner, Chartered, 88 B.R. 85, 87 (Bankr. D. Md. 1988) ("[A 363 sale] may even be made, as here, prior to filing a plan of reorganization."). Significantly, faced with the August 31st termination date, the sale of the

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Satellite Assets pursuant to the Global Settlement is the only hope for the distributions to be made to the unsecured creditors of these estates. Accordingly, DE Shaw's argument that the absence of assets to reorganize amounts to a *sub rosa* plan lacks merit. In re WHET, 12 B.R. at 750 ("[T]he case law again is clear that there is nothing objectionable about a sale of all the assets outside of a chapter 11 plan . . . A trustee may . . . first liquidate the assets of a debtor and then propose a plan for distributing the proceeds to creditors.").

C. Creditors Are Not Receiving Preferential Treatment

69. DE Shaw's objection to the "treatment" of DIRECTV's and NRTC's prepetition and postpetition claims in connection with the Global Settlement is also misplaced. First, DIRECTV is not being "paid" on account of its claim in respect of the Seamless Litigation Judgment. Indeed, the Global Settlement specifically contemplates the release of claims in respect of the Seamless Litigation Judgment. The effect of the release, an adjustment to the Purchase Price, is simply a mechanic of the transaction. Absent dealing with the Seamless Judgment in connection with the Global Settlement, DIRECTV's purchase price would be approximately $63 million less. In such instance, Pegasus would still be required to satisfy such claim in full as it is against PSC and, therefore, structurally senior to the claim of the holders of the Senior Notes and the Subordinated Notes. The payment of the claims of operating company creditors, whether as part of the Global Settlement or in a plan, does not adversely affect DE Shaw's rights. Moreover, failing to adequately address the Seamless Litigation Judgment in the context of the Global Settlement would defeat the intention of the parties, which is to resolve all material disputes among them and enable the Debtors to proceed toward a swift exit from chapter 11, two elements that satisfy and are essential to the approval of 9019 settlements.

70. The resolution of all disputes with NRTC is likewise an essential component of the Global Settlement and in the best interests of these estates. The respective amounts owed by

NRTC to Pegasus and Pegasus to NRTC are not in dispute. NRTC is indebted to Pegasus in respect of the cash patronage for 2003 and a portion of 2004. Pegasus is likewise indebted to NRTC in respect of prepetition and postpetition amounts due and owing under the Member Agreement. Each of these claims is subject to setoff, recoupment and/or payment in full as a result of their administrative status, and would result in net debts in favor of NRTC. Satisfying these claims which, like DIRECTV's claims, are structurally senior to the claims of DE Shaw and all other noteholders, will not adversely affect DE Shaw's treatment or any other creditor's treatment under a subsequent plan. See In re K-Mart Corp., 359 F.3d 866 (7th Cir. 2004) (holding that similarly situated creditors cannot be worse off as a result of payments on account of pre-petition debts outside of plan). It is worth noting as well, that the Member Agreement is being assumed and assigned to DIRECTV in connection with the Global Settlement and, thus, all outstanding claims of NRTC in respect of the Member Agreement are required to be addressed in accordance with Bankruptcy Code section 365. Accordingly, provisions dealing with NRTC's claims in the context of the Global Settlement are fair and equitable.

D. The Release of the Pegasus Non-Debtors is Appropriate in the Context of the Global Settlement

71. Because of the involvement of the Pegasus Non-Debtors in these disputes, the parties cannot achieve the desired global settlement without a release in favor of DIRECTV and NRTC from the Pegasus Non-Debtors. Thus, DIRECTV and the NRTC specifically conditioned their participation in the settlement on the requirement that the Pegasus Non-Debtors (i) release all claims they may have against DIRECTV and NRTC relating to the Debtors' DBS business and (ii) commit not to engage in further litigation that would adversely affect implementation of the Global Settlement. See Settlement Agreement, §§ 1.3(c), 5(b).

72. The Debtors, however, cannot compel the Pegasus Non-Debtors' participation in the Global Settlement. Rather, through good faith and arms' length negotiations, the Debtors and the Committee were able to achieve a critical component of the Global Settlement – the participation of the Pegasus Non-Debtors – in return for the estates granting the Pegasus Non-Debtors a release. In addition to receiving the crucial benefit of the Pegasus Non-Debtors' participation, thereby enabling the Global Settlement, the Debtors are also receiving the additional benefit of the release of approximately $28.1 million in pre-petition amounts owed by the Debtors to PCC.

73. In evaluating the release to the Pegasus Non-Debtors, the Court should consider the probability of success in pursuing the claims being released and the complexity and expense of the litigation involved. As discussed above, any potential claims that the Debtors could bring against the Pegasus Non-Debtors will necessarily involve a risk of uncertainty, as well as a significant investment of time and money. In light of these considerations, as well as the critical benefit the Debtors' are receiving in connection with the Global Settlement, the decision to forego these claims easily satisfies the 9019 standard of reasonableness. This is especially so in light of the magnitude of the proceeds to be paid to the Debtors' unsecured creditors, as compared to potential recoveries on actions against PCC that would not even satisfy 50% of the claims of the Secured Lenders.

74. DE Shaw is similarly unconvincing in its assertion that "PCC's unsecured claim is allowed and paid, and thus preferred at the exepense of other creditors." Objection ¶ 23. Simply put, PCC is not receiving any consideration on account of the PCC Note in connection with the Global Settlement and is releasing its claims with respect thereto. In citing to the Subordinated Indenture to buttress its position, DE Shaw disregards the fact that, as a subordinated note holder,

it is not entitled to receive any recovery on account of its notes until the holders of the Senior Notes are paid in full, inclusive of postpetition interest. DE Shaw's allegations that they may have claims against certain "senior" creditors in connection with the negotiation of the Global Settlement is likewise preposterous and need not be dealt with in connection with the Motion but, rather, may be addressed (and summarily dismissed) in connection with the prosecution of a plan of reorginization in these cases.

75. As evidenced by the foregoing, the terms of the Global Settlement do not dictate material portions of a future plan for the Debtors, do not restructure the rights of creditors and do not require non-consenting creditors to release any claims. Accordingly, the Global Settlement does not amount to a *sub rosa* plan.

E. The Broadcast Asset Sale is Appropriate

76. DE Shaw's final objection to the Global Settlement rests on its belief that the proposed sale of the Broadcast Assets to PCC, ***which is subject to higher and better offers***, is for less than fair value and that the proposed bidding procedures will not promote competitive bidding. The Committee disputes these assertions and submits that the sale of the Broadcast Assets (and the bidding procedures contemplated thereby)[11] is in the best interests of the Debtors' estates and their creditors.[12]

[11] The approval of any proposed bid procedures and the sale of the Broadcast Assets will be sought pursuant to a separate motion to be filed with this Court at a later date.

[12] The fact that PCC, an insider, is the stalking horse bidder does not change the fact that the proposed sale of the Broadcast Assets is supported by sound business judgment. It has been widely held that it is not *per se* bad faith for an insider to purchase the assets of a debtor-in-possession, and a sale to an insider, without more, would not suffice to show a lack of good faith. In re Bakalis, 220 B.R. 525, 537 (Bankr. E.D.N.Y. 1998) (citation omitted). Applying the good faith standard, courts frequently have approved sales of assets to insiders. See, e.g., In re Naron & Wagner, Chartered, 88 B.R. 85, 88 (Bankr.D.Md.1988) (approving the sale of assets "to a corporation controlled by insiders of the seller, which is Debtor's subsidiary"); In re Andy Frain Services, Inc. 798 F.2d 1113, 1125 (7th Cir.1986) (affirming sale of assets to insider of debtor and holding that "[e]ven if [the insider] were a fiduciary, a sale to him without more would not suffice to show a lack of good faith").

77. The decision to sell the Broadcast Assets, as contemplated by the Letter Agreement, is an exercise of sound business judgment. The Committee, which actively participated in all the negotiations culminating in the execution of the Letter Agreement, submits that the Purchase Price represents a fair market value for the Broadcast Assets. Greenhill & Co., LLC ("Greenhill"), one of the Committee's financial advisors, has already performed a preliminary independent valuation of the Broadcast Assets, and concluded that the Purchase Price of $75 million appears to represent a fair stalking horse bid for such assets.

78. PBT and its subsidiaries (i) own a portfolio of nine television stations serving six markets and (ii) operate the stations in Pennsylvania, Maine and Tallahassee, Florida. The television stations cover approximately 1.6 million households and generated $32 million in revenue in 2003. Even though the stations produced a minimal free positive cash flow in 2003, the Debtors have projected that the Broadcast Assets will generate $7 million in free positive cash flow by 2009. Greenhill used various methods to value the Broadcast Assets and concluded that: (i) the trading valuations of comparable public companies imply a value for the Broadcast Assets ranging from $61 to $64 million, (ii) comparisons with recent precedent transactions for similar broadcast assets suggests a valuation of the Broadcast Assets of approximately $75 million; and (iii) a discounted cash flow analysis yields a valuation range for the Broadcast Assets of $80 to $85 million. Based on the foregoing analysis, the $75 million minimum purchase price represents a fair market value ***stalking horse bid*** for the Broadcast Assets, which stalking horse bid is subject to higher and better offers.

79. Unlike the Satellite Assets, an auction for the Broadcast Assets may draw the interest of a number of unknown parties. In that regard, the Committee submits that the contemplated auction procedures provide a fair and reasonable means of ensuring that the

Broadcast Assets are sold for the highest and best offer attainable. Such procedures afford potential purchasers a reasonable opportunity to investigate the Broadcast Assets and afford the Debtors and the Committee requisite time to consider and evaluate competing bids.

80. First, the timeline of the sale, as described in the Letter Agreement, contemplates the completion of the sale in October 2004. This time frame will provide prospective purchasers with approximately two months to evaluate the Broadcast Assets and submit competing bids.

81. Second, the proposed Expense Reimbursement of up to $1 million represents 0.75% of the $75 million purchase price, which is reasonable when compared to expense reimbursements approved in other cases.[13] Third, the proposed auction procedures require that competing offers exceed the Purchase Price by a minimum of only $2,500,000, which will foster competitive bidding and cover any Expense Reimbursement. Notably, there is no provision for a break-up fee.

82. The Committee, thus, believes that the proposed sale of the Broadcast Assets will enable the Debtors to assure a sale to a contractually committed bidder at a price the Committee believes, based on the analysis of its financial advisor, is fair and reasonable, while providing the estates with the opportunity of obtaining even greater benefits through an auction process.

83. As evidenced by the foregoing, the Global Settlement is undoubtedly in the paramount interest of all creditors, and considering the extensive involvement of the Committee

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[13] The approval of expense reimbursements and other forms of bidding protections in connection with the sale of assets pursuant to section 363 of the Bankruptcy Code has become an established practice in chapter 11 cases. Bankruptcy courts have approved bidding incentives similar to the proposed bidding protections under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. See, e.g., In re Integrated Resources, Inc., 147 B.R. 650, 659-662 (Bankr. S.D.N.Y. 1992) (discussing that business judgment may be found where the stalking horse bid served "(1) to attract or retain a potentially successful bid, (2) to establish a bid standard or minimum for other bidders to follow, or (3) to attract additional bidders."); Samjens Partners I v. Burlington Industries, Inc., 663 F.Supp. 614, 624 (Bankr. S.D.N.Y.1987) (bidding incentives may be "legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking").

in its negotiation and formulation, the Global Settlement has been developed with proper deference to the needs of unsecured creditors.

CONCLUSION

84. The Debtors and the Committee have clearly acquitted their fiduciary duties to their respective stakeholders by entering into the Global Settlement and prosecuting the Motion. Through the Global Settlement, the Debtors and the Committee have, among other things, (a) ensured that hundreds of millions of dollars will be available for distribution to unsecured creditors in connection with these cases when, absent the Global Settlement, there was a strong likelihood that unsecured creditors would receive no recovery on account of their claims, (b) settled all potential claims and causes of action by and among DIRECTV and NRTC, on the one hand, and the Debtors, on the other, the continuance of which would not likely result in a favorable outcome for these estates and (c) resolved potential claims and causes of action among the Pegasus Non-Debtors and the Debtors, which likely would have resulted in protracted, costly and complex litigation with uncertain results. It is evident from the application of the facts and circumstances of these cases to applicable law governing Bankruptcy Rule 9019 settlements and Bankruptcy Code section 363 sales that the Global Settlement is the best alternative available to these estates to maximize value and ensure a guaranteed maximum recovery to the Debtors' unsecured creditors. In sum, the Global Settlement (a) was negotiated in good faith and at arm's length, (b) is fair and equitable, (c) is in the best interests of these estates and their creditors and (d) clearly does not fall below the lowest point in the range of reasonableness.

For all of the foregoing reasons, the Committee respectfully requests that the Court (a) approve the Global Settlement, (b) overrule all objections to the Motion in their entirety, and (c) grant such other relief as the Court deems just, equitable and proper.

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