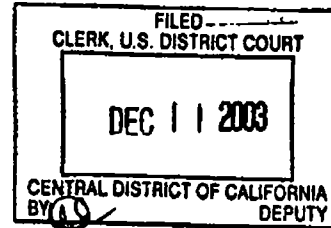
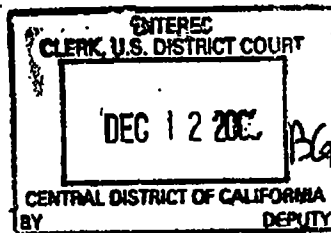




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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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National Rural Telecommunications  
Cooperative,

Plaintiff,

v.

DIRECTV, INC., et al.,

Defendants.

CV 99-5666 LGB (CWx)  
CV 99-8672 LGB (CWx)

**ORDER DENYING  
PEGASUS' MOTION FOR  
CLARIFICATION AND  
RECONSIDERATION, OR, IN  
THE ALTERNATIVE, A  
STAY PENDING APPEAL**

I. INTRODUCTION

The Court is in receipt of Pegasus' Motion for Clarification and Contingent Motion for Reconsideration or, In the Alternative, a Stay Pending Appeal lodged with the Court on December 4, 2003. The Court is also in receipt of DIRECTV's Opposition filed on December 9, 2003, NRTC's Opposition filed on December 9, 2003, and the Declaration of Raymond Kim filed on behalf of the Class on December 9, 2003. Based on the following analysis, Pegasus' Motion for

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1 Clarification and Contingent Motion for Reconsideration or, In the Alternative, a  
2 Stay Pending Appeal is DENIED.

3  
4 **II. FACTUAL AND PROCEDURAL HISTORY**

5  
6 Non-parties Pegasus Satellite Television, Inc. And Golden Sky System, Inc.  
7 (together, "Pegasus") moved to intervene in Case Nos. 99-5666 & 99-8672 (the  
8 "NRTC Actions") for the limited purpose of objecting to the settlement of those  
9 actions. November 13, 2003 Order ("Order"), at 1. Pegasus alleged that the basis  
10 for its motion to intervene was that the parties to the NRTC Actions, namely,  
11 DIRECTV, Inc. and Hughes Communications Galaxy, Inc. (jointly "DIRECTV")  
12 and the National Rural Telecommunications Cooperative ("NRTC") had executed  
13 a proposed settlement agreement which allegedly affects Pegasus' interests  
14 without its consent. Order, at 1.

15  
16 This Court's Order held that Pegasus did not have a right to intervene in the  
17 NRTC Actions between NRTC and DIRECTV because it does not have a  
18 "significant protectable interest relating to the property or transaction that is the  
19 subject of the action." Order, at 22. The subject of the NRTC Actions is the DBS  
20 Distribution Agreement between NRTC and DIRECTV. Order, at 4. The DBS  
21 Agreement provides that NRTC has exclusive and non-exclusive rights to  
22 distribute programming and services offered by DIRECTV in NRTC's area of  
23 service. The DBS Agreement also states that DIRECTV and NRTC can modify  
24 their agreement any time in writing. Order, at 4. Pegasus is not a party to the DBS  
25 Agreement.<sup>1</sup> Order, at 4.

26  
27  
28 <sup>1</sup> The Court also found that Pegasus, in its Member Agreement with NRTC (the "Member

2  
1 Pegasus is a party to a separate agreement between Pegasus and NRTC  
2 ("Pegasus' Member Agreement"). Order, at 5. Pegasus' Member Agreement is  
3 related to the DBS Agreement in that Pegasus' rights under the Member  
4 Agreement arise from NRTC's rights under the DBS Agreement. Order, at 5.  
5 DIRECTV is not a party to the Member Agreement but is a third-party beneficiary  
6 to the Member Agreement. Order, at 5.

7 Pegasus sought to intervene in the NRTC Actions for the sole purpose of  
8 objecting to the proposed settlement agreement between NRTC and DIRECTV.  
9 The NRTC Actions were filed by NRTC against DIRECTV to clarify and enforce  
10 NRTC's rights against DIRECTV under the DBS Agreement. Order, at 5-6.  
11 Pegasus argued that its rights under its Member Agreement with NRTC entitled it  
12 to intervene in the NRTC Actions because its rights would be affected by the  
13 proposed settlement. The Court rejected Pegasus' argument that its Member  
14 Agreement with NRTC gave it a right to intervene in these actions. The Court  
15 found that:  
16

17  
18 The linchpin of [the motion to intervene] is that the DBS  
19 Agreement is separate and apart from Pegasus' Member Agreement.  
20 Pegasus does not have any rights under the DBS Agreement which is  
21 the subject of the proposed settlement. Pegasus' rights are limited to  
22 Pegasus' Member Agreement between NRTC and Pegasus which is  
23 not affected by the proposed settlement.  
24  
25

26  
27 Agreement'), acknowledged that it was not a third party beneficiary of the DBS Agreement. See  
28 Order, at 4 n.1.

1 Order, at 11. The Court held that Pegasus had not met the first requirement under  
2 the Ninth Circuit's test for a motion to intervene. "An applicant seeking  
3 intervention as a matter of right must show that (1) it has a 'significant protectable  
4 interest relating to the property or transaction that is the subject of the action; (2)  
5 the disposition of the action may, as a practical matter, impair or impede the  
6 applicant's ability to protect its interest; (3) the application is timely; and (4) the  
7 existing parties may not adequately represent the applicant's interest." Donnelly v.  
8 Glickman, 159 F.3d 405, 409 (9th Cir. 1998). The Court denied Pegasus' motion  
9 to intervene because it held that Pegasus had not shown that it had a significant  
10 protectable interest in the NRTC Actions.  
11

### 12 **III. THE MOTION FOR RECONSIDERATION**

13  
14  
15 Now, Pegasus seeks a clarification of this Court's November 13, 2003  
16 Order. If the Court denies its motion for clarification, Pegasus seeks  
17 reconsideration of the November 13, 2003 Order. If the Court denies its motion  
18 for reconsideration, Pegasus seeks a stay pending Pegasus' appeal of this Court's  
19 Order to the Ninth Circuit. The Court will address each of these issues in turn.  
20

#### 21 **A. Motion for Clarification**

22  
23 Pegasus seeks a clarification of this Court's November 13, 2003 Order  
24 which states that Pegasus' rights under Pegasus' Member Agreement will not be  
25 affected by NRTC's settlement with DIRECTV, Inc. and Hughes Communications  
26 Galaxy, Inc. ("DIRECTV") in the NRTC Actions. Pegasus argues that the Court  
27 should clarify whether this statement entitles Pegasus to (1) compel NRTC to  
28

1 obtain from DIRECTV, and to provide to Pegasus, all DBS Services and Launch  
2 Fees for the full duration of the Member Agreement, and (2) compel DIRECTV, as  
3 a necessary party, to take any actions required to ensure NRTC's full performance  
4 of its obligations to Pegasus under the Member Agreement. Pegasus is, therefore,  
5 seeking a clarification of its legal rights under the Member Agreement vis-a-vis  
6 NRTC and DIRECTV. This "clarification" is in reality a request for declaratory  
7 relief regarding Pegasus' rights against NRTC and DIRECTV. Pegasus'  
8 contractual rights against NRTC and DIRECTV are not at issue in the NRTC  
9 Actions and are not part of the case or controversy before this Court. The Court  
10 shall not provide an advisory opinion to clarify or declare legal rights between  
11 parties which have not been raised or addressed in the NRTC Actions. United  
12 States Nat'l Bank v. Independent Ins. Agents of Am., 508 U.S. 439, 446 (1993).  
13 "The exercise of judicial power under Art. III of the Constitution depends on the  
14 existence of a case or controversy,' and 'a federal court [lacks] the power to render  
15 advisory opinions.'" Id. Pegasus is not a party to the NRTC actions in which it  
16 seeks to intervene. Therefore, Pegasus's rights under its Member Agreement vis-  
17 a-vis NRTC and DIRECTV shall not be clarified by this Court.

18  
19 Therefore, Pegasus' motion for clarification is **DENIED**.

20  
21 B. Motion for Reconsideration

22  
23 In the alternative, Pegasus seeks a reconsideration of our November 13,  
24 2003 Order. Pegasus argues that if the "Court believes that the settlement will or  
25 could limit NRTC's ability to discharge all of its obligations to Pegasus, and  
26 thereby will or could effectively limit the services and benefits Pegasus can obtain  
27 under its Member Agreement, then Pegasus respectfully requests that the Court  
28

1 reconsider its decision denying Pegasus' motion to intervene." Mot., at 12.  
2 Pegasus argues that the "'emergence' of such belief 'after the time of such  
3 decision' is plainly a 'new material fact,' and such a belief reflects a 'failure to  
4 consider material facts presented to the Court before such decision.'" Mot., at 12.

5 Local Rule 7-18(b) & (c) reads in relevant part:  
6

7 A motion for reconsideration of the decision on any motion  
8 may be made only on the grounds of . . . (b) the emergence of new  
9 material facts or a change of law occurring after the time of such  
10 decision, or (c) a manifest showing of a failure to consider material  
11 facts presented to the Court before such decision. No motion for  
12 reconsideration shall in any manner repeat any oral or written  
13 argument made in support of or in opposition to the original motion.  
14

15  
16 Local Rule 7-18(b) & (c) (2003).

17 Pegasus' argument that the Court's "beliefs" regarding Pegasus' rights vis-  
18 a-vis NRTC and DIRECTV constitute a "new material fact" is disingenuous. As  
19 stated earlier, a clarification of rights between Pegasus and NRTC or DIRECTV  
20 under Pegasus' Member Agreement is not an issue properly before this Court. The  
21 Court has not expressed a "belief" or finding regarding this issue. Therefore,  
22 Pegasus has not provided a new material fact or change of law to justify its motion  
23 for reconsideration.

24 Furthermore, Pegasus has not made a "manifest showing of a failure to  
25 consider material facts presented to the Court." Pegasus has not cited any  
26 evidence which the Court did not duly consider in issuing its November 13, 2003  
27 Order.  
28

Since Pegasus has not made the requisite showing under Local Rule 7-18 in

1 its motion for reconsideration of the November 13, 2003 Order, Pegasus' motion  
2 for reconsideration is **DENIED**.

3  
4 C. Motion for Stay Pending Appeal

5  
6 Pegasus also seeks a stay of the NRTC Actions pending Pegasus' appeal to  
7 the Ninth Circuit. A stay is determined by the following factors: (1) whether the  
8 stay applicant has made a strong showing that he is likely to succeed on the merits;  
9 (2) whether the applicant will be irreparably injured absent a stay; (3) whether  
10 issuance of the stay will substantially injure the other parties interested in the  
11 proceeding; and (4) where the public interest lies.. See United States v. Hilton,  
12 481 U.S. 770, 776 (1987) . In addition, it must show that the public interest  
13 supports issuance of a stay." See United States v. Oakland Cannabis Buyers'  
14 Coop., 190 F.3d 1109, 1114 (9<sup>th</sup> Cir. 1999).

15  
16 The Court held, in its November 13, 2003 Order, that Pegasus did not show  
17 that it had a significant protectable interest in the NRTC Actions. The Court based  
18 its opinion on its finding that Pegasus did not have any rights under the DBS  
19 Agreement between NRTC and DIRECTV which was the sole subject of the  
20 NRTC Actions. The Court also found that Pegasus was neither a party nor a third-  
21 party beneficiary to the DBS Agreement. Under these facts, the Court finds that  
22 Pegasus has not shown a probability of success on the merits of its appeal of the  
23 Court's November 13, 2003 Order denying its motion to intervene.

24 Furthermore, the Court finds that the issuance of a stay may substantially  
25 injure NRTC and DIRECTV who have been involved in this litigation since 1999  
26 and are entitled to an expeditious resolution of the NRTC Actions. Both NRTC  
27 and DIRECTV argue that their contingent settlement will be adversely affected by  
28 a stay. The Court also finds that a stay may have an injurious impact on the




1 related Class Action lawsuit's settlement. The Class Action lawsuit's final  
2 fairness hearing for the proposed settlement is set for January 5, 2004 and any  
3 delay in the resolution of the NRTC Actions may have an adverse effect on the  
4 settlement of the Class Action lawsuit. "[T]here is a compelling public interest  
5 and policy in upholding and enforcing settlement agreements voluntarily entered  
6 into." Bianchi v. Perry, 140 F.3d 1294, 1297 (9<sup>th</sup> Cir. 1998). The public interest  
7 in this case would be better served by an expedient resolution of the NRTC  
8 Actions and the Class Action lawsuit.

9 Pegasus has not made the requisite showing for a stay of the NRTC Actions  
10 pending Pegasus' appeal to the Ninth Circuit. Based on the foregoing, Pegasus'  
11 motion for a stay pending appeal is **DENIED**.  
12

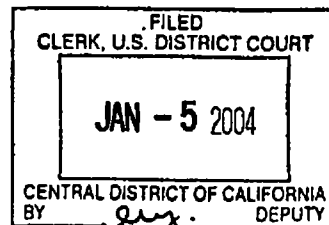
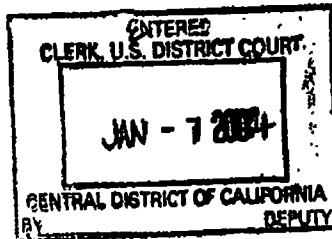
13  
14 **IT IS SO ORDERED.**

15  
16 Dated: December 10, 2003

17   
18 **LOURDES G. BAIRD**  
19 **United States District Judge**  
20  
21  
22  
23  
24  
25  
26  
27  
28



ORIGINAL



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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NATIONAL RURAL  
TELECOMMUNICATIONS  
COOPERATIVE,

Plaintiff,

v.

DIRECTV, INC., HUGHES  
COMMUNICATIONS GALAXY, INC.,

Defendants.

CV 99-5666 LGB (CWx)  
CV-00-2117 LGB (CWx)

**ORDER GRANTING FINAL  
APPROVAL OF CLASS  
ACTION SETTLEMENT**

**I. INTRODUCTION**

This is a class action by members of the National Rural Telecommunications Cooperative ("NRTC") ("Plaintiffs") against DIRECTV, Inc. and Hughes Communications Galaxy, Inc. ("Defendants"). The parties notified the Court of an impending settlement on the eve of trial. On September 23, 2003, the parties filed a motion for preliminary approval of the Proposed Settlement and the Proposed Notice of Settlement to Class Members ("Notice"). On November 7, 2003, this Court entered an order preliminarily approving the Proposed Settlement in the Class Action Lawsuit. The Court also approved the proposed form of Notice and directed Class Counsel to serve that Notice (with certain minor modifications) to each Class

1250

1 Member no later than November 12, 2003. The Court set the Final Approval Hearing  
2 on the Proposed Settlement for January 5, 2004 at 10 A.M. Currently before the  
3 Court is the Class' Application for Final Approval of the Class Action Settlement.  
4

## 5 **II. HISTORY OF THE LITIGATION AND PROPOSED SETTLEMENT**

6

7 The parties are familiar with the extensive history of this litigation and the  
8 terms of the Proposed Settlement consisting of the Term Sheet, the First  
9 Amendment to the Term Sheet, the Second Amendment to the Term Sheet, and the  
10 New Member Agreement. For the sake of efficiency, the Court will not repeat the  
11 history or terms of the Proposed Settlement and incorporates by reference the  
12 Notice which sets out these two areas in detail.  
13

## 14 **III. LEGAL STANDARD**

15

16  
17 Federal Rule of Civil Procedure 23(e) provides that "[a] class action shall  
18 not be dismissed or compromised without the approval of the court . . ." Fed. R.  
19 Civ. P. 23(e)(2003). Approval under 23(e) involves a two-step process in which  
20 the Court first determines whether a proposed class action settlement deserves  
21 preliminary approval and then, after notice is given to class members, whether  
22 final approval is warranted. See Manual for Complex Litigation, Third, § 30.41, at  
23 236-37 (1995).

24 The "universally applied standard" in determining whether a court should  
25 grant final approval to a class action settlement is whether the settlement is  
26 "fundamentally fair, adequate, and reasonable." 5 Moore Federal Practice, § 23.85  
27 (Matthew Bender 3d ed.) (citing In re Pacific Enters. Sec. Litig., 47 F.3d 373, 377  
28

1 (9<sup>th</sup> Cir. 1995) and Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9<sup>th</sup> Cir.  
2 1992), cert. denied, 506 U.S. 953 (1992)). The Ninth Circuit has considered, if  
3 applicable, the following eight factors in determining whether a proposed class  
4 action settlement is fair, reasonable, and adequate:

- 5
- 6 (1) the strength of the plaintiff's case;
- 7 (2) the risk, expense, complexity, and likely duration of further litigation;
- 8 (3) the risk of maintaining class action status throughout the trial;
- 9 (4) the amount offered in settlement;
- 10 (5) the extent of discovery completed and the stage of the proceedings;
- 11 (6) the experience and view of counsel;
- 12 (7) the presence of a governmental participant; and
- 13 (8) the reaction of the class members to the proposed settlement.
- 14
- 15

16 See Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9<sup>th</sup> Cir. 1998); see also  
17 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9<sup>th</sup> Cir. 1998).

18 Not all of these factors will apply to every class action settlement. Under  
19 certain circumstances, one factor alone may prove determinative in finding  
20 sufficient grounds for court approval. See, e.g., Torrisi v. Tucson Elec. Power  
21 Co., 8 F.3d 1370, 1376 (9<sup>th</sup> Cir. 1993).

22 Furthermore, "[d]istrict courts have wide discretion in assessing the weight  
23 and applicability of each factor." 5 Moore's Federal Practice, § 23.85[2][a]  
24 (Matthew Bender 3d ed.). "The relative degree of importance to be attached to  
25 any particular factor will depend upon and be dictated by the nature of the claim(s)  
26 advanced, the type(s) of relief sought, and the unique facts and circumstances  
27 presented by each individual case." Officers for Justice v. Civil Service Comm'n  
28

1 of the City and County of San Francisco, 688 F.2d 615, 625 (9<sup>th</sup> Cir. 1982).  
2 "Ultimately, the district court's determination is nothing more than an 'amalgam  
3 of delicate balancing, gross approximations, and rough justice.'" Id. (quoting City  
4 of Detroit v. Grinnell Corp., 495 F.2d 448, 468 (2d Cir. 1974)). "The initial  
5 decision to approve or reject a settlement proposal is committed to the sound  
6 discretion of the trial judge." Officers for Justice, 688 F.2d at 625.

#### 8 IV. ANALYSIS

9  
10 The discussion of each of the relevant factors enunciated in the Linney case  
11 follows:

##### 12 A. Strength of the Plaintiff's Case

13  
14 "An important consideration in judging the reasonableness of a settlement is  
15 the strength of the plaintiffs' case on the merits balanced against the amount  
16 offered in the settlement." 5 Moore Federal Practice, § 23.85[2][b] (Matthew  
17 Bender 3d. ed.). However, in balancing, "a proposed settlement is not to be  
18 judged against a speculative measure of what might have been awarded in a  
19 judgment in favor of the class." Id. As noted by the Ninth Circuit in Officers for  
20 Justice:

21  
22 [T]he settlement or fairness hearing is not to be turned into a trial or  
23 rehearsal for trial on the merits. Neither the trial court nor [the Court  
24 of Appeals] is to reach any ultimate conclusions on the contested  
25 issues of fact and law which underlie the merits of the dispute, for it  
26  
27  
28

1 is the very uncertainty of outcome in litigation and avoidance of  
2 wastefulness and expensive litigation that induce consensual  
3 settlements.  
4

5 688 F.2d at 625.

6 The Court has reviewed the significant terms of the Proposed Settlement  
7 and finds that the settlement terms compare favorably to the uncertainties  
8 associated with continued litigation regarding the contested issues in this case.  
9 Among other things, the Proposed Settlement provides Class Members with a  
10 meaningful business resolution regarding contested issues such as the Term of the  
11 Member Agreements, the Class Members' renewal term rights, and revenues  
12 derived from Premium Services and Advanced Services. In comparing the  
13 strength of the Plaintiffs' case with the Proposed Settlement, the Court finds that  
14 the Proposed Settlement is a fair resolution of the issues in this case.  
15

16  
17 **B. Risk, Expense, Complexity and Likely Duration of Further**  
18 **Litigation**  
19

20 "In most situations, unless the settlement is clearly inadequate, its  
21 acceptance and approval are preferable to lengthy and expensive litigation with  
22 uncertain results." 4 A Conte & H. Newberg, Newberg on Class Actions, § 11:50  
23 at 155 (4<sup>th</sup> ed. 2002). As observed in Oppenlander v. Standard Oil Co. (Indiana),  
24 64 F.R.D. 597 (D. Colo. 1974):  
25

26 The Court shall consider the vagaries of litigation and compare the  
27 significance of immediate recovery by way of the compromise to the  
28

1 mere possibility of relief in the future, after protracted and expensive  
2 litigation. In this respect, "It has been held proper to take the bird in  
3 hand instead of a prospective flock in the bush."  
4

5 64 F.R.D. at 624.

6 The Proposed Settlement was reached on the eve of trial. The trial on the  
7 merits of this case was estimated by the parties to last between thirty-five and  
8 fifty-three days, broken into at least three phases. In addition to a significant  
9 number of lay witnesses, the parties identified numerous experts to help explain  
10 the complex issues involved in the litigation. Given the length, complexity, and  
11 number of issues involved, it is very possible that a jury may not have reached a  
12 unanimous verdict on all issues. Furthermore, even if it did reach unanimous  
13 verdicts, it is likely that an appeal would have followed. Avoiding such a trial and  
14 the subsequent appeals in this complex case strongly militates in favor of  
15 settlement rather than further protracted and uncertain litigation.  
16

17  
18 **C. The Risk of Maintaining Class Action Status Throughout the**  
19 **Trial**  
20

21 DIRECTV has never challenged the Court's certification of this matter as a  
22 class action under Fed. R. Civ. P. 23(b)(3). As a result, the Court would likely be  
23 able to maintain class action status throughout trial.  
24

25 **D. The Amount Offered In Settlement**  
26

27 In assessing the consideration obtained by the class members in a class  
28



1 action settlement, "[i]t is the complete package taken as a whole, rather than the  
2 individual component parts, that must be examined for overall fairness." Officers  
3 for Justice, 688 F.2d at 628. In this regard, it is well-settled law that a proposed  
4 settlement may be acceptable even though it amounts to only a fraction of the  
5 potential recovery that might be available to the class members at trial. See  
6 Linney, 151 F.3d at 1242 (quoting City of Detroit, 495 F.2d 448, 455 and n.2); see  
7 also William v. Vukovich, 720 F.2d 909, 922 (6<sup>th</sup> Cir. 1983) (court may not  
8 withhold approval merely because settlement is only a fraction of what a  
9 successful plaintiff would have received in a fully litigated case).

10  
11 The Class agreed to release its claims to monetary damages as part of the  
12 Proposed Settlement. However, the Court already disposed of all of the Class  
13 Plaintiffs' damages claims at the summary judgment stage, leaving only the  
14 prospect that the Court's ruling would ultimately be set aside on appeal. Also, the  
15 Court rejected the Class Plaintiffs' claims for restitution on most of the elements  
16 of their 17200 claim, except for restitution on the launch fees component of such  
17 claim if the Class Plaintiffs could first establish liability. Although the Proposed  
18 Settlement does not provide for monetary damages; it provides Class Members  
19 with other valuable benefits not measured in terms of monetary recovery.

20 Two of those benefits are worthy of some discussion in this context. First,  
21 the Proposed Settlement provides Class Members with a definite and certain term  
22 of years for the Member Agreement that is unaffected by the continued operation  
23 of any particular Satellite. As a result, the Class Members will no longer be  
24 subject to the risk of premature operational failure of any measuring Satellite and  
25 will have an initial term that is significantly longer than that which the engineers  
26 believe is the best case scenario for the contractual life of DBS-1. Second, the  
27 Proposed Settlement provides Class Members with concrete renewal term options  
28

1 that allow Class Members to continue their DBS businesses, at no additional cost,  
2 and to receive a fixed dollar payment at the end of the contract for each subscriber  
3 transitioned to DIRECTV (for those Members who select Option 1). The  
4 settlement of the ROFR dispute alone provides the Class with significant value  
5 without litigation uncertainty.

6 Thus, the settlement provides the Class with certainty regarding its business  
7 and with the opportunity to profit from the business for an extended period on  
8 economic terms many of which are more beneficial than those in place at the start  
9 of the litigation. Given the risk and uncertainty of the litigation, the benefits to the  
10 Class of the settlement make the settlement fair, just and reasonable.

11  
12 **E. The Extent of Discovery Completed and the Stage of the**  
13 **Proceedings**  
14

15  
16 “The extent of discovery may be relevant in determining the adequacy of the  
17 parties’ knowledge of the case.” Manual for Complex Litigation, Third, § 30.42.  
18 (1995). “A court is more likely to approve a settlement if most of the discovery is  
19 completed because it suggests that the parties arrived at a compromise based on a  
20 full understanding of the legal and factual issues surrounding the case.” 5  
21 Moore’s Federal Practice, § 23.85[2][e] (Matthew Bender 3d ed.). “If all  
22 discovery has been completed and the case is ready to go to trial, the court  
23 obviously has sufficient evidence to determine the adequacy of settlement.” 4 A.  
24 Conte & H. Newberg, Newberg on Class Actions, § 11:45 at 129 (4<sup>th</sup> ed. 2002). A  
25 settlement following sufficient discovery and genuine arms-length negotiation is  
26 presumed fair. See City Partnership Co. v. Atlantic Acquisition Ltd. P’ship, 100  
27 F.3d 1041, 1043 (1<sup>st</sup> Cir. 1996); see also New York v. Reebok Int’l Ltd., 903 F.  
28

1 Supp. 532, 535 (S.D.N.Y. 1995), aff'd, 96 F.3d 44 (2d Cir. 1996).

2 The proposed settlement was reached among the settling parties after the  
3 completion of all liability and damages discovery. In connection with these  
4 discovery proceedings, approximately 365 depositions were taken across the  
5 country, and hundreds of thousands of pages of documents were exchanged by the  
6 parties. In addition, all summary judgment motions had been decided by the Court  
7 prior to the proposed settlement as well as a number of motions in limine. As a  
8 result, the proposed settlement was reached only after the parties had exhaustively  
9 examined the factual and legal bases of the disputed claims. This fact strongly  
10 militates in favor of the Court's approval of the settlement.  
11

#### 12 F. The Experience and Views of Counsel

13  
14  
15 "Great weight" is accorded to the recommendation of counsel, who are most  
16 closely acquainted with the facts of the underlying litigation." In re Paine Webber  
17 Ltd. P'ships Litig., 171 F.R.D. 104, 125 (S.D.N.Y. 1997). This is because  
18 "[p]arties represented by competent counsel are better positioned than courts to  
19 produce a settlement that fairly reflects each party's expected outcome in the  
20 litigation." Pacific Enters. Sec. Litig., 47 F.3d at 378. Thus, "the trial judge,  
21 absent fraud, collusion, or the like, should be hesitant to substitute its own  
22 judgment for that of counsel." Cotton v. Hinton, 559 F.2d 1326, 1330 (5<sup>th</sup> Cir.  
23 1977); Hanrahan v. Britt, 174 F.R.D. 356, 366-368 (E.D. Pa. 1997) (presumption  
24 of correctness applies to a class action settlement reached in arms'-length  
25 negotiations between experienced, capable counsel after meaningful discovery,  
26 citing Manual for Complex Litigation, Second § 30.41 (1985) and Ratner  
27 v. Bennett, No. 92-4701, 1996 WL 243645, \*5 (E.D. Pa. May 8, 1996)).  
28

1 Class Counsel have demonstrated a high degree of competence in the  
2 litigation of this case. Counsel together with the Class Representatives strongly  
3 believe that the Proposed Settlement is a fair, adequate, and reasonable resolution  
4 of the Class' dispute with DIRECTV and is preferable to continued litigation.

5  
6 **G. The Presence of a Governmental Participant**  
7

8 There is no governmental participant in this Class Action. As a result, this  
9 factor does not apply to the Court's analysis.  
10

11  
12 **H. Reaction of the Class Members to the Proposed Settlement**  
13

14 "The reactions of the members of a class to a proposed settlement is a  
15 proper consideration for the trial court." 5 Moore's Federal Practice, § 23.85[2][d]  
16 (Matthew Bender 3d ed.). In this regard, "[t]he representatives' views may be  
17 important in shaping the agreement and will usually be presented at the fairness  
18 hearing; they may be entitled to special weight because the representatives may  
19 have a better understanding of the case than most members of the class." Manual  
20 for Complex Litigation, Third, § 30.44 (1995).

21 On November 7, 2003, the Court entered an Amended Order Granting  
22 Preliminary Approval of Class Action Settlement and Approving the Proposed  
23 Notice of Class Action Settlement (the "Preliminary Approval Order"). In the  
24 Preliminary Approval Order, the Court preliminarily approved the Proposed  
25 Settlement, approved (with certain modifications) the proposed Notice, and  
26 scheduled a Final Approval Hearing for January 5, 2004. The Court also made the  
27 following order with respect to the manner in which Class Members could object  
28

to the Proposed Settlement:

Any Class Member may appear and show cause (if it has any) why the Proposed Settlement should or should not be approved as fair, just, reasonable, and adequate. However, no Class Member shall be heard or entitled to contest final approval of the Proposed Settlement unless that Class Member has filed with the District Court, no later than December 10, 2003, written objections to the Proposed Settlement and all papers and briefs supporting such written objections . . .

See Preliminary Approval Order, at 3.

The Notice, which was served on each Class Member on November 12, 2003, prominently advised the Class Members of the Court's requirements regarding objections in the body of the Notice itself. See Notice at 56-58. A copy of the Preliminary Approval Order itself was also attached as Exhibit F to the Notice.

No objections to the Proposed Settlement have been filed with the Court or served on counsel. The absence of a single objection to the Proposed Settlement provides further support for final approval of the Proposed Settlement. It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members. See In re Marine Midland Motor Vehicle Leasing Litig., 155 F.R.D. 416, 420 (W.D.N.Y. 1994); Dillard v. City of Foley, 926 F. Supp. 1053, 1063 (M.D. Ala. 1996); In re Michael Milken and Assoc. Sec. Litig., 150 F.R.D. 46, 56-57 (S.D.N.Y. 1993); In re Fleet/Norstar

1 Sec. Litig., 935 F. Supp. 99, 107 (D.R.I. 1996).

2 Here, every Class Member was served with Notice of the Proposed  
3 Settlement. That Notice contained a detailed narrative of the background of the  
4 Class Action Lawsuit, the terms of the Proposed Settlement, and the Class Action  
5 Plaintiffs' views relating to those settlement terms. The Notice also included  
6 copies of the actual settlement documents<sup>1</sup> and the Court's Preliminary Approval  
7 Order, and provided Class Members with clear instructions about how to object to  
8 the Proposed Settlement if the Class Members opposed final approval of the  
9 Proposed Settlement.

10 In conjunction with that Notice, Class Counsel also conducted meetings  
11 with the Class Members at three different locations throughout the country. These  
12 meetings were specifically devoted to discussion of the Proposed Settlement, and  
13 each lasted for almost a full day. Representatives from NRTC also participated in  
14 these meetings. In total, representatives of almost 95% of the Class Members'  
15 subscribers attended those meetings. See Class Action Plaintiffs' Open. Brief,  
16 Suppl. Scott Decl.

17 The Class Members have been given comprehensive information about the  
18 terms of the Proposed Settlement far exceeding the disclosure generally required  
19 in class action settlements. See, e.g., Gottlieb v. Wiles, 11 F.3d 1004, 1013 (10<sup>th</sup>  
20 Cir. 1993) (to satisfy Rule 23(e), "[i]t is not necessary to give all of the details of  
21 the settlement, but only to 'fairly apprise' the class members of the terms of the  
22 settlement.""). The complete absence of Class Member objections to the Proposed  
23 settlement.""). The complete absence of Class Member objections to the Proposed  
24

---

25 <sup>1</sup> Each Notice sent to Class Members contained copies  
26 of the Term Sheet, amendments to the Term Sheet, a  
27 Complete Restatement of Amended Term Sheet, and a New  
28 NRTC/Member Agreement for Marketing and Distribution of  
DBS Services.

1 Settlement speaks volumes with respect to the overwhelming degree of support for  
2 the Proposed Settlement among the Class Members. That unanimous, positive  
3 reaction to the Proposed Settlement is compelling evidence that the Proposed  
4 Settlement is fair, just, reasonable, and adequate.

5  
6 **V. CONCLUSION**

7  
8 The Court finds, based on its analysis of the factors discussed above, that  
9 the Proposed Settlement is fair, just, reasonable and adequate. Based on the  
10 foregoing, the Court hereby **GRANTS** the Class' Application for final approval of  
11 the Class Action Settlement.  
12

13  
14 **IT IS SO ORDERED.**

15  
16 Dated: January 5, 2003

17   
18 **LOURDES G. BAIRD**  
19 United States District Judge  
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FILED

DEC 22 2003

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. GATTERSON, CLERK  
U.S. COURT OF APPEALS

NATIONAL RURAL TELECOMMUNICATION  
COOPERATIVE,

Plaintiff - Appellee,

and

NORTH CENTRAL TELEPHONE  
COOPERATIVE, a Tennessee not for profit  
cooperative corporation, on behalf of themselves  
and as representative of the class of all those  
similarly situated; et al.,

Plaintiffs,

v.

DIRECTV, INC., a California corporation; et al.,

Defendants - Appellees,

v.

PEGASUS SATELLITE TELEVISION, INC., a  
Delaware corporation; et al.,

Plaintiff-Intervenors - Appellants.

No. 03-57165

D.C. Nos. CV-99-5666-LGB

CV-99-08672-LGB

Central District of California,  
Los Angeles

ORDER

Before: GOODWIN and WALLACE, Circuit Judges

Appellants' motions to stay the district court's dismissal and the  
implementation of the settlement of these actions are denied.

The briefing schedule established previously shall remain in effect.

Michael E. Baumann, Esq.  
KIRKLAND AND ELLIS  
34th Floor  
777 South Figueroa Street  
Los Angeles, CA 90017

gar  
03-57165

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

MAR 30 2004

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NATIONAL RURAL  
TELECOMMUNICATION  
COOPERATIVE,

Plaintiff - Appellee,

and,

NORTH CENTRAL TELEPHONE  
COOPERATIVE, a Tennessee not for profit  
cooperative corporation, on behalf of  
themselves and as representative of the class  
of all those similarly situated; et al.,

Plaintiffs,

v.

DIRECTV, INC., a California corporation; et  
al.,

Defendants - Appellees,

v.

PEGASUS SATELLITE TELEVISION,  
INC., a Delaware corporation; et al.,

Plaintiff-Intervenors - Appellants.

No. 03-57165

D.C. Nos. CV-99-5666-LGB  
CV-99-08672-LGB

Central District of California,  
Los Angeles

ORDER

Appellants' motion to dismiss this appeal is granted. Fed. R. App. P. 42(b).

The parties shall bear their own costs on appeal.

A certified copy of this order shall serve as the mandate of this court.

FOR THE COURT

A handwritten signature in black ink, reading "Stephen Liacouras", written over a horizontal line.

Stephen Liacouras  
Circuit Mediator

Michael E. Baumann, Esq.  
KIRKLAND AND ELLIS  
34th Floor  
777 South Figueroa Street  
Los Angeles, CA 90017

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03-57165



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CENTRAL DISTRICT OF CALIFORNIA  
BY: *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PEGASUS SATELLITE  
TELEVISION, INC., and GOLDEN  
SKY SYSTEMS, INC.,

Plaintiff,

v.

DIRECTV, INC. and HUGHES  
COMMUNICATIONS GALAXY,  
INC.,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. CV-00-00368 LGB (CWx)

ENTRY OF FINAL JUDGMENT  
PURSUANT TO FED.R.CIV.PROC.  
58(d)

This action came before the Court, Honorable Lourdes G. Baird, United States District Judge, presiding. Plaintiff/Counter-defendants Pegasus Satellite Television, Inc. and Golden Sky Systems, Inc. (collectively "Pegasus") and Defendant/Counter-plaintiffs DIRECTV, Inc. and Hughes Communications Galaxy, Inc. (collectively "DIRECTV") appeared by their respective attorneys at a number of hearings resulting in Orders that have now disposed of all the claims in this case.



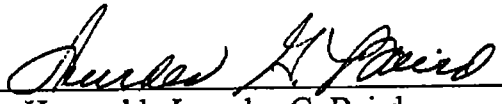
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**Therefore, it is Ordered and Adjudged that:**

The case be and hereby is dismissed in accordance with the Court's prior Orders. The parties shall brief the issue of whether and to whom costs should be awarded on a schedule they will jointly submit to the Court.

Dated: June 1, 2004

APPROVED:

  
\_\_\_\_\_  
The Honorable Lourdes G. Baird  
United States District Judge

SCANNED

**PROOF OF SERVICE**

SCANNED

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 777 South Figueroa Street, 44th Floor, California 90017-5844.

On May 28, 2004, I served the foregoing document described as

**ENTRY OF FINAL JUDGMENT PURSUANT TO FED.R.CIV.PROC. 58(d)**

[X] by placing true copies thereof enclosed in sealed envelope(s) addressed as follows:

Michael Baumann, Esq.  
Kirkland & Ellis  
777 S. Figueroa Street, 34<sup>TH</sup> Floor  
Los Angeles, CA 90017

[X] **(BY HAND DELIVERY)** I caused such envelope to be delivered by hand to the office of the addressee. Executed on May 28, 2004, at Los Angeles, California.

[X] **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
GERI GOMEZ



**NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE**

**NOTICE OF TERMINATION OF MEMBER AGREEMENTS  
(RELATING TO DIRECTV DBS SERVICES)**

Sent by Federal Express

Delivered on June 2, 2004

To NRTC Members that Were Members of the Class Subject to the August 5, 2003 Settlement with DIRECTV, Inc. or that Separately Joined in Such Settlement

Re: Termination of Member Agreements relating to DIRECTV DBS Services

Dear Member:

**IMMEDIATE TERMINATION OF NRTC/DIRECTV AGREEMENTS.** You are hereby notified that on June 1, 2004, NRTC and DIRECTV mutually terminated:

- (i) that certain DBS Distribution Agreement, dated as of April 10, 1992 (as amended, including, without limitation, as of February 14, 1994, and by the Complete Restatement of Amended Term Sheet effective as of August 5, 2003 (the "Settlement Agreement")), by and between DIRECTV, Inc., a California corporation, as assignee of Hughes Communications Galaxy, Inc. ("DIRECTV"), and National Rural Telecommunications Cooperative, a District of Columbia corporation ("NRTC"), pursuant to which NRTC obtained an exclusive right to distribute DBS Distribution Services and certain DIRECTV programming in certain territories (the "DBS Distribution Agreement");
- (ii) that certain New DBS Distribution Agreement as provided for in the Settlement Agreement (the "New DBS Distribution Agreement");
- (iii) that certain Trademark License Agreement dated as of September 12, 1994 (the "Trademark License Agreement"), by and between DIRECTV and NRTC; and
- (iv) that certain Second Revised Seamless Consumer Agreement dated as of March 10, 2004 (the "Seamless Consumer Agreement"), by and between DIRECTV and NRTC .

Accordingly, such agreements have no further force and effect, and all rights and obligations NRTC had under such agreements have been terminated immediately, including, without limitation, any rights NRTC had with respect to the use of DIRECTV's trademarks. By separate agreement, DIRECTV has granted NRTC the right to act as master servicer and agent for DIRECTV to authorize you to continue the use of DIRECTV's trademarks on a non-exclusive basis pursuant to the Existing Member Agreement solely until the Termination Date, in substantially the same manner as previously authorized under the Trademark License Agreement and the Existing Member Agreement.

**NOTIFICATION OF TERMINATION OF YOUR MEMBER AGREEMENTS.** You are hereby further notified that NRTC has terminated the following agreements with you:

- (i) the NRTC/Member Agreement for Marketing and Distribution of DBS Services that you or a predecessor-in-interest entered in 1992 or 1993 (as amended, including in 1994, the "Existing Member Agreement"), pursuant to Section 13 thereof, effective as of August 31, 2004 (the "Termination Date"); and
- (ii) the New NRTC/Member Agreement for Marketing and Distribution of DBS Services that you may have entered in 2004 (the "New Member Agreement"), pursuant to Section 12 thereof, effective immediately.

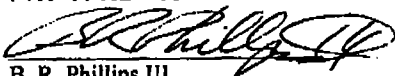
Until the Termination Date, NRTC shall, as DIRECTV's agent and master servicer, continue to provide services required under the Existing Member Agreement. NRTC's agency agreement and authority thereunder terminate on August 31, 2004 and, as of such date, NRTC has no further authority to provide any services or permit your use of DIRECTV's trademarks, and the Existing Member Agreement will have no further force and effect, and all rights and obligations you had under the Existing Member Agreement will have been terminated as of such date. Please

note that because the Termination Date shall occur more than ten (10) years after the Service Commencement Date (as defined in the Existing Member Agreement), no refund of any Committed Member Payment (as defined in the Existing Member Agreement) is payable by DIRECTV to you or NRTC as a result of this termination pursuant to the terms of the Existing Member Agreement.

**CERTAIN RIGHTS AND OBLIGATIONS CONTINUE.** Notwithstanding the foregoing, any obligation to pay to NRTC and/or any right to receive payments from NRTC, which has accrued prior to the Termination Date, shall survive the termination of the Existing Member Agreement. In addition, although NRTC has assigned its rights in certain proprietary information to DIRECTV, you have a continuing obligation pursuant to Section 20 of the Existing Member Agreement and Section 19 of the New Member Agreement to maintain all subscriber information on a strictly confidential basis, subject to the terms and conditions thereof.

Sincerely,

NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE



B. R. Phillips III  
President and Chief Executive Officer

**MARSTON DECLARATION**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

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

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**DECLARATION OF DAVID W. MARSTON JR., ESQ.**

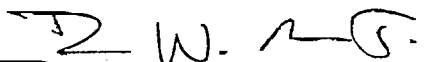
Under penalty of perjury, I, DAVID W. MARSTON JR., ESQ., declare that the following facts are true and correct:

1. I am an attorney with the law firm of Morgan, Lewis & Bockius LLP.
  2. On Wednesday June 2, 2004, I served Ted S. Lodge with the following documents:  
(1) Notice of Termination of Member Agreements (relating to DIRECTV DBS Services); (2) Notice of Termination of Agreement Between DIRECTV, Inc. and Pegasus; (3) Letter to Bank of America, N.A. Re Termination of Agreements Between NRTC and DIRECTV; Termination of Member Agreement; Offer to Pegasus Satellite Television, Inc., Golden Sky Systems, Inc., and Pegasus Communications Corporation and All Subsidiaries and Affiliates ("Pegasus"); and (4) Pegasus Offer Agreement.
  3. It is my understanding that Mr. Lodge is the President and Chief Operating Officer of Pegasus Communications Corporation ("Pegasus").
-

4. Service was made on Mr. Lodge by hand delivery at approximately 8:04 a.m. EDT on June 2, 2004 in the lobby of the office building at 225 City Line Avenue, in Bala Cynwyd, Pennsylvania where the Pegasus offices are located.

5. A security guard in the lobby of the office building witnessed my hand delivery of these documents to Mr. Lodge.

DATED: June 5, 2004

  
\_\_\_\_\_  
DAVID W. MARSTON JR.