

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE**

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	§	
IN RE:	§	
	§	
PEGASUS SATELLITE TELEVISION, INC.,	§	CASE NO. 04-20878
	§	(Chapter 11)
DEBTOR.	§	(Jointly Administered)
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**RESPONSE OF NUCENTRIX BROADBAND NETWORKS, INC.
TO DEBTORS' FIRST OMNIBUS OBJECTION TO AND MOTION TO
RECLASSIFY, REDUCE OR DISALLOW CERTAIN CLAIMS
PURSUANT TO 11 U.S.C. § 502(B), BANKRUPTCY RULES
3001 AND 3007, AND D. ME. LBR 3007-1**

Nucentrix Broadband Networks, Inc. ("Nucentrix" or "Creditor"), party in interest and a creditor of Pegasus Satellite Television, Inc. et al., (the "Debtors"), hereby submits this Response ("Response") to Debtors' First Omnibus Objection to and Motion to Reclassify, Reduce or Disallow Certain Claims Pursuant to 11 U.S.C. § 502(b), Bankruptcy Rules 3001 and 3007, and D.ME. LBR 3007-1 (Docket No, 857, the "Objection").

Background

1. On October 11, 2004, Nucentrix timely filed its Proof of Claim in this proceeding in the amount of \$64,687 (the "Claim"). A true and correct copy of the Claim, which has been assigned Claim No. 575, is attached hereto as Attachment A. The Claim is based on a valid Sales Agency Agreement dated March 14, 2002, between Pegasus Satellite Television, Inc. ("Pegasus"), one of the Debtors, and

Nucentrix (as amended, the "Conversion Agreement"). The Claim provided, among other things, that:

If and to the extent that an order is entered in these bankruptcy proceedings authorizing the rejection of the Conversion Agreement after September 25, 2004, Nucentrix is entitled, at a minimum, to rejection damages as set forth in this Proof of Claim.

2. On November 9, 2004, this Court entered its *Order Approving the Debtors' Rejection of Certain Unexpired Leases and Executory Contracts and Notice Procedures for Fixing the Rejection Effective Date of Certain Unexpired Leases and Executory Contracts* (Docket No. 719) (the "Order"). Among other things, the Order required counterparties to the Leases and Contracts (each as defined in the Order) on Exhibit A to the Order to file proofs of claim for damages arising from the Debtors' rejection of such Leases or Contracts.

3. The Conversion Agreement was among the Leases and Contracts rejected by the Debtors effective November 8, 2004, pursuant to the Order. Having already filed its Claim for rejection damages on October 11, 2004, Nucentrix did not file a duplicate claim.

4. On December 27, 2004, the Debtors filed the Objection, asserting that the Claim should be expunged on the basis of the Debtors' belief that they are not liable to Nucentrix for the Claim.

Basis of the Claim

5. The Debtors are incorrect in their assertion that they owe no obligation to Nucentrix in connection with the Claim. The basis for the Claim is for damages arising from the Debtor's rejection of the Conversion Agreement. Under the Conversion Agreement, Nucentrix acted as a sales agent in converting subscribers from Nucentrix's

own “wireless cable” subscriber base to DIRECTV programming services provided by Pegasus. For each subscriber that Nucentrix converted to Pegasus’ subscriber base (defined as a “Converted Subscriber” under the Conversion Agreement), Section 8.5 of the Conversion Agreement obligates Pegasus to pay Nucentrix a Continuing Service Fee (as defined in the Conversion Agreement) of \$3.00 per Converted Subscriber. Section 8.5 of the Agreement also provides that Pegasus’ Obligation to pay the Continuing Service Fee terminates only upon:

- (a) the termination of the Converted Subscriber for any reason; or
- (b) the voluntary or involuntary disconnection, suspension, discontinuance or downgrade of the Converted Subscriber’s DIRECTV core Programming Package below Total Choice for an reason, for any period of thirty (30) days or more; or
- (c) the termination of this Agreement for Nucentrix’s material breach; or
- (d) three (3) years after the approved activation of the Converted Subscriber.

6. Under § 365(g) of the Bankruptcy Code, the rejection of an executory contract constitutes a breach of such contract. The rejection of the Conversion Agreement therefore constitutes a breach of the Conversion Agreement for which Nucentrix is entitled to rejection damages. Damages resulting from the rejection and breach of the Conversion Agreement consist of, at a minimum, the remaining stream of Continuing Service Fees to which Nucentrix would have been entitled but for the Debtors’ rejection and breach of the Conversion Agreement. Damages also may include attorneys’ fees for breach of the Conversion Agreement and any other damages to which Nucentrix may be entitled under law, equity or the Conversion Agreement.

7. Nucentrix has calculated the remaining Continuing Service Fees due from Pegasus through January 2006, the date on which substantially all of the Converted

Subscribers will have passed the three-year anniversary of their approved activation date. In addition, Nucentrix's calculation assumes a 2% churn rate through January 2006, to take into account reasonably expected "churn" from Pegasus' subscriber base. Nucentrix's calculation, which is set forth in Exhibit B to the Claim, totals \$64,687 and represents the minimum amount to which Nucentrix is entitled as a result of the rejection of the Conversion Agreement.

Documentation

8. In addition to the documentation provided with the Claim, Nucentrix hereby submits a Schedule of Converted Subscribers, including approved activation dates, from which the damages for Debtors' breach of the Conversion Agreement were calculated. This Schedule, derived from information provided by the Debtors, is attached hereto as Attachment B.

Responsible Person

9. The name, address, telephone number and fax number of the person possessing ultimate authority to reconcile, settle or otherwise resolve the claim on behalf of Nucentrix, as well as receive any reply to this Response from the Debtors, is:

J. Curtis Henderson
Senior Vice President and General Counsel
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17440 North Dallas Parkway, Suite 230
Dallas, Texas 75287-7397
(972) 818-6633, ext. 139 (tel.)
(469) 828-0133 (fax)

Prayer

10. For the reasons contained herein, Nucentrix requests that the Objection be denied with respect to Nucentrix, that the Claim be allowed, and that Nucentrix be awarded damages in the amount of, at least, \$64,687 arising from the rejection of the

Conversion Agreement and any other amounts to which Nucentrix may be entitled at law, in equity or under the Conversion Agreement. Nucentrix reserves all rights to amend, modify or supplement this Response.

DATED this 18th day of January, 2005.

Respectfully submitted,

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By: /s/ J. Curtis Henderson

J. Curtis Henderson SBT #

CERTIFICATE OF SERVICE

This is to certify that on this 18th day of January, 2005 a true and correct copy of the above and foregoing document has been served by first class mail, postage prepaid upon all parties listed on the attached Service List.

/s/ Todd C. Crosby

One of Counsel

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SERVICE LIST

PEGASUS SATELLITE TELEVISION, INC., ET AL CHAPTER 11 CASE No. 04-20878

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