

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

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

**MOTION FOR ORDER AUTHORIZING BUT NOT  
DIRECTING PAYMENT OF CERTAIN PREPETITION TAXES**

Pegasus Satellite Television, Inc., and certain of its subsidiaries and affiliates, each a debtor and debtor in possession herein (collectively, the “Debtors”),<sup>1</sup> by and through their undersigned attorneys, file this motion (the “Motion”) requesting that this Court enter an Order: (i) authorizing, but not directing, the Debtors to pay certain accrued and outstanding prepetition taxes; and (ii) authorizing and directing applicable banks and financial institutions to process and pay all of the Debtors’ deposits, wire transfers and checks that may not have cleared prior to the Petition Date involving the payment of such taxes. The facts and circumstances supporting this Motion are set forth in the concurrently filed Affidavit of Ted S. Lodge, President, Chief Operating Officer and Counsel of Pegasus Satellite Communications, Inc., in support of First Day Motions. In further support of this Motion, the Debtors represent as follows:

**STATUS OF THE CASE AND JURISDICTION**

1. On June 2, 2004 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the

<sup>1</sup> The Debtors are: Argos Support Services Company, Bride Communications, Inc., B.T. Satellite, Inc., Carr Rural TV, Inc., DBS Tele-Venture, Inc., Digital Television Services of Indiana, LLC, DTS Management, LLC, Golden Sky DBS, Inc., Golden Sky Holdings, Inc., Golden Sky Systems, Inc., Henry County MRTV, Inc., HMW, Inc., Pegasus Broadcast Associates, L.P., Pegasus Broadcast Television, Inc., Pegasus Broadcast Towers, Inc., Pegasus Media & Communications, Inc., Pegasus Satellite Communications, Inc., Pegasus Satellite Television of Illinois, Inc., Pegasus Satellite Television, Inc., Portland Broadcasting, Inc., Primewatch, Inc., PST Holdings, Inc., South Plains DBS, LP., Telecast of Florida, Inc., WDSI License Corp., WILF, Inc., WOLF License Corp., WTLH License Corp.

“Bankruptcy Code”), and motions or applications seeking certain typical “first day” orders, including an order to have these cases jointly administered.

2. The Debtors have continued in possession of their respective properties and have continued to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner and no official committee has yet been established in these cases.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105(a), 507(a)(8) and 541(d) of the Bankruptcy Code.

### **BACKGROUND OF THE DEBTORS**

5. Pegasus Satellite Television, Inc. (“PST”), together with its subsidiaries, is the nation’s largest independent provider of DIRECTV® programming. Organized in 1996 as a Delaware Corporation, PST is headquartered in Marlborough, Massachusetts. PST is a wholly owned indirect subsidiary of Pegasus Satellite Communications, Inc.

6. The Debtors’ principal operating business is its direct broadcast satellite (“DBS”) business.<sup>2</sup> Specifically, the Debtors provide DIRECTV programming services to rural households across the United States and, as of December 31, 2003, had in excess of 1.1 million subscribers and the exclusive right to distribute DIRECTV services to approximately 8.4 million rural households in certain territories within 41 states.

7. DBS services are digital broadcasting services that require a subscriber to install or have installed a satellite receiving antenna (or dish) and a digital receiver. DIRECTV,

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<sup>2</sup> Debtor Pegasus Media & Communications, Inc. also conducts television broadcast operations through twelve (12) subsidiaries, all of which have filed voluntary petitions under chapter 11 and are Debtors in these cases.

in particular, requires subscribers to have a satellite dish, which can be as small as 18 inches in diameter depending on the services received, to which DIRECTV directly transmits programming services via five high power Ku band satellites. The Debtors in turn offer certain core programming packages to subscribers, which vary according to channels delivered and price.

8. The Debtors maintain an independent retail network through dealer relationships to distribute DIRECTV programming. The Debtors have expanded this network to include over 4,000 consumer electronics stores and other independent retailers serving rural areas in the Debtors' service area. Today, the Debtors' retail network is one of the few sales and distribution channels available to digital satellite service providers seeking broad and effective distribution in rural areas throughout the continental United States.

9. As of March 31, 2004, the Debtors had assets aggregating approximately \$1.6 billion related to their DBS business, which generated net revenues of approximately \$831.2 million during calendar year 2003. The Debtors employ approximately 942 employees.

### **RELIEF REQUESTED**

10. **Sales Taxes.** The Debtors' DBS operations result in the collection of state sales and use taxes and surcharges from their customers. These sales and use taxes and surcharges are subsequently remitted to the applicable taxing authorities. Sales and use taxes and surcharges accrue and are paid at various intervals to the relevant taxing authorities. As of the Petition Date, the estimated aggregate amount of the Debtors' accrued and unpaid sales and use taxes and surcharges is approximately \$3.2 million.

11. **Property Taxes.** The Debtors are obligated to pay property taxes on certain real and personal property that they own within the United States. The Debtors are required to make separate filings of real and personal property taxes to numerous taxing

authorities during each year. As of the Petition Date, the estimated aggregate amount of the Debtors' accrued and/or unpaid real and personal property taxes is approximately \$1.1 million.

12. By this Motion, the Debtors seek authority to pay to the relevant taxing authorities the accrued and unpaid sales and use taxes and surcharges, and to the extent necessary to continue to efficiently operate their businesses as they deem appropriate, the property taxes and any other taxes for which directors, officers or employees of the Debtors may be personally liable.

13. To the extent that any transfers, deposits or checks issued by the Debtors prepetition on account of the these taxes have not cleared as of the Petition Date, the Debtors also seek authorization and/or ratification of their banks' honoring of such transfers on or after the Petition Date. In addition, the Debtors seek authorization to reissue any check which was drawn in payment of any prepetition tax approved herein that was not cleared by a bank or financial institution.

#### **JUSTIFICATIONS FOR GRANTING REQUESTED RELIEF**

14. In some or all of the states in which the Debtors do business, sales taxes constitute so-called "trust fund" taxes that are required to be collected from third parties and held in trust for payment to the taxing authorities. See e.g., Al Copeland Enterprises, Inc. v. Texas (In re Al Copeland Enterprises.), 991 F.2d 233 (5th Cir. 1993) (sales tax required by state law to be collected from customers is a "trust fund" tax); Shank v. Washington State Dep't of Revenue (In re Shank), 792 F.2d 829, 830 (9th Cir. 1986) (same); In re Hilaire 102 B.R. 1 (Bankr. D. Mass. 1989) (same); Front Office Associates, Inc. v. Clark (In re Front Office Associates, Inc.), 142 B.R. 24, 26 (Bankr. R.I. 1992) (same). To the extent these "trust fund" taxes are "collected" from the third parties and held by the debtor prior to remittance to the taxing authorities, courts have repeatedly held that such funds do not constitute property of the debtor's estate under

section 541(d) of the Bankruptcy Code.<sup>3</sup> See Begier v. Internal Revenue Service, 496 U.S. 53 (1990). The Debtors, therefore, do not have any equitable interest in the sales taxes, and the payment of such taxes at this time will not prejudice the rights of any of the Debtors' other creditors.

15. In many of the states in which the Debtors do business, sales and use taxes are administered by the same taxing authorities, and are collected and enforced in the same manner. Accordingly, although few, if any, of the states in which the Debtors do business have statutes which expressly treat use taxes as "trust taxes," many of the states' taxing authorities assert various penalties and enforcement actions as if use taxes constituted sales taxes. Given the large number of sales and use tax filings that the Debtors prepare each year, it would be extremely costly for the Debtors' estates to resolve any disputes and defend any actions that the various taxing authorities assert regarding the issue of whether use taxes are entitled to the same treatment as sales taxes.

16. Similarly, numerous surcharges are collected from customers of the Debtors and are paid to the appropriate taxing authorities on a monthly or quarterly basis. The Debtors believe that authority to pay the surcharges is necessary to assure the uninterrupted operation of their DBS business.

17. In many states that have laws providing that certain taxes constitute "trust fund" taxes (including certain states in which the Debtors do business), officers, directors and employees of the collecting entity may be held personally liable for nonpayment of such taxes. Furthermore, even where such taxes do not constitute "trust fund" taxes, certain states

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<sup>3</sup> Section 541(d) of the Bankruptcy Code provides:

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d).

nevertheless may attempt to hold the Debtors' officers, directors and employees personally liable for nonpayment. Therefore, to the extent such taxes of the Debtors are not paid, the Debtors' officers and directors may be subject to lawsuits in such jurisdictions during the pendency of these cases. Such potential lawsuits would prove extremely distracting to the Debtors, to the named officers, directors and employees whose attention to the Debtors' chapter 11 cases is required, and to this Court, which might be asked to entertain various motions seeking injunctions with respect to the potential state court actions. Accordingly, it is in the best interests of the Debtors' estates and the policy of the Bankruptcy Code to eliminate the possibility of the foregoing distractions. Accordingly, the Debtors request the Court's authorization of the payment to the relevant taxing authorities of the accrued and unpaid sales and use taxes and surcharges, as well as any other taxes for which directors, officers or employees of the Debtors may be personally liable.

18. In addition, in some or all of the states in which the Debtors do business, liens can attach to real and personal property on which the Debtors have unpaid property taxes, entitling the taxing authorities to postpetition interest or other adequate protection. Since real and personal property taxes effectively may have the same priority as secured claims against the Debtors' estates, the Debtors submit that payment of property taxes at this time will not prejudice the rights of the Debtors' general unsecured creditors.

19. Moreover, all or virtually all of the applicable taxes and surcharges discussed in this Motion are entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code and, thus, must be provided for in full under any plan of reorganization. See 11 U.S.C. § 1129(a)(9)(C). Accordingly, the payment of the taxes at this time will affect only the timing of payment, will avoid the accrual of interest or penalty charges on such claims, and will not prejudice the rights of the Debtors' general unsecured creditors.

20. Further, courts in this circuit have authorized debtors in possession to pay a variety of prepetition claims of creditors, including claims similar to the taxes and surcharges herein. See, e.g., In re ACT Manufacturing, Inc., Case No. 01-47641-JBR (Bankr. D. Mass., order entered December 26, 2001); In re Malden Mills Industries, Inc., Case No. 01-47214-JBR (Bankr. D. Mass., order entered November 30, 2001).

21. For all of the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interest of their estates.

22. Nothing in this Motion or the order approving this Motion should be construed as impairing the Debtors' ability to contest the amounts of the taxes or surcharges owing to the various taxing authorities, or requiring the Debtors to pay any of the applicable taxes or surcharges, and the Debtors expressly reserve all of their rights with respect thereto.

#### **NOTICE**

23. Notice of this Motion has been given to (i) the United States Trustee for the District of Maine; (ii) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (iii) the administrative agents for the credit facilities of Pegasus Media & Communications, Inc. and Pegasus Satellite Communications, Inc. ("PSC") and (iv) each of the indenture trustees for each series of notes of PSC. The Debtors submit that in light of the nature of the relief requested, no further notice is required.

#### **NO PRIOR REQUEST**

24. The Debtors have not previously sought the relief requested herein from this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an Order substantially in the form attached hereto (i) authorizing, but not requiring, the Debtors to pay accrued and unpaid prepetition sales, use and property taxes and associated surcharges, as well as

any other taxes for which directors, officers or employees of the Debtors may be personally liable; (ii) authorizing, ratifying and directing the Debtors' banks actions to honor any and all prepetition tax and surcharge transfers that may not have cleared prior to the Petition Date; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: Portland, Maine  
June 2, 2004

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