

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

MOTION FOR ORDER: (I) APPROVING FORM AND MANNER OF SOLICITATION, FORM OF BALLOTS AND RELATED NOTICES; (II) ESTABLISHING A VOTING RECORD DATE AND VOTING PROCEDURES; (III) ESTABLISHING THE DATE AND PLACE FOR THE CONFIRMATION HEARING, AND THE PROCEDURES AND DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION; AND (IV) GRANTING RELATED RELIEF

Pegasus Satellite Television, Inc. and certain of its subsidiaries and affiliates, each a debtor and debtor-in-possession in the above captioned cases (collectively, the “Debtors”),¹ by and through their undersigned attorneys, respectfully represent:

JURISDICTION AND VENUE

1. This Bankruptcy Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and the within motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105(a) and 1126 of title 11 of the United States Code (the “Bankruptcy

¹ The Debtors are: Argos Support Services Company, Bride Communications, Inc., B.T. Broadcast, 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.

Code”), as supplemented by rules 2002, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and D. Me. LBR 2002-1(b) and 3017-1.

BACKGROUND

2. On June 2, 2004 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On the Petition Date, the Debtors also jointly filed motions or applications seeking certain typical “first day” orders, including an order to have these cases jointly administered.

3. The Debtors continue in possession of their properties and are operating and maintaining their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On June 10, 2004, the United States Trustee for the District of Maine appointed the Official Committee of Unsecured Creditors (the “Committee”) pursuant to section 1102(a) of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in these cases.

5. On January 7, 2005, the Debtors filed the Debtors’ Joint Chapter 11 Plan (the “Plan”)¹ and Disclosure Statement for Debtors’ Joint Chapter 11 Plan (the “Disclosure Statement”), each dated January 5, 2005. A hearing to consider approval of the Disclosure Statement is scheduled for February 9, 2005 at 11:00 a.m.

RELIEF REQUESTED

6. By this motion (the “Motion”), the Debtors seek the entry of an order, substantially in the form filed simultaneously herewith (the “Proposed Order”), pursuant to sections 105(a) and 1126 of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2002,

¹ Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Plan.

3017, 3018, and 3020 and D. Me. LBR 2002-1(b) and 3017-1: (i) approving form and manner of solicitation, form of ballots and related notices; (ii) establishing a voting record date and voting procedures; (iii) establishing the date and place for the Confirmation Hearing, and the procedures and deadline for filing objections to confirmation of the Plan; and (iv) granting related relief.

Form and Manner of Solicitation

A. Establishing Voting Record Date

7. Bankruptcy Rule 3017(d) provides that, for the purposes of vote solicitation, “creditors and equity security holders shall include holders of stock, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. Claims in these cases may have been traded and may continue to be traded. Accordingly, the Debtors propose that the record date for purposes of determining which creditors are entitled to vote on the Plan (subject to the disallowance of such creditors’ Claims for voting purposes as set forth below) and for the purpose of determining creditors entitled to receive the Unimpaired Creditor Notice and the Notice of Non-Voting Status (each as defined below) and any other notices required to be sent in accordance with this Motion be February 9, 2005 (the “Record Date”).

B. Proposed Form and Manner of Solicitation and Notices

8. As more fully discussed below, pursuant to the Plan, the following holders of Claims and Interests are not entitled to vote: (a) Holders of Claims in Classes 1A, 1B, 1C and 1D (Secured Claims), Classes 2A, 2B, 2C and 2D (Priority Non-Tax Claims) and Classes 5B-2, 5C-2 and 5D-2 (Interests in PMC, the PST Debtors and the PBT Debtors), as they are unimpaired and conclusively presumed to accept the Plan (the “Unimpaired Classes”); and (b)

Holders of Claims or Interests in Class 4A (Subordinated Claims), Class 5A-1 (preferred stock Interests in PSC) and Class 5A-2 (common stock Interests in PSC), as they are impaired, not eligible to receive a Distribution under the Plan and deemed to reject the Plan (the “Deemed Rejected Classes”).

9. Pursuant to the Plan, Holders of Claims in Class 3A, Class 3B, Class 3C and Class 3D (General Unsecured Claims) are entitled to vote because they are impaired and eligible to receive a Distribution under the Plan (the “Voting Classes”).

Solicitation Packages to Eligible Voters

10. The Debtors propose that only the following Holders of Claims in the Voting Classes be entitled to vote (the “Eligible Voters”): (a) the Holders of filed proofs of claim, as reflected on the official claims register maintained by The Trumbull Group, LLC (“Trumbull”)¹ as of the close of business on the Record Date, unless any such Claim is the subject of a pending objection filed no later than twenty (20) days prior to the Voting Deadline; (b) the Holders of Claims that are the subjects of pending objections filed no later than twenty (20) days prior to the Voting Deadline, if at all, only to the extent and in the amount that the Debtors’ objection to such Claim concedes that such Claim should be allowed, or as otherwise ordered by the Bankruptcy Court; and (c) the Holders of Claims that are listed in the Schedules as liquidated, non-contingent and in an amount greater than zero dollars (excluding scheduled Claims that have been (i) superseded by a filed proof of claim, (ii) disallowed and expunged, or (iii) paid in full); provided, however, that the assignee of a transferred and assigned Claim (whether a filed or scheduled Claim) shall constitute an Eligible Voter and be permitted to vote such Claim only if the transfer and assignment has been noted on the Bankruptcy Court’s docket

¹ Pursuant to an Order dated June 4, 2004, Trumbull was appointed herein as the claims, noticing and balloting agent of the Bankruptcy Court pursuant to 28 U.S.C. § 156(c) (the “Balloting Agent”).

and is effective pursuant to Bankruptcy Rule 3001(e) as of the close of business on the Record Date.

11. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to Holders of Claims for purposes of soliciting their votes on a plan of reorganization. The Debtors propose that within ten (10) days after the approval of this Motion, or such time as may be fixed by the Bankruptcy Court, they will mail, or cause to be mailed, solicitation packages (“Solicitation Packages”) to the Eligible Voters, which will include:

- a. notice of the Confirmation Hearing and related matters, substantially in the form attached to the Proposed Order as Exhibit A thereto (the “Notice”), setting forth (i) the time fixed for submitting acceptances and rejections to the Plan, (ii) the time fixed for filing objections to confirmation of the Plan, and (iii) the date and time of the Confirmation Hearing;
- b. a copy of the Disclosure Statement filed by the Debtors and as approved by the Bankruptcy Court (with exhibits, including the Plan); and
- c. a Ballot (with instructions), in substantially the form approved by the Bankruptcy Court, as more fully described below.

12. The Debtors submit that such materials and manner of service satisfy the requirements of Bankruptcy Rule 3017(d).

Additional Procedures for Holders of Senior Notes

13. Bankruptcy Rule 3017(e) provides that the court shall consider the “procedures for transmitting the documents and information required by [Rule 3017(d)] to beneficial holders of stock, bonds, debentures, notes and other securities and determine the adequacy of such procedures and enter such orders as the court deems appropriate.” Because of the complexity and difficulty associated with identifying and contacting beneficial owners of publicly traded securities, many of which hold their securities in brokerage accounts and through several layers of ownership, the Debtors propose that solicitation materials be sent in a manner,

as described below, that is customary in the securities industry so as to maximize the likelihood that beneficial owners of the Senior Notes will receive the materials in a timely fashion.

14. The Debtors are advised that the Senior Notes are held in the name of The Depository Trust Company (“DTC”), and that, below the DTC level, certain brokers, banks and other nominees (the “Record Holders”) are registered Holders of the Senior Notes. In many instances, the Record Holders do not hold the Senior Notes for their own accounts, but for their customers which are, in turn, the beneficial owners of the Senior Notes (the “Beneficial Owners”).

15. The Debtors propose to transmit the Solicitation Package described above to each of the Beneficial Owners by mailing Solicitation Packages to each Record Holder. To facilitate this mailing, the Debtors request that the Court order DTC to provide the Balloting Agent with a list (either in paper form or on a diskette) containing the name, address and amount of Senior Notes owned by each Record Holder as of the Record Date within three (3) business days after the approval of this Motion.

16. The Debtors request that the Court order each Record Holder to obtain the votes of Beneficial Owners for which it holds such securities by forwarding a Solicitation Package, which will include, inter alia, a Ballot for Class 3A Senior Notes (described below) (the “Beneficial Owner Ballot”), to each such Beneficial Owner, and include a return envelope provided by and addressed to the Record Holder, so that the Beneficial Owner may return the completed Ballot to such Record Holder. The Debtors request that the Court order the Record Holder to summarize the individual votes of its respective Beneficial Owners from their Beneficial Owner Ballots on an appropriate master Ballot (described below) (the “Master Ballot”). If a Record Holder is also a Beneficial Owner of a Senior Note, it should separately

complete a Ballot and summarize and include such vote on the Master Ballot. The Record Holder should then return the Master Ballot to the Balloting Agent. This procedure recognizes the complex structure of the securities industry, enables the Debtors to transmit solicitation materials to the Beneficial Owners of the Senior Notes, and affords such Beneficial Owners of the Senior Notes a fair and reasonable opportunity to vote.

Notice to the Unimpaired Classes

17. Bankruptcy Rule 3017(d) provides, in relevant part, as follows:

If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation.

Fed. R. Bankr. P. 3017(d). Pursuant to section 1126(f) of the Bankruptcy Code, such unimpaired creditors are "conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class . . . is not required." 11 U.S.C. § 1126(f). Accordingly, the Debtors propose that they not be required to transmit a Solicitation Package to the Unimpaired Classes. Instead, the Debtors propose to mail or cause to be mailed to each such Holder at its address to which notices are required to be sent pursuant to Bankruptcy Rule 2002(g), a notice, substantially in the form attached to the Proposed Order as Exhibit B thereto (the "Unimpaired Creditor Notice"), which identifies: (a) the Unimpaired Classes; (b) the date and time of the Confirmation Hearing; and (c) the deadline and procedures for filing objections thereto. The Unimpaired Creditor Notice will further provide that Holders of Claims in the Unimpaired Classes may receive a copy of the Plan and Disclosure Statement upon written request to the

Balloting Agent. In addition, copies of the Plan and Disclosure Statement will be available on the Debtors' website at www.pgtv.com.

Notice to the Deemed Rejected Classes

18. Pursuant to section 1126(g) of the Bankruptcy Code, a class is deemed not to have accepted a plan if such plan does not provide for any Distribution to members of such class on account of their claims or interests. See, 11 U.S.C. § 1126(g). Accordingly, the Debtors propose that they not be required to transmit a Solicitation Package to the Deemed Rejected Classes. Instead, the Debtors propose to mail or cause to be mailed to each such Holder at its address to which notices are required to be sent pursuant to Bankruptcy Rule 2002(g), a notice, substantially in the form attached to the Proposed Order as Exhibit C thereto (the "Notice of Non-Voting Status"), which identifies: (a) the Classes designated as the Deemed Rejected Classes; (b) the date and time of the Confirmation Hearing; and (c) the deadline and procedures for filing objections thereto. The Notice of Non-Voting Status also will provide that such Holders of Claims or Interests are entitled to receive a copy of the Plan and Disclosure Statement upon written request to the Balloting Agent. In addition, copies of the Plan and Disclosure Statement will be available on the Debtors' website at www.pgtv.com.

Notice to Holders of Contingent,
Unliquidated, and/or Disputed Claims

19. The Debtors further propose to provide to all Holders of Claims recorded as unliquidated, contingent and/or disputed a notice setting forth the procedures and deadlines specific to their Claims, by first class mail, no later than ten (10) business days after the entry of an order approving this Motion substantially in the form attached to the Proposed Order as Exhibit D thereto.

Publication Notice

20. In order to provide notice of the time for filing and serving objections to the Plan and the date and time of the Confirmation Hearing to (a) creditors to whom no other notice was sent and who are unknown to and not reasonably ascertainable by the Debtors; (b) known creditors with addresses unknown by the Debtors; and (c) creditors with potential Claims unknown by the Debtors, the Debtors propose to publish the notice, substantially in the form attached to the Proposed Order as Exhibit E thereto (the "Publication Notice"), in the national editions of The Wall Street Journal, The New York Times and USA Today within ten (10) days after approval of this Motion. The Debtors submit that publication of such notice prior to the Confirmation Hearing is adequate and sufficient notice to such creditors under the circumstances. Moreover, pursuant to Bankruptcy Rule 3017(a), a copy of the Plan and Disclosure Statement will be provided to any party in interest upon written request to the Balloting Agent. In addition, copies of the Plan and Disclosure Statement will be available on the Debtors' website at www.pgtv.com.

21. The Debtors submit that the foregoing notices satisfy the requirements of the Bankruptcy Code and Bankruptcy Rules.

Approval of Voting Procedures, Form of Ballots and Procedures for Distribution to Beneficial Holders

(i) Establishment of Voting Deadline

22. Pursuant to Bankruptcy Rule 3017(c), at the time of or before the approval of the Disclosure Statement, "the court shall fix a time within which the holders of claims and interests may accept or reject the plan." Fed. R. Bankr. P. 3017(c). The Debtors respectfully request that the Bankruptcy Court establish March 17, 2005 at 4:00 p.m. (Eastern Standard Time) as the deadline by which all Ballots accepting or rejecting the Plan shall be received at the

Ballot tabulation center (the “Voting Deadline”). Ballots must be returned to the Ballot tabulation center in the provided first-class, postage-prepaid envelope, or by overnight courier.

(ii) Amounts and Classification of Claims

23. The Debtors propose that the amount and classification of a Claim or Interest for purposes of voting on the Plan be dealt with as follows:

- a. With respect to Secured Claims (Classes 1A, 1B, 1C and 1D) and Priority Non-Tax Claims (Classes 2A, 2B, 2C and 2D), each Holder shall be conclusively presumed to have accepted the Plan and is not entitled to vote.
- b. With respect to Common Stock Interests in PMC (Class 5B-2), the PST Debtors (Class 5C-2) and the PBT Debtors (Class 5D-2), each Holder shall be conclusively presumed to have accepted the plan and is not entitled to vote.
- c. With respect to General Unsecured Claims (Classes 3A, 3B, 3C and 3D):
 - (1) To the extent a proof of claim has been timely filed as a liquidated, non-contingent Claim in an amount greater than zero dollars, then the Holder thereof shall be entitled to vote in the amount specified in such Claim (regardless of the scheduled amount of such Claim or whether such Claim is scheduled as contingent or unliquidated) unless such Claim is the subject of a pending objection filed no later than twenty (20) days prior to the Voting Deadline.
 - (2) If a Claim for which a proof of claim has been timely filed is, by its terms, wholly contingent or unliquidated, such Claim shall be disallowed for voting purposes, subject to the filing of a Claimant Voting Motion (as defined and discussed more fully below). If a Claim for which a proof of claim has been timely filed is marked as partially contingent or unliquidated, that portion that is liquidated and not contingent may be voted in the amount asserted.
 - (3) If a Claim is listed on the Schedules as a non-contingent, liquidated Claim in an amount greater than zero dollars and a related proof of claim was not: (i) timely filed; or (ii) deemed timely filed by an order of the Bankruptcy Court prior to the Voting Deadline, then the Holder of such Claim

is entitled to vote in the amounts set forth in the Schedules, subject to any applicable limitations set forth below.

- (4) If a Claim is listed on the Schedules as contingent, unliquidated, and/or disputed and a related proof of claim was not: (i) timely filed; or (ii) deemed timely filed by an order of this Court prior to the Voting Deadline, unless the Debtors (with the Committee's consent, not to be unreasonably withheld) have consented in writing, such Claim is disallowed for purposes of voting on the Plan.
- (5) In the event a Claim is the subject of an objection filed no later than twenty (20) days prior to the Voting Deadline for which there has been no ruling by the Bankruptcy Court as of the Voting Deadline, the disputed portion of such Claim shall not be counted for voting purposes and the related Ballot, if any, shall not be counted, except to the extent and in the manner indicated in the Debtors' objection or as otherwise ordered by the Bankruptcy Court.
- (6) If a Claim has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, such Claim shall be temporarily allowed in the amount so estimated or allowed pursuant to such order for voting purposes only.
- (7) If a Claim has been deemed Allowed (*i.e.*, for Distribution purposes) by a Final Order, then such Claim is allowed for voting purposes in the allowed amount.

d. With respect to Subordinated Claims (Class 4A), preferred stock Interests in PSC (Class 5A-1) and common stock Interests in PSC (Class 5A-2) each Holder shall be deemed to have rejected the Plan and is not entitled to vote.

(iii) Other Voting Procedures

24. Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that the “court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018(a).

25. As noted above, if the Debtors or the Committee file an objection to a Claim at least (20) days before the Voting Deadline (a “Voting Objection”), the Debtors propose that such Claim be temporarily disallowed for voting purposes only, except to the extent set forth in the Voting Objection.

26. The Debtors also propose that a party holding an unliquidated, contingent, and/or disputed Claim wishing to challenge its treatment for voting purposes, or any holder of a Claim who seeks (i) to have its Claim allowed for voting purposes in an amount different from that which is set forth in the Schedules, the Plan, the Disclosure Statement, or this Motion; or (ii) to respond to a Voting Objection, be required to file a motion setting forth, with particularity, the amount at which such claimant believes its Claim should be allowed, and the evidence in support thereof (a “Claimant Voting Motion”) no later than ten (10) days prior to the Voting Deadline. The Debtors further propose that the Bankruptcy Court schedule a hearing on such motion for a date prior to the Confirmation Hearing. Further, the Debtors propose that if the Bankruptcy Court has not temporarily or otherwise allowed all or a portion of such Claim for voting purposes, pursuant to Bankruptcy Rule 3018(a), on or before the deadline that Ballots must be received by the Balloting Agent, then such claimant be permitted to vote the Claim in an amount equal to one dollar.

27. In addition, the Debtors propose that the Bankruptcy Court approve the following rules and standards:

- a. Any Ballot that is properly completed, executed, and timely returned to the Balloting Agent, but does not indicate an

acceptance or rejection of the Plan, or indicates both an acceptance and rejection of the Plan, will not be counted.

- b. Any Ballot that is returned to the Balloting Agent indicating acceptance or rejection of the Plan, but that is unsigned or does not contain an original signature, will not be counted.
- c. Any Ballot postmarked prior to the deadline for submission of Ballots, but received afterward, will not be counted, unless otherwise ordered by the Bankruptcy Court.
- d. Whenever a Holder of a Claim submits more than one Ballot voting the same Claim prior to the deadline for receipt of Ballots, except as otherwise directed by the Bankruptcy Court, the last such properly completed and executed Ballot received prior to the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior Ballots.
- e. For purposes of determining under section 1126(c) of the Bankruptcy Code whether one-half in number of Claims in each Class has accepted the Plan, separate Claims held by a single creditor in a particular Class will be aggregated as if such creditor held one Claim in such Class, and the votes related to such Claims will be treated as a single vote to accept or reject the Plan.
- f. A Holder of a Claim that is entitled to vote must vote all of its Claims within a particular Class either to accept or reject the Plan and may not split its vote. Accordingly, a Ballot with respect to a Claim (or multiple Ballots with respect to separate Claims within a single Class) that partially rejects and partially accepts the Plan, or that indicates both a vote for and against the Plan, will not be counted.
- g. If a creditor simultaneously casts inconsistent duplicate Ballots, with respect to the same Claim, such Ballots will not be counted.
- h. Each creditor will be deemed to have voted the full amount of its Claim.
- i. Any Ballot received by the Balloting Agent by telephone, fax, e-mail or other electronic communication will not be counted.
- j. Unless otherwise ordered by the Bankruptcy Court, questions as to the validity, form, eligibility (including time of receipt), acceptance and revocation or withdrawal of Ballots will be determined by the Balloting Agent and the Debtors (with the consent of the Committee, not to be unreasonably withheld) in their discretion, which determination will be final and binding.

28. The Debtors further propose that the following Ballots not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected: (a) any Ballot received after the Voting Deadline, unless the Debtors (with the consent of the Committee, not to be unreasonably withheld) have granted an extension of the Voting Deadline with respect to such Ballot in writing; (b) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (c) any Ballot cast by a person or entity that does not hold a Claim in the Voting Class; and (d) any Ballot cast for a Claim scheduled as unliquidated, contingent, and/or disputed for which no proof of claim was timely filed or deemed timely filed.

(iv) Approval of Ballots

29. In accordance with Bankruptcy Rule 3017(d), the Debtors propose to use Ballots substantially in the forms attached hereto as Exhibits F through K to the Proposed Order. These forms comply with Bankruptcy Rule 3018(c) and are based substantially on Official Form No. 14.¹ The Ballots will be distributed to the Eligible Voters, in the following manner:

<u>Exhibit</u>		<u>Class</u>
Exhibit F	Ballot for General Unsecured Claims against PSC	Class 3A
Exhibit G	Ballot for Beneficial Owner of PSC Senior Notes	Class 3A Senior Note Holders
Exhibit H	Master Ballot for PSC Senior Note Holders	Class 3A Senior Note Holders
Exhibit I	Ballot for General Unsecured Claims against PMC	Class 3B
Exhibit J	Ballot for General Unsecured Claims against the PBT Debtors	Class 3C
Exhibit K	Ballot for General Unsecured Claims against the PST Debtors	Class 3D

¹ They have, however, been modified in some respects to address the particular needs of these cases.

30. The Debtors request that these forms of Ballots be approved by the Bankruptcy Court. The Debtors reserve the right to prepare and distribute modified forms of the Ballot, substantially in conformance with the attached Ballots and Official Form No. 14, should the Debtors or the Balloting Agent find it necessary due to further refinement of the balloting process or modification of the Plan. Furthermore, pursuant to the Plan, the Debtors reserve the right to seek a determination that one or more of the Classes in the Plan designated as impaired are unimpaired and that such Class or Classes therefore are conclusively presumed to have accepted the Plan without regard to how the Class or Classes actually voted.

Establishment of Confirmation Hearing and
Objection Deadline and Related Procedures

31. Bankruptcy Rule 3017(c) provides:

On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

Fed. R. Bankr. P. 3017(c).

32. In accordance with Bankruptcy Rule 3017(c) and in view of the Debtors' proposed solicitation outlined herein, the Debtors request that a hearing on confirmation of the plan (the "Confirmation Hearing") be scheduled for March 24, 2005. The Debtors propose that, (with the consent of the Committee, not to be unreasonably withheld), they be permitted to continue the Confirmation Hearing from time to time as appropriate without further notice except for adjournments announced in open court. The proposed schedule is in compliance with the Bankruptcy Rules and will enable the Debtors to pursue consummation of the Plan in accordance with the statutory timetable.

33. Bankruptcy Rule 3020(b) provides that objections to confirmation of a proposed plan of reorganization must be filed with the Bankruptcy Court and served on the

debtors, the trustee, any committee appointed under the Bankruptcy Code and on any other entity designated by the Bankruptcy Court, within a time specified by the Bankruptcy Court. To comply with the twenty-five (25) day notice requirement of Bankruptcy Rule 2002(b) and 2002(d) and the solicitation schedule described above, and to permit the Debtors adequate time to respond to objections prior to the Confirmation Hearing, the Debtors propose that March 17, 2005 at 4:00 p.m. (Eastern Standard Time) be fixed by the Bankruptcy Court as the last date for filing and serving written objections, comments or responses to confirmation of the Plan (including any supporting memoranda). The Debtors further propose that the Bankruptcy Court only consider timely filed written objections stating: (a) the name and address of the objecting party; (b) the amount and nature of the Claim or Interest of such party; and (c) with particularity, the basis and nature of any objection or proposed modification, and that all objections not timely filed and served in accordance with the provisions of this Motion be deemed waived. Objections to confirmation of the Plan shall be served by the relevant objector on the parties identified in the Proposed Order.

34. Finally, the Debtors note that voting procedures substantially similar to those sought herein have been approved in other cases in this Circuit. See e.g. In re High Voltage Engineering Corp., et al., Case No. 04-11586; In re Enivid, Inc., et al., Case No. 03-11472, 03-11474 through 03-11478 and 03-12681 through 03-12715; In re Sabine, Inc., Case No. 03-10668.

NOTICE

35. Notice of this Motion has been provided to each of the parties on the All Notices List (as defined therein) in accordance with the Order Establishing Case Management Procedures and Hearing Schedule dated July 9, 2004.

NO PREVIOUS REQUEST

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

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Bankruptcy Court enter an order, substantially in the form filed simultaneously herewith, granting this motion and such other relief as the Bankruptcy Court deems just.

Dated: Portland, Maine
January 24, 2005

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