

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**OBJECTION TO THE APPROVAL OF THE DEBTORS’
JOINT DISCLOSURE STATEMENT**

Par Capital Management, Inc. and Par Investment Partners, L.P. (collectively, "Par Capital") and HSBC Bank USA, National Association, as Indenture Trustee ("HSBC") hereby object (the "Objection") to the Debtors' Joint Disclosure Statement (the "Disclosure Statement") to the Debtors' Joint Chapter 11 Plan, dated January 7, 2005 (the "Plan"). In support of this Objection, Par Capital and HSBC state as follows:

Background

1. On June 2, 2004 (the "Petition Date"), Pegasus Satellite Television, Inc. and certain of its subsidiaries and affiliates, including Pegasus Satellite Communications, Inc. ("PSC") (collectively, the "Debtors") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

2. HSBC is the successor Indenture Trustee of PSC's 13.5% Senior Subordinated Notes due March 2007, pursuant to which approximately \$193,100,000 aggregate principal amount were issued (the "Sub Debt").

3. Par Capital is the holder of \$41,200,000 of the Sub Debt.¹

4. An official committee of unsecured creditors was appointed on June 10, 2004.

5. On or about August 3, 2004, the Debtors filed a Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 1146(c) and Bankruptcy Rule 9019 (I) Approving Global Settlement by and Among the Debtors and Debtors In Possession, Pegasus Communications Corporation and Other Non-Debtor Affiliates, DirecTV, Inc., The DirecTV Group, Inc., National Rural Telecommunications Cooperative, and The Official Committee of Unsecured Creditors, and (II) Authorizing And Approving in Connection Therewith a Sale, Transfer and Conveyance of Certain Assets of the Debtors to DirecTV, Inc., dated August 3, 2004 (the "Settlement Motion"). The Settlement Motion, the related global settlement agreement (the "Global Settlement Agreement"), and other exhibits to the Settlement Motion provide for releases by parties to the Global Settlement Agreement of PSC and non-debtor persons affiliated with it, including without limitation, PSC's parent, Pegasus Communications Corporation ("PCC"), officers and directors of each, and a broad array of representatives of all of the beneficiaries of the releases ("Non-Debtor Affiliates").

6. In addition to the releases embodied in the Global Settlement Agreement, the Letter Agreement (Exhibit D to the Settlement Motion) among PCC, PSC's committee of unsecured creditors and certain committee members requires that any plan of reorganization filed by the Debtors provide "that all creditors and preferred shareholders will release, to the fullest extent permitted by law, any claims such creditors or preferred shareholders may hold in their

¹ Par Capital also holds 38,726 shares of PSC's 12.75% Series Preferred Stock. This Objection is filed in respect of its holdings of Sub Debt.

individual capacities against the officers and directors of the Debtors, or against PCC and its non-debtor affiliates and their respective officers, directors, employees and advisors."

7. On August 26, 2004, the Court approved the Settlement Motion. As to the release provisions in the Global Settlement Agreement and those contemplated by the Letter Agreement, the Court clarified that notwithstanding approval of the Settlement Motion, third party claims against Non-Debtor Affiliates would not be released.

8. On August 31, 2004, Par Capital filed a reservation of rights indicating that to the extent that any of the release provisions could be interpreted to release claims which Par Capital might have against any Non-Debtor Affiliates, including any claims for breach of duties owed to it by such Non-Debtor Affiliates, Par Capital does not consent to such releases, specifically reserves its rights and claims against Non-Debtor Affiliates, and reserves its rights to address this issue when and if it is presented in the context of a plan of reorganization or otherwise.

9. On January 7, 2005, the Debtors filed the Plan and related Disclosure Statement. The Plan contemplates the sale of the Broadcast Business (as defined in the Plan) or the stock of one or more of the Debtors to PCC or an alternate buyer (the "Broadcast Sale").

10. The Plan also provides for the creation of a Liquidation Trust on the Effective Date, to be essentially funded by all right, title and interest of the Debtors in all assets and properties not sold in the Broadcast Sale or the Satellite Sale (as defined in the Plan).

11. In the Plan and Disclosure Statement, the Debtors seek to obtain releases by creditors and any other party-in-interest (the “Third Party Release”)² of present and former directors and officers of the Debtors (the “Releasees”). The Third Party Release is presumably fulfillment of the release term of the Letter Agreement.

Potential Claims Against Certain Non-Debtor Affiliates and Releasees

12. Par Capital and HSBC have identified several potential claims against certain Non-Debtor Affiliates and Releasees which the Plan and the Third Party Releases would purport to eliminate. These claims include the following:

(A) Breach of fiduciary duty³ by PSC’s directors and controlling shareholder, PCC, based on transfers made as part of a series of transactions that included the issuance of the Sub Debt, including the following transfers:

- (i) the exchange of Golden Sky DBS Inc.’s notes for PSC’s Sub Debt notes, which benefited PCC and the officers and directors common to each PCC and PSC; and
- (ii) payment of dividends and distributions made in 2001 (as part of the PSC corporate reorganization) and in 2002, which benefited PCC and the officers and directors common to each PCC and PSC. Distributions and dividends made by PSC to PCC were unlawful due to PSC’s impaired financial condition and avoidable by PSC under relevant state law; they

² What is objectionable is the release of a non-chapter 11 debtor third party from a debt or liability to another third party (here, a holder or representative of the Sub Debt) and the complementary injunction against any action by the claimant third party against the obligor third party. The term Third Party Release as employed herein includes both the release and the injunction. The Debtors themselves also release the Releasees from liability to the Debtors. The release by the Debtors of claims which they hold (including derivative claims) is not objectionable and is, in fact, already effective as a part of the relief encompassed by approval of the Settlement Motion.

³ Fiduciary duties run from directors and a controlling shareholder to the entire community of interests in a corporation, including its creditors, if the corporation is “in the vicinity of insolvency” and acts of the board or the controlling shareholder might detrimentally affect creditors. At all relevant times, PSC’s public disclosures demonstrated conclusively that it was in the vicinity of insolvency.

constitute breaches of duty to the Sub Debt because they were both unlawful distributions and fraudulent transfers.

(B) Breach of fiduciary duty by PSC's directors and controlling shareholder, PCC, to the

Sub Debt based on the following additional fraudulent transfers:

- (i) payment of dividends in 2002;
- (ii) transfer of stock of Pegasus Real Estate Company on May 8, 2004 to PCC; and
- (iii) transfer of 7% of the equity of Pegasus Communications Holdings, Inc. on April 11, 2002 to PCC.

(C) Possible additional claims for misrepresentation or other violation of the securities laws.

Release Provision Under the Debtors' Chapter 11 Plan

13. Section 11.7 of the Debtors' Plan provides that:

EXCEPT AS MAY BE PROVIDED IN THIS PLAN, AS OF THE CONFIRMATION DATE, BUT SUBJECT TO THE OCCURRENCE OF THE EFFECTIVE DATE, NONE OF: (I) THE LIQUIDATING TRUSTEE, THE DEBTORS, THE REORGANIZED DEBTORS, THEIR SUCCESSORS AND ASSIGNS; (II) THEIR PRESENT DIRECTORS AND OFFICERS; (III) THEIR FORMER DIRECTORS AND OFFICERS WHO HELD SUCH POSITION WITH THE DEBTORS AS OF OR SINCE THE PETITION DATE; (IV) AGENTS, ATTORNEYS, ADVISORS, FINANCIAL ADVISORS, INVESTMENT BANKERS AND EMPLOYEES OF THE DEBTORS; AND (V) THE CREDITORS' COMMITTEE, ITS CURRENT AND FORMER MEMBERS, AGENTS, ATTORNEYS, ADVISORS, FINANCIAL ADVISORS AND INVESTMENT BANKERS, SHALL HAVE OR INCUR ANY LIABILITY TO ANY PERSON FOR ANY CLAIM, OBLIGATION, RIGHT, CAUSE OF ACTION OR LIABILITY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS ARISING OUT OF ANY ALLEGED FIDUCIARY OR OTHER DUTY AND THE AVOIDANCE OF PREFERENCES OR FRAUDULENT CONVEYANCES OR ANY GUARANTY ISSUED BY ANY OF THE DEBTORS), WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, BASED IN WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION OR OCCURRENCE FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS; AND ALL CLAIMS BASED UPON OR ARISING OUT OF SUCH ACTIONS OR OMISSIONS SHALL BE FOREVER WAIVED AND RELEASED; PROVIDED, HOWEVER, THAT THIS SECTION SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY PERSON THAT OTHERWISE WOULD RESULT FROM ANY ACTION OR OMISSION TO THE EXTENT THAT SUCH ACTION OR OMISSION IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED WILLFUL MISCONDUCT.

THE RELEASE DESCRIBED ABOVE SHALL BE ENFORCEABLE AS A MATTER OF CONTRACT AGAINST ANY HOLDER OF A CLAIM TIMELY NOTIFIED OF THE PROVISIONS OF THIS PLAN. CLAIMANTS OF THE DEBTORS SHALL BE ENJOINED FROM COMMENCING OR CONTINUING ANY ACTION, EMPLOYMENT OF PROCESS OR ACT TO COLLECT, OFFSET OR RECOVER ANY CLAIM THAT IS RELEASED AS PROVIDED HEREIN.

14. Attached as Appendix A are the changes that should be made to Section 11.7 of the Plan.

Argument

15. Pursuant to the above release provision of the Debtors' Plan, the Debtor is effectively forcing the Sub Debt holders to release all claims against the Releasees while providing no recovery for the Sub Debt holders under the Plan.

16. Because the Third Party Release under the Plan does not depend on actual consent of holders of Sub Debt, is not in exchange for any consideration to those holders, and does not satisfy the "exceptional circumstances" requirements for granting of such a release, the Third Party Release is improper, not permitted by law and render the Plan patently unconfirmable.

17. Par Capital and HSBC object to the Disclosure Statement because the Plan impermissibly provides for non-consensual releases of claims held by the Sub Debt against the Releasees.

I. THE COURT SHOULD ADDRESS THE OBJECTION TO THE NON-CONSENSUAL THIRD PARTY RELEASE IN THE DEBTORS' PLAN IN CONNECTION WITH THE DISCLOSURE STATEMENT HEARING BECAUSE SUCH PROVISION RENDERS THE DEBTORS' PLAN PATENTLY UNCONFIRMABLE

18. Bankruptcy courts recognize that grounds for disapproving a disclosure statement exist when the proposed plan is so fatally flawed that confirmation is impossible. In such instance, it is appropriate for a bankruptcy court to address certain issues that would render the

debtor's plan unconfirmable at the disclosure statement hearing stage. In re Phoenix Petroleum, 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) ("Courts generally have agreed that it may, on occasion, be appropriate to consider issues at the disclosure hearing stage which could otherwise be raised at confirmation, if the described plan is fatally flawed so that confirmation would not be possible..."); In re Curtis Center Limited Partnership, 195 B.R. 631 (Bankr. E.D. Pa. 1996) (Chapter 11 debtor's amended disclosure statement could not be approved where plan which disclosure statement described was patently unconfirmable); In re O'Leary, 183 B.R. 338, 338-39 (Bankr. D. Mass. 1995) ("Courts may refuse to approve disclosure statements that describe plans that cannot be confirmed."); In re Bjolmes Realty Trust, 134 B.R. 1000, 1002 (Bankr. D. Mass. 1991) (it is permissible for the court to pass upon confirmation issues where it is contended that the plan is so fatally and obviously flawed that confirmation is impossible); Eastern Maine Electric Cooperative, 125 B.R. 329, 333 (Bankr. D. Me. 1991) (analysis of whether plan is confirmable may occur at the disclosure statement stage where plan inadequacies are patent). See also In re Cardinal Congregate I, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990) ("disapproval of the adequacy of a disclosure statement may sometimes be appropriate where it describes a plan of reorganization so fatally flawed that confirmation is impossible"); In re Monroe Well Service, Inc., 80 B.R. 324, 333 (Bankr. E.D. Pa. 1987) (appropriate to disapprove of disclosure statement when court is convinced that plan could not be confirmed).

19. A provision in a plan of reorganization that improperly grants a release of third parties from claims that creditors hold against them, such as the Third Party Release, is one of the issues that may render a plan patently flawed and, as a result, unconfirmable. In re Mahoney Hawkes, LLP, 289 B.R. 285, 294 (Bankr. D. Mass. 2002) (finding that while certain issues, including third party releases, are generally issues for the hearing on confirmation, the court

found it appropriate to rule upon them in connection with the disclosure statement hearing).

II. THE NON-CONSENSUAL THIRD PARTY RELEASE PROVIDED FOR UNDER THE DEBTORS' PLAN IS INAPPROPRIATE UNDER THE BANKRUPTCY CODE

A. General Standard for Third Party Release

20. Three Circuits and a number of lower courts have adopted a blanket prohibition on non-consensual third party releases, premised largely on the provisions of § 524(e) of the Bankruptcy Code, which provides that “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.” 11 U.S.C. § 524(e). See, e.g., Resorts International, Inc. v. Lowenschuss, 67 F.3d 1394, 1401 (9th Cir. 1995) (“this court has repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors.”); Feld v. Zale Corp., (In re Zale Corp.), 62 F.3d 746, 761 (5th Cir. 1995) (“Accordingly, because the permanent injunction as entered improperly discharged a potential debt of a non-debtor, the bankruptcy court exceeded its powers under § 105.”); Landsing Diversified Props.-II v. First Nat'l Bank & Trust Co., (In re Western Real Estate Fund, Inc.), 922 F.2d 592, 601 (10th Cir. 1990), modified sub nom., Abel v. West, 932 F.2d 898 (10th Cir. 1991) (permanent injunction improperly insulated non-debtors in violation of section 524(e) without any countervailing justification of debtor protection).

21. While other circuit courts have allowed third party releases or injunctions, they do so pursuant to § 105(a) of the Bankruptcy Code⁴ only under extraordinary circumstances. See, e.g., Class Five Nevada Claimants v. Dow Corning Corp. (In re Dow Corning Corp.), 280 F.3d 648, 658 (6th Cir. 2002), cert. denied, 537 U.S. 816, 123 S.Ct. 85, 154 L.Ed.2d 21 (2002)

⁴ Section 105(a) of the Bankruptcy Code provides that a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Code].” 11 U.S.C. § 105(a).

(followed those circuits that have held that enjoining a non-consenting creditor's claim is only appropriate in "unusual circumstances;" such an injunction is a dramatic measure to be used cautiously); In re Specialty Equip. Cos., Inc., 3 F.3d 1043, 1047 (7th Cir. 1993) (recognizing that in some circumstances even consensual release may be "unwarranted"); Securities and Exchange Commission v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.), 960 F.2d 285, 293 (2nd Cir. 1992) (a bankruptcy court may enjoin a creditor from suing a third party provided the injunction plays an important part in the debtor's reorganization plan); Menard-Sanford v. Mabey (In re A.H. Robins Co.), 880 F.2d 694, 702 (4th Cir. 1989) ("In this situation where the Plan was overwhelmingly approved, where the Plan in conjunction with insurance policies provided as a part of a plan of reorganization gives a second chance for even late claimants to recover where, nevertheless, some have chosen not to take part in the settlement in order to retain rights to sue certain other parties, and where the entire reorganization hinges on the debtor being free from indirect claims such as suits against parties who would have indemnity or contribution claims against the debtor, [the court does] not construe § 524(e) so that it limits the equitable power of the bankruptcy court to enjoin the questioned suits.");⁵ Gillman v. Continental Airlines (In re Continental Airlines), 203 F.3d 203, 214 (3d Cir. 2000) (while the Third Circuit did not establish a rule regarding conditions under which non-debtor releases and permanent injunctions are appropriate or permissible, the court determined that the non-consensual release of a non-debtor party in the debtor's plan did not pass muster under even the most flexible tests for the validity of non-debtor releases).

22. The First Circuit itself has not ruled on the third party release issue under §524(e)

⁵ The court in In re Menard-Sanford v. Mabey (In re A.H. Robins Co.), 880 F.2d 694, 702 (4th Cir. 1989) specifically left the question concerning cases in which § 524(e) does apply for another day.

of the Bankruptcy Code but has commented on it in Monarch Life Ins. Co. v. Ropes & Gray, 65 F.3d 973, 979-80 (1st Cir. 1995).⁶ The First Circuit did address non-debtor injunctions pursuant to § 105(a) and cautioned that bankruptcy courts should not use their discretion under § 105(a) lightly. In In re G.S.F. Corp., 938 F.2d 1467, 1474 (1st Cir. 1991), the First Circuit stated that the grant of equitable power under § 105(a) is not unlimited. “While 11 U.S.C. § 105(a) does grant the bankruptcy court broad powers to issue any order 'necessary or appropriate to carry out the provisions of this title,' it is an extraordinary exercise of discretion to use that power to stay a third party action not involving the debtor.” Id. The First Circuit upheld the bankruptcy court order, which amounts to a release of all claims by the debtor’s landlord against a secured creditor of the debtor, because the action in question would have an effect on the debtor’s estate and the non-debtor parties involved consented to the order at the time of its entry. Id.

23. Several courts, including courts in the First Circuit, have adopted and used the so-called Master Mortgage factors, after In re Master Mtg. Inv. Fund, Inc., 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994). Master Mortgage provided the following list of factors which comprise the necessary “special” or “extraordinary” circumstances which would permit a third party release: (1) an identity of interests between the debtor and the third-party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate; (2) the non-debtor has contributed substantial

⁶ The First Circuit identified the third party release issue in Monarch Life Ins. Co. v. Ropes & Gray, a case where the lower court judge confirmed the debtor’s plan which contained releases for a number of non-debtors including attorneys. Id. at 976. Post-confirmation, a subsidiary of the debtor sued Ropes & Gray for malpractice. The defendant argued, and the bankruptcy court agreed, that plaintiff violated an injunction contained in the confirmed plan. Plaintiff argued on appeal that the bankruptcy court lacked the jurisdiction to enter such injunctions. The First Circuit ruled that plaintiff was estopped to argue about the Bankruptcy Court's jurisdiction as it had never appealed the order of confirmation; the court did not rule on the propriety of the injunction. The court stated that “We express no view on the soundness of the precedents cited in the confirmation order.” Monarch Life Ins. Co., 65 F.3d at 983.

assets to the reorganization; (3) the injunction is essential to the reorganization; (4) a substantial majority of the creditors agree to such injunction, specifically, the impacted class, or classes, has 'overwhelmingly' voted to accept the proposed plan treatment; and (5) the plan provides a mechanism for the payment of all, or substantially all, of the claims of the class or classes affected by the injunction.

24. Bankruptcy courts within the First Circuit that have followed Master Mortgage in assessing whether the high hurdle to third party releases has been cleared include:⁷ In re Mahoney Hawkes, LLP, 289 B.R. 285, 300 (Bankr. D. Mass. 2002) (holding that the plan would be unconfirmable because of insufficient evidence to warrant such “extraordinary exercise of discretion.”); In re Salem Suede, Inc., 219 B.R. 922, 936-37 (Bankr. D. Mass. 1998) (the court denied confirmation for a variety of reasons including its conclusion that the non-debtor discharges were unwarranted; the plan provided releases for the insurer/plan funder and various insiders of the debtor and the court concluded that even if injunctions were permissible under the Bankruptcy Code, they were not appropriate in this case because none of the factors which the Master Mortgage decision articulated were present); In re Boston Harbor Marina Co., 157 B.R. 726, 730-32 (Bankr. D. Mass. 1993) (the court sustained the objection to the confirmation of the plan, in part, because the requested injunctive relief was improper given that the proposed release provision would make class acceptance binding upon those who reject the plan and those who fail to vote at all, and the parties who would benefit by the releases and injunctions were contributing nothing to the plan).

⁷ Former Bankruptcy Judge Queenan of the district of Massachusetts believes that third party releases are not

25. A number of courts have approved consensual releases of third parties and have permitted consent to be found in acceptance of a plan. These courts have held that a plan is a contract that may bind those who vote in its favor.⁸ See, e.g., In re Zenith Electronics Corp., 241 B.R. 92, 111 (allowing release by any creditor who actually voted in favor of the plan); In re Arromill, 211 B.R. 497, 506 (Bankr. D.N.J. 1997) (when a release of liability of a non-debtor is a consensual provision or agreed to by the affected creditor, it is similar to a contract or settlement). Conversely, the Third Party Releases in the Debtors' Plan, which are non-consensual, cannot be approved. See In re Excide Technologies, 303 B.R. 48, 71-75 (Bankr. D. Del. 2003) (the court did not approve the third party release because the debtor's creditors did not consent to the plan, which provides only a minimal payment of claims to the class affected by the injunction); See also In re Elsinore Shore Assocs., 91 B.R. 238, 252 (Bankr. D.N.J. 1988) (plan provisions deeming non-debtor proponents and their principals to be discharged and released from any and all claims were prohibited by the Bankruptcy Code and relevant case law); In re Monroe Well Serv., Inc., 80 B.R. 324, 334 (Bankr. E.D. Pa. 1987) (debtors could not obtain confirmation of a plan which would attempt, over the objection of creditors, to discharge the obligations of non-debtors); In re Conseco, Inc., 301 B.R. 525 (Bankr. N.D. Ill., 2003) (a consensual release can be included in a Chapter 11 plan without the necessity of showing any unusual circumstances). In this case, Par Capital and HSBC, on behalf of the Sub Debt holders, do not consent to the Third Party Release provision under the Debtors' Plan, which provides no distribution to Sub Debt holders.

only inappropriate but should face a jurisdictional barrier. BCD Weekly News & Comment, Vol. 42, Issue 5 at A3 (December 22, 2003).

⁸ Judge Queenan questions the propriety of this approach as well, suggesting that it provides disparate treatment of those creditors who actually have claims against third parties and who waive them for no more consideration than that offered to creditors without such claims. Queenan, BCD Weekly News & Comment, Vol. 42, Issue 4

at A4 (December 9, 2003).

26. The Debtors' Plan here does not meet the basic standard for the validity of non-debtor releases, as discussed above and outlined by the Master Mortgage court. The Plan does not provide for repayment in full of all creditors; there is no substantial contribution by the Releasees to the Plan funding; the Third Party Releases are not an essential part of the Plan. Also, the Debtors' Plan is a liquidating plan. Bankruptcy courts have found that third party injunctions are inappropriate under such liquidating Chapter 11 plans. The requirements of contribution of assets to the reorganization and that the injunction be essential to reorganization are not met when a debtor is liquidating and there is no ongoing business. See In re Swallen's, Inc., 210 B.R. 123, 127 (Bankr. S.D. Ohio 1997); In re Optical Technologies, Inc., 216 B.R. 989, 993-94 (Bankr. M.D.Fla. 1997). But see Abel v. Shugrue (In re Ionosphere Clubs, Inc.), 184 B.R. 648, 655 (S.D.N.Y. 1995).

27. Allowing the Debtors' Third Party Release provision would be unwarranted and no extraordinary circumstances exist here to merit such relief.

WHEREFORE, Par Capital and HSBC respectfully request that this Court decline to approve the Disclosure Statement and grant such other and further relief as may be just and appropriate under the circumstances.

Respectfully Submitted,

/s/ Daniel L. Cummings
BY: Daniel L. Cummings
Norman, Hanson & De Troy LLC
415 Congress Street
Portland, Maine 04112
(207) 774-7000

-and-

Daniel M. Glosband, P.C.
Macken Toussaint, Esq.
GOODWIN PROCTER LLP
Exchange Place
Boston, Massachusetts 02109
(617) 570-1000

*COUNSEL FOR PAR CAPITAL
MANAGEMENT, INC.
AND PAR INVESTMENT PARTNERS, L.P.*

Mark R. Somerstein, Esq.
Debra SuDock, Esq.
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178
(212) 808-7800

*COUNSEL FOR HSBC BANK USA,
NATIONAL ASSOCIATION, as Indenture
Trustee*

DATED: February 1, 2005

Appendix A

EXCEPT AS MAY BE PROVIDED IN THIS PLAN, AS OF THE CONFIRMATION DATE, BUT SUBJECT TO THE OCCURRENCE OF THE EFFECTIVE DATE, NONE OF: (I) THE LIQUIDATING TRUSTEE, THE DEBTORS, THE REORGANIZED DEBTORS, THEIR SUCCESSORS AND ASSIGNS; (II) ~~THEIR PRESENT DIRECTORS AND OFFICERS;~~ (III) ~~THEIR FORMER DIRECTORS AND OFFICERS WHO HELD SUCH POSITION WITH THE DEBTORS AS OF OR SINCE THE PETITION DATE;~~ (IV) AGENTS, ATTORNEYS, ADVISORS, FINANCIAL ADVISORS, INVESTMENT BANKERS AND EMPLOYEES OF THE DEBTORS; AND (V~~III~~) THE CREDITORS' COMMITTEE, ITS CURRENT AND FORMER MEMBERS, AGENTS, ATTORNEYS, ADVISORS, FINANCIAL ADVISORS AND INVESTMENT BANKERS, SHALL HAVE OR INCUR ANY LIABILITY TO ANY PERSON FOR ANY CLAIM, OBLIGATION, RIGHT, CAUSE OF ACTION OR LIABILITY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS ARISING OUT OF ANY ALLEGED FIDUCIARY OR OTHER DUTY AND THE AVOIDANCE OF PREFERENCES OR FRAUDULENT CONVEYANCES OR ANY GUARANTY ISSUED BY ANY OF THE DEBTORS), WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, BASED IN WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION OR OCCURRENCE FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS; AND ALL CLAIMS BASED UPON OR ARISING OUT OF SUCH ACTIONS OR OMISSIONS SHALL BE FOREVER WAIVED AND RELEASED; PROVIDED, HOWEVER, THAT THIS SECTION SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY PERSON THAT OTHERWISE WOULD RESULT FROM ANY ACTION OR OMISSION TO THE EXTENT THAT SUCH ACTION OR OMISSION IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED WILLFUL MISCONDUCT.

THE RELEASE DESCRIBED ABOVE SHALL BE ENFORCEABLE AS A MATTER OF CONTRACT AGAINST ANY HOLDER OF A CLAIM TIMELY NOTIFIED OF THE PROVISIONS OF THIS PLAN. CLAIMANTS OF THE DEBTORS SHALL BE ENJOINED FROM COMMENCING OR CONTINUING ANY ACTION, EMPLOYMENT OF PROCESS OR ACT TO COLLECT, OFFSET OR RECOVER ANY CLAIM THAT IS RELEASED AS PROVIDED HEREIN.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

| | | |
|---------------------------|---|----------------------|
| In re: |) | |
| |) | CASE NO. 04-20878 |
| PEGASUS SATELLITE |) | |
| TELEVISION, INC., et al., |) | CHAPTER 11 |
| |) | JOINTLY ADMINISTERED |
| Debtors. |) | |
| |) | |

CERTIFICATE OF SERVICE FOR ELECTRONIC CASE FILING

I hereby certify that I served a true copy of the Objection to Approval of the Debtors' Joint Disclosure Statement dated February 1, 2005 on each of the parties on the service list below via U.S. mail, postage prepaid on February 1, 2005.

All other parties listed on the Notice of Electronic File have been served electronically.

Dated: February 1, 2005

/s/ Daniel L. Cummings _____
Daniel L. Cummings

SERVICE LIST

NONE.