

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

DEBTORS' OMNIBUS RESPONSE TO (I) OBJECTION TO THE APPROVAL OF THE DEBTORS' JOINT DISCLOSURE STATEMENT AND (II) UNITED STATES TRUSTEE'S OBJECTION TO DEBTORS' FIRST AMENDED JOINT DISCLOSURE STATEMENT DATED JANUARY 31, 2005

Pegasus Satellite Television, Inc., and certain of its subsidiaries and affiliates, each a debtor or debtor in possession in the above-captioned cases (collectively, the "Debtors"),¹ hereby file this omnibus response (the "Response") to (i) the Objection to the Approval of the Debtors' Joint Disclosure Statement (the "Bondholder Objection"), filed February 1, 2005, by Par Capital Management, Inc., Par Capital Investment Partners, L.P. and HSBC Bank USA, National Association, as indenture trustee (collectively, the "Objecting Bondholders"); and (ii) the United States Trustee's Objection to Debtors' First Amended Joint Disclosure Statement Dated January 31, 2005 (the "US Trustee Objection" and together with the Bondholder Objection, the "Objections"), filed February 2, 2005, by the United States Trustee for the District of Maine (the "US Trustee"); and respectfully state as follows:

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., and WTLH License Corp.

BACKGROUND

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 “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.

2. The Debtors are continuing 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.

3. On June 10, 2004, the United States Trustee for the District of Maine appointed an official committee of unsecured creditors pursuant to section 1102(a) of the Bankruptcy Code (the “Committee”).

4. No request has been made for the appointment of a trustee or examiner in these cases.

PLAN AND DISCLOSURE STATEMENT

5. On January 7, 2005, the Debtors filed the Debtors’ Joint Chapter 11 Plan (the “Original Plan”) and the accompanying Disclosure Statement for Debtors’ Joint Chapter 11 Plan (the “Original Disclosure Statement”), each dated January 7, 2005. On January 31, 2005, the Debtors’ filed the Debtors’ First Amended Joint Chapter 11 Plan (as amended from time to time, the “First Amended Plan”) and the accompanying First Amended Disclosure Statement for Debtors’ First Amended Joint Chapter 11 Plan (as amended from time to time, the “First Amended Disclosure Statement”), each dated January 31, 2005.²

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the First Amended Plan.

6. The First Amended Plan provides for, among other things, the establishment of a Liquidating Trust to make Distributions thereunder in accordance with the absolute priority rule of the Bankruptcy Code.

THE OBJECTIONS

7. On February 1, 2005, the Objecting Bondholders filed the Bondholder Objection. The Objecting Bondholders include the indenture trustee for the Subordinated Notes issued by Pegasus Satellite Communications, Inc. (“PSC”) and holders of approximately \$41.2 million of such Subordinated Notes, which will not be receiving any Distributions under the First Amended Plan. In the Bondholder Objection, the Objecting Bondholders allege the existence of certain potential breach of fiduciary duty claims against certain of the officers and directors of PSC and its non-debtor controlling shareholder, Pegasus Communications Corporation (“PCC”). The Objecting Bondholders assert that the Original Plan, against which the Bondholder Objection is directed, provided for an involuntary release by the Debtors’ creditors of claims against, inter alia, the Debtors’ present and former directors and officers and, to the extent it may become a successor in interest to one or more of the Debtors, PCC. Alleging that the presence of this release of third parties makes the Original Plan unconfirmable under any circumstances, the Objecting Bondholders request that the Court decline to approve the Original Disclosure Statement.³

8. On February 2, 2005, the US Trustee filed the US Trustee Objection. The US Trustee objects to section III.H.10 of the First Amended Disclosure Statement, which describes the provision of the First Amended Plan allowing the Debtors to satisfy their

³ It is interesting to note that the arguments raised in the Bondholder Objection are equally applicable to the third party releases of HSBC Bank USA, National Association, which provision it requested be included in the First Amended Plan.

obligations to pay fees to the US Trustee under 28 U.S.C. § 1930(a)(6) (the “US Trustee Fees”) by paying an amount estimated by the Court on the Effective Date under the First Amended Plan. The US Trustee requests that the First Amended Plan and First Amended Disclosure Statement be amended to require payment of the US Trustee Fees as provided in 28 U.S.C. § 1930(a)(6) through the closing of the Chapter 11 Cases and that the Debtors provide the US Trustee with monthly reports regarding disbursements under the Plan and projections regarding continued compliance with the terms of the Plan. Finally, the US Trustee Objection requests that the Liquidating Trustee be covered by a bond to cover the aggregate Plan disbursements likely to be held by the Liquidating Trust at any time following the Confirmation Date.

RESPONSE

9. All of the issues raised in the Objections are matters that are not necessary for the Court to decide in connection with the approval of the First Amended Disclosure Statement pursuant to section 1125 of the Bankruptcy Code and should properly be considered by the Court only at the hearing on confirmation of the First Amended Plan. “The purpose of a disclosure statement is of course to determine whether the statement contains ‘adequate information’ within the meaning of § 1125; this means information ‘of a kind, and in sufficient detail ... that would enable a hypothetical reasonable investor ... to make an informed judgment about the plan.’” In re Bjolmes Realty Trust, 134 B.R. 1000, 1001-02 (Bankr. D. Mass. 1991) (quoting 11 U.S.C. § 1125(a)(1) (alterations in original)). “The question whether a plan meets the requirements for confirmation is usually answered at confirmation hearings.” In re E. Maine Elec. Coop., Inc., 125 B.R. 329, 333 (Bankr. D. Me. 1991) (citing In re Unichem Corp., 72 B.R. 95, 98 (Bankr. N.D. Ill. 1987)). The enforceability of the Plan’s release provisions and whether and to the extent the Liquidating Trustee must be covered by a bond are more appropriately matters for the Court to examine at the hearing on confirmation of the First Amended Plan.

10. Nevertheless, the Debtors propose to make the following changes to the First Amended Plan to address the Objections: (i) revising the release provisions in section 11.6 of the First Amended Plan to clarify that any Holder of a Claim or Interest that is not receiving Distributions under the First Amended Plan will not be deemed to have released the Debtors' officers and directors or, to the extent PCC becomes a successor in interest to one or more of the Debtors, PCC; (ii) revising section 5.5 of the First Amended Plan to clarify that the Liquidating Trustee will send copies of the quarterly reports pursuant thereto to the US Trustee; and (iii) revising section 14.4 of the First Amended Plan to provide that the US Trustee Fees will be paid pursuant to 28 U.S.C. § 1930(a)(6) through the closing of the Chapter 11 Cases. The Debtors will also revise the First Amended Disclosure Statement to reflect such changes to the First Amended Plan. The Debtors' proposed revisions are attached hereto as Exhibit A. The Debtors believe that these revisions adequately address the concerns raised in the Objections, and that further revisions are not required in order for the Court to find that the Disclosure Statement provides "adequate information" within the meaning of section 1125(a) of the Bankruptcy Code.

A. The Proposed Revisions Adequately Address the Objections.

11. The Bondholder Objection is limited to the involuntary release of the Debtors' directors and officers from alleged liabilities owed to the Holders of Claims in Class 4A under the First Amended Plan, Subordinated Claims against PSC. Bondholder Objection, ¶ 11, fn 2; ¶ 17. As set forth in Exhibit A hereto, the Debtors propose to amend section 11.6 of the First Amended Plan to explicitly provide that Holders of Claims and Interests who will not receive Distributions under the First Amended Plan, including Holders of Claims in Class 4A, will not be deemed to have released claims held against either the Debtors' present or former officers and directors or PCC, to the extent PCC emerges as a successor in interest to one or more of the Debtors. Conforming changes have been made to the First Amended Disclosure

Statement as set forth in Exhibit A hereto. The Debtors submit that this revision renders the Bondholder Objection moot. The Objecting Bondholders have advised the Debtors that they will be withdrawing the Bondholder Objection based on these changes to the First Amended Plan and First Amended Disclosure Statement.

12. Furthermore, contrary to the Objecting Bondholders' contentions, the First Amended Plan is not patently unconfirmable because it provides releases to certain non-Debtors. As noted in paragraph 22 of the Bondholder Objection, the First Circuit has declined to rule on whether permanent injunctive relief may be afforded to third parties under the terms of a plan, and even described certain circumstances where such relief may be afforded to parties who do not contribute financially to the plan. See Monarch Life Ins. Co. v. Ropes & Gray, 65 F.3d 973, 980 (1st Cir. 1995); see also In re G.S.F. Corp., 938 F.2d 1467 (1st Cir. 1991) (affirming bankruptcy court's power to enjoin litigation between third parties of matter on which final judgement had been rendered earlier by the bankruptcy court). The Debtors intend to present evidence in support of such releases at the hearing on confirmation of the First Amended Plan.

13. Similarly, the proposed revisions to sections 5.5 and 14.4 of the First Amended Plan, along with conforming changes to the relevant descriptive sections of the First Amended Disclosure Statement, all as set forth in Exhibit A hereto, address the primary issues raised in the US Trustee Objection regarding the ongoing payment of the US Trustee's fees as provided in 28 U.S.C. § 1930(6) and ongoing reporting of all Distributions made under the First Amended Plan through the closing of the Chapter 11 Cases.

B. The Request for a Liquidating Trustee Bond Should Be Overruled.

14. The US Trustee's request that the Liquidating Trustee "be covered by a bond in an amount sufficient to cover the aggregate Plan disbursements that he/she is likely to hold at any time post-confirmation, pending distribution[.]" US Trustee Objection, ¶ 3, is not an

issue that the Court needs to consider in connection with approval of the First Amended Disclosure Statement and such issue should be deferred until the hearing on confirmation of the First Amended Plan, and in any event is completely unsupported by either applicable law or justified by the facts of this case.

15. In any event, the proposed bond for the Liquidating Trustee is wholly unsupported by law, as evidenced by the US Trustee's inability to cite to a single statute, rule or case supporting such a requirement. Furthermore, the US Trustee has not asserted any facts that warrant imposition of such a requirement on the Liquidating Trustee. The Debtors see no reason to reduce the recovery of creditors through the imposition of this cost on the Liquidating Trustee. In the event the Court determines that the matter should be considered at the hearing to approve the First Amended Disclosure Statement, the Debtors respectfully maintain that the US Trustee Objection should be overruled on its merits to the extent it relates to requesting a bond covering the Liquidating Trustee.

WHEREFORE, the Debtors respectfully request that, to the extent the Objections have not been previously withdrawn, the Court (i) overrule the Bondholder Objection as moot; (ii) overrule the US Trustee Objection, to the extent it relates to payment of the US Trustee Fees and furnishing copies of reports, as moot; and (iii) overrule the US Trustee Objection, to the extent it relates to requiring a bond covering the Liquidating Trustee, on its merits or, in the alternative, adjourn consideration thereof until the hearing on confirmation of the First Amended Plan.

Dated: Portland, Maine
February 8, 2005

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Exhibit A

Revised Plan Provisions:

5.5. Quarterly Reports. Not later than forty-five (45) days following: (i) the last day of the third full calendar month following the Effective Date; and (ii) the last day of every third calendar month thereafter until the dissolution of the Liquidating Trust (each of (i) and (ii), a “Reporting Period”), the Liquidating Trustee shall file a report with the Bankruptcy Court and shall send copies of such report to the United States Trustee that discloses, for the applicable Reporting Period: (a) compensation paid to the Liquidating Trustee; (b) amounts paid to the Reorganized Debtors’ Professionals; (c) amounts paid to Creditors’ Committee Professionals; (d) amounts paid in satisfaction of other post-Effective Date expenses of the Reorganized Debtors; (e) the amounts of any Distributions paid to Holders of Administrative Claims, Priority Non-Tax Claims, Priority Tax Claims, and Secured Claims; (f) the amount of any Distributions paid to Holders in each Class of General Unsecured Claims; (g) the amounts held in the Reserves by the Liquidating Trustee as of the conclusion of the Reporting Period, including the Disputed Claims Reserve; (h) the number and aggregate face amount of Disputed Claims compromised, adjudicated, or otherwise resolved during the Reporting Period; (i) the number and aggregate face amount of Disputed Claims remaining; and (j) such other information as the Liquidating Trustee may deem necessary or appropriate to keep the Bankruptcy Court and interested parties generally apprised of the status of the Liquidating Trust and the Reorganized Debtors’ cases.

14.4. Payment of Statutory Fees. ~~All~~ With respect to the Chapter 11 Cases, all unpaid fees payable pursuant to 28 U.S.C. § ~~1930, 1930(a)(6)~~, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date, and ~~none of the Debtors, their Estates, Reorganized Debtors and the Liquidating Trustee, such fees shall be timely paid thereafter be liable for each quarter until the payment of additional fees under 28 UChapter 11 Cases are closed.~~ S.C. § 1930.

11.6. Release. The following release shall be valid, binding, and enforceable:

EXCEPT AS MAY BE PROVIDED IN THIS PLAN OR THE GLOBAL SETTLEMENT ORDER, 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; (V) THE INDENTURE TRUSTEES; AND (VI) 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 IN CLAUSES (I) SOLELY TO THE EXTENT PEGASUS COMMUNICATIONS CORPORATION IS DEEMED TO BE A SUCCESSOR OR ASSIGN THEREUNDER, (II) AND (III) OF THE PRECEDING PARAGRAPH OF THIS SECTION 11.6 SHALL NOT BE ENFORCEABLE AS A MATTER OF CONTRACT AGAINST ANY HOLDER OF A CLAIM TIMELY NOTIFIED OF THE PROVISIONS OF OR INTEREST THAT IS NOT RECEIVING DISTRIBUTIONS UNDER 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.

Revised Disclosure Statement Provisions:

Section III.G.4. Releases and Exculpations

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE GLOBAL SETTLEMENT ORDER, 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; (V) THE INDENTURE TRUSTEES; AND (VI) THE CREDITORS' COMMITTEE AND 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 HEREINAFTER 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 SUCH CLAIMS BASED UPON OR ARISING OUT OF SUCH ACTIONS OR OMISSIONS SHALL BE FOREVER WAIVED AND RELEASED; PROVIDED, HOWEVER, THAT THIS WAIVER AND RELEASE 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 in~~ clauses (i) solely to the extent PCC is deemed to be a successor or assign thereunder, (ii) and (iii) of the preceding paragraph shall not be enforceable as a matter of contract against any Holder of a claim timely notified of the provisions of Claim or Interest that is not receiving Distributions under the Plan. Claimants against 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 in the Plan.

Section III.H.10. Payment of Statutory Fees

~~All~~ With respect to the Chapter 11 Cases, all unpaid fees payable pursuant to 28 U.S.C. § 1930, 1930(a)(6), as determined by the Bankruptcy Court ~~on~~ at the Confirmation Date Hearing, shall be paid on the Effective Date, and ~~none of the Debtors, their Estates, the Reorganized Debtors and the Liquidating Trustees~~ such fees shall be timely paid thereafter ~~be liable for each quarter until the payment of additional fees under 28 U~~ Chapter 11 Cases are closed. S.C. § 1930.