UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8867 / December 4, 2007

SECURITIES EXCHANGE ACT OF 1934
Release No. 56891 / December 4, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12897

In the Matter of

Marshall W. Pagon and Howard E. Verlin,

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Marshall W. Pagon ("Pagon") and Howard E. Verlin ("Verlin") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

RESPONDENTS

A. **Pagon,** age 51, is a resident of Haverford, Pennsylvania. He was the founder, Chairman of the Board, and Chief Executive Officer of Pegasus Communications Corporation and controlled the vote of the Class B common stock of Pegasus Communications Corporation, resulting generally in majority control of the voting power of that entity.

B. **Verlin**, age 46, is a resident of Philadelphia, Pennsylvania. He helped found Pegasus Communications Corporation in 1991, and he has remained with the company ever since. During the relevant period (1999-2002), Verlin served as a Vice President and then as an Executive Vice President of Pegasus Communications Corporation.

RELEVANT ENTITIES

Pegasus Communications Corporation ("Pegasus"), was a Delaware corporation based in Bala Cynwyd, Pennsylvania, which, pursuant to a corporate re-organization in February of 2001, became the parent company of various operating subsidiaries including Pegasus Satellite Communications and Pegasus Media & Communications.[2] Pegasus' common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act. On January 4, 2007, Pegasus filed a Form 15 to terminate its registration and reporting status following a going-private transaction, which took it below the 300 record holder threshold set forth under Exchange Act Rules 12g-4(a)(1) and 12h-3(b)(1)(i). Pegasus and its subsidiaries followed a calendar year reporting cycle.

Pegasus Satellite Communications, Inc. ("PSC"), during all relevant times, was a Delaware corporation based in Bala Cynwyd, Pennsylvania. PSC filed annual and quarterly reports with the Commission on Forms 10-K and 10-Q commencing in November of 1996. During the period 1998 to 2001, PSC issued stock, options, warrants, and debt securities in public and private offerings. On February 22, 2001, PSC became a wholly-owned subsidiary of Pegasus. On June 2, 2004, PSC filed for bankruptcy. On August 2, 2004, PSC filed a Form 15 to terminate its duty to file reports with the Commission. On May 5, 2005, PSC ceased being a subsidiary of Pegasus when a plan of reorganization became effective that provided for a Liquidating Trustee overseeing the disposition of PSC's assets.

Pegasus Media & Communications, Inc. ("PM&C"), a Delaware corporation based in Bala Cynwyd, Pennsylvania during all relevant times, was a diversified media and communications company, which together with its subsidiaries, owned and operated broadcast

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] Prior to the re-organization, Pagon and Verlin served as Chief Executive Officer and Executive Vice President, respectively, of the operating subsidiaries.

television systems and provided direct broadcast satellite television services to customers in certain rural areas of the United States. PM&C was a direct subsidiary of PSC. PM&C also filed annual and quarterly reports with the Commission commencing in May 1996. On September 3, 2003, it filed a Form 15 to terminate its reporting duties. On June 2, 2004, PM&C filed for bankruptcy. On May 5, 2005, PM&C ceased being an indirect subsidiary of Pegasus when a plan of reorganization became effective that provided for a Liquidating Trustee overseeing the disposition of PM&C's assets.[3]

SUMMARY

During the period from 1999 though 2001, Pegasus, a satellite television provider, engaged in a number of actions designed to increase the number of its active satellite subscribers. First, Pegasus extended the period of time that customers who had failed to pay their bills could be considered active and, therefore, part of the subscriber count. At Pegasus, these delinquent accounts whose status was extended were called "re-aged" accounts. Second, in 2001, Pegasus re-activated the accounts of certain customers who had voluntarily disconnected their service by reclassifying the accounts from disconnect to suspend status and by assigning one-cent credits to the customers' accounts, thus causing the billing system to restore those subscriber accounts to active status. At Pegasus, these accounts that were reactivated by one-cent credits were called "penny-suspends" or "penny-credits." As a result of these actions, the number of subscribers who were not generating revenue or receiving services from Pegasus grew substantially. Without these actions, Pegasus would have had nominal growth in its subscriber base for the year 2001. Up until April of 2002, when Pegasus disclosed an adjusted subscriber count, investors had no way of knowing that a significant number of Pegasus' subscribers had been retained by using the tactics described above. The Commission has previously addressed PSC and PM&C's violations of the federal securities laws arising out of these programs. *See In the Matter of Pegasus Satellite Communications, Inc., et al.*, File No. 3-12146 (January 11, 2006). This Order addresses the role of two individuals.

IV.

FACTS

A. Background

Pegasus' business plan focused on marketing satellite television products and services to rural areas within the United States. At all relevant times, Pegasus included subscriber data in its quarterly and annual reports filed with the Commission, and in quarterly earnings releases and conference calls with securities analysts. Subscriber data was also incorporated into a registration statement on Form S-4, as amended June 15, 2001, filed with the Commission by

[3] Until the completion of a corporate reorganization in 2001, PSC was required to file periodic reports with the Commission under Section 13(a) of the Exchange Act as a result of registering securities pursuant to Section 12(g) of the Exchange Act. During the relevant time, PM&C's obligation to file periodic reports with the Commission under Section 15(d) of the Exchange Act was suspended, but it did file reports on a voluntary basis.

PSC, covering an exchange offering of securities under the Securities Act.[4] Stock analysts frequently cited subscriber statistics as a metric for measuring the value of satellite and cable television businesses such as Pegasus, and Pegasus monitored the movement of the subscriber base from period to period.

For example, on January 19, 2000, a research report prepared by an independent investment firm had said of Pegasus:

> *Despite the run-up in the stock, we argue that Pegasus is attractively valued. Pegasus trades at $3,600 per user, which compares favorably to Echostar's $6,900 per user. Our view is that a discount is warranted given that Echostar is an integrated provider rather than simply a reseller. A 50% discount, however, fails to reflect the fact that[, among other things,] Pegasus is growing, faster than Echostar—its net subscriber additions jumped by 50% in December versus only 23% for Echostar .... Based on a valuation of $4,000 per estimated end-2000 user.... we increase our price target to $150 from $70.*

Pegasus billed customers through a billing system designed and maintained by an independent telecommunications cooperative. The system generated subscriber statistics that Pegasus used to prepare reports. The system used certain criteria to determine which accounts would be considered active and included in the subscriber statistics and which accounts would be considered dropped, or "churned," and excluded from subscriber statistics. Prior to February 2000, the system automatically cut off and marked as churned accounts that were overdue by 52 days. Such churned accounts were not counted as part of the subscriber base reported by the system. Accounts of customers who voluntarily terminated their relationship with Pegasus were considered inactive and churned immediately unless an account had a credit balance, in which case, it would continue to be counted as active by the billing system maintained by the telecommunications cooperative.

B. Re-aging Delinquent Subscribers

From at least the third quarter of 1999 through 2001, Pegasus engaged in activities that had the effect of increasing the number of subscribers reported in its public filings. Specifically, in December of 1999, Pegasus extended the churn parameters for a number of delinquent subscribers from 51 to 60 days, thus allowing those subscribers to be reported as active for a longer period. In June and September 2000, Pegasus made similar extensions for even longer periods, in each instance extending the cut-off parameters from 60 days to 120 days. Many of the delinquent subscribers whose accounts were extended did not ultimately produce revenue for Pegasus, though they continued to receive satellite television services. The stated reason for

[4] Registration statements were also filed by Pegasus entities, including PSC, at different times. Such filings included, among others, a Form S-4 filed on January 7, 2000 covering an exchange offer for PSC senior notes and a Form S-4 filed on April 6, 2000 covering the issuance of Pegasus Class A common stock. These registration statements either restate subscriber data containing no-core numbers and/or incorporate by reference other filings that do so.

these parameter extensions was to allow customers the time and incentive to come current in their bills and to maintain or "remarket" them as active subscribers.

C. The Audit Committee Internal Review

At or around November 2000, a Pegasus board member learned of an allegation that Pegasus had inflated its subscriber count for the third quarter of 2000. On November 16, 2000, the board member e-mailed the senior managers including Pagon, asking them to investigate the activity in question. When Pagon was informed, he contacted the Company's general counsel, and the matter was elevated to the Audit Committee. The Audit Committee assigned the director of internal audit to review the allegations, interview the appropriate employees, and draft a report. In January 2001, the Audit Committee, after considering the report, determined that the Company had not intentionally extended parameters at the ends of quarters to manipulate subscriber counts. The Audit Committee expressed a concern that the Company's actions could be misinterpreted that way, however, and instructed management to set clear definitions and classifications of subscribers and to adhere to them in the future.

D. Renewed Efforts to Extend Subscriber Churn Dates

In 2001, Pegasus continued to re-age delinquent subscribers by extending cut-off parameters and, in addition, Pegasus initiated a new penny-suspend policy which targeted customers who had voluntarily disconnected their accounts. In May 2001, Pegasus further extended the churn date for delinquent accounts to 114 days — two months after the service cutoff date for delinquent accounts.

E. Using Penny-Suspends to Activate Closed Accounts

In 2000, Pegasus had used penny-suspends as a "work around" to address an anomaly in the billing system concerning the classification of a relatively small number of subscribers. In the spring of 2001, Pegasus began to use a new and different penny-suspend policy on a wide-spread basis. This penny-suspend policy involved taking accounts of voluntarily disconnected customers (customers who specifically stated they no longer wanted Pegasus' services and whose accounts were churned), reclassifying the accounts to suspend status, and placing a one-cent credit on those accounts to make them active again (in suspend status) in the billing system that Pegasus utilized. In order to attach the penny-credits to disconnected customer accounts, Pegasus employees had to move the accounts from a de-activated category with a zero balance to an active category by assigning the one-cent credits to such accounts. By these means, Pegasus added accounts to its no-core subscriber population that neither received services nor made payments, but remained active for purposes of the publicly reported subscriber count.

The combination of the re-aging and penny-suspend policies caused Pegasus' no-core population to rise significantly from period to period during 2001. By the fourth quarter of 2001, the penny-credit accounts became the largest subset of the so-called "no-core" group of active subscribers, meaning a category of subscribers who were not receiving core programming services.

	Total Count	No Core[5]	% of Total Count
Q1 2001	1,440,000	105,966	7%
Q2 2001	1,461,000	131,476	9%
Q3 2001	1,496,000	155,003	10%
Q4 2001	1,519,000	188,554	12%

Pegasus discontinued these subscriber "retention" policies when Pegasus announced a change in its subscriber counting methodology in its 2001 Form 10-K and reduced its subscriber base by approximately 138,000. The bulk of this reduction consisted of subscribers who had been subject to re-aging and the penny-credit policies employed as part of the remarketing program.

F. Public Reporting of Subscriber Numbers

Until April 2000, Pegasus released information concerning its subscriber base on a monthly basis and thereafter it reported such information on a quarterly basis. Pegasus published its subscriber data in the form of press releases and conference calls with stock analysts who were covering the company. The same subscriber data was contained in periodic filings made with the Commission on Forms 10-K and 10-Q during the relevant time. Subscriber data was also referenced or incorporated by reference in registration statements filed with the Commission covering the offer and sale of securities.

Pegasus reported subscriber numbers in the periodic reports filed with the Commission between 1999 and December 2001. In each annual and quarterly filing on Forms 10-K and 10-Q during those reporting periods, Pegasus disclosed the number of subscribers and attributed increases in subscriber numbers to, among other things, "internal growth." Pegasus did not explain that a substantial portion of the subscriber base growth included a large number of subscribers whose status as subscribers was prolonged or re-activated by the re-aging of accounts and the issuance of one-cent credits as described above.

G. Pegasus Announces a Change in its Subscriber Counting Methodology

In its 2001 Form 10-K Pegasus announced that it was changing its method for publicly reporting its number of subscribers in order to improve its public reporting and internal analyses.

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5 The amounts shown here reflect the total no-core category, which for purposes of this analysis includes the 54-114 day re-aged accounts, penny-suspends, suspends turned active, and unknown origin subscriber groups.

The disclosures made in the 2001 Form 10-K by Pegasus regarding the subscriber counting policy change read as follows:

> We have recently undertaken a review of the method by which we publicly report the number of our subscribers. Our publicly reported subscriber counts in the past have included a number of accounts whose service has been suspended for prolonged periods of time. Because we believe it would improve our public reporting and internal analyses, we are changing our method of reporting subscribers, beginning with the first quarter of 2002 so as to exclude these accounts. We estimate that if we had instituted this change at December 31, 2001, we would have reported approximately 1.4 million subscribers. This change would have had no effect on our 2001 consolidated financial statements if we had implemented it during 2001, and will have no effect on our future consolidated financial statements.

This announcement did not mention that in addition to suspended accounts, the written-off subscriber accounts also included 70,415 disconnected subscriber accounts which had penny-credits added. Although Pegasus did make a correction in April 2002 to its previously reported subscriber numbers for 2001, Pegasus did not revise its subscriber numbers reported for the periods between 1999 and the end of 2000.

H. The Decision to Report the Re-Activated Subscribers as Active Is Independent of the Business Decision to Re-Activate them

Certain officers at Pegasus approved of the re-aging and penny-suspend tactics as part of a remarketing effort designed to stem the rising trend in subscriber disconnections. Pegasus' stated reason for the reporting of re-aged subscribers and penny-credit subscribers was to allow for the possibility of winning back these customers. However, even if the re-aging and penny-credits were done for the business purpose of remarketing, certain Pegasus officers made a separate decision to include re-aged and penny-credit subscribers in their publicly reported subscriber counts. In other words, Pegasus could have backed these accounts out of its count of active subscribers before publicly reporting that metric.

I. Respondents' Conduct

As Pegasus' chairman and CEO, Pagon signed the periodic reports Pegasus filed with the Securities and Exchange Commission and participated in their preparation. Similarly, he signed registration statements and participated in their preparation. Pagon also hosted periodic conference calls for shareholders and stock analysts. As a result of his involvement with these reporting functions, Pagon had a duty to ensure that the Pegasus remarketing program did not negatively affect the accuracy of these reports. Pagon had accepted the use of re-aging as a method for remarketing customers. Pagon was also aware that – at least in 2000 – Pegasus had used the concept of penny-credits, in the context of using penny credits to address an anomaly in the billing system as described above. By accepting the use of these methods as part of a remarketing program, Pagon had an obligation to oversee the remarketing program to ensure that it was operated in a way that did not result in misstatements of subscriber numbers in public reports through April 2002. Pagon also failed to ensure that Pegasus considered whether the no-core subscriber data should have been backed out of Pegasus' subscriber metrics before they were publicly reported. Pagon was negligent in failing to carry out these duties, and as a result, the Pegasus SEC filings and analyst conference calls reported subscriber metrics that included the no-core re-aged and penny-credit subscribers as active subscribers.

Up until the issuance of the audit committee report in early January 2001, Verlin was involved in subscriber operations, including the decision to extend parameters for certain customers in the second and third quarters of 2000. Following the issuance of the audit report, Pegasus made some management changes, such that starting in January 2001, Mr. Verlin no longer was responsible for subscriber operations. However, after January 2001, he was copied from time to time on email updates regarding the status of churn or subscriber counts and he knew that Pegasus was reporting its subscriber counts. In that vein, Verlin became aware of the penny suspend program in June 2001 and even approved the text of a remarketing program to be directed at customers whose accounts had been reactivated with a penny credit. Despite his position in Pegasus senior management, Verlin failed to take affirmative steps to ensure that the re-aging and penny suspend programs came to an end such that subscriber numbers would be reported accurately.

V.

LEGAL DISCUSSION

Sections 17(a)(2) and 17(a)(3) of the Securities Act prohibit material misstatements and omissions in the offer or sale of a security. From 1999 to 2001, Pegasus issued stock in registered transactions on the U.S. securities markets. Because of the conduct described above, Pegasus violated these provisions. Negligent conduct can violate Sections 17(a)(2) and (3). *See, e.g., SEC v. Hughes Capital Corp.*, 124 F.3d 449, 453 (3d Cir. 1997).

Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file annual and quarterly reports with the Commission. The obligation to file such reports embodies the requirement that they be true and correct. Rule 12b-20 further requires the inclusion of any additional material information that is necessary to make required statements, in light of the circumstances under which they were made, not misleading. Negligence is enough for a reporting violation. *S.E.C. v. Savoy Indus.*, 587 F.2d 1149, 1167 (D.C. Cir. 1978).

Section 13(b)(2)(A) of the Exchange Act requires issuers to "make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain the accountability of assets. Because of the conduct described above, Pegasus and PSC violated these provisions.

By their conduct, described above, Pagon and Verlin were causes of Pegasus' and PSC's violations of these provisions. Where the primary violations underlying a finding that a person is "a cause of" violations do not themselves require a finding of scienter, the standard of liability for being "a cause of" such violations is negligence. *See*, *KPMG LLP v. SEC*, 289 F.3d 109, 120 (DC Cir. 2002).

VI.

As a result of the conduct described above, Respondents caused Pegasus and PSC to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-13 and 12b-20 thereunder.

VII.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondents shall cease and desist from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

C. Respondent Verlin shall pay disgorgement in the principal amount of $16,285.28 and prejudgment interest in the amount of $7,674.60 for a total of $23,959.88, to the United States Treasury. Such payment (a) shall be: (A) made by United States postal money order, certified check, bank cashier's check, or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered, mailed, or sent by overnight delivery service to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Verlin as a Respondent in these proceedings and includes the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Cheryl J. Scarboro, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5631. Respondent Verlin shall make his payments in two installments, the first installment of $11,979.50 shall be paid within 30 days of the entry of this Order, and the second installment of $11,979.50 shall be paid within 120 days of the entry of this Order, with prejudgment interest to accrue on the second installment amount until paid. Respondent agrees that if the full amount of any payment described above is not made by the date the payment is required by this Order, the entire amount of disgorgement and prejudgment interest $23,959.88, plus any interest accrued pursuant to SEC Rule of Practice 600 minus payments made, if any, is due and payable immediately without further application.

By the Commission.

Nancy M. Morris
Secretary