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August 9, 2005

**VIA FACSIMILE and REGULAR MAIL**

Managing Director  
Attention: FOIA Officer  
Federal Communications Commission  
445 12th Street, S.W., Room 1-A835  
Washington, D.C. 20554

**Re: PEGASUS DEVELOPMENT CORP.  
REPLY TO OPPOSITION TO FREEDOM OF INFORMATION ACT  
REQUEST**

To whom it may concern:

Highcast Network, Inc. (Highcast"), by counsel, hereby replies to Pegasus Development Corp.'s ("PDC") opposition to Highcast's request to inspect documents submitted to the Commission by Pegasus on January 31, 2005.<sup>1</sup> Highcast seeks unredacted copies of the "satellite construction contract and accompanying exhibits between PDC and Space Systems/Loral", which were submitted in redacted form under cover of the January 31 letter.

PDC's argument is founded on the simple but conclusory assertion that the satellite construction contract sought is not "germane" to Highcast's business and that Highcast has "no real reason for seeking review of the confidential filing." PDC appears to argue that only competing satellite applicants are entitled to seek review of documents filed with requests for confidential treatment by other satellite applicants.<sup>2</sup>

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<sup>1</sup>July 22, 2005 Letter from Bruce D. Jacobs to Managing Director re: Pegasus Development Corporation Opposition to Freedom of Information Act Request.

<sup>2</sup>Notably, PDC does nothing to bolster the bare assertions in its request for confidential treatment that the material is in fact entitled to protection from disclosure and offers no response to the information submitted in Highcast's July 14<sup>th</sup> letter that appears to be inconsistent with PDC's actual construction of a satellite.

PDC's argument fails at every turn. It is not incumbent on Highcast to prove it has an interest that PDC would consider "legitimate", to the contrary, information submitted to the Commission by applicants and licensees is to be made available for public inspection to anyone at all and for any reason at all unless submitting party meets its burden of establishing entitlement to confidential treatment. Highcast submits that PDC's request for confidential treatment fails to meet that burden, and accordingly there is no cause to examine Highcast's interest in a submission that would ordinarily be available for public inspection in the normal course. See, generally, 47 CFR §§ 0.457 - 0.459.

In any event, Highcast indeed has a strong and "legitimate" interest in PDC's milestone compliance as the satellite contemplated is highly germane to Highcast's business. Highcast, in which PDC was an early investor, seeks to provide seamless integration of digital satellite and digital terrestrial broadcasting. Integration with PDC's and its corporate parent Pegasus Communications Corporation's (PCC) satellite broadcasting business has been anticipated since PDC first invested in Highcast in 1999.

In October 2004, PDC and PCC terminated the entire staff of personnel engaged in pursuing development of PDC's Ka band licenses and, shortly thereafter, defaulted on its obligations to Highcast. These actions, as well as the public disclosures cited in Highcast's July 14<sup>th</sup> letter seeking access to the redacted terms of the satellite construction contract, appear to be inconsistent with PDC's actual compliance with its milestone requirements. Simply put, Highcast has a direct interest in PDC's milestone compliance. If PDC is not in compliance Highcast must look elsewhere for access to satellite broadcasting services. Filing its own application for a Ka band orbital slot (including perhaps the 87 degree WL slot should PDC not proceed with developing it) or allying with another Ka band licensee or applicant are among the most likely options.

PDC supports its argument that only competing applicants have a "legitimate interest" in reviewing satellite construction contracts with citations to two cases. That both cases are decades old and substantially pre-date the establishment of the International Bureau illustrates the paucity of support for its position, especially in an era of first-come licensing. Under the Commission's first-come licensing rules the traditional concept of a "competing applicant" simply doesn't apply. PDC is licensed to a particular Ka band slot - 87 WL - and the Bureau will not accept competing applications for that slot so long as PDC remains licensed. Even if parties seeking

review of licensee filings were required to prove a "legitimate interest" before reviewing documents submitted by licensees, status as a competing applicant obviously cannot be the standard for assessing that "legitimate interest". Highcast has both a direct interest in PDC's milestone compliance and a separate interest in an alternative Ka band satellite should PDC default.<sup>3</sup>

For the reasons explained in this letter and in Highcast's July 14, 2005 Freedom of Information Act request, Highcast again requests that the redacted portions of PDC's satellite contract be made available for public inspection.

Very truly yours,

HALPERN & LEVY, P.C.

By: Mark S. Halpern / AW  
Mark S. Halpern

MSH:aw  
Enclosures

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<sup>3</sup>Highcast is not currently in litigation with PDC or PCC.