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UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
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RCN CORPORATION, <u>et al.</u> ,	:	Case No. 04-13638 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**DEBTORS' APPLICATION FOR ORDER UNDER 11 U.S.C. §§ 327(e)
 AND 328 AND FED. R. BANKR. P. 2014 AND 2016 AUTHORIZING
 THE RETENTION OF WINSTON & STRAWN LLP AS SPECIAL
 COUNSEL TO THE BOARD OF DIRECTORS**

RCN Corporation ("RCN") and certain of its direct and indirect subsidiaries, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby apply for entry of an order under 11 U.S.C. §§ 327(e) and 328 and Fed. R. Bankr. P. 2014 and 2016 authorizing the retention of Winston & Strawn LLP ("Winston & Strawn"), as of June 7, 2004, as special counsel to RCN's Board of Directors. In support of this application, the Debtors rely on the Declaration of

David Neier in Support of Debtors' Application for Order under 11 U.S.C. §§ 327(e) and 328 and Fed. R. Bankr. P. 2014 and 2016 Authorizing the Retention of Winston & Strawn LLP as Special Counsel to the Board of Directors (the "Neier Declaration").¹ In further support of this application, the Debtors respectfully represent as follows:

BACKGROUND

A. The Chapter 11 Filings

1. On May 27, 2004 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for reorganization relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

2. No trustee or examiner has been appointed in these chapter 11 cases. On June 10, 2004, the Committee of Unsecured Creditors (the "Creditors' Committee") was appointed by the United States Trustee for the Southern District of New York (the "United States Trustee"). No other official committees have been appointed or designated in these chapter 11 cases.

¹ The Debtors incorporate by reference the facts set forth in the Neier Declaration. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Neier Declaration.

3. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are Bankruptcy Code sections 327(e) and 328 and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

5. By this application, the Debtors seek entry of an order authorizing the Debtors to retain Winston & Strawn, as of June 7, 2004, as special counsel to represent the members of RCN's Board of Directors (the "Board of Directors") and to provide them with legal services and advice in connection with these chapter 11 cases, pursuant to the terms and provisions of this application, the proposed order submitted herewith, the Neier Declaration and their Engagement Letter (the "Engagement Letter") with Winston & Strawn, a copy of which is attached as Exhibit A to the Neier Declaration.

6. Accordingly, the Debtors respectfully request entry of an order under Bankruptcy Code section 327(e) and 328 of the Bankruptcy Code authorizing them to retain Winston & Strawn as special counsel to the Board of Directors to perform services that will be necessary during these cases, as more fully described herein.

BASIS FOR RELIEF

7. Winston & Strawn is an international law firm of nearly 900 attorneys, with considerable experience in practice areas relevant to its role as special counsel to the Board of Directors, including litigation, corporate, tax and securities law. Winston & Strawn also has considerable experience, expertise and knowledge with respect to reorganizations under chapter 11 of the Bankruptcy Code.

8. In connection with its retention pursuant to this application, Winston & Strawn would advise the Board of Directors as their attorneys and provide legal services and advice from time to time in connection with these cases including corporate governance matters, fiduciary duties of the Board of Directors, matters concerning the Securities and Exchange Commission, the Federal Communications Commission or any other federal, state or local regulatory agency, any investigations, and any securities class actions or shareholder derivative actions, and other matters that arise in connection with these cases including, but not limited to, the following:

- a. conduct legal research, collection and review of documents, interviews of relevant current and former officers, directors and employees of the Debtors and other tasks in connection with the Proceedings (as defined in the Neier Declaration);
- b. review developments in these cases and advise the Board of Directors in connection therewith;
- c. provide legal advice to the Board of Directors in support of its ongoing responsibilities with respect to the Debtors' operations, including attendance at meetings of the Board of Directors and its committees;

- d. represent and provide such services as are requested by the Board of Directors in connection with any litigation that may be brought against the Board of Directors;
 - e. if necessary, appear before the Bankruptcy Court, any district or appellate courts, and the United States Trustee on behalf of the Board of Directors with respect to the matters referred to above; and
 - f. provide the full range of legal services and advice normally associated with the matters referred to above.
9. The Debtors submit that Winston & Strawn is well-qualified to act as special counsel to the Board of Directors and to represent the Debtors' legitimate business interests in the matters for which it is to be employed.

10. The Debtors submit that the retention of Winston & Strawn under the terms described herein is appropriate under sections 327(e) and 328 of the Bankruptcy Code. With the Court's approval, a debtor in possession has the power to employ attorneys as special counsel pursuant to section 327(e) of the Bankruptcy Code, which provides:

The [debtor], with the Court's approval, may employ, for a specified special purpose, other than to represent the [debtor] in conducting the case, an attorney that has represented the [debtor], if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtors or the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e). See, e.g., DeVlieg-Bullard, Inc. v. Natale, 174 B.R. 497 (N.D.

Ill. 1994); Meespierson Inc. v. Strategic Telecom, Inc., 202 B.R. 845, 847-48 (Bankr. D. Del. 1996); In re Leisure Dynamics, 32 B.R. 753, 754 n.2 (Bankr. D. Minn. 1983), aff'd, 33 B.R. 121 (D. Minn. 1983) (noting that court had approved debtor's retention of corporate counsel under section 327(e)).

11. Simply put, section 327(e) authorizes the retention of an attorney who has represented a debtor, provided that: (a) such retention is for a special purpose; (b) the purpose of the retention is not to conduct the cases; (c) the retention is in the best interests of the estates; and (d) the attorney does not hold any interest adverse to the debtor respecting the subject of its retention. As detailed below, the Debtors' proposed retention of Winston & Strawn as special counsel falls squarely within the scope of and purpose for which Congress enacted Bankruptcy Code section 327(e).

SPECIAL PURPOSE

12. Winston & Strawn's proposed retention pursuant to Bankruptcy Code section 327(e) is for the limited purpose of representing the Board of Directors as counsel and in connection with related contested matters and/or litigation. The Debtors expect that Winston & Strawn will provide the services described herein, and that such services do not constitute matters central to the Debtors' reorganization. In these activities, Winston & Strawn will work closely with the Debtors' general bankruptcy counsel.

CONDUCT OF THE CASES

13. On June 22, 2004, the Court entered final orders authorizing the retention of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden, Arps") as bankruptcy counsel for the Debtors, and Swidler Berlin Shereff Friedman, LLP as special regulatory counsel for the Debtors. Winston & Strawn will not be rendering services typically performed by a debtor's bankruptcy counsel. Winston & Strawn's proposed retention is for the discrete matters referenced above and, by outlining Winston & Strawn's role, the Debtors have ensured that there will be no duplication of the services provided by these other counsel. Winston & Strawn ordinarily will not be involved in interfacing with the Court and will not be primarily responsible for the Debtors' general restructuring efforts; however, Winston & Strawn may on occasion interface with the Court to the extent necessary to assist the Debtors and their bankruptcy counsel. Winston & Strawn has informed the Debtors that it will coordinate with and assist Skadden, Arps in connection with these cases.

BEST INTERESTS OF THE ESTATES

14. The Debtors believe that the retention of Winston & Strawn, on the terms and conditions set forth herein, is in the best interests of the Debtors and their estates and creditors.

15. The Debtors selected Winston & Strawn because, among other things, its attorneys have extensive experience, expertise and knowledge in practice areas,

including chapter 11 reorganizations, relevant to its role as special counsel to the Board of Directors. The Debtors believe that Winston & Strawn is well-suited to serve as special counsel to the Board of Directors, and to ensure that these cases proceed in an efficient and successful manner. As such, Winston & Strawn should be retained as special counsel to the Board of Directors.

ADVERSE INTEREST

16. Winston & Strawn has informed the Debtors that, except as set forth in the Neier Declaration, neither Winston & Strawn nor any of its partners, counsel or associates, has had, or presently has, any connection with the Debtors, their creditors or any other party in interest in these cases, their respective attorneys and investment advisors, the United States Trustee or any person employed in the office thereof.

17. Winston & Strawn has informed the Debtors that, except as set forth in the Neier Declaration, neither Winston & Strawn, nor any of its members, counsel or associates, has any interest adverse to the Debtors or their respective estates, creditors or any other party in interest in these cases, or their respective attorneys or accountants, with respect to the matters for which it is to be retained.

18. Where, as here, there is no conflict concerning the subject matter of the proposed special engagement, an application to employ special counsel should be granted. As recognized in In re Carla Leather, Inc., 44 B.R. 457, 474 (Bankr.

S.D.N.Y. 1984), aff'd, 50 B.R. 764 (S.D.N.Y. 1985), "[section] 327(e) bars engagement of special counsel only in the presence of an actual conflict of interest concerning the subject matter of the engagement." (citations omitted).

19. The Debtors understand that Winston & Strawn will apply to the Court for allowance of compensation for professional services rendered and reimbursement of charges and disbursements incurred in these chapter 11 cases in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Southern District of New York, the United States Trustee Fee Guidelines and the orders of this Court. The Debtors understand that such applications will constitute a request for interim payment against the firm's reasonable fees to be determined at the conclusion of the cases. Subject to Court approval, the Debtors understand that compensation will be payable to Winston & Strawn on an hourly basis, plus reimbursement of actual and necessary expenses incurred by Winston & Strawn.

20. The Debtors submit that no new or novel issue of law is presented with respect to the matters contained herein. Because the relevant authorities in support of the requested relief are cited in this application, the Debtors request that the requirement of the service and filing of a separate memorandum of law under Local Bankr. R. 9013-1(b) be deemed satisfied.

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing the Debtors to retain Winston & Strawn as special counsel to the Board of Directors to perform the services described herein, and (ii) granting the Debtors such other and further relief as is just and proper.

Dated: New York, New York
July 8, 2004

RCN Corporation, on behalf of itself
and the Subsidiary Debtors, as Debtors and
Debtors-in-Possession

/s/ Anthony M. Horvat
By: Anthony M. Horvat
Title: Senior Vice President and Chief
Restructuring Officer