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2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4

5 ----- x  
6 In the Matter  
7 of Case No.  
8 04-13637  
9 HOT SPOTS PRODUCTIONS, INC.  
10 Debtor.  
11 ----- x

12 June 2, 2004

13 United States Custom House  
14 One Bowling Green  
15 New York, New York 10004  
16

17 Motion for Joint Administration, Motion to  
18 approve motion for order (I) authorizing the  
19 Debtors' continued use of existing bank account  
20 and cash management system and (II) authorizing  
21 intercompany transactions; Motion to authorize  
22 motion for interim order (I) authorizing the  
23 use of lenders' cash collateral, (II) granting  
24 adequate protection and (III) scheduling a  
25 final hearing; Debtors' application for order  
authorizing retention of Bankruptcy Services  
LLC as claims and noticing for the Debtors;  
Debtors' application for order authorizing  
retention of Innisfree M&A Incorporated as  
noticing, voting, and information agent for the  
Debtors; Debtors' application for order  
authorizing retention of Skadden, Arps, Slate,  
Meagher & Flom LLP as attorneys for the Debtors  
and (B) scheduling final hearing; Debtors'  
application for order (A) authorizing retention  
of Swidler Berlin Shereff Friedman, LLP as  
special regulatory counsel to the Debtors and  
(B) scheduling final hearing; Debtors'  
application for order (A) authorizing retention  
of Price Waterhouse Coopers LLP as auditors for  
the Debtors and (B) scheduling final hearing;  
Debtors' application for order (A) authorizing

1  
2 financial advisors for the Debtors and (B)  
3 scheduling final hearing; Debtors' application  
4 for order (A) authorizing retention of AP  
5 Services, LLC as crisis managers for the  
6 Debtors and (B) scheduling final hearing;  
7 Motion for interim and final orders (A)  
8 establishing notification and hearing  
9 procedures for trading in equity interests and  
10 (B) Re: Doc #17; notice of hearing.  
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B E F O R E:

HON. ROBERT D. DRAIN,  
Bankruptcy Judge.

1 HOT SPOTS PRODUCTION, INC.

2 A P P E A R A N C E S:

3  
4 SKADDEN, ARPS, SLATE, MEAGHER &  
5 FLOM, LLP

6 Attorneys for Debtors  
7 Four Times Square  
8 New York, New York 10036

9  
10 BY: JAY GOFFMAN, ESQ.

11 -and-

12 FREDERICK D. MORRIS, ESQ.

13 -and-

14 MAXWELL M. MILLER, ESQ.

15  
16  
17 MILBANK, TWEED, HADLEY & McCLOY,  
18 LLP

19 Attorneys for Ad Hoc Committee  
20 One Chase Manhattan Plaza  
21 New York, New York 10005

22  
23 BY: DENNIS F. DUNNE, ESQ.

1 HOT SPOTS PRODUCTION, INC.

2 A P P E A R A N C E S: (Cont'd)

3  
4 ANDREWS KURTH, LLP

5 Attorneys for Wells Fargo

6 450 Lexington Avenue

7 New York, New York 10017

8  
9 BY: PETER S. GOODMAN, ESQ.

10 -and-

11 DEIRDRE ANN SULLIVAN, ESQ.

12  
13  
14 SIMPSON THACHER & BARTLETT, LLP

15 Attorneys for JP Morgan and

16 its agents

17 425 Lexington Avenue

18 New York, New York 10017

19  
20 BY: PETER V. PANTALEO, ESQ.

1 HOT SPOTS PRODUCTION, INC.

2 A P P E A R A N C E S: (Cont'd)

3

4 RCN CORPORATION

5 105 Carnegie Center

6 Princeton, New Jersey 08540

7

8 BY: DEBORAH M. ROYSTER, ESQ. U.S.

9

10

11 DEPARTMENT OF JUSTICE

12 OFFICE OF THE UNITED STATES

13 TRUSTEE

14 33 Whitehall Street

15 New York, New York 10004

16

17 BY: PAUL SCHWARTZBERG, ESQ.

18

19

20

21

22

23

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25

1 HOT SPOTS PRODUCTION, INC.

2 P R O C E E D I N G S

3  
4 THE COURT: Mr. Goffman.

5 MR. GOFFMAN: Thank you, your  
6 Honor. Jay Goffman of Skadden Arps on behalf  
7 of the debtors.

8 First of all, your Honor, thank you  
9 for taking the time this afternoon to hear us  
10 on this first day application and motions.

11 As your Honor is aware, there are  
12 five debtors in these cases. The first is Hot  
13 Spots, Hot Spots Production, Inc. That was the  
14 first case that was filed and that was the  
15 first name on the caption.

16 RCN Incorporation was then filed,  
17 followed by three other RCN subsidiaries: RCN  
18 Finance, LLC; RLH Property Incorporation and  
19 TEC Air. Each of the Chapter 11 petitions were  
20 filed on May 27, 2004. This is a central  
21 prearranged Chapter 11 case.

22 Again, we appreciate your Honor  
23 making the time this afternoon to hear us for  
24 these first day motions and applications.

25 I'm very happy to report that after

## HOT SPOTS PRODUCTION, INC.

months and months of difficult negotiations, the debtors, the secured lender represented by able counsel to my right, and an ad hoc committee senior noteholders also represented by able counsel to my far right, have received an agreement upon a consensual restructuring of all of the RCN debt and equity in this case.

As we will discuss in greater detail, the key elements for this restructuring are basically repayment in full of the senior secured credit facility to be provided by Deutsche Bank, approximately \$460 million, that will be used to pay off the existing senior secured credit facility, and the conversion of all of our outstanding senior notes of the parent holding company level of approximate \$1.1 billion into the equity of the reorganized company.

By reaching this agreement, we have been able to avoid at this time the filing of any of the major operating companies and the attendant impact, negative impact that it could have on the employees and businesses.

These are the keys to the consensual

1                   HOT SPOTS PRODUCTION, INC.  
2   restructuring we brought to the court and we  
3   believe it will allow this company to emerge  
4   fairly quickly from Chapter 11 with a very  
5   healthy balance sheet poised for a successful  
6   future.

7                   The motions and applications that we  
8   ask the court to consider today are designed to  
9   simply facilitate the process.

10                  Before we talk about today's first  
11   day motion, I would first to like make some  
12   introductions.

13                  Since today, the first day of this  
14   hearing, I think there are certain people that  
15   are extremely important to these case that the  
16   Court will see time and time again that your  
17   Honor needs to know of.

18                  The first would be Mr. John Dubel.  
19   Mr. Dubel is the current president and chief  
20   operating officer of RCN corporation.

21                  He's a principal at Alix Partners,  
22   which is firm that provides turnaround in  
23   crisis management services, financial advisory  
24   services, management consulting services,  
25   information system services and claims

1                   HOT SPOTS PRODUCTION, INC.  
2                   management services.

3                   Your Honor, I can't say enough about  
4                   the job that Mr. Dubel and his team have done  
5                   here.

6                   When Mr. Dubel and the Alix partners  
7                   team were brought in in February, this  
8                   restructuring process was at a crossroads.  
9                   Negotiations were very difficult. Our  
10                  relationships with our lenders and bond holders  
11                  were very tenuous, and I can honestly say that  
12                  the leadership and the efforts that Mr. Dubel  
13                  brought to this restructuring I believe are the  
14                  primary reason that we are here today with a  
15                  consensual restructuring.

16                  Mr. Dubel has over 20 years of  
17                  experience providing turnaround crisis  
18                  management and restructuring services and  
19                  significant restructuring experience in the  
20                  large and mid size corporations.

21                  His background includes operational  
22                  reorganizations and cost reductions, financial  
23                  department restructurings, strategic  
24                  repositioning and divestitures. His industry  
25                  experience includes telecom and high tech,

1                   HOT SPOTS PRODUCTION, INC.  
2     travel, retail and apparel, manufacture,  
3     publishing, financial services and oil and gas.

4                   Immediately prior to this  
5     assignment, Mr. Dubel was the chief executive  
6     officer of Cable and Wireless of America, and  
7     formally he served as the chief restructuring  
8     officer of Turner Corporation and the chief  
9     financial officer of WorldCom, Inc., in their  
10    Chapter 11 case.

11                  Prior to joining Jay Alix and  
12    Associates, he ran his own turnaround firm  
13    where his roles included chief restructuring  
14    officer and chief operating officer at CellNet  
15    Data systems, Inc., chief financial officer and  
16    executive committee member of Barney's New York  
17    and chief financial officer of the Leslie Fay  
18    Company.

19                  Prior to forming his own company,  
20    Mr. Dubel was a partner at a big five  
21    accounting firm where he was a founding member  
22    of their corporate recovery services practice.

23                  Next I would like to introduce  
24    Mr. Anthony Horvat. Mr. Horvat has been Mr.  
25    Dubel's right-hand man since Mr. Dubel joined

1 HOT SPOTS PRODUCTION, INC.  
2 the company.

3 Mr. Horvat's title is chief  
4 restructuring officer of RCN Corporation and  
5 he's also an employee of AP Services, an  
6 affiliate of Alix Partners.

7 Mr. Horvat has been employed by RCN  
8 since February of 2004 and before joining Alix  
9 Partners, Mr. Horvat was employed by U.S.  
10 Filter Corporation, which he helped grow from a  
11 40 million to a five billion dollar Fortune 500  
12 company.

13 Mr. Horvat is a certified insolvency  
14 and restructuring advisor, a member of the  
15 American Bankruptcy Institute and a member of  
16 the Association of Insolvency and Restructuring  
17 Advisors. He has an MBA from the Wharton  
18 School at the University of Pennsylvania.

19 Next I would like to introduce Miss  
20 Deborah Royster. Miss Royster is general  
21 counsel of RCN Corporation.

22 Since joining RCN in 1999, Miss  
23 Royster has also served as general counsel of  
24 Starpower Communication, which is a joint  
25 venture in which RCN is a 50 percent joint

1 HOT SPOTS PRODUCTION, INC.

2 venture member. Miss Royster has also served  
3 as the senior vice president of regulatory and  
4 external affairs for RCN Corporation; and  
5 before joining RCN, Miss Royster served as  
6 executive director of the office of Cable  
7 Television and Telecommunication in the  
8 District of Columbia from 1998 to 1999.

9 She's a member of the District of  
10 Columbia Bar and a graduate of the University  
11 of Virginia law school.

12 I'm not sure if Mr. Coleman is with  
13 us, but I would like to take a minute just to  
14 mention that we have retained Blackstone  
15 Corporation also as our financial advisors.  
16 Mr. Coleman is our lead person there, and we  
17 will be talking about them in greater detail  
18 when we get to the their application, and I  
19 think I will leave that discussion until we get  
20 there.

21 You know Mr. Peter Pantaleo as  
22 counsel to the banks. I would like to express  
23 my appreciation for all his professionalism in  
24 helping us get to where we are today, and I  
25 believe you know Mr. Dunne of Milbank Tweed,

1                   HOT SPOTS PRODUCTION, INC.  
2       counsel to the ad hoc committee noteholders,  
3       who I would also like to express my  
4       appreciation for working with us to get the  
5       consensual restructuring.

6                   In both cases, we have had many  
7       disagreements throughout this case and it is  
8       very difficult times but we are pleased to have  
9       gotten where we are today.

10                  Your Honor, leading up to today's  
11       hearings, it's been a little different because  
12       when we filed these cases, we weren't filing  
13       the operation companies. We filed them in  
14       anticipation of these prearranged filings.

15                  On May 26th, we served drafts, the  
16       original motions, and applications on the U.S.  
17       Trustee, on counsel to the banks and counsel to  
18       the noteholders. We received certain comments  
19       from each of the parties and on that basis made  
20       certain changes.

21                  On May 27th, when we filed the  
22       actual petitions, we then served the revised  
23       applications and motions on counsel to the  
24       banks, counsel to the noteholders, U.S.  
25       Trustee, the FCC, the SEC, the IRS, the United

1           HOT SPOTS PRODUCTION, INC.  
2 States Attorney, and the 17 general unsecured  
3 creditors listed in the petition.

4           An affidavit of service to that  
5 effect has been filed with the court.

6           As of two hours ago, we received one  
7 objection from Wells Fargo to three of the  
8 applications, and I'll address that at the  
9 appropriate time. That's the only objection  
10 that I'm aware of.

11           THE COURT: I'm sorry. Did you  
12 serve the other preferred shareholders?

13           MR. GOFFMAN: We didn't serve the  
14 other preferred shareholders, although I will  
15 tell you that there are two preferred  
16 shareholders, one of whom sits on the company's  
17 board and, so, that voted in favor of the  
18 filings. The other one of which had actually  
19 fairly recently stepped off the board. So they  
20 did not get the papers.

21           The second one did not get the  
22 papers but I do not believe we had served the  
23 other one.

24           MR. GOODMAN: Peter Goodman on  
25 behalf of the preferred shareholders. We were

1           HOT SPOTS PRODUCTION, INC.  
2   not served with any of the pleadings.

3           THE COURT: I think Mr. Goffman  
4   acknowledged that.

5           MR. GOFFMAN: If I could, I will  
6   take a brief moment to give you an overview of  
7   the company and the cases and then we will get  
8   right to the motion.

9           THE COURT: Okay.

10          MR. GOFFMAN: RCN Corporation,  
11   again, is primarily a holding corporation for  
12   certain direct and indirect subsidiaries whose  
13   primary business is delivering bundle  
14   communication services, including long distance  
15   and local telephone, video programming and data  
16   services primarily for residential customers  
17   over a broadband network.

18          We have 19 nondebtor affiliates and  
19   we provide services in the Boston area and 18  
20   surrounding communities around Boston, in the  
21   New York City area, in the suburbs of  
22   Philadelphia, the Lehigh Valley Area, in  
23   Pennsylvania, Chicago, San Francisco and two  
24   communities in Los Angeles. We have  
25   approximately 2600 employees all of who are in

1 HOT SPOTS PRODUCTION, INC.

2 the subsidiaries that have not filed.

3 We compete for the most part in  
4 incumbent service providers, and since our  
5 inception in September of 1997, RCN relied  
6 extensively on access in the capital markets to  
7 enhance development of a high speed fiber optic  
8 broadband network.

9 In short, RCN financed a significant  
10 portion of its growth, including corporation  
11 acquisition, and purchased certain assets  
12 through secured credit facilities from the  
13 banks and through the issuance of debt  
14 securities and preferred and common stock.

15 Through a number of events that this  
16 court is more than familiar with over the last  
17 few years, the access to the capital markets  
18 has disappeared for these type of companies.  
19 As a result of that, RCN curtailed its business  
20 expansion plan beginning by 2002.

21 RCN changed its capital acquisition  
22 plan in an attempt to live within the capital  
23 constraints that it had. Unfortunately, by the  
24 fall of 2003, it had become clear to RCN and  
25 many of its stakeholders that notwithstanding

1                   HOT SPOTS PRODUCTION, INC.  
2     its efforts to live within the capital letters  
3     it had, that the only way to maximize for the  
4     company to survive over the long term was to  
5     restructure its balance; therefore, beginning  
6     in the fall of 2003, the company with its  
7     financial advisors and legal advisors began  
8     pursuing a restructuring plan for the banks and  
9     the noteholders.

10                  The banks were advised by both  
11     counsel and financial advisors and an Ad Hoc  
12     Committee of senior noteholders was formed and  
13     they were represented by both counsel and  
14     financial advisors. The company, as is  
15     normally in this situation, paid all the  
16     relevant fees in those circumstances.

17                  In the course of these discussions,  
18     we, because at different times did have the two  
19     largest members of equity on the board or with  
20     strong relationships with the company, did have  
21     continuing conversations with those equity  
22     members, also. Unfortunately, the values of  
23     the company are what they are and that's what  
24     brought us here today.

25                  THE COURT: Does the Ad Hoc

1                   HOT SPOTS PRODUCTION, INC.  
2   Committee consist of majority of the bond debt  
3   and majority of the bondholders or is it a  
4   smaller sub?

5                   MR. GOFFMAN: It has been  
6   represented to us that the Ad Hoc Committee  
7   represents approximately 50 -- can I say the  
8   number? -- 57 percent of the outstanding  
9   bonds. 57 of the 1.1 billion.

10                  THE COURT: Okay.

11                  MR. GOFFMAN: We believe that in the  
12   course -- what became apparent over the course  
13   of the negotiations of the past several months  
14   was that in order to come up with a restructure  
15   that would truly place the company in a  
16   position so that it would be able to prosper  
17   once the restructuring was completed we needed  
18   to come up with an amortization schedule for  
19   our existing secured debt that the company  
20   could clearly and easily satisfy going forward.

21                  That left us with a couple of  
22   choices, to either try to negotiate that with  
23   our existing lenders, which we were doing, or  
24   see if we could replace that from outside  
25   sources.

1 HOT SPOTS PRODUCTION, INC.

2 Fortunately, through the efforts of  
3 Mr. Dubel and his team and through the efforts  
4 of Blackstone Group, we were able to take  
5 advantage of the financing markets and we  
6 talked to numerous potential lenders.

7 And after a couple of months of  
8 negotiations with originally seven, narrowing  
9 it down to four lenders, and then finally down  
10 to the winning bidder here, which is Deutsche  
11 Bank, we have come up with a proposed new  
12 senior lender that will provide the company  
13 with a capital structure that when we emerge  
14 will position this company to not only survive  
15 but to prosper on a going forward basis, and,  
16 therefore, will allow the equity that's going  
17 to be created by converting over 1.1 billion of  
18 bond equity to become valuable.

19 Today, your Honor, what we are  
20 presenting are simply a handful of first day  
21 motions and applications, which, for the most  
22 part, I think will be nonconfrontational. I  
23 will try to start with the easiest one first.

24 The first one is just a motion for  
25 an order, and before I start that, let me first

1                   HOT SPOTS PRODUCTION, INC.  
2       mention that we have filed the affidavit of  
3       Mr. Horvat. Again, he's the chief  
4       restructuring officer.

5                   It provides the factual and  
6       evidentiary basis for all of the motions and  
7       applications that we file, and we would submit  
8       that it provides the evidentiary basis for the  
9       request we are seeking.

10                  Mr. Horvat is in court today and  
11       will be available for crossing, if that were  
12       necessary, and on that basis I will proceed.

13                  First we have a motion for an order  
14       directing joint administration. Again, a very  
15       simple normal order. It simply doesn't change  
16       any substantive rule. It simply says that the  
17       five debtors will be a joint administration  
18       type process.

19                  THE COURT: Is there a reason to  
20       have the caption be Hot Spots instead of RCN?

21                  MR. GOFFMAN: The only reason was  
22       that it was the first company filed and it has  
23       always been my practice whoever is the first  
24       one would be the one. If your Honor would  
25       prefer it be RCN.

1 HOT SPOTS PRODUCTION, INC.

2 THE COURT: I think given that there  
3 doesn't seem to be any party interest in Hot  
4 Spots, it would be better to have it RCN.

5 MR. GOFFMAN: Certainly. We have to  
6 change it, if it is okay.

7 THE COURT: Other than that, I  
8 reviewed the motion and I will approve it.

9 MR. GOFFMAN: If your Honor would  
10 like, we can handwrite in the change and submit  
11 the order now.

12 THE COURT: You can submit the  
13 orders at the end of the hearing.

14 MR. GOFFMAN: Very good, your  
15 Honor. The second one is simply a motion for  
16 an order establishing certain notice, case  
17 management and administrative procedures.  
18 Again, just an administrative order seeking to  
19 establish the case management procedure here.

20 It is going to limit certain notice  
21 procedures in these Chapter 11 cases. It is  
22 going to designate the parties upon whom notice  
23 should be served. It is going to direct that  
24 all matters should be heard at certain  
25 prescheduled omnibus hearings which we are

1                   HOT SPOTS PRODUCTION, INC.  
2 going to ask your Honor for report dates.

3                   There is in our experience routine  
4 in large cases and allows for an orderly  
5 administration of the case. We have seen the  
6 same type of orders in, certainly WorldCom,  
7 Adelphia, Enron and other such cases.

8                   THE COURT: I've reviewed this also  
9 and I'll grant it.

10                  As far as the omnibus hearing dates,  
11 I do have some dates, dates for that, too.

12                  MR. GOFFMAN: The most important one  
13 -- do you want to take the dates now?

14                  THE COURT: Well, I think we mind as  
15 well at this point.

16                  I think with respect to a fair  
17 amount of the relief that is sought today, you  
18 are seeking it on an interim basis and I have  
19 time either on Wednesday, June 16th, or  
20 Tuesday, June 22nd for the final hearing and  
21 then as far as omnibus dates, I have time on  
22 either the 29th or the 30th of July. The 30th  
23 is probably better, and that would probably be  
24 the date for the Blackstone hearing, too.  
25 There being more news for that.

1 HOT SPOTS PRODUCTION, INC.

2 And then August, any time between  
3 the 23rd and the 27th, so you can just pick a  
4 date then. September 22nd to October 1st you  
5 can pick one of those dates. October 25th  
6 through the 29th. You can pick one of those  
7 dates at 10, for each of the dates it would be  
8 at 10 in the morning.

9 MR. GOFFMAN: So I have the 22nd of  
10 June. I have the 30th.

11 THE COURT: Of July. In August it  
12 could be any time between the 23rd or the 27th,  
13 and September from any time between the 22nd  
14 and October 1st and then for October any time  
15 between the 25th to the 29th. So you can just  
16 pick a date for each of those last three  
17 months.

18 MR. GOFFMAN: Can I ask that at the  
19 end of this hearing we go through our  
20 calenders.

21 THE COURT: That's fine and then you  
22 can just hand it up later.

23 I take it that literally, since this  
24 is a holding company bankruptcy, you really  
25 only have 17 unsecured nonbondholder creditors;

1 HOT SPOTS PRODUCTION, INC.

2 is that right?

3 MR. GOFFMAN: I think that's right,  
4 your Honor.

5 THE COURT: Normally in these I have  
6 the notice until the committee is formed doing  
7 the 20 largest, but since it seems they are  
8 only owed relatively small amounts, I think it  
9 is fine as is.

10 MR. GOFFMAN: The only issue that  
11 I'm aware of has to do with, obviously, I think  
12 the 22nd will work certainly for the final  
13 hearing for the banks cash collateral. We will  
14 need to have the Deutsche Bank financing  
15 approved within the first 30 days. I expect to  
16 be able to file that motion by the end of the  
17 week. So if the hearing is going to be the  
18 22nd, I may need to shorten notice by a couple  
19 of days.

20 THE COURT: Okay. That's fine.  
21 Just for your planning, I'm going to be out for  
22 basically the first three weeks of July so  
23 that's -- you can get another judge if you have  
24 an emergency then.

25 MR. GOFFMAN: I will try not to do

1                   HOT SPOTS PRODUCTION, INC.  
2   anything then. By the way, as long as I  
3   mentioned the Deutsche Bank motion, when we  
4   file the Deutsche Bank motion, there are going  
5   to be certain items in there with respect to  
6   fee letter and other things that we are going  
7   to need to file in seal, and we will serve that  
8   certainly upon the U.S. Trustee, counsel for  
9   the committee, counsel for the banks and the  
10  other parties, but I think --

11                   THE COURT: If you have any, feel  
12  free to call my chambers on the procedure for  
13  doing that.

14                   MR. GOFFMAN: Next we have a motion  
15  for an order authorizing the continued use of  
16  the existing bank account and cash management  
17  system and authorizing intercompany  
18  transaction.

19                   Again, I think a fairly standard  
20  order here, really just keeps the existing cash  
21  management system in place. It is a benefit to  
22  the debtors.

23                   We have a cash management system  
24  that optimizes all the uses of cash for all the  
25  debtors and nondebtors. Since the lenders lend

1 HOT SPOTS PRODUCTION, INC.

2 to both debtors and nondebtors, we need to make  
3 sure that the intercompany system works. Our  
4 debtors are not note lenders.

5 To the extent that there are any  
6 intercompany transfers, they are, in fact,  
7 borrowers or takers in some fashion from the  
8 other company so there is no negative impact,  
9 if there were any impact, upon the debtors.

10 We would ask as part of this order  
11 the normal things, such as, well, the office of  
12 the U.S. Trustee has obviously established  
13 certain guidelines for debtor in possession  
14 administration, closing all existing bank  
15 accounts and opening new ones and establishing  
16 certain debtors in possession accounts and  
17 separate debtor in possession accounts.

18 Under cash collateral under the  
19 existing circumstances, we established an  
20 account with PNC Bank. PNC is a fully  
21 recognized bank. The only money that is going  
22 to be in this account is approximately \$5  
23 million that will be funded from nondebtors  
24 upon approval of the cash collateral order and  
25 upon approval of this order. It will be there

1                   HOT SPOTS PRODUCTION, INC.  
2 essentially to cover the fees and expenses of  
3 this case.

4                   We believe that PNC is a substantial  
5 financial institution, that the bank is FDI  
6 insured up to the applicable limit and we  
7 believe that the account is fully  
8 collateralized.

9                   On that basis, we would seek a  
10 waiver of the U.S. Trustee account and the bank  
11 account be closed and a new one be open. We  
12 would have all new checks that were issued be  
13 labeled debtor in possession account so that it  
14 would be obvious that these are debtor in  
15 possession checks, but we would submit there is  
16 no good purpose served to close of account and  
17 just open up a new one.

18                  Again, we think it makes sense to  
19 continue using the same centralized cash  
20 management. It is really the best way for us  
21 to continue to operate the company to make sure  
22 the debtors have access to the funds they need  
23 to pay the U.S. Trustee fees and pay the  
24 expenses of the estate.

25                  THE COURT: Okay.

1 HOT SPOTS PRODUCTION, INC.

2 MR. DUNNE: Dennis Dunne, Milbank,  
3 Tweed, Hadley and McCloy on behalf of the Ad  
4 Hoc Committee of noteholders. We have no  
5 objection to the entry of the order with one  
6 reservation of rights.

7 I think Mr. Goffman accurately  
8 described how this mechanisms works. In  
9 essence, the nondebtor operating entities are  
10 funding the holding company parent bankruptcy  
11 and we, as a result, they will have no  
12 administrative expense priority claims against  
13 these debtor estates for reimbursement of those  
14 borrowings, if you will.

15 We have no objection to accounting  
16 for those items as such with the reservation of  
17 rights as to whether they are truly ad min  
18 claims in the sense, if there was a worse case  
19 scenario here of melt down of these entities,  
20 there would be argument of something about  
21 consolidation of tracing the bond funds down to  
22 certain accounts at the operating levels and  
23 whether, in essence, it truly is a borrowing of  
24 somebody else's property as opposed to property  
25 that truly belonged to RCN Corporation.

1 HOT SPOTS PRODUCTION, INC.

2 With that reservation of rights, we  
3 have no objection.

4 THE COURT: Okay.

5 MR. GOFFMAN: I spoke to Mr. Dunne  
6 about this issue this morning as part of our  
7 desire to continue to maintain the peace. We  
8 said he can reserve his rights in all these  
9 issues in the unlikely event that it is done.

10 THE COURT: The second paragraph in  
11 the order says that the debtor is authorized to  
12 engage in intercompany transactions which is  
13 relative to the rule.

14 Do you mind me inserting in the  
15 debtor ordinary course of business, which is  
16 what I think was intended.

17 MR. GOFFMAN: Certainly.

18 THE COURT: And then there's the  
19 last, I'm sorry, the 7th paragraph of the order  
20 prohibits PNC from offsetting, freezing or  
21 otherwise impeding the use of funds, and then  
22 there is a proviso that it doesn't prejudice  
23 PNC's right to seek relief from the estate to  
24 accomplish any of the foregoing.

25 Do you mind if I add or, B,

1                   HOT SPOTS PRODUCTION, INC.  
2       authorize the debtors use of any cash  
3       collateral of PNC such as permitted by code?

4                   MR. GOFFMAN: I'm sorry.

5                   THE COURT: Or authorize provided,  
6       however, that nothing herein shall prejudice  
7       PNC's ability to seek relief to accomplish any  
8       of the foregoing or, B, authorize the debtors  
9       use of any cash collateral of PNC except as  
10      permitted by the Bankruptcy Code.

11                  MR. GOFFMAN: I have no problem.

12                  MR. GOODMAN: It is probably more  
13      the bank's cash collateral than PNC.

14                  THE COURT: This suggestion is to  
15      apply to PNC. Okay. All right. With those  
16      changes, I will grant it.

17                  MR. GOFFMAN: I will next turn to  
18      the motion for interim use of cash collateral.  
19      As I said, we have reached an agreement with  
20      RCN secured lenders on the use of consensual  
21      use of cash collateral.

22                  This includes an agreement by the  
23      senior secured lenders not only to allow us to  
24      use cash collateral for the debtors here, but  
25      also to allow the continuing use of cash of the

1                   HOT SPOTS PRODUCTION, INC.  
2 nonaffiliate debtors and their agreement not to  
3 propose any assets there as a result of what  
4 would otherwise be across the fall horizon from  
5 the Chapter 11 filings.

6                   The terms are set forth in great  
7 detail in the motion. I won't try to summarize  
8 them all since I won't try to get them wrong.

9                   But the key terms that I think do  
10 need to go on the record are as follows: That  
11 the debtors should only use the cash collateral  
12 for the payment of the costs and expenses  
13 associated with these Chapter 11 cases as  
14 specified on a budget.

15                  The senior secured lenders will  
16 receive replacement liens and all of the  
17 rights, title and interest of the debtors  
18 including after acquired property, which  
19 include all cash contained in any account of  
20 the debtors and the proceeds of all causes of  
21 action, including proceeds and cause of action  
22 arising in Section 544, 545, 547, 548 and 550  
23 of the Bankruptcy Code, but all such liens are  
24 subject to a carve-out of payments, including  
25 fees of professionals in these cases in amounts

1 HOT SPOTS PRODUCTION, INC.

2 agreed to in the order.

3 The debtor shall pay the fee and  
4 expense of the senior secured lenders including  
5 such lenders professionals. The debtor shall  
6 pay interest on any amounts outstanding under  
7 the facility of the nondefault rate, and the  
8 debtor's right to use cash collateral shall  
9 terminate on the earliest to occur of  
10 consummation of a plan agreement of  
11 reorganization in these Chapter 11 cases unless  
12 extended by the administrative agent 45 days  
13 after the petition date if a final cash  
14 collateral order has not been entered by the  
15 Court, or upon written notice to the debtors  
16 after the occurrence and during the continuance  
17 of any of the events described in the motion.

18 With that, your Honor, we would ask  
19 that the Court approve all the order.

20 THE COURT: Okay.

21 MR. DUNNE: Your Honor, I'm not  
22 going to burden the court with the issues that  
23 we have currently pending between the ad hoc  
24 committee and the banks. We hope to resolve a  
25 bunch of them for the final hearing, but for

1                   HOT SPOTS PRODUCTION, INC.  
2   the purposes of today we have no objection to  
3   the entry of the order.

4                   MR. GOODMAN: Your Honor, the bank  
5   has no objection obviously. This is a  
6   consensual order. I just want to clarify one  
7   thing. Mr. Goffman made a reference to the  
8   bank's agreement not to foreclose or take  
9   action with respect to the nondebtors  
10   subsidiary.

11                   I think what he's agreeing to, this  
12   is just for the record, i the credit agreement  
13   and automatic acceleration on any one  
14   bankruptcy filing. And so before the holding  
15   company runs the bankruptcy, we need a waiver,  
16   and the waiver basically said the automatic  
17   feature of the default was waived and that it  
18   wouldn't be any acceleration until or unless  
19   there was a natural vote of the acquired  
20   lenders.

21                   Our expectation is that inasmuch as  
22   we have a prearranged consensual deal here, it  
23   won't be any action taken against the  
24   nondebtors but there is no formal agreement in  
25   any binding sense that we would ever exercise

1 HOT SPOTS PRODUCTION, INC.

2 the realm, your Honor.

3 MR. GOFFMAN: That's fine.

4 THE COURT: Okay. U.S. Trustee.

5 MR. SCHWARTZBERG: My name is Paul  
6 Schwartzberg with the U.S. Trustee's office.

7 As I indicated to counsel prior to  
8 the hearing a few days ago, we do have a  
9 concern regarding the lien on the Chapter 5  
10 recoveries from the interim hearing until final  
11 hearing. Although I know there is an ad hoc  
12 committee, they don't represent all the  
13 unsecured creditors. Although Milbank  
14 represents that committee, there is no  
15 guarantee they are going to represent the  
16 official committee when it gets appointed, so  
17 we feel it is appropriate for the U.S. Trustee  
18 to step up at this point and protect those  
19 rights of the unsecured creditors may want to  
20 put forth at the final hearing.

21 So, at this point, I think it is  
22 inappropriate and premature to allow the  
23 secured creditors to have liens on the recovery  
24 actions.

25 THE COURT: Okay.

1 HOT SPOTS PRODUCTION, INC.

2 MR. SCHWARTZBERG: And, actually,  
3 your Honor, I would like an unusual and  
4 extraordinary circumstance it is not usually  
5 granted in the Southern District.

6 THE COURT: I had the same comment,  
7 particularly in the case where you are going to  
8 get paid in full. I think on an interim basis,  
9 you can seek it at the final hearing but I  
10 think it should be excluded for the interim.

11 MR. GOODMAN: That's fine. What we  
12 will do, we will make it clear that paragraph  
13 is subject to the entry of the final order and  
14 unless that happens, then we will have that.

15 THE COURT: And then I have a  
16 question, this is on Mr. Dunne's wish list, but  
17 one of the events of default on page 17,  
18 paragraph 7(C) is the failure of the debtors to  
19 comply with any covenant or agreement specified  
20 in the loan documents with some exceptions tied  
21 to the commencement of the Chapter 11 case.

22 I, obviously, haven't seen the loan  
23 documents, but particularly when I look at  
24 paragraph 8, which seems, although it is not  
25 clear to me, maybe you need to clarify this,

1                   HOT SPOTS PRODUCTION, INC.  
2   if, in fact, there is a breach of the order,  
3   the secured lenders have on five days notice  
4   the right to foreclose on their collateral.

5                   I'm nervous about putting it in the  
6   event of default that I haven't seen.

7                   Have Skadden and Milbank reviewed  
8   the credit agreement to see that there is not a  
9   risk of getting tripped up between now and the  
10   final hearing on this?

11                  MR. GOFFMAN: We have reviewed it  
12   and we have spent a considerable amount of time  
13   with it. It was a lot of give and take and  
14   back and forth in the negotiations, and I  
15   think --

16                  THE COURT: It is an easy shorting  
17   of it. If there are things in there that you  
18   would otherwise be putting in as a specific  
19   event of default but sometimes credit  
20   agreements get out of --

21                  MR. GOFFMAN: There were certain  
22   items where we thought there have been  
23   instances over the last few months where we  
24   identified that we might trip up a financial  
25   covenant. We have gotten waivers on those.

1 HOT SPOTS PRODUCTION, INC.

2 To the best of our knowledge, we  
3 have identified all of the potential covenant  
4 breaches that could arise over the next 20 days  
5 and have dealt with them.

6 MR. GOODMAN: My understanding, your  
7 Honor, is that this was meant to be a shorthand  
8 way of putting into an order other protections  
9 that we might have. We are going to go on a  
10 stand alone basis just to put in.

11 When we negotiated talk about some  
12 of the covenants, clearly financial covenants  
13 and did try to incorporate to the extent any  
14 updates need to occur, that updating in the way  
15 in which the order was granted so our  
16 expectation was that this was livable and fit  
17 within the parameters of what the budget and  
18 what business had anticipated and, you know, is  
19 not meant to create a surprise. Obviously,  
20 they are covenants.

21 MR. GOFFMAN: One of the reasons we  
22 do have a five-day period is if we all got  
23 surprised, if we missed something and it turned  
24 out there was a breach of a covenant and it  
25 appeared that we could work it out quickly

1 HOT SPOTS PRODUCTION, INC.

2 enough, it would give us sufficient time to be  
3 back in court and ask for relief on the issue.

4 THE COURT: Maybe I'm reading  
5 paragraph 8 wrong, is the five day period  
6 solely, I mean, the right that the lenders have  
7 after the expiration of the five day period, is  
8 it solely as stated in the fifth line above  
9 that page 19 in order to protect the collection  
10 obligations, or do the banks have the right to  
11 go beyond that and basically collect on  
12 everything? If it is just the added protection  
13 obligation, this is not a big point. It is not  
14 that much concern.

15 MR. GOFFMAN: I don't think it could  
16 apply.

17 THE COURT: Could it apply to all  
18 435 million?

19 MR. GOFFMAN: I don't think it was  
20 intended to apply beyond adequate protection  
21 obligations.

22 MR. GOODMAN: I think it applies to  
23 everything, your Honor, including as against  
24 the nondebtors. Again, there is no stay or  
25 injunction with respect --

1 HOT SPOTS PRODUCTION, INC.

2 THE COURT: As against the  
3 nondebtors, that's not really my focus.

4 MR. GOODMAN: And so as a debtor as,  
5 as practical matter, it is just the added  
6 protection obligations because I'm not quite  
7 sure of this.

8 THE COURT: I guess you don't have a  
9 lien on the stock?

10 MR. GOODMAN: We do have a lien on  
11 some stock, yes.

12 THE COURT: But not the parent  
13 company stock?

14 MR. GOODMAN: Not stock that is  
15 ultimately held a by third-party in effect. We  
16 do have lower tier.

17 THE COURT: That's what I meant.

18 MR. GOFFMAN: The parent owns other  
19 subsidiaries so you would force us to get  
20 back.

21 THE COURT: If you trip over a  
22 covenant, maybe I be have more receptive for a  
23 motion for an injunctive than I might normally  
24 be.

25 MR. GOFFMAN: And that was always

1 HOT SPOTS PRODUCTION, INC.

2 our view; that we thought we had covered all  
3 the covenants. In the unlikely event something  
4 came up based upon our experience so far, we  
5 thought we would work it out; and if we didn't  
6 work it out, we thought it gave sufficient time  
7 to come and seek an injunction.

8 THE COURT: That's fine.

9 MR. GOODMAN: The way we structured  
10 this, your Honor, is similar to a dip where you  
11 have your covenants and you have your  
12 remedies. You have your default and your  
13 notice period, even though it is not new money,  
14 it is money. So it is intended to work the  
15 same way.

16 Next I have a motion for an interim  
17 filing order establishing notification  
18 procedures or trading and equity interest, and  
19 before I walk through it, I would like to  
20 introduce my partner, Max Miller.

21 Mr. Miller is a partner in our tax  
22 group. He has been working ostensibly on the  
23 RCN case, is fully versed on the tax and LCN  
24 issues here and I will try to present this, but  
25 to the extent there are more technical

1 HOT SPOTS PRODUCTION, INC.

2 questions you Honor might have, Mr. Miller is  
3 here to answer them.

4 The purpose of this motion is to set  
5 up a procedure that will help preserve very  
6 valuable assets of the debtors estates, the net  
7 operating losses.

8 The restrictions on trading and the  
9 procedural mechanisms we are seeking here are  
10 necessary to prevent the debtors from  
11 potentially undergoing an ownership change for  
12 U.S. federal income tax purposes outside of a  
13 confirmed Chapter 11 plan.

14 The debtors approach is that if we  
15 undergo an ownership change pursuant to a  
16 Chapter 11 plan, we will be able to preserve  
17 the vast amount of our net operating loss  
18 carried forward and our other tax benefits.

19 Currently, we estimate that we have  
20 over \$2.4 billion of net operating losses and a  
21 substantial amount of losses with respect to  
22 current assets.

23 We recognize that under any plan, a  
24 substantial amount of those net operating  
25 losses will be lost as a result of cancellation

1                   HOT SPOTS PRODUCTION, INC.  
2 of indebtedness. Nevertheless, it is our  
3 expectation that at the, during all the  
4 calculations, conclusion of these cases, it is  
5 still going to be over a billion net operating  
6 losses.

7                   Those net operating losses, if  
8 properly preserved, even at a 35 percent  
9 corporate tax rate, represents \$350 million in  
10 value that will be available to the reorganized  
11 entity. That's an important asset that we need  
12 to try to preserve.

13                  THE COURT: Or potential value.

14                  MR. GOFFMAN: Potential value.

15                  What we are trying to do is set up a  
16 mechanism that's as least restrictive as  
17 possible and really what we are asking for is a  
18 notice procedure. We are not asking for an any  
19 restrictions on debt trading. We are simply  
20 asking for a notice procedure so that we can  
21 know before equity trades hands what  
22 tradespeople are seeking so that we can make a  
23 determination if the trades that are being  
24 sought could potentially force us to lose the  
25 NOLs.

1 HOT SPOTS PRODUCTION, INC.

2 Specifically, abandonment trading or  
3 transfer of RCN stock could adversely affect  
4 RCNs losses if too many 5 percent or greater  
5 blocks of equity interests are created or too  
6 many shares are added to or sold from such  
7 blocks such that altogether with previous  
8 trading by 5 percent shareholders during the  
9 preceding three-year period an ownership change  
10 within the meaning of Section 382 of the  
11 Internal Revenue code is triggered prior to  
12 consummation and outside the context of the  
13 Chapter 11 plan.

14 Again, it's one thing if the change  
15 happens pursuant to a plan. It is another  
16 thing if it happens prior to.

17 THE COURT: You are comfortable that  
18 this hasn't happened already?

19 MR. GOFFMAN: We are comfortable  
20 that this hasn't happened already. We have  
21 been monitoring all the trades for quite some  
22 period of time.

23 Our capital structure, and I will go  
24 through it briefly among the equity, there is a  
25 public equity and then there were two primary

1                   HOT SPOTS PRODUCTION, INC.  
2       preferred groupings. There was preferred  
3       shares held by Hicks Muses and then there were  
4       preferred shares held by Vulcan Investments  
5       which was a pull-out investment vehicle. Those  
6       were our only two preferred shareholders.

7                   In December of last year, Vulcan, I  
8       believe, transferred a portion of its shares to  
9       Wells Fargo for a couple of million dollars for  
10      tax purposes but those are only two entities.  
11      So we have been able to track that and we have  
12      had people that have done nothing but monitor.  
13      We believe that we need to hold on to that.

14                  A significant majority of the common  
15      stock of RCN will be distributed to creditors  
16      holding the outstanding notes to RCN in  
17      exchange for the debt under the plan.

18                  Accordingly, upon consummation of  
19      the plan, there will be an ownership change for  
20      purposes of Section 382 because the percentage  
21      of RCN stock that will be owned by holders of  
22      claim will have increased by more than 50  
23      percent over the lowest percentage of the stock  
24      of RCN held by such persons during the three  
25      year testing period.

1 HOT SPOTS PRODUCTION, INC.

2 As described in the motion, we  
3 intend to avail ourselves when that happens of  
4 one of the two tax bankruptcy exceptions that  
5 exist, 382(L)(5) or 382(L)(6).

6 Without trying to put on the record  
7 the differences between the two, essentially,  
8 382(L)(5) and 382(L)(6) allow us to retain the  
9 NOLs in different amounts and use them in  
10 different fashions, but the key is to make sure  
11 that in both circumstances that we don't blow  
12 and lose the NOLs prior to consummation of the  
13 plan.

14 The relief we are requesting is  
15 procedural. It is narrowly tailored to meet  
16 our needs because it is not borrowing all the  
17 trading in RCN stock. We are only seeking to  
18 establish procedures that let us monitor types  
19 of stock trading that poses serious risks to us  
20 under Section 382 so that if a trade is  
21 proposed that could cause us to lose the NOLs,  
22 we have the ability to come back to the court  
23 and seek an injunction at that time.

24 The procedures that we referenced  
25 will permit most stock trading to continue

1                   HOT SPOTS PRODUCTION, INC.  
2   subject only to the applicable securities or  
3   bankruptcy and other laws.

4                   Unless we get interim immediate  
5   relief today, your Honor, it is possible that  
6   by the time we return to this court, trades  
7   could occur that would have caused us to lose  
8   the NOLs by the time we come back here. That's  
9   why we are asking for the relief now.

10                  In many of these case, this type of  
11   relief is sought on a first day basis without  
12   notice, but we thought it was more appropriate  
13   since there wasn't, since we weren't seeking  
14   first day hearings on any of the other motions  
15   that we did this and that's why we have done  
16   this in this fashion.

17                  THE COURT: There really was no note  
18   to the shareholders?

19                  MR. GOFFMAN: You are right, your  
20   Honor. Let me address that for one second  
21   because we did get the Wells Fargo objection,  
22   and the motion itself was not served upon Wells  
23   Fargo, but I take extreme issue with the notion  
24   that Wells Fargo is not a party to these  
25   proceeding; that they didn't know what was

1 HOT SPOTS PRODUCTION, INC.  
2 going on.

3 THE COURT: They filed an  
4 objection. They obviously and --

5 MR. GOFFMAN: It is more than that.  
6 For the last two months, your Honor, we have  
7 been negotiating for new financing. We have  
8 had narrowed it down to seven parties and then  
9 to four parties. Within those four parties was  
10 Wells Fargo.

11 Wells Fargo, pursuant to a  
12 confidentiality agreement with the company, has  
13 been negotiating and meeting with the company  
14 with Mr. Dubel and management, with Blackstone  
15 and through their counsel, other counsel, I  
16 will notice with Skadden for the last two  
17 months.

18 They know everything about the  
19 company. They know everything about the  
20 restructuring. They know everything about the  
21 net operating losses. They knew about the fact  
22 that we were going to be proceeding in this  
23 fashion to get this type of motion to preserve  
24 the NOLs.

25 The question came up in their due

1                   HOT SPOTS PRODUCTION, INC.  
2   diligence as to whether or not we were going to  
3   try to get this type of motion, because if they  
4   were going to be the successful lender here,  
5   they certainly wanted to make sure that the NOL  
6   would be preserved.

7                   So this notion that Wells Fargo  
8   didn't know about this, they had no notice,  
9   that they were surprised by this, I will accept  
10   maybe Mr. Goodman didn't know about it and  
11   maybe his clients didn't tell him about it.  
12   But Wells Fargo has been talking to us, meeting  
13   with us and knowing everything about what's  
14   been going on here, including what was going to  
15   be brought in front of this court for the last  
16   two months. So I don't accept the fact that  
17   this is news to Wells Fargo.

18                  The restrictions we are seeking here  
19   are narrow. They are procedural in nature.  
20   They are not changing the substantive rights  
21   and they are necessary to preserve a very  
22   valuable asset of this estate.

23                  THE COURT: Mr. Goodman.

24                  MR. GOODMAN: Your Honor, thank you  
25   for hearing from us.

1 HOT SPOTS PRODUCTION, INC.

2 I would just like to correct one  
3 statement made by Mr. Goffman. My statement  
4 was that we were not served with the  
5 pleadings.

6 Insofar as what my client knows or  
7 does not know about the restructuring process,  
8 the officers that I have spoken to about the  
9 matter told me that they were surprised about  
10 the bankruptcy. I think they expected a  
11 bankruptcy case. They themselves, the two  
12 officers I spoke to, didn't know anything about  
13 the NOLs.

14 In fact, I advised them yesterday  
15 afternoon when I was retained about the  
16 restrictions on trading with respect to the  
17 NOLs which directly affects Wells Fargo's  
18 rights.

19 We believe that the restrictions on  
20 trading sought by the debtor on an interim  
21 basis are premature. We don't believe that the  
22 debtor has demonstrated that there is any  
23 evidence that a change in control is eminent or  
24 about to occur or that one has not already  
25 incurred.

1 HOT SPOTS PRODUCTION, INC.

2 In the meantime, what this process  
3 does is for a 30 day period restricts my  
4 client's ability to transfer his property,  
5 which are 225,000 shares of seriously preferred  
6 stock. We don't believe that the debtor has  
7 proved irreparable harm, likelihood of success  
8 on the merits or that the balance of the  
9 equities are in favor.

10 There was no notice to our client of  
11 these, of the interim relief sought. I think  
12 it is unusual to get this type of relief as a  
13 first day order.

14 I would note that under the Federal  
15 Rules of Civil Procedures there is, first of  
16 all, there is aspects of injunctive relief in  
17 this order because what it does is it requires  
18 us, if we want to dispose or sell of our stock,  
19 to notify the debtors and the debtors have  
20 really a time period to object.

21 I think the time period -- excuse me  
22 if I don't know the exact dates. Again, I was  
23 just retained. There are several motions that  
24 I had reviewed in a short time but I think it  
25 holds up the sale for a 30 day period.

1 HOT SPOTS PRODUCTION, INC.

2 Now, as I was alluding to earlier,  
3 if you are asking for a TRO, or temporary  
4 restraining order, under the Federal Rules that  
5 lasts only 10 days.

6 Here without notice we are being  
7 restrained up until 30 days, and then at some  
8 point they will, hopefully, set this interim  
9 order for a final order and final hearing where  
10 these issues can be vetted out with more time,  
11 more due process and more notice.

12 So, at this point, your Honor, I  
13 would ask this court not to the approve these  
14 restrictions. I think they are onerous. I  
15 think they are premature and I think it is  
16 highly unusual to have these types of  
17 restrictions implemented on a first day basis  
18 without any notice.

19 THE COURT: As a practical matter,  
20 how soon can you notify the shareholders of  
21 this?

22 MR. GOFFMAN: Your Honor, I assume  
23 we can send out --

24 THE COURT: If I schedule the  
25 hearing on this like June, within 10 days,

1                   HOT SPOTS PRODUCTION, INC.  
2   would you be able to give them notice? You  
3   probably won't, but maybe I don't know your  
4   gamut of shareholders.

5                   MR. GOFFMAN: The issue, your Honor,  
6   we certainly know very large holders and we can  
7   certainly notify them very quickly.

8                   But as far as the public where the  
9   stock is held in the street name, you have to  
10  go through a process in order to make sure they  
11  get the notice and there is no way, as a  
12  practical matter, if we did that, they would  
13  actually get the notice in time to actually be  
14  heard. I would be happy to deal with this on  
15  the 22nd, your Honor.

16                  THE COURT: Okay. The objection  
17  also says that there is a difference between  
18  the motion definition of substantial  
19  shareholders and the actual people who you  
20  really have to protect against and the Internal  
21  Revenue code.

22                  Is that true? I mean, is there any  
23  meaningful difference there?

24                  MR. GOFFMAN: Mr. Miller.

25                  MR. MILLER: The limitations in the

1           HOT SPOTS PRODUCTION, INC.  
2 motion are set to be slightly below five below  
3 the share holdings of common stock and are set  
4 to cover any holder of preferred stock of the  
5 limitations in the Internal Revenue Code for  
6 anyone who owns 5 percent of the equity of the  
7 company.

8           So what the company is trying to  
9 find out is the -- what the company is trying  
10 to do is give itself a little bit of margin for  
11 error with respect to understanding.

12           THE COURT: Preferred because they  
13 are first on the food chain?

14           MR. MILLER: Yes.

15           THE COURT: You are including?

16           MR. MILLER: It is always more  
17 complicated for RCN than other economies  
18 because an ownership change is measured by  
19 percentage of the value of the company that you  
20 own, and when there are four classes of stock,  
21 it is complicated to figure out what value a  
22 particular number of shares of a particular  
23 class has as a percentage of the total.

24           THE COURT: And why does that have  
25 to be 30 days?

1 HOT SPOTS PRODUCTION, INC.

2 MR. MILLER: 30 days is a relatively  
3 common amount of time that you see in these  
4 kinds of orders.

5 THE COURT: What, maybe Mr. Dunne  
6 knows this, is the new form of proposed order  
7 that the debt trader associations is  
8 proposing? Do you know how many days they have  
9 in it? You don't.

10 MR. DUNNE: I thought it was 15.

11 THE COURT: I thought it was 15,  
12 too. Would 15 pose that much of a burden,  
13 especially if you are taking this?

14 MR. MILLER: I think 15 would be  
15 more of a burden but I think the company would  
16 develop --

17 THE COURT: This is an unusual  
18 context in that it implicates both 362 and  
19 injunctive relief.

20 Based on potentially if someone blew  
21 the NOL that could be a violation of the stay.  
22 So I think given that fact and the difficulty  
23 of getting notice as proposed to the  
24 shareholder, I think having this be effective  
25 through June 22nd is appropriate.

1 HOT SPOTS PRODUCTION, INC.

2 It seems to me it is, indeed, a  
3 valuable asset even given the ownership change  
4 under the plan as entailed in the motion, and  
5 with the change to 15 days, it does appear to  
6 be narrowly tailored to preserve the debtors  
7 rights.

8 It seems to me that if there is  
9 going to be any substantial trade here, it is  
10 not going to happen and 15 days won't cause it  
11 to happen, given where the debtors are at this  
12 point. So I'll approve it without change.

13 MR. GOFFMAN: Thank you, your  
14 Honor. That brings us to our retention  
15 application.

16 The first one, your Honor, is our  
17 application to retain Bankruptcy Services LLC  
18 as claims and noticing agent.

19 BSI, we would seek to retain them as  
20 claims and noticing agent for the debtors to do  
21 a variety of things, mail notice to the estates  
22 creditors and partners of interest, provide  
23 computerized claims and database service and  
24 provide expertise, consultation, assistance in  
25 the claims processing and other administration

1 HOT SPOTS PRODUCTION, INC.  
2 information with respect to the debtors  
3 bankruptcy case.

4 THE COURT: Does anyone have  
5 anything to say on this motion? I reviewed it  
6 and I will approve that.

7 MR. GOFFMAN: Thank you, your  
8 Honor. The second one is also a fairly  
9 standard one, debtors retention application to  
10 retain Innisfree M&A Incorporated as noticing,  
11 voting and information agent for the debtors.

12 Again, we would seek to engage  
13 Innisfree to disseminate certain notices to  
14 holders of RCN senior notes and stock to  
15 provide assistance to the debtors and their  
16 advisors in connection with all aspects of  
17 voting, timing issues, distribution,  
18 solicitation and the like. It is again a  
19 fairly standard motion.

20 THE COURT: Does anyone have any  
21 comments on this one? I will approve this one,  
22 also.

23 MR. GOFFMAN: Next I get to the  
24 debtors retention applications to retain  
25 Skadden Arps.

1 HOT SPOTS PRODUCTION, INC.

2 Skadden Arps has been counsel to the  
3 debtors for several years. We have filed the  
4 appropriate applications. Our retention for  
5 the debtors goes back to as far as 1977,  
6 September of 1977.

7 In my retention affidavit, we  
8 disclose all connections with the debtors and  
9 all other parties in interest. And I believe  
10 we have shown, I believe I said 1977, 1997,  
11 where we started representing the debtors.

12 In my retention affidavit we  
13 disclosed all possible connections to the  
14 debtors, creditors, holders and other parties  
15 of interest.

16 When we served the application, the  
17 only party that expressed a concern was the  
18 U.S. Trustee, and the U.S. Trustee expressed  
19 the following concern. It said that with  
20 respect two entities that were identified in my  
21 retention affidavit, what I will call Deutsche  
22 Bank and JP Morgan Chase, there was a question  
23 as to whether or not we should bring in  
24 conflict counsel to deal with them.

25 And what the U.S. Trustee said at

## HOT SPOTS PRODUCTION, INC.

the time was in my affidavit as part of full disclosure, rather than simply say that limit my disclosure to the specific JP Morgan Bank entity that provided the loan and a specific Deutsche Bank entity that's providing the loan, we wanted to make full disclosure, and so I provided information about all relationships we had with all the JP Morgan entities and all the Deutsche Bank entities and the U.S. Trustee was concerned that we had accepted the JP Morgan entities and the Deutsche Bank entities each represented more than one percent of the firms revenue in the year 2003, and possibly we might need conflicts counsel.

Without arguing with the U.S. Trustee whether or not this so-called one percent rule really is applicable, really makes sense, what we have done is we met with the U.S. Trustee. We've gone back and we have scrubbed the numbers and it's very clear to us, and I will be filing a further affidavit, that the JP Morgan Bank that provided the loan, to RCN, is not a client of our firm that provided greater than one percent of revenue to us in

1                   HOT SPOTS PRODUCTION, INC.  
2       2003 and the Deutsche Bank entity that is  
3       providing the loan commitment to us to RCN is  
4       also not a client of the firm that provided  
5       greater than one percent of revenue.

6                   Although I don't have a sign-off  
7       certainly from the U.S. Trustee, it is our hope  
8       that by the time we get to the final hearing on  
9       this, that based upon that analysis, that the  
10      U.S. Trustee will agree with our concept.

11                  We had good discussions yesterday  
12      and I'm hopeful it will go in that direction,  
13      so we would ask for the retention on an interim  
14      basis in that fashion.

15                  I will be filing a follow-up  
16      affidavit that will clarify those two points  
17      and, hopefully, it will be fully consensual by  
18      the time we get to the final hearing.

19                  THE COURT:   Okay.

20                  MR. SCHWARTZBERG:   As Mr. Goffman  
21      said, it is correct we have concerns regarding  
22      the retention of Skadden. We are waiting  
23      further disclosure. I don't know if we  
24      formulated a position whether they can unbundle  
25      the entities and separate percentage out or

1                   HOT SPOTS PRODUCTION, INC.  
2 not. We will wait for disclosure and probably  
3 further discussions with Skadden.

4                   THE COURT: I'm prepared to approve  
5 this on an interim basis based on the record as  
6 it stands before me. I'm sure that Skadden  
7 will be sensitive if more of a conflict appears  
8 or arises, but I'm prepared to approve this,  
9 and I guess we will have the final hearing,  
10 only if there is an objection, on the 22nd. So  
11 I guess objection should be in two or three  
12 days before then.

13                  MR. GOFFMAN: Thank you, your  
14 Honor.

15                  THE COURT: You are going to submit  
16 an order.

17                  MR. GOFFMAN: Yes, we will.

18                  THE COURT: Either way.

19                  MR. GOFFMAN: We will submit an  
20 order. Next we turn to the debtors application  
21 to retain Swindler Berlin as special regulatory  
22 counsel. Swindler has been the debtors primary  
23 regulatory counsel for many years. They  
24 regularly advise the company on all regulatory  
25 issues regarding the FCC issues, state and

1 HOT SPOTS PRODUCTION, INC.

2 local regulatory issues.

3 They have been working with the  
4 company throughout this entire process.  
5 Obviously everything we are doing in this  
6 restructuring is interrelated with the  
7 regulatory process.

8 Their involvement in an on going  
9 forward basis is important and, therefore, they  
10 have filed the appropriate applications and,  
11 therefore, we would ask that they also be  
12 retained on an interim basis. No objections  
13 have been filed.

14 THE COURT: Okay. I will approve  
15 Swidler Berlin's retention, also on an interim  
16 basis. For purposes of the notice for these  
17 motions or applications, the objections should  
18 be submitted by 4 p.m. on the 18th of June.

19 MR. GOFFMAN: Thank you, your  
20 Honor. Next I turn to the debtors application  
21 to retain Price Waterhouse Coopers as auditors  
22 for the debtors.

23 As with any other major company, the  
24 debtors need auditors. Price Waterhouse  
25 Coopers have been the debtors auditors for the

1                   HOT SPOTS PRODUCTION, INC.  
2 past seven years. They are familiar with the  
3 debtors business and financial affairs. They  
4 are familiar with Chapter 11 cases and how to  
5 proceed on the auditing process during the  
6 Chapter 11 cases.

7                   They have filed all the appropriate  
8 applications and affidavit. They have also  
9 agreed to charge 80 percent of their standard  
10 rates for the upcoming order of the quarterly  
11 reviewed services, and based upon the  
12 application and no objection being filed, we  
13 would ask that your Honor sign the order.

14                  THE COURT: This is an hourly rate  
15 arrangement?

16                  MR. GOFFMAN: Yes, your Honor.

17                  THE COURT: So there would be 330  
18 and 331?

19                  MR. GOFFMAN: Yes, your Honor.

20                  THE COURT: Hearing no objections, I  
21 will approve this on an interim basis with the  
22 same objection deadline and hearing date. If  
23 there is an objection.

24                  MR. GOFFMAN: Next I turn to the  
25 debtors application for retaining the

1 HOT SPOTS PRODUCTION, INC.

2 Blackstone Group as financial advisors.

3 Blackstone was retained by the  
4 debtors in these cases in March of this year.  
5 Since that time, Blackstone has developed a  
6 deep understanding of the debtors financial and  
7 business operations.

8 Before -- let me talk a little bit  
9 about what Blackstone has done since they have  
10 been involved in this case.

11 Blackstone has done an outstanding  
12 job. From the day that they were retained in  
13 these cases, Tim Coleman and his entire team  
14 have worked nonstop day after day around the  
15 clock to help make this restructuring work.

16 The work that the Blackstone Group,  
17 along with the work of the company led by Mr.  
18 Dubel, Mr. Horvat, Ms. Royster has been  
19 exceptional.

20 When Blackstone and Mr. Dubel first  
21 came in, we were truly at a crossroads. We  
22 were at a difficult point in the case. Our  
23 relationships with our senior secured lenders  
24 and noteholders were not very good, and it was  
25 through their efforts that we were able to turn

1                   HOT SPOTS PRODUCTION, INC.  
2   a very difficult situation into a very good  
3   one, a very successful consensual  
4   restructuring. They worked round the clock and  
5   they have done a remarkable job.

6                   Blackstone is an extremely qualified  
7   organization. They are one of the preeminent  
8   financial restructuring advisors in the  
9   industry. They have worked on many, if not  
10   most of the major Chapter 11 cases in this  
11   country.

12                  The Blackstone compensation  
13   basically is as follows: They will receive a  
14   monthly advisory fee of \$200,000 a month. They  
15   receive a restructuring fee of somewhere  
16   between 7 to \$8 million subject to resumption  
17   of between zero to 50 percent of any  
18   transaction fee as defined in the engagement  
19   agreement depending upon when the transactions  
20   is completed.

21                  Upon the consummation of a  
22   transaction as defined, they may also receive a  
23   transaction fee payable in cash out of the  
24   proceeds equal to 2 percent of the  
25   consideration but there's an overall cap on the

1                   HOT SPOTS PRODUCTION, INC.  
2   total fees. The sum of the transaction fee  
3   plus the restructuring fee cannot exceed  
4   10-and-a-half million dollars.

5                   THE COURT: Is the transaction, does  
6   that include a plan or is it some other type of  
7   transaction like an M & A transaction? It  
8   wasn't that clear to me in their letter.

9                   MR. GOFFMAN: Bear with me one  
10   second. Let me double check.

11                  THE COURT: I can cut it short. It  
12   strikes me that in large measure to regularize  
13   these types of retentions and address the  
14   concerns of the U.S. Trustee, as well as the  
15   Court's, that what's developed in the Southern  
16   District is a process whereby there is an  
17   interim retention for someone that seeks to be  
18   retained and compensated under Section 328,  
19   subject to pretty wide notice and a longer  
20   period for the final hearing, and consistent  
21   with that, I think that pending that final  
22   hearing, the compensation should be subject to  
23   330 or 331, particularly in a case like this.

24                  Are you going to confirm a plan  
25   before July 30?

1 HOT SPOTS PRODUCTION, INC.

2 MR. GOFFMAN: No, your Honor.

3 THE COURT: So I don't think that  
4 they are at risk, in other words, on what they  
5 have negotiated with the company so that they  
6 should be prepared to answer that question I  
7 guess at the final hearing.

8 But I think the order should just  
9 say in paragraph 4 prior to the entry of an  
10 order approving the application on the final  
11 basis and then continue on all compensation,  
12 reimbursement, expenses shall be paid to  
13 Blackstone and approved by the Court in  
14 accordance with the requirements of Sections  
15 330 and 331 and then paragraph 5 will be  
16 deleted from the interim order, which is the  
17 paragraph that says if subject to the limited  
18 standard of Section 328. The notice shall make  
19 it clear that they are seeking approval of the  
20 fee arrangement under 328, except for the  
21 conduct of the U.S. Trustee.

22 MR. GOFFMAN: We will make that  
23 clear, your Honor, and the only reason I went  
24 into great detail, I was aware that this was  
25 the process and that we were going to proceed

1 HOT SPOTS PRODUCTION, INC.  
2 in this fashion.

3 I didn't have the opportunity at the  
4 beginning of this case to talk about  
5 Blackstone's role, and even though they have  
6 only been involved for a relatively short  
7 period of time, I thought it was important the  
8 Court was aware that their efforts have paid  
9 huge dividends.

10 THE COURT: You are still using  
11 them?

12 MR. GOFFMAN: Absolutely.

13 THE COURT: I know that Wells Fargo  
14 objected to this motion, but I think that it is  
15 more appropriate, given how I just ruled for  
16 that objection, to be considered if it is not  
17 resolved beforehand at this final hearing.  
18 Although I do want to make it clear for the  
19 record, I think that although I can conceive of  
20 situations where this is not the cases,  
21 generally I don't think it is fair for a  
22 financial advisor to be deprived of a fee that  
23 it earns simply because a substantial portion,  
24 perhaps the majority of its work, was done  
25 prepetition, and I'm just not that sympathetic

1 HOT SPOTS PRODUCTION, INC.  
2 to that type of objection.

3 But here it appears that they are  
4 also working considerably post-petition, so the  
5 point may be mute anyway, but I think with that  
6 change, I will approve it. Mr. Dunne wants to  
7 get up and say something.

8 MR. DUNNE: Your Honor, I think with  
9 that change, we are fine as well. Our  
10 comments, let me just say this for the record,  
11 the Ad Hoc Committee will reiterate some of  
12 what Mr. Goffman said, that we do believe that  
13 Blackstone appearing on the scene and Alix  
14 Partners was a breath of fresh air. They have  
15 our consensus and cooperation and my client  
16 wants to see them appropriately and fairly  
17 compensated for that.

18 They are expecting to have a  
19 dialogue on the terms of success fees and  
20 aggregate compensation for that work and,  
21 hopefully, before we return to this court, we  
22 will have an agreement with all the parties  
23 that we could present up to the court.

24 THE COURT: Okay. Again, that's the  
25 reason for the longer notice and the like

1 HOT SPOTS PRODUCTION, INC.

2 since, given the wording of Section 328, you  
3 have to have the dialogue now as opposed to at  
4 the end of the case.

5 MR. GOODMAN: Your Honor, speaking  
6 for the banks, there is a continuing need in  
7 this case, despite all of the work that  
8 Blackstone and I would even say J. Alix did  
9 together, to get us to the point where we are  
10 today and it was quite a bit of very fine work  
11 for the reasons that Mr. Goffman has given,.

12 From the bank's point of view, there  
13 is very much a reason to keep them active in  
14 the case because there is a difference, as your  
15 Honor knows, between agreement and a closing,  
16 and in between the agreement and a closing, we  
17 still have a company that is a very young  
18 company and a very competitive business that  
19 still needs a lot of hands on care and feeding,  
20 and the lenders at least are looking to both  
21 Blackstone and J. Alix to continue to provide  
22 substantial guidance when we get to closing,  
23 your Honor. Thank you.

24 THE COURT: Okay.

25 MR. GOFFMAN: Now I turn to our

1 HOT SPOTS PRODUCTION, INC.

2 final application of the day, which is our  
3 application to retain AP Services which is an  
4 affiliate of Alix Partners. Again, it's being  
5 sought on an interim basis only.

6 AP Services's intent is to provide  
7 John Dubel as a representative to the debtors  
8 to serve the debtors president and chief  
9 executive officer. It is providing Mr. Horvat  
10 to serve as chief restructuring officer. It is  
11 providing whatever other persons are necessary  
12 to the debtors for the debtors operations and  
13 to complete these restructuring procedures.  
14 They filed their appropriate application.

15 Their services up-to-date and  
16 throughout this case are without question  
17 indispensable. Without their efforts, we  
18 wouldn't be where we are today. Without their  
19 continuing efforts, we will not get to the  
20 finish line.

21 This is as crucial a motion in our  
22 application as we sought today. It is on an  
23 interim basis and we reserve the reservation of  
24 rights and we would ask, with all of that  
25 record, that your Honor enter the order.

1 HOT SPOTS PRODUCTION, INC.

2 THE COURT: As I read the draft  
3 order, which actually is a little different  
4 than the application, you don't have the same  
5 type of need to resolve the success fee upfront  
6 that you would have until we modify the order  
7 for Blackstone. So I think this is really a  
8 fairly easy application to grant. So I will  
9 approve it.

10 MR. GOFFMAN: Very good. Thank you,  
11 your Honor. With that, I think we are done.  
12 All we have left is to consult with each other  
13 to pick the dates for the omnibus hearings.

14 THE COURT: Okay. And then you can  
15 hand up, if you have the disks, or you can  
16 e-mail them down to me.

17 MR. GOFFMAN: We have the disks.  
18  
19  
20  
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25

1 HOT SPOTS PRODUCTION, INC.

2 C E R T I F I C A T E

3  
4 I, MICHAEL WILLIAMS, a Certified  
5 Shorthand Reporter and Notary Public of the  
6 State of New York do hereby certify that the  
7 foregoing is a true and accurate transcript of  
8 the within proceedings, to the best of my  
9 ability.

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MICHAEL WILLIAMS, CSR