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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11  
: RCN CORPORATION, et al., : Case No. 04-13638 (RDD)  
: Debtors. : (Jointly Administered)  
: :  
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**MOTION TO AMEND ORDER UNDER 11 U.S.C. §§ 363, 1107 AND 1108 (I) AUTHORIZING THE DEBTORS' CONTINUED USE OF EXISTING BANK ACCOUNT AND CASH MANAGEMENT SYSTEM AND (II) AUTHORIZING INTERCOMPANY TRANSACTIONS PREVIOUSLY ENTERED IN THE CASES OF RCN CORPORATION, ET AL.**

RCN Cable TV of Chicago, Inc. (the "Affiliate Debtor"), a debtor and debtor-in-possession, together with RCN Corporation ("RCN"), TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC and Hot Spots Productions, Inc., the debtors and debtors-in-possession in case number 04-13638 (collectively, the "Initial Debtors," and together with the Affiliate Debtor, the "RCN Debtors"), hereby move for entry of an order amending the Order Under 11 U.S.C. §§ 363, 1107 and 1108 (i)

Authorizing the Debtors' Continued Use of the Existing Bank Account and Cash Management System, and (ii) Authorizing Intercompany Transactions, entered June 3, 2004, in the chapter 11 case of RCN Corporation, Case No. 04-13638 (RDD) (Docket No. 11) (the "Original Order"). In support of this motion, the RCN Debtors rely on the Second Affidavit of Anthony M. Horvat Pursuant to Local Bankruptcy Rule 1007-2 and in Support of Chapter 11 Petition and First-Day Motions (the "Horvat Affidavit").<sup>1</sup> In further support of this motion, the RCN Debtors respectfully represent as follows:

## **BACKGROUND**

### **A. The Chapter 11 Filing**

1. On August 5, 2004 (the "Petition Date"), the Affiliate Debtor filed a voluntary petition in this Court for reorganization relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Previously, on May 27, 2004, the Initial Debtors each filed voluntary petitions in this Court for reorganization relief under the Bankruptcy Code. The cases of the Initial Debtors are jointly administered under case number 04-13638 (RDD), and the Affiliate Debtor has requested that this case also be administered under the same case number for procedural purposes only. The Affiliate Debtor continues to manage and operate its

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<sup>1</sup> The RCN Debtors incorporate by reference the facts set forth in the Horvat Affidavit. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Horvat Affidavit.

business as debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

2. No trustee, examiner or official committee has been appointed in this chapter 11 case. An official committee of unsecured creditors, however, was appointed in the cases of the Initial Debtors on June 10, 2004.

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 363, 1107 and 1108.

**B. Business Operations**

5. RCN Corporation ("RCN") is a holding company for certain direct and indirect subsidiaries (collectively, the "RCN Companies") that deliver bundled communications services, including local and long distance telephone, video programming (including digital cable television and high definition television) and data services (including cable modem, high speed Internet access and dial-up Internet) to customers over their predominantly owned network. One of RCN's wholly owned operating subsidiaries is RCN Telecom Services of Illinois, LLC ("RCN Illinois"), which is not currently a debtor in this or any other cases. RCN Chicago, the Debtor, is a wholly owned subsidiary of RCN Illinois.

6. The RCN Companies also entered into strategic joint venture relationships to achieve early penetration of certain telecommunications services markets to reduce their cost of entry. In particular, the RCN Companies hold a 50% equity interest in Starpower Communications, LLC, which provides telecommunications services in the Washington, D.C. metropolitan area, including parts of Virginia and Maryland, under the brand name "Starpower." The RCN Companies also hold an approximate 49% equity interest in Megacable, S.A. de C.V., Megacable Telecomunicaciones, S.A. de C.V. and MCM Holdings, S.A. de C.V. (collectively, the "Megacable Entities"), the largest cable television provider in Mexico and owner of 27 wireline cable systems. Starpower Communications, LLC and the Megacable Entities are not currently debtors in these or any other chapter 11 cases.

7. The RCN Companies provide services in Boston and 18 surrounding communities, New York City, the suburbs of Philadelphia, the Lehigh Valley in Pennsylvania, Chicago, San Francisco and several of its suburbs, and two communities in the Los Angeles area.

8. The RCN Companies are telecommunications providers, and for the most part, compete against incumbent service providers. The telecommunications business is highly competitive and requires large capital outlays for network and equipment. Returns on investment depend on the quality, innovation and pricing of the services. The RCN Companies offer cutting edge services at prices that take

into consideration the number and types of services in the bundle a customer purchases. The RCN Companies currently have in excess of one million service connections and employ approximately 2,400 employees and independent contractors. RCN Chicago, however, has no employees.

### **C. Capital Structure and History**

9. RCN was formed on September 30, 1997. Since its inception, the RCN Companies have relied extensively on access to the capital markets to finance the development of a high-speed, high-capacity, fiber-optic broadband network. In addition, the RCN Companies have accessed the capital markets to finance their strategy of expanding into new geographic areas by acquiring existing businesses. Thus, the RCN Companies have financed a significant portion of their growth, including corporate acquisitions and purchases of fixed assets, through access to secured credit facilities and the issuance of debt securities and preferred and common stock.

### **D. Secured Credit Facilities**

10. In June 1999, certain of the RCN Companies (including RCN Chicago), each either as a borrower or guarantor, entered into a \$1 billion senior secured credit facility (the "Senior Credit Facility") with J.P. Morgan Chase Bank ("JPMorgan Chase") as administrative agent and collateral agent and certain other lender parties (collectively the "Senior Lenders"). The Senior Credit Facility is

comprised of a \$250 million seven-year revolving credit facility, a \$250 million seven-year multi-draw term loan facility and a \$500 million eight-year term loan facility, each of which is secured by a senior lien on substantially all of the RCN Companies' assets. The Senior Credit Facility is governed by a single credit agreement dated as of June 3, 1999 (as amended, the "Senior Credit Agreement"). As of April 30, 2004, approximately \$432.5 million was outstanding under the Senior Credit Facility.

11. In June 2003, RCN entered into a \$41.5 million Commercial Term Loan and Credit Agreement (the "Junior Credit Facility") with Evergreen Investment Management Company, LLC and certain of its affiliates (collectively, "Evergreen"). As of April 30, 2004, approximately \$27.5 million was outstanding under the Junior Credit Facility. The Junior Credit Facility is secured by a junior lien on substantially all of the assets of RCN (excluding cash), including the equity of its directly owned subsidiaries (excluding RLH Property Corporation). Pursuant to an intercreditor agreement between the Senior Lenders and Evergreen, the liens securing the Junior Credit Facility are contractually subordinated to the liens securing the Senior Credit Facility.

**E. Senior Unsecured Notes**

12. Between 1997 and 2000, RCN issued the following senior notes: (i) the 10% Senior Notes due October 15, 2007, issued under the Indenture

dated October 17, 1997, as amended, (ii) the 11 1/8% Senior Discount Notes due October 15, 2007, issued under the Indenture dated October 17, 1997, as amended, (iii) the 9.8% Senior Discount Notes due February 15, 2008 issued under the Indenture dated February 6, 1998, as amended, (iv) the 11% Senior Notes due July 1, 2008, issued under the Indenture dated June 24, 1998, as amended, and (v) the 10 1/8% Senior Notes due January 15, 2010, issued under the Indenture dated December 22, 1999, as amended (collectively, the "Senior Notes"). The Senior Notes are unsecured obligations of RCN only. RCN's obligations under the Senior Notes were approximately \$1.1 billion as of March 31, 2004.

**F. Events Leading to Chapter 11 Filings of the Initial Debtors**

13. Due to the confluence of a series of events, including the continued severe slowdown in the telecommunications industry and continued limited access to the capital markets, the RCN Companies revised their growth plan during 2002. Under the revised growth plan, the RCN Companies decided to substantially curtail future capital spending and geographic expansion of their network in all existing markets to focus on customer growth in existing markets and to reduce operating expenses.

14. Despite these and other cost-savings measures, the RCN Companies determined that their projected revenues and available cash-on-hand may be insufficient to meet their working capital, debt service, capital expenditure and

other requirements (including interest payments on Senior Notes) in 2004 and beyond. Accordingly, the RCN Companies began exploring alternatives to refinance or restructure their indebtedness.

15. In October 2003, the RCN Companies began preliminary discussions with an ad hoc committee of certain holders of Senior Notes (the "Noteholders' Committee") and JPMorgan Chase as administrative agent for the Senior Lenders concerning a possible restructuring transaction.

16. In connection with ongoing negotiations with the Noteholders' Committee and JPMorgan Chase, RCN chose not to make the interest payment scheduled for January 15, 2004 with respect to its 10 1/8% Senior Notes due 2010, and additionally chose not to make the interest payment scheduled for February 15, 2004 on the 9.8% Senior Discount Notes due 2008, the interest payment scheduled for April 15, 2004 on the 10% Senior Notes due 2007 and the interest payment scheduled for April 15, 2004 on the 11 1/8% Senior Discount Notes due 2007. The RCN Companies entered into forbearance agreements with the Senior Lenders, Evergreen and the Noteholders' Committee in which each agreed not to declare an event of default as a result of RCN's failure to make the interest payments. The parties to the forbearance agreements subsequently extended the forbearance period to facilitate additional negotiations.

17. The forbearance agreements allowed the RCN Companies to continue negotiating a financial restructuring with the Noteholders' Committee and JPMorgan Chase, notwithstanding the expiration of the grace period associated with the missed interest payments in respect of the aforementioned Senior Notes. During the forbearance period, the RCN Companies sought to negotiate a comprehensive restructuring proposal in which the RCN Companies would undergo a financial restructuring through reorganization under chapter 11. Those negotiations included discussions with various entities on a possible new credit facility to replace the existing Senior Credit Facility, and such efforts resulted in the agreement described below.

18. Prior to the Petition Date, RCN entered into a commitment letter with Deutsche Bank AG, Cayman Islands Branch and Deutsche Bank Securities, Inc. (together, "Deutsche Bank")<sup>2</sup> pursuant to which Deutsche Bank has committed to provide certain of the RCN Companies with new financing upon the consummation of a plan of reorganization. The new financing will consist of (i) a \$310 million first lien facility, including a \$285 million term loan facility and a \$25 million letter of credit facility and (ii) a \$150 million second lien facility. Each of the facilities will be guaranteed by all of RCN's wholly owned domestic subsidiaries

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<sup>2</sup> The Initial Debtors' entry into the commitment letter with Deutsche Bank was approved by this Court by order dated June 22, 2004.

and secured by substantially all the assets of RCN and its wholly owned domestic subsidiaries. Each of the facilities will contain prepayment provisions, covenants (including financial covenants) and events of default customary for facilities of this nature. Closing and funding for each of the facilities is subject to satisfaction of customary conditions precedent for facilities of this nature.

**G. RCN Cable TV of Chicago, Inc.**

19. RCN Illinois is a wholly owned subsidiary of RCN. RCN Chicago and 21<sup>st</sup> Century Telecom Services, Inc. ("21<sup>st</sup> Century") are each wholly owned subsidiaries of RCN Illinois. Together, RCN Illinois, 21<sup>st</sup> Century and RCN Chicago operate a telecommunications and cable network in the greater Chicago area. All three entities were acquired by RCN in April 2000 under a stock purchase agreement. At the time of the acquisition, RCN Illinois (f/k/a 21st Century Telecom Group, Inc.) and its affiliates provided telecommunications and cable services to certain areas in the Chicago area.

20. RCN Chicago is currently party to four cable franchise agreements (the "Franchise Agreements") with the City of Chicago ("the City"). RCN Chicago's obligations under the Franchise Agreements were first deferred with the City's consent and are now subject to modification under federal law due to the commercial impracticability of performing the Franchise Agreements in their current form. To that end, on December 12, 2003, RCN Chicago filed a petition to modify

the Franchise Agreements (the "Modification Petition") to enable it to redefine and fulfill its obligations thereunder in light of changed circumstances.

21. On January 15, 2004, RCN Chicago's ultimate parent, RCN, issued a press release announcing that it had deferred the decision to make an interest payment due on that day with respect to its 10 1/8% Senior Notes due 2010. Notwithstanding the press release, the non-payment of interest, and the Modification Petition, on February 10, 2004, the Chicago Cable Commission (the "Commission") adopted resolutions urging RCN Chicago to make payments due under one of the Franchise Agreements and declaring RCN Chicago in violation of the construction requirements in that franchise agreement. Also, on February 11, 2004, the Chicago City Council adopted a resolution directing the Commission to issue fines to enforce compliance with RCN's obligations. Shortly after, on February 14, 2004, RCN announced that any restructuring would likely be implemented through reorganization under chapter 11 of the Bankruptcy Code. On a Saturday, February 21, 2004, with notice given to RCN Chicago only the night before, the Commission imposed multi-million dollar fines on RCN Chicago. Thus, the City never addressed the merits of the Modification Petition before imposing the fines and, in fact, only did so belatedly when it denied the Modification Petition on April 9, 2004.

22. The inability to resolve this situation, in spite of efforts by RCN Chicago, precipitated RCN Chicago's chapter 11 filing. In addition, in order to

stop the illegal actions of the City and the destruction of its estate, RCN Chicago and RCN have filed an adversary complaint against the City and have moved for a temporary restraining order, pending a hearing on an application for a preliminary injunction, to enjoin the City from taking any action to enforce its claims for fees, damages or penalties or in connection with the Franchise Agreements from any property of the RCN Companies.

### **RELIEF REQUESTED**

23. By this motion, the RCN Debtors seek to amend the Original Order, attached hereto as Exhibit A, to authorize the Affiliate Debtor to continue to participate in the RCN Companies' previously approved cash management system. The proposed amended order is attached hereto as Exhibit B. A blackline comparing the changes from the Original Order to the proposed amended order is attached hereto as Exhibit C.

#### **A. The Affiliate Debtor Should Be Authorized To Continue To Use the Cash Management System**

24. As previously disclosed in the first-day motions filed by the Initial Debtors, the RCN Companies, including the Affiliate Debtor, maintain an integrated centralized cash management system to collect, transfer, and disburse funds generated by their operations (the "Cash Management System"), as set forth more fully below. The RCN Companies' cash management procedures are ordinary, usual and essential business practices, and are similar to those used by other major

corporate enterprises. The Affiliate Debtor has no bank accounts of its own, and therefore uses the Cash Management system to fund its operations.

25. The Cash Management System. In the ordinary course of business, the RCN Companies maintain a centralized, consolidated Cash Management System. The Cash Management System provides for centralized reporting, collection, and disbursement of funds, and the administration of bank accounts required to effect the collection, disbursement, and movement of cash among the RCN Companies.

26. The Cash Management System performs three essential functions: (i) the collection and administration of the RCN Companies' revenues and deposits; (ii) the payment of operating and other disbursements; and (iii) the investment of the RCN Companies' cash pursuant to established investment policies. The principal components of the Cash Management System are described below.

27. Deposit Accounts. The RCN Companies' accounts receivable in the form of cash, checks, credit card payments, and direct debits are collected from customers and reciprocal compensation payees daily through depository lockbox accounts (the "Deposit Accounts") located at various local banks. As part of the Cash Management System, the Deposit Accounts located at PNC Bank, N.A. ("PNC") are maintained as zero balance accounts, meaning that on a daily basis, after funding the Disbursement Accounts (as defined below), cleared funds on deposit in

the Deposit Accounts at PNC at the close of business are automatically transferred to the Disbursement Master Funding Account (as defined below). The Deposit Accounts that are not located at PNC are maintained as minimum balance accounts, meaning that on a regular (but not necessarily daily) basis, the majority of cleared funds on deposit in the non-PNC Deposit Accounts are manually transferred to the Disbursement Master Funding Account (as defined below).

28. Disbursement Accounts. The RCN Companies' maintain zero-balance disbursement accounts for the periodic payment of operating expenses and customer refunds (the "Disbursement Accounts"). The Disbursement Accounts have a zero balance account relationship with a disbursement master funding account (the "Disbursement Master Funding Account") where the RCN Companies advance funds daily. Because the Disbursement Accounts are zero-balance accounts, excess funds, if any, remaining at the close of a business day are moved back into the Disbursement Master Funding Account.

29. The Disbursement Master Funding Account and the Concentration Account. Daily disbursements from the Disbursement Accounts are funded by daily transfers from the Disbursement Master Funding Account which is linked to, and funded by, a concentration account (the "Concentration Account"). On a daily basis, excess funds in the Deposit Accounts are drawn into the Disbursement Master Funding Account and then transferred to the Concentration Account. If, however,

additional funds are needed in the Disbursement Accounts, then funds are drawn down from the Concentration Account to the Disbursement Master Funding Account.

30. Restricted Accounts. In accordance with the terms of the Senior Credit Agreement, RFM2, LLC, a Non-Debtor Affiliate, maintains two restricted cash collateral accounts (the "Cash Collateral Accounts") to which access is limited in accordance with the Senior Credit Agreement and related credit documents.<sup>3</sup> Funds in the Cash Collateral Accounts are currently invested per the investment guidelines established under the Senior Credit Agreement.

31. The Cash Management System provides numerous benefits to the RCN Companies, including the ability to (a) control corporate funds, (b) invest idle cash, (c) ensure cash availability and (d) reduce administrative expense by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. Here, it would be unduly difficult and expensive for the Affiliate Debtor to establish a new system of accounts and a new cash management and disbursement system. Under the circumstances, maintenance of the Cash Management System without disruption is both essential to the Affiliate

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<sup>3</sup> A holding account is tied to the Cash Collateral Accounts through which liquidated amounts from the Cash Collateral Accounts pass through before reaching the Concentration Account (the "Cash Collateral Holding Account"). Funds in the Cash Collateral Holding Account are always maintained in cash.

Debtor's ongoing operations and in the best interests of the Affiliate Debtor's estate and creditors.<sup>4</sup>

32. In sum, if the Affiliate Debtor is compelled to modify the Cash Management System, the operations of the Affiliate Debtor, as well as the administration of its chapter 11 case, would be impaired. Accordingly, the RCN Debtors submit that the Affiliate Debtor's continued participation in the Cash Management System should be authorized.

33. This Court has previously granted chapter 11 debtors authority to continue using their existing cash management systems. See, e.g., In re Radio Unica Communications Corp., Case No. 03-16837 (CB) (Bankr. S.D.N.Y. Oct. 31, 2003); In re WorldCom, Inc., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Oct. 15, 2002); In re Adelpia Communications Corp., Case No. 02-41729 (REG) (Bankr. S.D.N.Y. June 26, 2002); In re NTL Inc., Case No. 02-41316 (ALG) (Bankr. S.D.N.Y. June 14, 2002); In re PhyCor, Inc., Case No. 02-40278 (PCB) (Bankr. S.D.N.Y. Jan. 31, 2002); In re Global Crossing Ltd., Case No. 02-40188 (REG) (Bankr. S.D.N.Y. Jan. 28, 2002); In re Enron Corp., Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. Dec. 3, 2001).

**B. The Affiliate Debtor Should Be Authorized to Continue Intercompany Transfers of Funds**

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<sup>4</sup> Transactions among the Affiliate Debtor and the other RCN Companies are accounted for and traceable, and the Affiliate Debtor will continue its practice of maintaining records of the applicable intercompany accounts.

34. Transfers of funds (the "Intercompany Transactions") among Non-Debtor Affiliates and Debtors occur in the ordinary course of business. From time to time, the Non-Debtor Affiliates advance funds to the Debtors to meet expenses, including general corporate overhead costs and other costs. These Intercompany Transactions reduce the Debtors' administrative costs. Because the Non-Debtor Affiliates are part of the RCN Companies, the entirety of the Intercompany Transactions among the Debtors and the Non-Debtor Affiliates remains within the spectrum of RCN's control.

35. The Intercompany Transactions are reflected either as general ledger entries in the particular RCN Company's books and records or, in some cases, as loans evidenced by notes. Such bookkeeping and documentation provide records of the Intercompany Transactions.

36. The relief requested herein is necessary because Intercompany Transactions among the Debtors and the Non-Debtor Affiliates are necessary to sustain the Debtors' limited operations and the administration of these chapter 11 cases. That is, the Debtors may require further intercompany advances to pay their ongoing expenses to the extent the Bank Account is not sufficiently funded as described herein.

37. Courts in this District previously have authorized debtors in other large chapter 11 cases to continue postpetition existing intercompany funding

practices. See, e.g., In re WorldCom, Inc., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Oct. 15, 2002); In re Adelphia Communications Corp., Case No. 02-41729 (REG) (Bankr. S.D.N.Y. June 26, 2002); In re Global Crossing LTD, Case No. 02-40188 (REG) (Bankr. S.D.N.Y. Jan. 28, 2002); In re The Singer Company N.V., Case No. 99-10578 (BRL) (Bankr. S.D.N.Y. Nov. 18, 1999).

38. The RCN 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 motion, the RCN 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 RCN Debtors respectfully request that the Court  
(i) amend the Original Order to authorize the Affiliate Debtor to continue to participate in the RCN Companies' previously approved cash management system and (iii) granting such other and further relief as is just and proper.

Dated: New York, New York  
August 4, 2004

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