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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 FURTHER AMEND THE AMENDED AND RESTATED  
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 Entertainment, Inc. ("RCN Entertainment") and certain of its affiliates, debtors and debtors-in-possession in the above captioned cases (collectively, the "Debtors"), together with RCN Corporation ("RCN"), TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC, Hot Spots Productions, Inc. (the "Initial Debtors"), and RCN Cable TV of Chicago, Inc. ("RCN Chicago," and together with the Debtors and the Initial Debtors, the "RCN Debtors"), hereby move for entry of an

order further amending the Amended and Restated 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 August 6, 2004, in the chapter 11 cases of RCN Corporation, et al., Case No. 04-13638 (RDD) (Docket No. 146) (the "Amended Order").<sup>1</sup> In support of this motion, the RCN Debtors rely on the Third Affidavit of Anthony M. Horvat Pursuant to Local Bankruptcy Rule 1007-2 and in Support of Chapter 11 Petitions and First-Day Motions (the "Horvat Affidavit").<sup>2</sup> In further support of this motion, the RCN Debtors respectfully represent as follows:

## **BACKGROUND**

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

1. On August 20, 2004 (the "Petition Date"), the Debtors each filed voluntary petitions in this Court for reorganization relief under chapter 11 of

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<sup>1</sup> The Amended Order amended 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, et al., Case No. 04-13638 (RDD) (Docket No. 11), and provides that RCN Chicago is authorized, along with the Initial Debtors, to continue to participate in the RCN Companies' (as defined below) previously approved cash management system.

<sup>2</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.

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 chapter 11 of the Bankruptcy Code. On August 5, 2004, RCN Chicago, an affiliate of the Debtors and the Initial Debtors, filed a voluntary petition in this Court for reorganization relief under chapter 11 of the Bankruptcy Code. The cases of the Initial Debtors and RCN Chicago are jointly administered under case number 04-13638 (RDD), and the Debtors have requested that these cases also be administered under the same case number for procedural purposes only. The RCN Debtors continue to manage and operate their business as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

2. No trustee, examiner or official committee has been appointed in these chapter 11 cases. 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.

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.

### **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 Entertainment and 21st Century Telecom Services, Inc.), 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>3</sup> pursuant to which Deutsche Bank has commit-

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<sup>3</sup> The Initial Debtors' entry into the commitment letter with Deutsche Bank was approved by this Court by order dated June 22, 2004.

ted 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 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 Entertainment Inc., On TV, Inc., 21st Century Telecom Services, Inc. and RCN Telecom Services of Virginia, Inc.**

19. RCN Entertainment Inc., ("RCN Entertainment") is a wholly owned subsidiary of RCN. On TV, Inc. ("On TV") is a wholly owned subsidiary of RCN Entertainment. Hot Spots Productions, Inc. ("Hot Spots"), one of the Initial Debtors, is also a wholly owned subsidiary of RCN Entertainment. RCN Entertainment, Hot Spots and On TV (collectively, the "RCN E Companies") create, develop, produce and distribute quality programming for the entire family. RCN Entertainment has an impressive library of award-winning programming and is currently in production on a number of series. In addition, RCN Entertainment has partnered with studios and Hollywood talent to develop and produce award-winning novels

into films. On TV was established to function as the guild signatory arm of RCN Entertainment. Currently, On TV is a signatory to the Writers Guild of America for the Reading Rainbow and Miracle's Boys productions. It is also a signatory to American Federation of Television and Radio Artists for the Miracle's Boys production. Although the RCN E Companies are currently producing a number of series, their overall operations are in the process of being wound up. The RCN Companies intend to use these chapter 11 cases to complete the RCN E Companies' winding up efforts. In connection with that effort, prior to the Petition Date, RCN Entertainment's five employees, and all related salary, employee benefits and similar obligations, were transferred to, and assumed by, RCN Telecom Services, Inc., a non-Debtor affiliate of the Debtors.

20. 21st Century Telecom Services, Inc. ("21st Century") is a non-operating indirect subsidiary of RCN with minimal assets and creditors. This entity was previously a subsidiary of 21st Century Telecom Group, Inc., an entity acquired by RCN in April 2000 under a stock purchase agreement. The RCN Companies anticipate winding up 21st Century in these chapter 11 cases. Similarly, RCN Telecom Services of Virginia, Inc. ("RCN Virginia") is a non-operating indirect subsidiary of RCN with minimal assets and creditors, and the RCN Companies anticipate winding up RCN Virginia in these chapter 11 cases.

## **RELIEF REQUESTED**

21. By this motion, the RCN Debtors seek to further amend the Amended Order, a copy of which is attached hereto as Exhibit A, to authorize the Debtors 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 Amended Order to the proposed amended order is attached hereto as Exhibit C.

### **A. The Debtors Should Be Authorized to Continue Intercompany Transfers of Funds**

22. As previously disclosed in the first-day motions filed by the Initial Debtors and RCN Chicago, the RCN Companies (including the Debtors) 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.

23. 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 re-

quired to effect the collection, disbursement, and movement of cash among the RCN Companies.

24. 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.

25. 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).

26. 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.

27. 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.

28. 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 docu-

ments.<sup>4</sup> Funds in the Cash Collateral Accounts are currently invested per the investment guidelines established under the Senior Credit Agreement.

29. 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 Debtors 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 RCN Debtors' ongoing operations and in the best interests of the RCN Debtors' estates and creditors.<sup>5</sup>

30. In sum, if the Debtors are compelled to modify the Cash Management System, the operations of the RCN Debtors, as well as the administration of these chapter 11 cases, would be impaired. Accordingly, the RCN Debtors

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<sup>4</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.

<sup>5</sup> Transactions among the Debtors and the other RCN Companies are accounted for and traceable, and the Debtors will continue its practice of maintaining records of the applicable intercompany accounts.

submit that their continued participation in the Cash Management System should be authorized.

31. 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 Adelphia 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 Debtors Should Be Authorized to Continue Intercompany Transfers of Funds**

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

33. 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.

34. The relief requested herein is necessary because Intercompany Transactions among the RCN Companies are necessary to sustain the Debtors' operations and the administration of these chapter 11 cases.

35. 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).

36. 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 enter an order (i) further amending the Amended Order to authorize the Debtors to continue to participate in the RCN Companies' previously approved Cash Management System and (ii) granting such other and further relief as is just and proper.

Dated: New York, New York  
August 20, 2004

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