

Hearing: August 26, 2004 at 10:00 a.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
RCN CORPORATION, INC., et al., : Case No. 04-13638
Debtors. : (Jointly Administered)
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**DEBTORS' APPLICATION FOR ORDER UNDER 28 U.S.C. § 156(c)
AND FED. R. BANKR. P. 2002 AUTHORIZING RETENTION
OF FINANCIAL BALLOTING GROUP LLC AS NOTICING, VOTING,
AND INFORMATION AGENT FOR THE DEBTORS**

RCN Corporation ("RCN") and certain of its direct and indirect subsidiaries, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Initial Debtors"), RCN Cable TV of Chicago, Inc. ("RCN Chicago") and RCN Entertainment, Inc., ON TV, Inc., 21st Century Telecom Services, Inc., RCN Telecom Services of Virginia, Inc. (collectively, the "Subsequent Debtors," and

together with RCN Chicago and the Initial Debtors, the "Debtors"), hereby apply for entry of an order under 28 U.S.C. § 156(c) and Fed. R. Bankr. P. 2002 authorizing the retention of Financial Balloting Group LLC ("FBG") as noticing, voting, and information agent for the Debtors. In support of this application, the Debtors rely on the Affidavit of Anthony M. Horvat Pursuant to Local Bankruptcy Rule 1007-2 and in Support of Chapter 11 Petitions and First Day Motions (the "First Horvat Affidavit") filed with the Court on May 27, 2004, and the Affidavit of Jane Sullivan in Support of Debtors' Application for Order under 28 U.S.C. § 156(c) and Fed. R. Bankr. P. 2002 Authorizing Retention of Financial Balloting Group LLC as Noticing, Voting, and Information Agent for the Debtors (the "Sullivan Affidavit").¹ In further support of this application, the Debtors respectfully represent as follows:

BACKGROUND

A. The Chapter 11 Filings

1. On August 20, 2004 (the "Petition Date"), the Subsequent Debtors each filed voluntary petitions 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

¹ The Debtors incorporate by reference the facts set forth in the First Horvat Affidavit and the Sullivan Affidavit. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the First Horvat Affidavit.

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 Subsequent Debtors have requested that these cases also be administered under the same case number for procedural purposes only. The 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 the Affiliate Debtor's chapter 11 case. An official committee of unsecured creditors was appointed in the cases of the Initial Debtors on June 10, 2004.

3. The Court has jurisdiction over this matter under to 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 sought herein are 28 U.S.C. § 156(c) and Rule 2002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

5. By this application, the Debtors seek entry of an order authorizing the retention of FBG to act as noticing, voting, and information agent (the "Solicitation Agent") for the Debtors in these chapter 11 cases to provide, among other things, noticing, consultation, solicitation, and vote tabulation services in connection with these cases pursuant to the terms and conditions of this application and the agreement attached as Exhibit A (the "FBG Agreement") to the accompanying Sullivan Affidavit.

BASIS FOR RELIEF

6. By an order dated June 3, 2004 (Dkt. No. 12), this Court approved the Initial Debtors' application for the retention of Innisfree M&A Incorporated ("Innisfree") as noticing, voting, and information agent for the Initial Debtors (the "Innisfree Retention Order").

7. On August 20, 2004, however, Jane Sullivan, a former Director of Innisfree, and the other professionals at Innisfree (the "Sullivan Group") who were performing or were to perform the noticing, voting and information services required under the terms of the Innisfree Retention Order left their employment at Innisfree and formed FBG. The Debtors, therefore, have brought this application to request that this Court approve the retention of FBG to perform the same services for the Debtors that were to have been provided by Innisfree.

8. The reasons the Initial Debtors provided in support of their application for the retention of Innisfree continue to be to be the same reasons for the Debtors' request for the retention of FBG as their noticing, voting and information agent.

9. A majority of the holders of the Senior Notes and the Common Stock hold such securities in "street name" through a bank, broker, or other nominee. During the course of these chapter 11 cases, the successful dissemination of notices, including the notice of the hearings to consider approval of the Disclosure Statement and confirmation of the Plan, to these "street name" holders will require coordination with numerous banks, brokerages, agents, proxies, or other nominees (collectively, the "Nominees"), primarily to ensure that these entities properly forward notices and other materials to their customers. The Debtors believe that the assistance of FBG will be necessary to facilitate the dissemination of notices and other materials to certain of their creditors and equity security holders.

10. Accordingly, the Debtors submit that the appointment of FBG as Solicitation Agent is both necessary and in the best interests of the Debtors' estates and their creditors. The Debtors thus wish to engage FBG to, among other things, disseminate certain notices to holders of the Senior Notes and the Common Stock and provide assistance to the Debtors and their advisors in connection with all

aspects of plan voting, including timing issues, distribution of necessary solicitation documents, and voting and tabulation procedures.

11. The Debtors respectfully submit that by appointing FBG to provide the services set forth herein, the satisfaction of the requirements under the Bankruptcy Code and the Bankruptcy Rules to distribute certain materials to the holders of the Senior Notes and the Common Stock will be rendered more efficient and economical. Indeed, the Debtors' estates and creditors will benefit tremendously from FBG's experience and cost-effective methods.

12. FBG was formed by the key members of Innisfree's bankruptcy specialty practice, the Sullivan Group, to provide the same services as Innisfree had been retained to provide in the Debtors' Chapter 11 cases. As a result of the Sullivan Group having moved to FBG, FBG now has the same expertise in these areas. FBG's principals and employees have significant experience providing counsel to large, publicly-traded companies, including debtors-in-possession, in matters relating to communications with, and notices to, security holders, assistance with plan solicitations, and the tabulation of ballots with respect to chapter 11 plans.

13. The Debtors anticipate that, as set forth more fully in the FBG Agreement, FBG will:

- (a) provide advice to the Debtors and their counsel regarding all aspects of the vote on the reorganization plan, including timing issues, voting and tabulation procedures, and documents needed for the vote;

- (b) review the voting portions of the disclosure statement and ballots, particularly as they may relate to beneficial owners holding securities in "street name;"
- (c) work with the Debtors to request appropriate information from the trustee(s) of the Senior Notes, the transfer agent of the Common Stock, and The Depository Trust Company;
- (d) mail voting and nonvoting documents to the registered record holders of the Senior Notes and Common Stock, and, if requested, other parties entitled to receive notice;
- (e) coordinate the distribution of voting documents to "street name" holders of Senior Notes by forwarding the appropriate documents to the banks and brokerage firms holding the securities (or their agent), who in turn will forward it to beneficial owners for voting;
- (f) coordinate the distribution of nonvoting documents to "street name" holders of Common Stock by forwarding the appropriate documents to the banks and brokerage firms holding the securities (or their agent), who in turn will forward it to beneficial owners for voting;
- (g) distribute copies of the master ballots to the appropriate nominees so that firms may cast votes on behalf of beneficial owners;
- (h) prepare a certificate of service for filing with the court;
- (i) handle requests for documents from parties in interest, including brokerage firm and bank back-offices and institutional holders;

- (j) respond to telephone inquiries from holders regarding the disclosure statement and the voting procedures;²
- (k) if requested to do so, make telephone calls to confirm receipt of plan documents and respond to questions about the voting procedures;
- (l) if requested to do so, assist with any necessary efforts to identify beneficial owners of the Senior Notes and the Common Stock;
- (m) receive and examine all ballots and master ballots cast by creditors and security holders. FBG will date- and time-stamp the originals of all such ballots and master ballots upon receipt;
- (n) tabulate all ballots and master ballots received prior to the voting deadline in accordance with established procedures, and prepare a vote certification for filing with the court; and
- (o) undertake such other duties as may be agreed upon by the Debtors and FBG.

14. FBG is well qualified to provide the above-referenced services to the Debtors. The principals of FBG have had significant experience providing counsel to large publicly traded debtors in matters relating to communicating with security holders and creditors, assisting with proxy and plan solicitations, and tabulating ballots. Jane Sullivan, who will head up the engagement for FBG, has provided counsel in numerous chapter 11 cases, including, among others, In re NTL

² FBG has informed the Debtors that it will restrict its answers to the information contained in the plan documents and will seek assistance from the Debtors or their counsel on any questions that fall outside the voting documents.

Inc., Case No. 02-41316 (ALG) (Bankr. S.D.N.Y. May 13, 2002); In re Rhythms NetConnections Inc., Case No. 01-14283 through 01-14287 (BRL) (Bankr. S.D.N.Y. Aug. 23, 2001); and In re Globix Corp., Case No. 02-10647 (PJW) (Bankr. D. Del. Mar. 6, 2002).

15. The Debtors propose to retain FBG on substantially the terms and conditions set forth in the FBG Agreement. Specifically, the Debtors propose that FBG be reimbursed for its reasonable out-of-pocket expenses and be paid for its services in accordance with the schedule of fees set forth in the FBG Agreement. The Debtors respectfully submit that the compensation they seek to pay FBG is reasonable in light of the services to be performed.

16. The Debtors request that the fees and expenses of FBG incurred in the performance of the above services be treated as an administrative expense of the Debtors' chapter 11 estates and be paid by the Debtors in the ordinary course of business without further notice to parties in interest or order of the Court but subject to the Court's retention of jurisdiction to hear and decide any dispute related thereto.³ FBG will submit to the Office of the United States Trustee, counsel for the agent under the prepetition credit facility, and counsel for the Official

³ As an administrative agent and an adjunct to the Court, the Debtors do not believe that FBG is a "professional" whose retention is subject to approval under Bankruptcy Code section 327 or whose compensation is subject to approval of the Court under Bankruptcy Code sections 330 and 331.

Committee of Unsecured Creditors, on a periodic basis, copies of the invoices it submits to the Debtors for services rendered.

17. The Debtors believe that, based on the Sullivan Affidavit, and except as disclosed therein, neither FBG nor any employee thereof has any connection with the Debtors, their creditors, any other party in interest herein or their respective attorneys and accountants, the United States Trustee for the Southern District of New York or any person employed in the office thereof; that FBG is "disinterested" as that term is defined in section 101(14) of the Bankruptcy Code modified as by Bankruptcy Code Section 1107(b); and that neither FBG nor any employee thereof represents any interest adverse to the Debtors' estates with respect to any matter upon which FBG is to be engaged.

18. For all the foregoing reasons, the Debtors believe that their retention of FBG as Solicitation Agent is appropriate and in the best interests of the Debtors and their estates and creditors.

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

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing the Debtors to retain FBG as Solicitation Agent for the Debtors in these chapter 11 cases pursuant to the terms of the FBG Agreement and this application, and (ii) granting the Debtors such other and further relief as is just and proper.

Dated: New York, New York
August 23, 2004

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