

Interim Hearing: August 26, 2004 at 10:00 a.m.
Objection Deadline: September 24, 2004 at 4:00 p.m.
Final Hearing Date: September 29, 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, et al. : Case No. 04- 13638 (RDD)
: Debtors. : (Jointly Administered)
: :
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**MOTION TO AMEND FINAL ORDER (I) AUTHORIZING THE
USE OF LENDERS' CASH COLLATERAL AND (II) GRANTING
ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 361 AND 363**

RCN Entertainment, Inc., On TV, Inc., 21st Century Telecom
Services, Inc. and RCN Telecom Services of Virginia, Inc., 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 to amend the previously entered Final Order (I) Authorizing the Use of Lenders' Cash Collateral and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 And 363 (the "Final Cash Collateral Order") entered on June 22, 2004 (Dkt. No. 66) in the Initial Debtors' cases. In support of this motion, the RCN Debtors respectfully represent as follows:

BACKGROUND

A. The Chapter 11 Filings

1. On August 20, 2004 (the "Petition Date"), the 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 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 the cases of the Debtors 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 or examiner has been appointed in these cases. An official committee of unsecured creditors was appointed in the cases of the Initial Debtors on June 10, 2004.

3. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 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 sections 361 and 363 of the Bankruptcy Code, and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

5. By this motion, the RCN Debtors seek to amend, on an interim and final basis, the Final Cash Collateral Order by adding RCN Cable TV of Chicago, Inc., 21st Century Telecom Services, Inc., On TV, Inc., RCN Entertainment, Inc., and RCN Telecom Services of Virginia, Inc." (collectively, the "Subsequent Debtors") to the definition of "Debtors" in such order. The RCN Debtors further request that the proposed amendment to the Final Cash Collateral Order be effective as to the Subsequent Debtors as of their respective petition dates. A copy of the Final Cash Collateral Order, as previously entered, is attached hereto as Exhibit A.

A copy of the proposed order amending the Final Cash Collateral Order is attached hereto as Exhibit B. A copy of the Budget¹ for the Subsequent Debtors filed pursuant to the Final Cash Collateral Order is attached hereto as Exhibit C.

BASIS FOR RELIEF

A. The Subsequent Debtors' Prepetition Senior Secured Obligations

6. As set forth in pleadings previously filed by the Initial Debtors, pursuant to the Credit Agreement dated as of June 3, 1999 (as amended, supplemented or otherwise modified prior to the Petition Date, the "Credit Agreement"), among RCN and certain subsidiaries of RCN (collectively, the "Borrowers"), the several lenders party thereto (collectively, the "Lenders") and JPMorgan Chase Bank, as administrative agent and collateral agent for the Lenders (in such capacity, the "Administrative Agent"), the Lenders made loans and other financial accommodations to or for the benefit of RCN and the Borrowers. All such loans, financial accommodations and other amounts owing by RCN and the Borrowers to the Administrative Agent under, or in connection with, the Credit Agreement including, without limitation, the Hedge Obligations (as defined below) and the Cash Management Obligations (as defined below), and all collateral and ancillary documentation

¹ Unless otherwise defined herein, each capitalized term used herein shall have the meaning assigned thereto in the Final Cash Collateral Order.

executed in connection therewith (collectively, the "Loan Documents"), are hereinafter referred to as the "Prepetition Obligations."

7. The Lenders assert that as of the Initial Debtors' Petition Date, the Lenders had made loans and financial accommodations such that as a result of the Company Guarantee Agreement dated as of June 3, 1999 (as amended, supplemented or otherwise modified), the Borrowers were contingently liable (i) to the Lenders in respect of loans made by the Lenders to the Borrowers pursuant to the Credit Agreement in the aggregate principal amount of approximately \$432.5 million (plus accrued and unpaid interest thereon), (ii) to the Administrative Agent and the Lenders in the aggregate face amount of approximately \$15 million on account of the Borrowers' reimbursement obligations with respect to letters of credit issued pursuant to the Credit Agreement which remained outstanding as of the Initial Debtors' Petition Date, (iii) to the Administrative Agent and the Lenders for fees and expenses incurred in connection with such loans and letters of credit as provided in the Credit Agreement, (iv) to certain of the Lenders in respect of interest rate protection agreements, foreign currency exchange agreements, commodity price protection agreements or other interest or currency exchange rate or commodity price hedging arrangement to which RCN or one of the Borrowers was a party (the "Hedge Obligations") and (v) to certain of the Lenders in respect of fees and expenses arising in

connection with cash management services for RCN and its subsidiaries and affiliates (the "Cash Management Obligations").

8. The Lenders also assert that, pursuant to (i) the Security Agreement, dated as of June 3, 1999, (ii) the Company Guarantee Agreement, dated as of June 3, 1999, (iii) the Subsidiary Guarantee Agreement, dated as of June 3, 1999, and (iv) the Indemnity, Subrogation and Contribution Agreement, dated June 3, 1999 (as each of the foregoing agreements may have been amended, supplemented or otherwise modified prior to the Initial Debtors' Petition Date), the Prepetition Obligations are secured by perfected, valid and enforceable first priority liens and security interests granted by the Borrowers pursuant to the Loan Documents to the Administrative Agent for the ratable benefit of the Lenders, upon the following assets and property of the Borrowers (as such terms are defined in the Loan Documents), which includes without limitation, Accounts Receivable, Documents, Equipment, General Intangibles, Instruments, Inventory, Pledged Interests and Proceeds and other tangible and intangible personal property and the proceeds thereof (including the setoff rights described in the Loan Documents and arising by operation of law, collectively the "Prepetition Collateral"). The Lenders assert that the cash of the Borrowers, including without limitation, all cash and other amounts on deposit or maintained at PNC Bank N.A., Account Number 9009700493 (the "Chapter 11 Account") and any similar account or accounts that currently exist or

may be opened by the RCN Debtors, and any amounts generated by the collection of accounts receivable, sale of inventory or other dispositions of the Prepetition Collateral constitute proceeds of the Prepetition Collateral and, therefore, are cash collateral of the Lenders within the meaning of Section 363(a) of the Bankruptcy Code (the "Cash Collateral").² The Lenders have objected to the use by the Subsequent Debtors of any Prepetition Collateral, including the Cash Collateral, except on the terms set forth in the Final Cash Collateral Order, as amended by the request herein. In addition, the Lenders have requested, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, adequate protection of their interest in the Prepetition Collateral to the extent of any diminution in value, including for the use of any Cash Collateral, the use, sale, lease, depreciation, decline in market price or other diminution in value of the Prepetition Collateral other than the Cash Collateral, and the imposition of the automatic stay.

² The term "Cash Collateral" and the authorization to use Cash Collateral pursuant to the terms of the Final Cash Collateral Order does not include any cash held in demand deposit account no. 323-247415 established at the office of the JPMorgan Chase Bank at 270 Park Avenue, New York, New York 10017 pursuant to the Cash Collateral Agreement dated as of June 20, 2002, made by RFM 2, LLC, a Delaware limited liability company, in favor of JPMorgan Chase Bank as issuer of various letters of credit (the "Bilateral LCs"), which cash is maintained by JPMorgan Chase Bank as collateral for the Bilateral LCs (the "LC Cash Collateral"). Notwithstanding anything to the contrary set forth in the Final Cash Collateral Order, JPMorgan Chase Bank shall continue to maintain the LC Cash Collateral in the above referenced account, subject to the terms of the Bi-Lateral LCs and the documents thereto related.

B. Need For Use of Cash Collateral

9. The Subsequent Debtors may not have sufficient available sources of working capital and financing to carry on the operation of their business without the use of Cash Collateral. Among other things, amendment of the Final Cash Collateral Order will minimize disruption of the Subsequent Debtors' business and operations and permit them to pay their expenses. The use of the Cash Collateral is, therefore, important to the preservation and maintenance of the going concern value of the Subsequent Debtors.

10. The Administrative Agent and the Subsequent Debtors have negotiated at arms' length and in good faith regarding the Subsequent Debtors' use of any Cash Collateral to fund the administration of the Subsequent Debtors' estates and the continued operation of their business. The Administrative Agent and the Lenders have agreed to permit the Subsequent Debtors to use Cash Collateral, subject to the terms and conditions set forth herein and in the Final Cash Collateral Order, as sought to be amended by this motion.

APPLICABLE AUTHORITY

A. Use of Cash Collateral and Proposed Adequate Protection

11. The RCN Debtors seek amendment of the Final Cash Collateral Order, on an interim and final basis, to authorize the Subsequent Debtors' use of any Cash Collateral. The Subsequent Debtors have sought permission from the

Administrative Agent to access the Cash Collateral on the terms specified in the proposed amended Final Cash Collateral Order, and the Subsequent Debtors have been advised by counsel to the Administrative Agent that the Administrative Agent consents to the terms of such proposed order. The Subsequent Debtors may require use of the Cash Collateral to pay corporate expenses and to pay administrative costs related to the restructuring.

12. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor-in-possession shall not use cash collateral without the consent of the secured party or court approval. See 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in property to be used by a debtor, the Court "shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

13. What constitutes adequate protection is determined on a case-by-case basis. See In re O'Connor, 808 F.2d 1393, 1396–97 (10th Cir. 1987). Adequate protection can be provided in a number of ways (see, e.g., 11 U.S.C. § 361), with the focus being to protect a secured creditor from diminution in the value of its interest in the collateral during the period of use. See In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (purpose of adequate protection is "to safeguard the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization"); In re Beker Indus. Corp., 58 B.R.

725, 736 (Bankr. S.D.N.Y. 1986) (same); In re Kain, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988).

14. Under section 361 of the Bankruptcy Code, the debtor may provide adequate protection by making "a cash payment or periodic cash payments to [an] entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title . . . results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). Adequate protection may also be provided by "providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(2).

15. The Subsequent Debtors have been advised that the Lenders have consented, and will not object to, the use of the Cash Collateral and other property on the terms described herein, in the amended Budget attached hereto as Exhibit C, and in the proposed amended Final Cash Collateral Order. The proposed adequate protection will be sufficient to protect the Lenders from diminution in the value of their interest in the Prepetition Collateral during the period it may be used by the Subsequent Debtors. See In re Beker Indus. Corp., 58 B.R. at 736; In re Kain, 86 B.R. at 513. The Subsequent Debtors believe that the proposed adequate protection is fair and reasonable and more than sufficient to satisfy any diminution in value of the Prepetition Collateral.

B. Interim Relief Should be Granted

16. Pursuant to Bankruptcy Rule 4001(b), a final hearing on a motion to use cash collateral pursuant to section 363 may not be commenced earlier than fifteen days after the service of such motion. Upon request, however, the court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. See Bankruptcy Rule 4001(b)(2).

17. Under Bankruptcy Rule 4001(b), the RCN Debtors requests that the Court (i) amend the Final Cash Collateral Order as proposed herein on an interim basis; and (ii) schedule a Final Hearing on the motion to amend the Final Cash Collateral Order as proposed herein on a final basis not later than forty-five days from the Petition Date.

18. Such relief is necessary to maintain ongoing operations and avoid harm and prejudice to the RCN Debtors' respective estates and parties in interest in the RCN Debtors' chapter 11 cases.

19. 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 Final Cash Collateral Order as described herein on an interim and
final basis and (ii) grant such other and further relief as is just and proper.

Dated: New York, New York
August 23, 2004

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/s/ Frederick D. Morris

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