

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11  
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RCN CORPORATION, et al., : Case No. 04-13638  
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Debtors. : :  
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**INTERIM ORDER (I) AUTHORIZING THE USE OF  
LENDERS' CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION  
PURSUANT TO 11 U.S.C. §§ 361 AND 363 AND (III) SCHEDULING  
A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b)**

Upon the motion (the "Motion"), dated as of May 26, 2004, of RCN Corporation ("RCN"), TEC Air, Inc. and Hot Spots Productions, Inc. (together, the "Obligors") and RLH Property Corporation and RCN Finance LLC (with RCN and the Obligors, each a "Debtor", collectively, the "Debtors"), (a) seeking this Court's authorization, pursuant to Section 363(c) of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code"), to use the Cash Collateral (as defined below) and, pursuant to Sections 361 and 363 of the Bankruptcy Code, to provide adequate protection to the Lenders (as defined below) with respect to any diminution in the value of the Lenders' interests in the Prepetition Collateral (as defined below), including for the use of the Cash Collateral (as defined below), the use, sale, lease, depreciation, decline in market price or other diminution in value of the Prepetition Collateral other than the Cash Collateral, or for the imposition of the automatic stay pursuant to Section 362(a) of the Bankruptcy Code; (b) seeking a preliminary hearing (the "Preliminary Hearing")

on the Motion to consider entry of an interim order pursuant to Bankruptcy Rule 4001(b) (this “Order”) authorizing the Debtors to use the Lenders’ Cash Collateral; and (c) requesting that a final hearing (the “Final Hearing”) be scheduled, and that notice procedures in respect of the Final Hearing be established by this Court to consider entry of a final order (the “Final Order”) authorizing on a final basis the Debtors’ use of the Cash Collateral; and due and sufficient notice of the Motion and the Preliminary Hearing under the circumstances having been given; and the Preliminary Hearing on the Motion having been held before this Court on June 2, 2004; and upon the entire record made by the Debtors at the Preliminary Hearing, and this Court having found good and sufficient cause appearing therefor,

**IT IS HEREBY STIPULATED AND AGREED BY AND AMONG THE DEBTORS, THE ADMINISTRATIVE AGENT AND THE LENDERS THAT:**

A. On May 26, 2004 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York. The Debtors are continuing to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has yet been established in the Debtors’ Chapter 11 cases.

B. This Court has jurisdiction over these Chapter 11 cases and the Motion pursuant to 28 U.S.C. § 157(b) and 1334. Consideration of this Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

C. 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”),<sup>1</sup> among RCN, 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 executed in connection therewith (collectively, the “Loan Documents”), are hereinafter referred to as the “Prepetition Obligations”.

D. The Lenders assert that as of the 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 prior to the Petition Date), RCN and the Obligors 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 not less than \$432,453,581.65 (plus accrued and unpaid interest thereon), (ii) to the Administrative Agent and the Lenders in the aggregate face amount of approximately \$15,000,000 on account of the RCN and the Obligors’ reimbursement obligations with respect to letters of credit issued pursuant to the Credit Agreement which remained outstanding as of the Petition Date, (iii) to the Administrative Agent and the Lenders for fees and expenses incurred in

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<sup>1</sup> Unless otherwise defined herein, each capitalized term used herein shall have the

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").

E. The Lenders assert that, pursuant to the (i) 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 Petition Date), the Prepetition Obligations are secured by perfected, valid and enforceable first priority liens and security interests granted by RCN and the Obligor pursuant to the Loan Documents to the Administrative Agent for the ratable benefit of the Lenders, upon the following assets and property of RCN and the Obligor (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 (i) the Prepetition Obligations are not subject to defense, counterclaim or offset of any kind, and (ii) the Administrative Agent's liens and security interests have been

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meaning assigned thereto in the Credit Agreement.

properly filed or recorded, as applicable, so as to be perfected in accordance with applicable law. The Lenders further assert that the cash of RCN and the Obligors, 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 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”).<sup>2</sup> The Lenders have objected to the use by the Debtors of the Prepetition Collateral, including the Cash Collateral, except on the terms of this Order (or other order that may be entered by the Court with the Administrative Agent’s consent). In addition, the Lenders are entitled, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral to the extent of the diminution in value, including for the use of the 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 for the imposition of the automatic stay.

Based upon the foregoing stipulations, and upon the record made before this Court at the Preliminary Hearing, and good and sufficient cause appearing therefor;

**THE COURT HEREBY FINDS** that:

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<sup>2</sup> The term “Cash Collateral” and the authorization to use Cash Collateral pursuant to the terms of this 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 this Order, JPMorgan

F. Good cause has been shown for the entry of this Order. The Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses without the use of Cash Collateral. Among other things, entry of this Order will minimize disruption of the Debtors' businesses and operations and permit them to pay operating expenses, maintain business relationships with their vendors and retain customer and vendor confidence by demonstrating an ability to maintain normal operations. The use of the Cash Collateral is therefore of the utmost significance and importance to the preservation and maintenance of the going concern value of the Debtors and their estates, and will enhance the prospects for a successful reorganization of the Debtors under Chapter 11 of the Bankruptcy Code.

G. The Administrative Agent and the Debtors have negotiated at arms' length and in good faith regarding the Debtors' use of Cash Collateral to fund the administration of the Debtors' estates and continued operation of their businesses. The Administrative Agent and the Lenders have agreed to permit the Debtors to use Cash Collateral for the period through the Termination Date (as defined below), all subject to the terms and conditions set forth herein, including the protection afforded a party acting in "good faith" pursuant to Section 363(m) of the Bankruptcy Code.

H. The Debtors represent that notice of the Preliminary Hearing and the relief requested in the Motion has been given to (i) the Office of the United States Trustee, (ii) counsel to the Administrative Agent, (iii) the Debtors' largest unsecured creditors as set forth in the consolidated list accompanying the Debtors' petitions, (iv) counsel to HSBC Bank USA, as

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Chase Bank shall continue to maintain the LC Cash Collateral in the above referenced account.

agent for the lenders under the Commercial Term Loan and Credit Agreement dated as of June 6, 2003, (v) counsel to HSBC Bank USA, as trustee pursuant to the indenture for the Senior Discount Notes and the Senior Notes issued by RCN and (v) counsel for the unofficial committee of noteholders. Based on such representation, such notice of the Preliminary Hearing was given in accordance with Sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), and the local rules of this District.

I. Based on the record presented to the Court at the Preliminary Hearing, the terms of the Debtors' use of the Lenders' Cash Collateral appear to be fair and reasonable, and to reflect the Debtors' and their respective directors' exercise of prudent business judgment consistent with their fiduciary duties.

J. The Debtors have requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2). The permission granted herein to use the Lenders' Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtors. This Court concludes that entry of this Order is in the best interest of the Debtors' estates and creditors.

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Preliminary Hearing, and good and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED** that:

1. The Motion is granted as provided herein on an interim basis. The Debtors are hereby authorized to use the Cash Collateral during the period from the Petition Date through and including the Expiration Date (as defined below), subject to the earlier occurrence of the Termination Date (as defined below), for general corporate purposes and costs and expenses related to these Chapter 11 cases in accordance with the terms and conditions of this Order; provided that all uses of cash by the Debtors for the costs and expenses of administering the

Chapter 11 cases (a) shall be deemed to be first from cash that is not Cash Collateral and thereafter from Cash Collateral and (b) shall be used in accordance with the procedures contained in paragraph 2 of this Order and subject to the limitations contained in paragraph 15 of this Order and the other conditions contained herein. The term “Expiration Date” shall mean October 31, 2004 (or such later date if the Administrative Agent consents, which extension thereof shall be effective without further Court approval).

2. The Debtors shall only use the Cash Collateral for the payment of the costs and expenses associated with the conduct of their Chapter 11 cases of the types specified for the Debtors on a Budget (as defined below). The term “Budget” shall mean a thirteen-week rolling cash flow forecast prepared on a book basis and presented separately for (A) the Debtors, (B) the Debtors’ non-Debtor subsidiaries and affiliates on a consolidated basis and (C) Debtors and their subsidiaries on a consolidated basis, and containing weekly minimum cash balances for such thirteen-week rolling period, prepared by the Debtors and in form and substance acceptable to the Administrative Agent, substantially in the form of Exhibit A hereto, which shall specify, by individual line item, each category of expenditures (“Weekly Expenditures”) for operating disbursements, financial disbursements, capital expenditures and other required disbursements, as such Budget may be amended, modified or supplemented from time to time without further Court approval but with the consent of the Administrative Agent. The Debtors shall use (a) Cash Collateral to make Weekly Expenditures relating to the cost and expenses of conducting their Chapter 11 cases (the “Chapter 11 Expenditures”) in accordance with the terms of this Order, and (b) the cash of non-Debtor subsidiaries and affiliates to make Weekly Expenditures that relate to the operation of the non-Debtor subsidiaries’ and affiliates’ businesses and that are not costs and expenses of administering the Debtors’ Chapter 11 cases (the “Operations



Expenditures”) pursuant to any existing contractual arrangements among such non-Debtors and the Lenders. As to any line item of the Budget, subject to Court approval if required by the Bankruptcy Code, and subject to the next sentence regarding timing of payments and obligations, the Debtors may use Cash Collateral to make Chapter 11 Expenditures, in any given week to be determined on a book basis, in excess of the amount set forth in such line item of the Budget for such week without the prior approval of the Administrative Agent only if the amount of the excess per line item is 15% or less, and cumulatively for the Budget period for any line item, 10% or less. Notwithstanding anything to the contrary herein, the Debtors shall be authorized to pay Chapter 11 Expenditures and incur liabilities at times other than set forth in the Budget provided that, except as expressly agreed by the Administrative Agent, the timing of such payments or incurring of such liabilities does not increase the total amount of expenditures and/or liabilities in the Budget beyond the percentages set forth in the previous sentence. No later than Wednesday of each week, the Debtors shall prepare and deliver to the Lenders, the Administrative Agent and its advisors, a report, for the week ending as of the preceding Friday, of actual receipts and expenditures (on a consolidated basis and separately for the Debtors) compared to the applicable Budget with a report of any material variances and the reasons therefor, in a form reasonably satisfactory to the Administrative Agent. To the extent any additional affiliates of the Debtors become Chapter 11 debtors after the date of entry of this Order, the Debtors shall file an amended Budget reasonably acceptable to the Administrative Agent that provides for any additional projected Chapter 11 Expenditures as a result of the filing of additional Chapter 11 petitions. Except as otherwise provided herein and notwithstanding any limitation herein on advances to non-Debtor subsidiaries and affiliates, the Debtors shall maintain their pre-Petition Date cash management and accounts receivable collection system to

the extent authorized by and subject to the terms of any order of this Court governing the Debtors' cash management system. Except as expressly set forth herein, this Order does not address the disposition of any Prepetition Collateral outside the ordinary course of business or the Debtors' use of the Cash Collateral resulting therefrom.

3. (a) As adequate protection for, and to the extent of, any diminution in the value of the Lenders' interest in the Prepetition Collateral resulting from (x) the use of the Cash Collateral pursuant to Section 363(c) of the Bankruptcy Code, (y) the use, sale, lease, depreciation, decline in market price or other diminution in value of the Prepetition Collateral (other than the Cash Collateral) pursuant to Section 363(c) of the Bankruptcy Code and (z) the imposition of the automatic stay pursuant to Section 362(a) of the Bankruptcy Code (the amount of any such diminution being referred to hereinafter as the "Adequate Protection Obligations"):

(i) the Administrative Agent and the Lenders are hereby granted (effective as of the Petition Date and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or otherwise), valid and perfected, replacement security interests in, and liens (the "Replacement Liens") on all of the right, title and interest of the Debtors in, to and under all present and after-acquired property of the Debtors of any nature whatsoever including, without limitation, all cash contained in any account of the Debtors, and the proceeds of all causes of action, but excluding, subject however to entry of the Final Order, causes of action arising under Sections 544, 545, 547, 548 and 550 of the Bankruptcy Code and the proceeds thereof (collectively, with the proceeds and products of any and all of the foregoing, the "Postpetition Collateral"). Subject to the Carveout (as defined below), said Replacement Liens shall be (x) a first priority perfected lien upon all of the Postpetition Collateral that is not otherwise encumbered by a validly perfected, non-avoidable security interest or lien on the Petition Date, (y) a first priority, senior, priming and perfected lien upon (a) that portion of the Postpetition Collateral that is comprised of the Prepetition Collateral and (b) Postpetition Collateral subject to a lien that is junior to the liens securing the Prepetition Obligations and (z) a second priority, junior perfected lien upon all Postpetition Collateral (other than the portion described in the preceding clause (y)), which is subject to a validly perfected lien as of the Petition Date; and

(ii) to the extent not otherwise paid by the Debtors' non-debtor subsidiaries and affiliates, the Debtors are authorized and directed to (a) immediately pay as

adequate protection an amount equal to all accrued and unpaid interest on the Prepetition Obligations and letter of credit fees at the non-default contract rates provided for in the Loan Documents, and all other accrued and unpaid fees and disbursements owing to the Administrative Agent under the Loan Documents and incurred prior to the Petition Date, (b) on the first business day of each month, pay as adequate protection an amount equal to all accrued but unpaid interest on the Prepetition Obligations at a rate per annum equal to ABR plus the Applicable Spread as of the day immediately prior to the Petition Date, and letter of credit and agency, administrative and other fees and disbursements, as and when due, all at the non-default contract rates provided for in the Loan Documents, and (c) pay as adequate protection any and all scheduled principal payments pursuant to the terms of the Credit Agreement (collectively, "Adequate Protection Payments").

(b) As further adequate protection hereunder, the Debtors shall provide the following reporting to the Administrative Agent (the "Reporting Requirements"), each of which must be in form and substance satisfactory to the Administrative Agent: (i) commencing on Wednesday, June 2, 2004, and within 35 days of the end of every month thereafter, 13-week rolling cash flow projections, prepared on a book basis and substantially in the form of Exhibit A hereto, presented separately for (A) the Debtors, (B) the Debtors' non-Debtor subsidiaries and affiliates on a consolidated basis and (C) Debtors and their subsidiaries on a consolidated basis with comparisons to any previously forecasted cash flows or balances for such period, (ii) within 15 days of June 1, 2004, and within 15 days of the end of every month thereafter, a report on the connections by product (voice, video, data) and market for residential and commercial segments for the Debtors and their subsidiaries as a whole with comparisons to any previously forecasted connections for such period, (iii) within 40 days of May 1, 2004, and within 40 days of the end of every month thereafter, (A) consolidated financial statements (including an income statement, balance sheet and statement of cash flows) for the Debtors and their subsidiaries as of the end of the preceding month, all as certified by an officer of the Debtors, with comparisons to the most recent business plan delivered to the Administrative Agent or its advisors pursuant to clause 3(b)(vi) hereof or otherwise, and written explanations for any material variances (including

variances for capital expenditures, by major category) and (B) a monthly statement summarizing all ordinary course asset dispositions effected by the Debtors within the preceding month other than in respect of inventory, (iv) within 45 days of the end of each fiscal quarter (other than the fourth fiscal quarter) and within 105 days of the end of each fiscal year, deliver to the Administrative Agent consolidated financial statements (including an income statement, balance sheet and statement of cash flows) for the Debtors and their subsidiaries as of the end of the preceding fiscal quarter or year, as the case may be, together with (x) in each case, a certificate of an officer of the Debtors attesting that such financial statements fairly reflect the financial condition of the applicable entity in accordance with GAAP and (y) with respect to the year-end consolidated financial statements, an audit by PricewaterhouseCoopers LLP or other independent certified public accountants of nationally recognized standing (which accountant's retention shall have been previously approved by this Court) reporting on such financial statements without any material qualifications other than with respect to the Debtors' Chapter 11 cases or a going concern qualification, (v) commencing on or before five (5) business days after June 1, 2004, and on or before five (5) business days after the end of every month thereafter, monthly updates on the status of any non-ordinary course asset sales, and (vi) on every anniversary after December 31, 2003, an annual business plan with consolidated financial statements (including an income statement, balance sheet and statement of cash flows) for the Debtors and their subsidiaries. In addition, the Debtors shall permit representatives, agents and/ or employees of the Administrative Agent or the Lenders to have reasonable access to their premises and non-privileged records during normal business hours (without unreasonable interference with the proper operation of the Debtors' businesses) and shall cooperate, consult with and provide to such persons all such non-privileged information as they may reasonably request from time to

time, including periodic updates provided to the Administrative Agent of efforts to obtain third party financing.

(c) As additional adequate protection, to the extent not paid by the Debtors' non-Debtor subsidiaries and affiliates, the Debtors are authorized and directed, within 20 days of the submission of invoices therefor, to pay or reimburse all reasonable fees, costs and charges incurred prepetition and postpetition by the Lenders and the Administrative Agent (including, without limitation, the administration fees payable to the Administrative Agent under the Credit Agreement and the reasonable fees and out-of-pocket disbursements of Capstone Corporate Recovery, LLC, Balfour Associates or any successor financial consultants and Simpson Thacher & Bartlett LLP, or any successor outside counsel advising the Administrative Agent), in each case, in connection with matters relating to the Credit Agreement, the Prepetition Obligations, the monitoring of the Debtors' Chapter 11 cases or the enforcement and protection of the rights and interests of the Administrative Agent and the Lenders in these Chapter 11 cases. None of the fees, costs and expenses payable pursuant to this paragraph shall be subject to separate approval by this Court (but the Court shall resolve any dispute as to the reasonableness of any such fees, costs and expenses), and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto. Nothing contained herein shall be deemed to be a waiver by any party in interest of the right to object to the reasonableness of any fees, costs and charges incurred by the Lenders or the Administrative Agent. As additional adequate protection, to the extent not paid by the Debtors' non-debtor subsidiaries and affiliates, the Debtors are also authorized and directed to pay any fees and expenses of JPMorgan Chase Bank arising in connection with the Bilateral LCs, as required pursuant to the terms of the Bilateral LCs and related documentation.

(d) Under the circumstances (and consistent with the rights of the Lenders under section 506(b) of the Bankruptcy Code), and based upon the Lenders' consent, the adequate protection provided herein is reasonable and sufficient to protect the interests of the Lenders. Notwithstanding any other provision hereof, the grant of adequate protection to the Administrative Agent and the Lenders pursuant hereto is (i) without prejudice to the rights of any party in interest (other than the Debtors) to assert that the Adequate Protection Payments constitute repayments of principal on unpaid Prepetition Obligations because such Prepetition Obligations are not oversecured and (ii) without prejudice to the right of the Administrative Agent or the Lenders to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection, and without prejudice to the right of the Debtors or any other party in interest to contest any such modification.

4. As used in this Order, "Carveout" means (a) the unpaid fees of the clerk of the Bankruptcy Court and of the United States Trustee pursuant to 28 U.S.C. § 1930(a) and (b) (the "Statutory Fees"), (b) following the occurrence of an Event of Default (as defined below), the payment of allowed professional fees and disbursements (the "Professional Fees and Disbursements") incurred by the professionals retained by the Debtors or any statutory committee appointed in these Chapter 11 cases not to exceed \$2,500,000 in the aggregate, plus unpaid Professional Fees and Disbursements previously incurred prior to the occurrence of such Event of Default and (c) costs and administrative expenses permitted to be incurred by any Chapter 7 trustee pursuant to an order of this Court following any conversion of the Debtors' Cases pursuant to Section 1112 of the Bankruptcy Code in an amount not to exceed \$150,000; provided however that Carveout amounts for Professional Fees and Disbursements and costs and expenses pursuant to clauses (b) and (c) are subject to the limitations and restrictions set

forth in paragraph 15 herein. So long as no Event of Default shall have occurred and be continuing, the Debtors shall be permitted to pay without reduction of the Carveout (x) the Statutory Fees and (y) the Professional Fees and Disbursements, as the same may be due and payable. Nothing herein shall be construed as a waiver of the right of the Administrative Agent or any Lender to object to the allowance of any Professional Fees and Disbursements.

5. Subject to the Carveout, the Adequate Protection Obligations shall constitute expenses of administration under Sections 503(b)(1), 507(a) and 507(b) of the Bankruptcy Code (the “507(b) Claims”) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code including, without limitation, Sections 105, 326, 328, 330, 331 and 726 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors, and any successor trustee or any creditor, in these Chapter 11 cases or, to the extent permitted by applicable law, any subsequent proceedings under the Bankruptcy Code. Subject to the Carveout, no cost or expense of administration under Sections 105, 503(b) or 507(b) or otherwise, including those resulting from the conversion of these Chapter 11 cases pursuant to Section 1112 of the Bankruptcy Code, shall be senior to, or pari passu with, the 507(b) Claims of the Lenders arising out of the Adequate Protection Obligations.

6. Except as expressly set forth in this Order, the liens granted pursuant to this Order shall not be (i) subject to any lien that is avoided and preserved for the benefit of the Debtors’ estates under Section 551 of the Bankruptcy Code or (ii) subordinated to or made pari passu with any other lien under Sections 363 and 364 of the Bankruptcy Code. Subject to the Carveout, the Replacement Liens shall be prior and senior to all liens and encumbrances of all other secured creditors in and to such Postpetition Collateral granted, or arising, after the Petition

Date (including, without limitation, liens and security interests, if any, granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors). The Replacement Liens granted pursuant to this Order shall constitute valid and duly perfected security interests and liens, and the Administrative Agent and the Lenders shall not be required to file or serve financing statements, notices of lien or similar instruments which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect such security interests and liens; and the failure by the Debtors to execute any documentation relating to the Replacement Liens shall in no way affect the validity, perfection or priority of such Replacement Liens. If, however, the Administrative Agent, in its sole discretion, shall determine to file any such financing statements, notices of lien or similar instruments, or to otherwise confirm perfection of such Replacement Liens, the Debtors are directed to cooperate with and assist in such process, the stay imposed by Section 362(a) of the Bankruptcy Code is hereby lifted to allow the filing and recording of a certified copy of this Order or any such financing statements, notices of lien or similar instruments, and all such documents shall be deemed to have been filed or recorded at the time of and on the date of this Order.

7. The Debtors' right to use the Cash Collateral shall terminate (the date of any such termination, the "Termination Date") on the earliest to occur of (x) consummation of a plan of reorganization in these Chapter 11 cases, (y) unless extended by the Administrative Agent, 45 days after the Petition Date if the Final Order has not been entered by the Court on or before such date or (z) upon written notice to the Debtors after the occurrence and continuance of any of the following events ("Events of Default") beyond any applicable grace period and subject to the applicable notice periods set forth in paragraph 8 hereof:



- a. Failure of the Debtors to make a payment to the Administrative Agent or the Lenders as and when required by this Order or other failure to comply in any material respect with the terms of this Order and such failure shall continue unremedied for more than five business days after written notice thereof;
- b. Failure of the Debtors to comply with any other covenant or agreement specified in this Order (other than those described in clause (a) above) and such failure shall continue unremedied for more than five business days after written notice thereof;
- c. Failure of the Debtors to comply with any covenant or agreement specified in the Loan Documents (except to the extent modified by this Order, waived pursuant to any written waiver or amendment to the Credit Agreement, or otherwise prohibited by the Bankruptcy Code), including provisions relating to payment of principal, interest, fees and mandatory prepayments (determined without giving effect to the acceleration of any such amounts arising solely as the result of the commencement of these Chapter 11 cases), and such failure shall continue unremedied for more than the applicable grace period set forth in the Loan Documents (or if no grace period shall be applicable, more than five business days); provided, however, that during the period covered by the Budget and during which the Debtors are using Cash Collateral pursuant to this Order, the restrictions on the use of Net Proceeds of any asset sales set forth in Sections 2.10 and 6.05 of the Credit Agreement, the Side Letter, dated March 10, 2003, with respect to the NJ Cash Collateral Agreement (as defined therein) and the Side Letter, dated March 9, 2004, with respect to the Carmel Cash Collateral Agreement (as defined therein) shall be replaced by the covenants set forth herein and in the Budget as to the Debtors;
- d. On any day of any week, cash and cash equivalents on hand (including Cash Collateral) at RCN and its Restricted Subsidiaries in the aggregate determined on a book basis shall be less than the corresponding weekly minimum amounts set forth in the Budget, as such amounts may be reduced to accommodate payment of scheduled principal and interest as Adequate Protection Payments as set forth in the Budget; provided, that the Debtors, on a one-time basis only, shall be permitted to remedy a deficiency within two business days of the occurrence thereof if (and only if) such deficiency does not exceed \$2 million; provided further, that proceeds of any post-Petition Date asset sales outside the ordinary course of business exceeding \$1 million shall not be counted in the calculation of cash on hand for purposes of this requirement;
- e. Any representation or warranty made by the Debtors in connection with the Reporting Requirements (other than with respect to projected financial information) shall prove to have been incorrect in any material respect when made;
- f. Any of the Chapter 11 cases shall be dismissed or converted to a Chapter 7 case; or a Chapter 11 Trustee with plenary powers, a responsible officer, or an examiner with enlarged powers relating to the operation of the businesses of the

Debtors (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed in any of the Chapter 11 cases; provided that the appointment by the Court of a trustee or other fiduciary of any of the Debtors' estates for the limited purpose of investigating, commencing or prosecuting an Adversary Proceeding on behalf of any of the Debtors' estates shall not constitute a default under this subparagraph;

- g. Failure to substantially consummate by October 31, 2004 or such later date as may be extended by the Administrative Agent, a plan of reorganization or liquidation in form and substance satisfactory to the Administrative Agent;
- h. Failure to provide to the Administrative Agent by June 10, 2004 commitment letters, in form and substance satisfactory to the Administrative Agent and which shall be subject only to customary closing conditions, evidencing the Debtors' ability to obtain sufficient funds to repay the Prepetition Obligations in full and in cash on or prior to the effective date of any plan of reorganization or liquidation;
- i. The Court shall enter an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of the Debtors which have an aggregate value in excess of \$1,000,000;
- j. An order shall be entered reversing, amending, supplementing, staying for a period in excess of 3 days, vacating or otherwise modifying this Order without the consent of the Administrative Agent;
- k. Any Debtor shall create, incur or suffer to exist any postpetition liens or security interests other than (i) those in favor of the Administrative Agent, (ii) carriers', warehousemen's, repairmen's or other similar liens, (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation and (iv) deposits to secure the payment of postpetition utilities, the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; provided that the aggregate value of the liens, pledges or deposits referred to in clauses (iii) and (iv) above shall not exceed \$10,000,000 at any one time; or any other claim which is pari passu with or senior to the claims of the Administrative Agent and the Lenders shall be granted in these Chapter 11 cases;
- l. Any judgment in excess of \$2,000,000 as to any postpetition obligation not covered by insurance shall be rendered against the Debtors and the enforcement thereof shall not be stayed; or there shall be rendered against the Debtors a non-monetary judgment with respect to a postpetition event which has or could reasonably be expected to have a material adverse effect on the ability of the Debtors to perform their obligations under this Order;

- m. A filing by any of the Debtors (or any of their successors and assigns) of (x) any motion or application or adversary proceeding challenging the validity, enforceability, perfection or priority of any of the Loan Documents or any such liens and security interests or any other cause of action against and/or with respect to the Prepetition Obligations, the prepetition liens securing such Prepetition Obligations, the Administrative Agent or the Lenders or (y) any plan of reorganization not reasonably acceptable to the Administrative Agent; and
- n. There shall occur any condition or event after the Petition Date that could reasonably be expected to have a material adverse effect on the property, business, condition (financial or otherwise) or prospects of the Debtors taken as a whole.

The Debtors shall promptly provide notice to the Administrative Agent (with a copy to counsel for any statutory committee appointed in these Chapter 11 cases and the United States Trustee) of the occurrence of any Event of Default.

8. On the Termination Date, upon five (5) business days' written notice to the Debtors (with a copy to counsel for any statutory committee appointed in these Chapter 11 cases and the United States Trustee) (i) the Administrative Agent may terminate the Debtors' right to use the Cash Collateral, (ii) the Adequate Protection Obligations shall become immediately due and payable, (iii) the Administrative Agent and each Lender may setoff amounts in any account of the Debtors maintained with the Administrative Agent or each Lender, respectively and (iv) the Administrative Agent and the Lenders may exercise the rights and remedies available under the Loan Documents, this Order or applicable law, including, without limitation, foreclosing upon and selling all or a portion of the Prepetition Collateral or Postpetition Collateral in order to collect the Adequate Protection Obligations. The actions described in clauses (iii) and (iv) above may be taken without further order of or application to the Court as the Administrative Agent or the Lenders shall, in its discretion, elect, and the automatic stay is hereby deemed modified and vacated to the extent necessary to permit such actions, provided that no order prohibiting such action is entered by this Court during the above-

referenced five (5) business day period. The Administrative Agent and the Lenders shall be entitled to apply the payments or proceeds of the Prepetition Collateral in accordance with the provisions of the Loan Documents, and in no event shall the Administrative Agent or any of the Lenders be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral, Postpetition Collateral or otherwise.

Notwithstanding the occurrence of the Termination Date or anything herein, all of the rights, remedies, benefits and protections provided to the Administrative Agent and the Lenders under this Order shall survive the Termination Date. Notwithstanding anything to the contrary contained herein, upon the occurrence of any of the Events of Default set forth in subsections (a), (d), (f), (j) and (m) of paragraph 7, the Debtors’ right to use Cash Collateral hereunder shall terminate immediately.

9. The provisions of this Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (a) confirming any plan of reorganization in these Chapter 11 cases; (b) converting any of these Chapter 11 cases to Chapter 7 cases; or (c) dismissing any of these Chapter 11 cases. If an order dismissing these Chapter 11 cases under Section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that (a) the Replacement Liens granted pursuant to this Order to the Administrative Agent and the Lenders shall continue in full force and effect, shall remain binding on all parties in interest notwithstanding such dismissal until the obligations secured thereby shall have been paid and satisfied in full and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for the limited purposes of enforcing such Replacement Liens.

10. The Debtors and any of their successors in interest (including, without limitation, any trustee appointed or elected in any of these Chapter 11 cases or following the conversion of any of these cases to cases under Chapter 7 or any representative(s) of the Debtors' estates appointed pursuant to Section 1123(b)(3) of the Bankruptcy Code or otherwise) shall be deemed to have waived and released, on behalf of themselves and their estates, all claims and causes of action under Sections 544, 545, 547 or 548 of the Bankruptcy Code seeking to recover or avoid any liens granted to, transfers to or for the benefit of, or other obligations incurred in favor of the Administrative Agent or any Lender, as well as any objection or defense to, the validity, perfection, priority, extent or enforceability of any amount due under the Loan Documents (collectively, the "Adversary Proceedings") and (a) the Prepetition Obligations shall constitute allowed claims, not subject to defense, counterclaim, offset of any kind or subordination for all purposes in these Chapter 11 cases and any subsequent Chapter 7 cases, (b) the liens and security interests of the Administrative Agent for the ratable benefit of the Lenders upon the Prepetition Collateral shall be deemed legal, valid, binding, enforceable, perfected and unavoidable and (c) the Administrative Agent and the Lenders shall not be subject to any other or further claims or causes of action by any party in interest seeking to exercise the rights of the Debtors' estates, except to the extent (and only to the extent) of any claims or causes of action that are the subject of an adversary proceeding or contested matter commenced by the Debtors or any other party authorized or permitted under applicable law to do so (including any statutory committee appointed in these Chapter 11 cases), if any, against the Administrative Agent or any Lender no later than the date that is 90 days from the date of the order approving of the appointment of counsel to an official committee of unsecured creditors in these Chapter 11 cases,

without prejudice to the rights of parties in interest to be heard with respect to extensions of the 90 day period referred to in this paragraph.

11. Entry of this Order shall be without prejudice to any and all rights, remedies, claims and causes of action which the Administrative Agent or the Lenders may have against the Debtors or third parties, and without prejudice to the right of the Administrative Agent and the Lenders to seek relief from the automatic stay in effect pursuant to Bankruptcy Code Section 362, or any other relief in the Chapter 11 cases, and the right of the Debtors to oppose any such relief. The provisions of this Order shall be binding upon and inure to the benefit of the Administrative Agent, the Lenders, the Debtors, and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in these Chapter 11 cases as a legal representative of the Debtors or the Debtors' estates.

12. (a) In order to facilitate the processing of claims, to ease the burden upon the Court and to reduce any unnecessary expense to the Debtors' estates, the Administrative Agent is authorized to file a master proof of claim on behalf of itself and the Lenders on account of their claims arising under the Loan Documents and hereunder against the Obligors (the "Master Proof of Claim"), and the Administrative Agent shall not be required to file a verified statement pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure.

(b) Upon the filing of the Master Proof of Claim against the Obligors, the Administrative Agent and each Lender, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Obligors arising under the Loan Documents, and the claim of the Administrative Agent and each Lender (and each of their respective successors and assigns), named in the Master Proof of Claim shall be allowed or disallowed as if such entity had

filed a separate proof of claim in each applicable Chapter 11 case in the amount set forth opposite each name in the Master Proof of Claim; provided that the Administrative Agent may but shall not be required to amend the Master Proof of Claim from time to time to, among other things, reflect a change in the holders of claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from any transfer of any such claims.

(c) The provisions set forth of this paragraph and the Master Proof of Claim are intended solely for the purpose of administrative convenience and, except to the extent set forth herein or therein, neither the provisions of this paragraph nor the Master Proof of Claim shall affect the substantive rights of the Debtors, any statutory committee appointed in these Chapter 11 cases, the Administrative Agent or the Lenders or any other party in interest or their respective successors in interest including, without limitation, the right of each Lender (or their successors in interest) to vote separately on any plan of reorganization proposed in the Debtors' Chapter 11 cases.

13. Pursuant to Sections 105, 361 and 363 of the Bankruptcy Code, the Administrative Agent and the Lenders are hereby found to be entities that have acted in "good faith" in connection with the negotiation and entry of this Order, and each is entitled to the protection provided to such entities under Section 363(m) of the Bankruptcy Code.

14. Except on the terms of this Order, the Debtors shall be enjoined and prohibited from at any time (i) using the Cash Collateral, or (ii) using the Postpetition Collateral. Notwithstanding any provision in other "first day" orders entered by this Court authorizing the Debtors to make payments in respect of prepetition obligations, if any, the provisions in this Order conditioning the payment of such amounts or limiting the amount of such payments are controlling. Except for the Carveout, no expenses of administration of these Chapter 11 cases or

any future proceeding or case which may result therefrom, including (without limitation) liquidation under Chapter 7, shall be charged pursuant to Section 506(c) of the Code against the Prepetition Collateral or the Postpetition Collateral without the prior written consent of the Administrative Agent and the Lenders, and no such consent shall be implied from any action, inaction or acquiescence by the Administrative Agent or the Lenders or otherwise.

15. Notwithstanding anything herein to the contrary, neither the Cash Collateral nor the Carveout may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the Loan Documents, or the liens or claims granted under this Order or the Loan Documents (but may be used for the investigation in connection with the Loan Documents), (b) assert any claims, counterclaims, defenses or causes of action against the Administrative Agent or the Lenders or their respective affiliates, (c) prevent, hinder or otherwise delay the Administrative Agent's foreclosure on the Cash Collateral, the Prepetition Collateral or the Postpetition Collateral in accordance with the Loan Documents or this Order (provided that nothing herein shall prejudice the Debtors' right to contest whether an Event of Default shall have occurred hereunder); or (d) seek to modify any of the rights granted to the Administrative Agent or the Lenders hereunder or under the Loan Documents, in each of the foregoing cases without such parties' prior written consent.

16. The Debtors shall, within three business days of entry of this Order, mail copies of a notice of the entry of this Order, together with a copy of this Order and a copy of the Motion, to the parties having been given notice of the Preliminary Hearing, to any party which has filed prior to such date a request for notices with this Court and to counsel for any statutory committee of unsecured creditors appointed pursuant to Section 1102 of the Bankruptcy Code.



The notice of entry of this Order shall state that any party in interest objecting to the use of the Lenders' Cash Collateral shall file written objections with the United States Bankruptcy Court Clerk for the Southern District of New York no later than 4:00 p.m. on June 18, 2004 and objections shall be served so that the same are received on or before such date by: (i) Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, Attention: Jay M. Goffman, Esq. and Frederick D. Morris, Esq., counsel to the Debtors, (ii) the Office of the United States Trustee, 33 Whitehall Street, New York, New York 10004, Attention: Paul K. Schwartzberg, Esq., and (iii) Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attention: Peter V. Pantaleo, Esq. and Elisha D. Graff, Esq., counsel to the Administrative Agent, and a hearing to consider Debtors' further use of cash collateral shall be held on June 22, 2004 at 10:00 a.m.

Dated: June 3, 2004  
New York, New York

/s/ ROBERT D. DRAIN  
United States Bankruptcy Judge