

Hearing Date: June 22, 2004 at 10:00 a.m.  
Objections Due: June 18, 2004 at 4:00 p.m.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036-6522  
(212) 735-3000  
Jay M. Goffman (JG 6722)  
J. Gregory St. Clair (GS 8344)  
Frederick D. Morris (FM 6564)

Attorneys for Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X	
	:
In re	: Chapter 11
	:
RCN CORPORATION, <u>et al.</u> ,	: Case No. 04-13638 (RDD)
	:
Debtors.	: (Jointly Administered)
	:
----- X	

**MOTION FOR ADMINISTRATIVE ORDER UNDER 11 U.S.C. §§ 105 AND 331 ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

RCN Corporation ("RCN") and certain of its direct and indirect subsidiaries, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby move for entry of an order under 11 U.S.C. §§ 105 and 331 establishing procedures for the interim compensation and reimbursement of expenses of court-approved professionals. In support of this motion, the Debtors respectfully represent as follows:

## **BACKGROUND**

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

1. On May 27, 2004 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for reorganization relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

2. No trustee or examiner has been appointed in these chapter 11 cases, and no official committees have yet been appointed or designated.

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 105 and 331.

## **RELIEF REQUESTED**

5. By this motion, the Debtors request entry of an order under sections 105(a) and 331 of the Bankruptcy Code establishing an orderly, regular process for allowance and payment of compensation and reimbursement for attorneys and other professionals whose services are authorized by this Court pursuant to sections 327 or 1103 of the Bankruptcy Code and who will be required to file

applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code. In addition, the Debtors request that the order establish a procedure for reimbursement of reasonable out-of-pocket expenses incurred by members of any statutory committees appointed in these cases.

6. The Debtors are currently seeking approval to employ certain professionals who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code. The Debtors may also seek to retain other professionals to assist them in these cases as the need arises (collectively, the "Debtors' Professionals"). In addition, if a statutory committee of unsecured creditors (the "Committee") is appointed in these cases, it likely will retain counsel, and possibly other professionals, to assist it (collectively with the Debtors' Professionals, the "Chapter 11 Professionals").

#### **PROPOSED COMPENSATION AND REIMBURSEMENT PROCEDURES**

7. Pursuant to section 331 of the Bankruptcy Code, all professionals are entitled to submit applications for interim compensation and reimbursement of expenses every 120 days, or more often if the Court permits. To avoid the "financing" of the Debtors' cases by the Chapter 11 Professionals, however, the Debtors request the establishment of procedures (a) for compensating and reimbursing the Chapter 11 Professionals on a monthly basis and (b) governing the interim and final fee application process. In addition, pursuant to section 503(b)(3)(F) of the

Bankruptcy Code, the Debtors seek to establish a mechanism by which members of the Committee (and members of any other statutory committees, if appointed) may be reimbursed for expenses incurred in the performance of their duties.<sup>1</sup> Such procedures will permit the Court and all other parties to monitor more effectively the professional fees incurred in these chapter 11 cases.

8. Specifically, the Debtors propose that the interim payment of compensation and reimbursement of expenses to the Chapter 11 Professionals be permitted as follows:

a. On or before the 20th day of each month following the month for which compensation is sought, each professional may serve a monthly statement (the "Monthly Statement") upon (i) RCN Corporation, 105 Carnegie Center, Princeton, New Jersey 08540, attn: General Counsel, (ii) counsel to the Debtors, Jay M. Goffman, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036-6522, (iii) counsel to all official committees at their addresses of record, (iv) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, attn: Paul K. Schwartzberg, Esq., and (v) counsel to the agent for the Debtors' prepetition credit facility, Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017-3954, attn: Peter V. Pantaleo, Esq. (collectively, the "Notice Parties"). The first such Monthly Statement of any Chapter 11 Professional should cover services rendered and expenses incurred from the effective date of such professional's retention (the "Retention Date") through the end of the first full month after the Retention Date.

---

<sup>1</sup> The specific relief requested by the Debtors conforms substantially to the professional and committee payment procedures approved by General Order of the United States Bankruptcy Court for the Southern District of New York, M-219, dated January 24, 2000, entitled "In the Matter of Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals."

b. The Monthly Statement would not be filed with the Court and a courtesy copy would not be delivered to the presiding Judge's chambers because these proposed procedures would not be intended to alter the fee application requirements outlined in sections 330 and 331 of the Bankruptcy Code, and the Chapter 11 Professionals would remain obligated to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules.

c. Each Monthly Statement would be required to contain a list of the individuals and their respective titles (e.g., attorney, accountant, or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred, and contemporaneously maintained time entries for each individual in increments of tenths (1/10) of an hour. No professional should seek reimbursement of an expense that would otherwise not be allowed pursuant to the Court's Administrative Orders dated June 24, 1991 and April 21, 1995 or the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330, dated January 30, 1996.

d. Each Notice Party would have 15 days from receipt of a Monthly Statement (the "Objection Deadline") to review the Monthly Statement. In the event that a Notice Party has an objection to the compensation or reimbursement sought in a particular statement, such Notice Party would serve, on or before the Objection Deadline, a written "Notice Of Objection" setting forth the nature of the objection and the amount of fees or expenses at issue upon (i) the professional whose Monthly Statement is the subject of the objection and (ii) the other Notice Parties.

e. At the expiration of the Objection Deadline, the Debtors would promptly pay 80% of the fees and 100% of the expenses identified in each Monthly Statement to which no Notice of Objection has been served in accordance with paragraph (d).

f. If the Debtors receive a Notice of Objection with respect to a particular Monthly Statement, they would withhold payment of that portion of the statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e).

g. Similarly, if the parties to an objection are able to resolve their dispute following the service of a Notice of Objection, and if the party whose statement was the subject of an objection serves upon all of the Notice Parties a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtors would promptly pay, in accordance with paragraph (e), that portion of the Monthly Statement which is no longer subject to an objection.

h. All objections that are not resolved by the parties would be preserved and presented to the Court at the next interim or final fee application hearing to be heard by the Court in accordance with paragraph (j) below.

i. The service of a Notice of Objection in accordance with paragraph (d) would not prejudice the objecting party's right to object to any interim or final fee application made to the Court in accordance with the Bankruptcy Code on any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Statement would not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code.

j. Approximately every 120 days, but no more than every 150 days, each Chapter 11 Professional will serve and file with the Court an application for interim or final court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested.

k. Any Chapter 11 Professional who fails to file when due an application seeking approval of compensation and expenses previously paid under these procedures (i) would be ineligible to receive further monthly payments of fees or expenses as provided herein until all such overdue applications are filed and (ii) might be required to disgorge any fees paid since his or her retention or the last fee application, whichever is later.

l. The pendency of an application or an order that payment of compensation or reimbursement of expenses was improper as to a particular Monthly Statement would not disqualify a professional from the

future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.

m. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein would have any effect on the Court's interim or final allowance of compensation and reimbursement of expenses of any of the Chapter 11 Professionals.

n. Counsel for any statutory committee(s) appointed in these cases could, in accordance with the foregoing procedures, collect and submit statements of expenses, with supporting vouchers, from members of the committee(s), provided that these reimbursement requests comply with this Court's Administrative Orders dated June 24, 1991 and April 21, 1995.

9. The Debtors further request that the Court limit the notice of hearings to consider interim and final fee applications to the Master Service List, as defined in the Order under 11 U.S.C. §§ 102 and 105 and Fed. R. Bankr. P. 2002, 9006 and 9007 Establishing Certain Notice, Case Management and Administrative Procedures. The Debtors further request that, notwithstanding any orders providing for notice procedures in these cases, the actual interim and final fee applications be served only upon the Notice Parties, with a courtesy copy delivered to chambers. Such notice should reach the parties most active in these cases and will save the expense of undue copying and mailing charges.

10. The procedures suggested herein would reduce the administrative burdens imposed on the United States Trustee and the Court by the fee approval process, would enable all parties to monitor closely the costs of administration of these cases, would diminish undue financial constraints on the Chapter 11 Profes-

sionals, and would permit the Debtors to efficiently manage their cash and liquidity. Such procedures are consistent with the procedures established in other complex cases in this district. See, e.g., In re Radio Unica Communications Corp., Case No. 03-16837 (CB) (Bankr. S.D.N.Y. December 3, 2003); In re PhyCor, Inc., Case No. 02-40278 (PCB) (Bankr. S.D.N.Y. 2002); In re Global Crossing, Ltd., Case No. 02-40188 (REG) (Bankr. S.D.N.Y. 2002); In re Enron Corp., Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. 2001).

11. 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 motion, 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 establishing (i) procedures for the interim compensation and reimbursement of expenses of the Chapter 11 Professionals and (ii) granting the Debtors such other and further relief as is just.

Dated: New York, New York  
June 4, 2004

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

/s/ J. Gregory St. Clair  
Jay M. Goffman (JG 6722)  
J. Gregory St. Clair (GS 8344)  
(Members of the Firm)  
Frederick D. Morris (FM 6564)  
Four Times Square  
New York, New York 10036-6522  
(212) 735-3000

Attorneys for Debtors and  
Debtors-in-Possession