

Hearing Date: September 29, 2004 at 10:00 a.m.
Objection Deadline: September 24, 2004 at 4:00 p.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 FOR ORDER UNDER 11 U.S.C. § 365(d)(4) EXTENDING
TIME WITHIN WHICH THE DEBTORS MAY ASSUME OR REJECT
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
(RCN CABLE TV OF CHICAGO, INC., RCN ENTERTAINMENT, INC.,
ON TV, INC., 21ST CENTURY TELECOM SERVICES, INC.,
AND RCN TELECOM SERVICES OF VIRGINIA, INC.)**

RCN Cable TV of Chicago, Inc. ("RCN Chicago"), RCN Entertainment, Inc., ON TV, Inc., 21st Century Telecom Services, Inc., and RCN Telecom Services of Virginia, Inc. (collectively, the "Debtors"), certain of the debtors and debtors-in-possession in the above captioned cases, hereby move for entry of an

order under 11 U.S.C. § 365(d)(4) extending the time within which the Debtors may assume or reject unexpired leases of nonresidential real property (the "Motion"). In further support of this Motion, the Debtors represent as follows:

BACKGROUND

1. On August 20, 2004 (the "Petition Date"), the Debtors (other than RCN Chicago) 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, RCN Corporation, the Debtors' ultimate parent corporation, TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC and Hot Spots Productions, Inc. (the "Initial Debtors"), each filed voluntary petitions in this Court for reorganization relief under the Bankruptcy Code. On August 5, 2004, RCN Chicago filed a voluntary petition in this Court for reorganization relief under chapter 11 of the Bankruptcy Code. The cases of the Debtors and Initial Debtors are jointly administered under case number 04-13638 (RDD). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

2. No trustee, examiner or official committee has been appointed in the Debtors' chapter 11 case. An official committee of unsecured creditors was appointed in the Initial Debtors' cases on June 10, 2004.

3. This 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 predicate for the relief requested herein is Bankruptcy Code section 365(d)(4).

RELIEF REQUESTED

5. By this Motion, the Debtors seek an order extending the time within which each Debtor may elect to assume or reject its unexpired leases of nonresidential real property through and including the earlier of (a) the effective date of a plan of reorganization for such Debtor or (b) January 17, 2005.

BASIS FOR RELIEF

6. The Debtors are parties to certain unexpired leases of nonresidential real property (the "Unexpired Leases"). The Unexpired Leases involve agreements under which the Debtors lease space to house their hub sites and other telecommunications equipment. The telecommunications equipment that is housed on the premises covered by the Unexpired Leases plays an essential role in the Debtors' ability to continue to provide telecommunications services to their customers.

7. The Debtors request an order extending the time within which each Debtor may assume or reject its Unexpired Leases through and including the

earlier of (a) the effective date of a plan of reorganization for such Debtor or (b) January 17, 2005,¹ in order to preserve their rights to reject or assume the Unexpired Leases outside of the sixty (60) day statutory period set by section 365(d)(4) of the Bankruptcy Code for the assumption or rejection of unexpired leases of nonresidential real property (the "Rejection Period").

8. On August 20, 2004, certain of the Debtors² filed with this Court (i) the Joint Plan Of Reorganization Of RCN Corporation And Certain Subsidiaries (as subsequently amended, supplemented, or otherwise modified, the "Plan"), and (ii) the disclosure statement with respect to the Plan (as subsequently amended, supplemented, or otherwise modified, the "Disclosure Statement"). On September 2, 2004, the Plan Proponent Debtors filed a motion with this Court requesting the approval of certain solicitation procedures in connection with the Plan (the "Solicitation Procedures Motion").

9. The Court has established September 29, 2004, as the date for the hearing at which the Court will consider the adequacy of the Disclosure State-

¹ January 17, 2005, is the date that is 90 days after the original Rejection Period will currently expire with respect to Debtors RCN Entertainment, Inc., ON TV, Inc., 21st Century Telecom Services, Inc., and RCN Telecom Services of Virginia, Inc.

² The Debtor plan proponents are RCN Entertainment, Inc., ON TV, Inc., and RCN Telecom Services of Virginia, Inc. (collectively, the "Plan Proponent Debtors"). The Initial Debtors are also proponents of the Plan.

ment. Pursuant to the Solicitation Procedures Motion, the Plan Proponent Debtors requested that this Court schedule a hearing to consider confirmation of the Plan in late November of this year. The Plan Proponents Debtors' decision to assume or reject the Unexpired Leases, as well as the timing of such assumption or rejection, depends in large part on whether a plan of reorganization is confirmed and ultimately consummated. Although the Plan Proponent Debtors anticipate that they will solicit acceptances, confirm and consummate their Plan prior to the expiration of the proposed Rejection Period, out of an abundance of caution, the Plan Proponent Debtors are seeking the relief contained herein.

10. Similarly, the movants which are not proponents of the Plan (RCN Chicago and 21st Century Telecom Services, Inc.) nonetheless are parties to potentially valuable Unexpired Leases. Accordingly, to preserve the ability of such Debtors to assume or reject such Unexpired Leases, these Debtors also believe that it is in the best interests of their estates that the Court grant the extension requested herein pursuant to section 365(d)(4) of the Bankruptcy Code.

APPLICABLE AUTHORITY

11. Pursuant to Bankruptcy Code section 365(d)(4), a debtor's unexpired leases of nonresidential real property that are not assumed (or voluntarily rejected) within the initial sixty days of a chapter 11 case, and are not the subject of a

motion filed prior to the expiration of the sixtieth day to extend the statutory period, are deemed rejected. Specifically, section 365(d)(4) provides, in relevant part, that:

[I]n a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

11 U.S.C. § 365(d)(4). Thus, the Court can, for cause, order an extension of the period during which a debtor-in-possession must assume or reject nonresidential real property leases upon the filing of a motion for such relief within the 60-day period or extensions thereof. In re Burger Boys, 94 F.3d 755, 760-61 (2d Cir. 1996); In re Wedtech Corp., 72 B.R. 464, 468-70 (Bankr. S.D.N.Y. 1987).

12. The Second Circuit has set forth the following nonexhaustive list of factors relevant to the determination of whether cause exists to extend the period during which a debtor-in-possession must assume or reject nonresidential real property leases: "(1) whether the debtor was 'paying for the use of the property'; (2) whether 'the debtor's continued occupation . . . could damage the lessor beyond [] the compensation available under the Bankruptcy Code'; (3) whether the lease is the debtor's primary asset; and (4) whether the debtor has had sufficient time to formulate a plan of reorganization." Burger Boys, 94 F.3d at 761 (quoting Theatre Holding Corp. v. Mauro, 681 F.2d 102, 105-06 (2d Cir. 1982)).

13. In this case, all of the Burger Boys factors are satisfied. First, the Debtors are paying for use of the property at the applicable lease rates and are continuing to perform their other obligations under the Unexpired Leases in a timely fashion. Thus, at this time, there are no defaults under the Unexpired Leases. Moreover, in compliance with section 365(d)(3) of the Bankruptcy Code, the Debtors fully intend to remain current with respect to all outstanding postpetition obligations under the Unexpired Leases.

14. Second, there is no reason why the Debtors' continued occupancy of the premises during the extension of time sought herein could or would damage the lessors (the "Lessors") beyond the compensation that is available to the Lessors under the Bankruptcy Code. There, would thus be no harm to the Lessors should the Court extend the period within which the Debtors must assume or reject the Unexpired Leases as requested herein.

15. Third, the Unexpired Leases are important assets of the Debtors. The Debtors' may be unable to successfully operate their business without the continued use of the property leased pursuant to the Unexpired Leases. The Debtors' business is largely dependent on providing telecommunications services to their customers. The loss of the leased premises used to house the Debtors' hub sites and other telecommunications equipment would impair the Debtors' continued

operations, as that equipment is essential to the Debtors' ability to continue to provide telecommunications services to their customers.

16. Additionally, the extension of the Rejection Period will not prejudice the Lessors to the Unexpired Leases. The Plan Proponent Debtors are moving rapidly towards the solicitation, confirmation and consummation of their Plan. Accordingly, the Lessors to the Unexpired Leases of the Plan Proponent Debtors should know within the coming few months whether their Unexpired Leases will be assumed or rejected by the Plan Proponent Debtors. Finally, the relief requested herein, if granted, will provide the other Debtors (RCN Chicago and 21st Century Telecom Services, Inc.) with sufficient time to exercise their sound business judgment with respect to the assumption or rejection of their Unexpired Leases and the formulation of a reorganization plan.

17. In contrast, if the 60-day period is not extended, the Debtors might be compelled to prematurely assume long-term liabilities under the Unexpired Leases (potentially creating administrative expense claims in excess of applicable rejection damage claims), to the detriment of the Debtors' creditors and estates. To prevent this difficult choice, the courts have suggested that bankruptcy courts exercise their discretion in appropriate cases to extend the section 365(d)(4) period. See Burger Boys, 94 F.3d at 760-61 (explaining that a decision to extend time is within the discretion of the bankruptcy court) (citations omitted).

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

WHEREFORE, the Debtors respectfully request that the Court enter an order extending the period within which each Debtor must assume or reject unexpired leases of nonresidential real property through and including the earlier of (a) the effective date of a plan of reorganization of such Debtor or (b) January 17, 2005, and granting the Debtors such other and further relief as is just.

Dated: New York, New York
September 14, 2004

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