

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. § 105(a) AND FED.
R. BANKR. P. 9006(b) EXTENDING THE TIME WITHIN
WHICH THE DEBTORS MAY FILE NOTICES OF REMOVAL
(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 Entertain-
ment, 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. § 105(a) and Fed. R. Bankr. P. 9006(b) extending the time within which the Debtors may file notices of removal under Fed. R. Bankr. P. 9027(a). In support of this Motion, the Debtors respectfully 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 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 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 section 105(a) of the Bankruptcy Code and Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

5. By this Motion, the Debtors seek entry of an order under 11 U.S.C. § 105 and Bankruptcy Rule 9006(b) extending the period set forth in Bankruptcy Rule 9027(a) within which the Debtors may file notices of removal (the "Removal Deadline") through and including January 17, 2005.¹

BASIS FOR RELIEF

6. Due to the size and scope of the Debtors' operations, the Debtors are from time to time named as a party in state court judicial actions arising in connection with any one of a variety of matters in which the Debtors may be involved. Because the Debtors have been primarily focused on stabilizing and maximizing the value of their business during the pendency of these chapter 11 cases, the Debtors have not had the opportunity to devote sufficient time to assess

¹ January 17, 2005, is the date that is 60 days after the original Removal Deadline with respect to Debtors RCN Entertainment, Inc., ON TV, Inc., 21st Century Telecom Services, Inc., and RCN Telecom Services of Virginia, Inc.

whether there are any pending actions which should be removed pursuant to 28 U.S.C. § 1452.

7. While the Debtors are not aware of any pending state court litigation to which they are a party, due to the scope and complexity of the Debtors' operations, the Debtors are requesting the relief outlined herein in order that they may have additional time to investigate whether there is any pending litigation that can and should be removed.

8. The Debtors submit that the requested extension through and including January 17, 2005 is in the best interests of their estates and creditors because the preservation of the Debtors' right to remove actions will afford the Debtors a sufficient opportunity to assess whether there are any pending actions that can and should be removed.

9. The Debtors' adversaries will not be prejudiced by the extension requested herein because such adversaries may not prosecute an action against the Debtors absent relief from the automatic stay. Additionally, nothing herein will prejudice any party to a proceeding the Debtors seek to remove from pursuing remand pursuant to 28 U.S.C. § 1452(b). Accordingly, the proposed extension requested herein will not prejudice the rights of other parties to any pending actions.

APPLICABLE AUTHORITY

10. 28 U.S.C. § 1452(a) governs the removal of state court actions to federal court:

- (a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

11. Bankruptcy Rule 9027(a) places time restrictions on the Debtors' ability to remove a state court action to federal court:

- (2) *Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code.* If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.
- (3) *Time for Filing; Civil Action Initiated After Commencement of the Case Under the Code.* If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the

initial pleading has been filed with the court but not served with the summons.

Fed. R. Bankr. P. 9027(a)(2), (3).

12. Bankruptcy Rule 9006(b) provides that the Court can extend the time periods imposed by Bankruptcy Rule 9027(a):

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . with our without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order

Fed. R. Bankr. P. 9006(b)(1).

Finally, Section 105(a) of the Bankruptcy Code provides, in pertinent part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

13. Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9006(b) provide this Court with the authority to extend the deadline to file notices of removal. Indeed, it is well settled that this Court is authorized to extend the Removal Deadline as requested herein. See Jandous Elec. Constr. Corp. v. City of New York (In re Jandous Elec. Constr. Corp.), 106 B.R. 48, 50 (Bankr. S.D.N.Y. 1989) (recognizing that the period in which to file as motion to remove may be expanded pursuant to Bankruptcy Rule 9006); In re Pacor, Inc., 743 F.2d 984, 996 n.17 (3d Cir. 1984), overruled on other grounds by Things Remembered v. Petrarca, 516 U.S. 124, 134-

35 (1995), (noting that court may grant extensions of time to file notices of removal); In re Lawrence, 233 B.R. 248, 255, n.3 (N.D.N.Y. 1999) ("request for [enlargement of time under Bankruptcy Rule 9006(b)] must come as soon as the need for it is apparent"); Fort Dodge Creamery Co. v. Loomis (In re Fort Dodge Creamery Co.), 117 B.R. 438, 443 (N.D. Iowa 1990) (trustee could have extended Removal Deadline pursuant to Bankruptcy Rule 9006).

13. 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 requests that the Court enter an order extending the Removal Deadline through and including January 17, 2005 and grant such other and further relief as is just and proper.

Dated: New York, New York
September 14, 2004

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