

Hearing Date: September 29, 2004 @ 10:00 a.m.
Objections Due: September 24, 2004 @ 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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**DEBTORS' MOTION FOR ORDER UNDER 11 U.S.C. § 1121(d)
EXTENDING THE EXCLUSIVE PERIODS TO PROPOSE
AND SOLICIT AND OBTAIN ACCEPTANCES OF
DEBTORS' JOINT PLAN OF REORGANIZATION
(RCN CORPORATION, TEC AIR, INC., RLH PROPERTY CORPORATION,
RCN FINANCE, LLC AND HOT SPOTS PRODUCTIONS, INC.)**

RCN Corporation, TEC Air, Inc., RLH Property Corporation, RCN
Finance, LLC and Hot Spots Productions, 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. § 1121(d) further extending the exclusive

periods during which the Debtors have the exclusive right to file a reorganization plan and solicit and obtain acceptances of a reorganization plan. In support of this Motion, the Debtors respectfully represent as follows:

BACKGROUND

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, as amended (the "Bankruptcy Code").¹ RCN Cable TV of Chicago commenced its chapter 11 case on August 5, 2004. Certain other affiliated debtors in these Chapter 11 cases commenced their cases on August 20, 2004.²

2. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

3. No trustee, examiner or official committee has been appointed in the Debtors' chapter 11 case. An official committee of unsecured creditors (the "Creditors' Committee") was appointed in the Debtors' cases on June 10, 2004.

¹ RCN Corporation, TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC and Hot Spots Productions, Inc. commenced their chapter 11 cases on May 27, 2004.

² RCN Telecom Services of Virginia, Inc., RCN Entertainment, Inc., 21st Century Telecom Services, Inc. and ON TV, Inc. commenced their chapter 11 cases on August 20, 2004.

4. 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).

5. The statutory predicate for the relief sought herein is Bankruptcy Code section 1121.

RELIEF REQUESTED

6. By this Motion, the Debtors request entry of an order extending the period within which the Debtors have the exclusive right to propose a reorganization plan (the "Plan Proposal Period") and solicit acceptances of a reorganization plan (the "Solicitation Period," and together with the Plan Proposal Period, the "Exclusive Periods") for approximately three (3) months (through and including December 31, 2004, and February 28, 2005, respectively) without prejudice to (i) the Debtors' right to seek further extensions of the Exclusive Periods, or (ii) the right of any party-in-interest to seek to reduce the Exclusive Periods for cause.

7. As this Court is aware, on August 20, 2004, the Debtors filed their Joint Plan of Reorganization of RCN Corporation and Certain Subsidiaries (the "Plan"). The Creditors' Committee is a co-proponent of the Plan. A hearing on the disclosure statement with respect to the Plan is scheduled for September 29, 2004, and the Debtors intend to pursue confirmation and consummation of the Plan by December 31, 2004. The Debtors have no reason to believe that they will be unable

to comply with this timeline. This Motion, however, has been filed solely to preserve the estate's Exclusive Periods in the unlikely event that the Debtors are required, for whatever reason, to develop and file a new plan and disclosure statement before year end.

BASIS FOR RELIEF

8. Sections 1121(b) and 1121(c)(3) of the Bankruptcy Code provide for: (a) an initial 120-day period after the Petition Date within which the Debtors have the exclusive right to file a reorganization plan or plans in their cases and (b) an initial 180-day period after the Petition Date within which the Debtors have the exclusive right to solicit and obtain acceptances of any reorganization plan or plans the Debtors file during the initial 120-day period.

9. The Exclusive Periods are intended to afford chapter 11 debtors a full and fair opportunity to rehabilitate their businesses and to negotiate and propose a reorganization plan -- without the deterioration and disruption of their businesses that might be caused by the filing of competing reorganization plans by non-debtor parties. Section 1121(d) of the Bankruptcy Code provides that the Court may extend the above-referenced Exclusive Periods "for cause" upon request of a party in interest after notice and a hearing.

10. In these cases, the Debtors' Plan Proposal Period is set to expire on September 24, 2004, and the attendant Solicitation Period is set to expire

on November 23, 2004. Although the Debtors believe that they will successfully confirm and consummate the Plan prior to the expiration of the current Exclusive Periods, the Debtors seek the relief requested in this Motion for the reasons outlined above.

APPLICABLE AUTHORITY

11. Under section 1121(d) of the Bankruptcy Code, the Court may extend the Plan Proposal Period and/or the Solicitation Period for cause. Specifically, that section provides that:

On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d).

12. In determining whether cause exists to extend the Exclusive Periods, the Court may examine, among others, the following factors:

- (a) The size and complexity of the case;
- (b) The existence of an unresolved contingency and the need to resolve claims that may have a substantial effect on a plan;
- (c) The Debtors' progress in resolving issues facing their estates;
and
- (d) Whether an extension of time will harm the Debtors' creditors.

See, e.g. In re Dow Corning Corp., 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); In re Express One Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987).

13. In evaluating these factors, bankruptcy courts are afforded maximum flexibility to review the particular facts and circumstances of each case. See In re Pub. Serv. Co. of N.H., 88 B.R. 521, 534 (Bankr. D.N.H. 1988) ("[Section] 1121(d) provides a 'for cause' standard in determining exclusivity extension requests. As might be inferred from such a general standard, the legislative intent has been construed to leave the question to the reorganization court in the exercise of its discretion and to promote maximum flexibility to suit various types of reorganization proceedings."); In re McLean Indus., 87 B.R. at 833 ("The legislative history indicates that it is to be viewed flexibly . . ."); see also First Am. Bank of N.Y. v. Southwest Gloves & Safety Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986) (acknowledging flexibility that section 1121(d) provides).

14. Based upon the foregoing factors, the Debtors submit that a precautionary extension of the Exclusive Periods is entirely justified in the Debtors' cases. By surpassing various complex hurdles over the course of the last year and reaching important settlements, on August 20, 2004, the Debtors filed their Plan providing for the significant restructuring of their balance sheet and related business operations. The Debtors expect creditor support of the proposed Plan as the Credi-

tors' Committee is a co-proponent with the Debtors of the Plan. As noted above, the hearing to consider the adequacy of the Disclosure Statement is scheduled for September 29, 2004, and the Debtors are on track to confirm and consummate the Plan prior to year end 2004.

15. The size and complexity of the Debtors' chapter 11 cases also warrant sufficient cause to further extend the Exclusive Periods. See, e.g., In re Express One Int'l, 194 B.R. at 100 ("The traditional ground for cause is the large size of the debtor and the concomitant difficulty in formulating a plan of reorganization."). The reorganization of the Debtors requires the restructuring of approximately \$1.5 billion in debt, including a senior secured credit facility, a junior secured credit facility, and five series of publicly traded notes; the implementation of a new exit financing facility; the review of a portfolio of approximately 160 real estate leases; and the resolution of several other business and operational matters.

16. In light of the size and complexity of these cases and the significant progress to date with respect to a largely consensual Plan, the Debtors' request for a 90-day extension is modest; it is only a fraction of the extensions granted in large reorganization cases, and therefore is amply warranted here. See, e.g., Dow Corning Corp., 208 B.R. at 665 (exclusivity extended for over two years); In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 411 (E.D.N.Y. 1989)

(extending exclusivity for one year and seven months); Gaines V. Perkins, 71 B.R. 294, 296 (W.D. Tenn. 1987) (exclusivity granted for over eight hundred days).

17. In sum, the requested extension of the Exclusive Periods will not prejudice the interests of any creditor. The Debtors have timely met, and continue to timely meet, their postpetition obligations in these cases. The relief requested in this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest, and should be approved.

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 (i) extending the Plan Proposal Period through and including December 31, 2004, and the Solicitation Period through and including February 28, 2005, without prejudice to (y) the Debtors' right to seek further extensions of the Exclusive Periods, or (z) the right of any party-in-interest to seek to reduce the Exclusive Periods for cause; and (ii) granting the Debtors such other and further relief as is just and proper.

Dated: New York, New York
September 15, 2004

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