

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

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

**AFFIDAVIT OF MAILING**

STATE OF NEW YORK )  
) ss.:  
COUNTY OF NEW YORK )

TIRZAH GORDON, being duly sworn, deposes and says:

1. I am over the age of eighteen years and employed by Bankruptcy Services LLC, 757 Third Avenue, New York, New York and I am not a party to the above-captioned action.
2. On October 5, 2002 I caused to be served the following:
  - a) "Notice of Motion for Order Under 11 U.S.C. § 363(b) and Bankruptcy Rule 9019 Authorizing and Approving Lease Termination and Recognition Agreement" dated October 5, 2004, to which is attached the "Motion for Order Under 11 U.S.C. § 363(b) and Bankruptcy Rule 9019 Authorizing and Approving Lease Termination and Recognition Agreement" dated October 5, 2004 (collectively the "Motion"), a copy of which is attached hereto as Exhibit "A", and
  - b) "Notice of Adjournment of Hearing Previously Scheduled for October 5, 2004 At 10:00 A.M. to Consider Approval of Disclosure Statement and Solicitation Procedures Motion" dated October 5, 2004 (the "Notice"), a copy of which is attached hereto as Exhibit "B",

by causing true and correct copies, enclosed securely in separate, postage pre-paid envelopes, to be delivered by overnight mail as follows:

- i. the Motion and Notice to those parties listed on the annexed Exhibit "C" and
- ii. the Notice to those parties listed on the annexed Exhibit "D".

  
\_\_\_\_\_  
Tirzah Gordon

Sworn to before me this  
8<sup>th</sup> day of October, 2004

  
\_\_\_\_\_  
Notary Public

MARIAH TIFFANY MARTIN  
Notary Public, State Of New York  
No. 01MA6076302  
Qualified In Suffolk County  
Commission Expires June 24, 2006

**EXHIBIT "A"**



PLEASE TAKE FURTHER NOTICE that on **October 27, 2004 at 10:00 a.m.**, the Bankruptcy Court will hold a hearing to consider granting the relief requested in the Motion (the "Hearing"). Objections to the Motion, if any, must be in writing, must conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and must be (i) filed with the Bankruptcy Court in accordance with General Order M-242 (as amended) – registered users of the Bankruptcy Court's case filing system must file electronically, and all other parties in interest must file on a 3.5 inch disk (preferably in Portable Document Format (PDF)), WordPerfect or any other Windows-based word processing format); submitted in hard-copy form directly to the chambers of the Honorable Robert D. Drain, United States Bankruptcy Judge; and served upon (i) RCN Corporation, 105 Carnegie Center, Princeton, NJ 08540, Attention: General Counsel; (ii) Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Debtors, 4 Times Square, New York, NY, 10036-6522, Attention: D. J. Baker, Esq.; (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st floor, New York, NY 10004, Attention: Paul K. Schwartzberg, Esq.; (iv) Milbank, Tweed, Hadley & McCloy, counsel to the unofficial committee of noteholders, 1 Chase Manhattan Plaza, New York, NY 10005, Attention: Dennis Dunne, Esq.; (v) counsel to any other statutory committee(s) appointed in these cases; (vi) Simpson Thacher & Bartlett, counsel to the agent for the Debtors'

prepetition credit facility, 425 Lexington Avenue, New York, NY 10017-3954,  
Attention: Peter V. Pantaleo, Esq.; and (vii) HSBC Bank USA, the indenture trustee  
for the Debtors' outstanding debt securities, 452 Fifth Avenue, New York, NY  
10001, Attention: Issuer Services, in each case so as to be **received** no later than 4:00  
p.m. Eastern time on **October 22, 2004** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that only those objections made in writing and timely filed and received by the Objection Deadline will be considered by the Bankruptcy Court at the Hearing, and that if no objections to the Motion are timely filed and served in accordance with the procedures set forth herein, the Bankruptcy Court may enter an order granting the Motion **without further notice.**

Dated: New York, New York  
October 5, 2004

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

/s/ D.J. Baker

D. J. Baker (JB 0085)  
(Member 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



dition Agreement. In support of this motion, the Debtors respectfully represent as follows:

### **BACKGROUND**

1. On May 27, 2004, RCN and certain other Debtors filed voluntary petitions in this Court for reorganization relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").<sup>1</sup> RCN Cable TV of Chicago, Inc., an affiliate of RCN, commenced its chapter 11 case on August 5, 2004. Certain additional Debtors commenced their chapter 11 cases on August 20, 2004.<sup>2</sup>

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

3. No trustee or examiner has been appointed in these chapter 11 cases. On June 10, 2004, the United States Trustee for the Southern District of New York appointed the Committee of Unsecured Creditors. No other official committees have been appointed or designated in these chapter 11 cases.

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<sup>1</sup> In addition to RCN, TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC and Hot Spots Productions, Inc., all affiliates of RCN, commenced their chapter 11 cases on May 27, 2004.

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



4. 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).

5. The statutory predicates for the relief requested herein are Bankruptcy Code section 363(b) and Bankruptcy Rule 9019.

### **RELIEF REQUESTED**

6. By this motion, the Debtors seek entry of an order pursuant to 11 U.S.C. § 363(b) and Bankruptcy Rule 9019 authorizing and approving the Lease Termination and Recognition Agreement (the "Agreement") among RCN, RCN Telecom Services, Inc. ("RCN Telecom")<sup>3</sup> and Consolidated Edison Co. ("ConEd"). A copy of the Agreement is attached hereto as Exhibit A.

### **BASIS FOR THE RELIEF REQUESTED**

#### **A. The Master Lease Agreement and Guaranty**

7. RCN Telecom and ConEd executed a lease dated August 23, 2000 (the "Master Lease"), whereby ConEd leased to RCN Telecom six entire floors and other areas (the "Original Premises") in the building known as 118-29 Queens Boulevard, Forest Hills, New York 11375 (the "Building"). The Master Lease expires on September 29, 2012. RCN executed a guaranty (the "Guaranty") in favor of ConEd of certain of RCN Telecom's obligations under the Master Lease.

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<sup>3</sup> RCN Telecom is a non-Debtor, wholly owned subsidiary of RCN.

8. After executing the Master Lease, RCN and its affiliates realized that their operations did not require all six floors of the Building, and subleased a substantial portion of the Original Premises to JetBlue Airways Corporation ("JetBlue") pursuant to a sublease (as amended, the "Sublease") initially dated June 10, 2002. The Sublease expires on September 29, 2012.

**B. Lease Termination and Recognition Agreement**

9. RCN and RCN Telecom do not believe that they will have any use for the Original Premises as part of their future business plans. Additionally, the rent payable to ConEd under the Master Lease is in excess of the rent payable to RCN Telecom under the Sublease. RCN Telecom therefore sustains an operating loss on the Sublease each month. The total projected loss under the Sublease through its current expiration date is approximately \$1.7 million. Moreover, RCN Telecom's total obligations (excluding projected revenue from the Sublease) under the Master Lease through its expiration exceed \$25 million.

10. RCN and RCN Telecom therefore recognized that they would receive an important benefit if they were able to terminate the Master Lease and Guaranty. A termination would release them from the inherent risk of leasing real property, and allow them to exit the leasing business. To that end, RCN, RCN Telecom and ConEd commenced negotiations regarding an agreement that allowed RCN and RCN Telecom to achieve these goals. After extensive negotiations,

conducted at arms' length and in good faith, RCN, RCN Telecom and ConEd executed the Agreement. The Agreement generally provides as follows:<sup>4</sup>

- a. The Master Lease and Guaranty shall terminate upon the occurrence of certain events described in the Agreement.
- b. ConEd will recognize JetBlue as its direct tenant on the terms set forth in the Sublease.
- c. RCN and RCN Telecom will pay ConEd the aggregate sum of \$1.7 million, subject to certain adjustments.
- d. ConEd will release RCN and RCN Telecom from all liabilities under the Master Lease and Guaranty except for liabilities to third parties arising prior to the effective date of the Agreement.

The Agreement provides the Debtors with a substantial benefit, as it releases RCN and RCN Telecom from future operating losses, as well as the inherent risk associated with subleasing real property. In RCN's and RCN Telecom's reasonable business judgment, such consideration constitutes fair, adequate and reasonable equivalent value; is in the best interests of the estate; and should be approved.

#### **APPLICABLE AUTHORITY**

11. Bankruptcy Rule 9019 allows for approval by a bankruptcy court of a settlement after notice and a hearing. Settlements and compromises are "a normal part of the process of reorganization," and are strongly encouraged in

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<sup>4</sup> The following summary of the Agreement is given for illustrative purposes only. To the extent this summary and the Agreement are inconsistent, the Agreement shall control.

bankruptcy. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (quoting Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939)). See also, Hicks, Muse & Co. v. Brandt, 136 F.3d 45, 50 n.5 (1st Cir. 1998) ("[c]ompromises are favored in bankruptcy").

12. Trustees and debtors-in-possession may, in the exercise of their business judgment, enter into settlements. In re Int'l Distrib. Ctrs., Inc., 103 B.R. 420, 423 (S.D.N.Y. 1989) ("A court may give weight to the [t]rustee's informed judgment that a compromise is fair and equitable, and consider the competency and experience of counsel who support the compromise") (citations omitted); In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 759 (Bankr. S.D.N.Y. 1992) (same).

13. A settlement should be approved unless it "fall[s] below the lowest point in the range of reasonableness." In re Teltronics Servs., Inc., 762 F.2d 185, 189 (2d Cir. 1985). The court need not decide the numerous questions of law and fact raised by the settlement, but rather should "canvass the issues" so that the reasonableness of the settlement may be evaluated. Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972); In re Best Prods. Co., 168 B.R. 35, 51 (Bankr. S.D.N.Y. 1994), *aff'd*, 68 F.3d 26 (2d Cir. 1995).

14. Bankruptcy Code section 363 authorizes a debtor-in-possession to dispose of property of the estate in the ordinary course of business without

court approval. Bankruptcy Code section 363(b) permits a debtor-in-possession to dispose of property of the estate "other than in the ordinary course of business" after notice and a hearing. The Agreement relates to property of the estate because, inter alia, RCN has obligations under the Guaranty.

15. Courts in this district and elsewhere consistently have held that transactions pursuant to section 363(b) should be approved if the debtor demonstrates a sound business justification for implementing it. See In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); In re Delaware Hudson Ry. Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991).

16. Once the debtor articulates a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'" In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

17. The terms of the Agreement are fair and reasonable, were negotiated in good faith and at arms' length, and constitute a sound exercise of the Debtors' business judgment. Terminations of the Master Lease and Guaranty are important steps in the Debtors' restructuring process, as they relieve them of a

significant contingent liability and provide an exit from the real estate leasing business.

18. As noted above, the Debtors' long term liabilities related to the Master Lease and Guaranty are comparable to the consideration paid to ConEd under the Agreement, assuming the status quo is maintained through the Master Leases' expiration. In addition, the certainty provided by releasing these long term obligations under the Master Lease and Guaranty is also very valuable to the Debtors' restructuring efforts, as there is no guaranty that the Debtors would be able to maintain the status quo through 2012. Indeed, failure to approve the Agreement would likely impede the Debtors' efforts to focus on their core businesses and effect a successful restructuring.

19. In the exercise of their business judgment, the Debtors therefore believe that the terms of the Agreement are reasonable based upon the important benefits the Debtors will receive. Based on the benefits to be realized from entering into the Agreement, together with the potential harm to the estates if the relief requested herein is not granted, the Debtors respectfully request that the motion be granted.

20. 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 (i) authorizing and approving the Agreement and (ii) granting such other and further relief as is just and proper.

Dated: New York, New York  
October 5, 2004

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

/s/ D.J. Baker  
D. J. Baker (JB 0085)  
(Member 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

## **Exhibit A**



6/2/04

## LEASE TERMINATION AND RECOGNITION AGREEMENT

THIS LEASE TERMINATION AND RECOGNITION AGREEMENT (this "Agreement") dated as of October 4, 2004, by and between CONSOLIDATED EDISON CO. OF NEW YORK, INC., having an address at 4 Irving Place, New York, New York 10003 ("Landlord") and RCN TELECOM SERVICES, INC., having an address at 105 Carnegie Center, Princeton, New Jersey 08540 ("Tenant").

### WITNESSETH

WHEREAS, Tenant is the tenant under that certain lease dated as of August 23, 2000 (together with any amendments thereto and modifications thereof, the "Lease") between Landlord, as landlord, and RCN Telecom Services of New York, Inc., Tenant's predecessor-in-interest, as tenant, covering six entire floors and part of the seventh floor in the building (the "Building") known as 118-29 Queens Boulevard, Forest Hills, New York 11375, all as more particularly described in the Lease (the "Lease Premises");

WHEREAS, Tenant, as sublandlord, and JetBlue Airways Corporation, as subtenant ("Subtenant"), entered into that certain sublease dated as of June 10, 2002 (as amended by that certain first amendment to sublease dated as of July 11, 2002; that certain second amendment to sublease dated as of October 16, 2002; and that certain third amendment to sublease dated as of November 7, 2003, together with all other amendments thereto and modifications thereof consented to by Landlord, the "Sublease"); and

WHEREAS, Landlord has agreed to: (i) terminate the Lease and accept Tenant's surrender of the Lease Premises subject to the Sublease; and (ii) recognize Subtenant as its tenant under the Sublease; the Sublease becoming a direct lease between Landlord and Subtenant, as hereinafter provided.

NOW, THEREFORE, in consideration of Tenant's payment of Surrender Consideration (as hereinafter defined), timely delivery by Tenant of the other documents required by Landlord and other good and valuable mutual consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Landlord and Tenant hereby agree as follows:

1. - - All words, terms or phrases used in this Agreement and defined in the Lease and the Sublease shall have the meanings herein that are respectively ascribed to them in the Lease and the Sublease unless herein otherwise expressly specified.

2. A) The Lease shall be and be deemed to be cancelled and terminated as between the parties to this Agreement with the same force and effect as if the Effective Date were the originally scheduled date for the expiration of the Lease on and as of the date on which the last of the following is received by Landlord (the "Effective Date"); Tenant obtains Bankruptcy Court approval of this Agreement as provided in paragraph 11 hereof, payment as provided in paragraph 4 is made in immediately available funds, the letter of credit pursuant to section 11 of the Sublease in the amount of \$2,140,090.80 has been received by Landlord and Subtenant has executed and delivered a written confirmation of its agreement to attorn to Landlord that is reasonably satisfactory to Landlord including a statement that the Sublease will become a direct lease between Landlord and Subtenant upon notice by the parties to this

Agreement. Tenant hereby agrees to surrender possession of the Lease Premises subject to the Sublease to Landlord on or prior to the Effective Date.

B. Tenant: represents to Landlord that Subtenant has not terminated the Sublease pursuant to the Termination Option as provided in section 16 of the Sublease and that Subtenant's right to terminate the Sublease pursuant to the Termination Option expired on September 1, 2004.

3. Effective from and after the Effective Date, Landlord agrees to recognize Subtenant as its tenant under the Sublease on all of the terms, provisions, covenants and conditions set forth in the Sublease as if the Sublease were a direct lease between Landlord, as landlord, and Subtenant, as tenant.

4. In consideration of Landlord's: (i) execution and delivery of this Agreement; and (ii) agreement to terminate the Lease as provided herein, Tenant and Guarantor collectively agree to pay Landlord, within ten (10) days after the date Tenant obtains Bankruptcy Court approval of this Agreement as provided in paragraph 11 hereof, the aggregate sum of \$1,700,000.00 less any rent paid by Tenant to Landlord in respect of the period from September 1, 2004 through the Effective Date that is in excess of the rent payable under the Sublease for the same period (the "Surrender Consideration").

5. Except as otherwise expressly provided herein, Landlord hereby as of the Effective Date: (i) releases: (a) Tenant of and from any and all liability and obligations (whether or not presently existing) under, in connection with or in any way relating to the Lease, the Sublease and/or any of the transactions or matters contemplated therein except for any liability or obligations due to claims by third parties based on occurrences prior to the Effective Date; and (b) RCN Corporation ("Guarantor") of and from any and all liability and obligations (whether or not presently existing) under, in connection with or in any way relating to that certain Guarantee Agreement dated as of August 21, 2000 (the "Guaranty"); and (ii) confirms that the Guaranty is hereby terminated and without any further force of effect, provided that the requirements of paragraph 2 hereof have been met.

6. Tenant hereby releases Landlord of and from any and all liability and obligations (whether or not presently existing) under, in connection with or in any way relating to the Lease, the Sublease and/or any of the transactions or matters contemplated therein.

7. All notices provided for or permitted to be given or made pursuant to this Agreement shall only be deemed to have been adequately given if in writing and delivered by either: (i) registered or certified mail, postage prepaid, in which case notice shall be deemed to have been received three (3) business days following the date same is deposited with the U.S. Postal Service; or (ii) nationally recognized overnight courier, next day delivery, prepaid, in which case notice shall be deemed to have been received one (1) business day following the date same is delivered to such nationally recognized overnight courier. All notices shall be addressed to the intended recipient at the address set forth below, or to such other address as may from time to time be specified in notice given to the other party by Landlord or Tenant:

If to Landlord:

Consolidated Edison Company of New York, Inc.  
4 Irving Place, Suite 206-S  
New York, New York 10003  
Attn: Real Estate Department

If to Tenant:

RCN Telecom Services Inc.  
105 Carnegie Center  
Princeton, New Jersey 08540  
Attn: James P. Herring

8. Within ten (10) days after the Effective Date, Tenant agrees to pay Landlord the sum of \$5,000.00 on account of Landlord's legal fees relating to this Agreement.

9. Each of Landlord and Tenant hereby acknowledges, confirms, covenants, represents and warrants to the other that it has the full right, power and lawful authority to enter into this Agreement and perform its respective covenants and obligations hereunder.

10. Each of Landlord and Tenant represents, warrants and confirms to and for the benefit of the other that it has not dealt with any broker or agent in connection with this Agreement and the matters contemplated hereby. The provisions of this paragraph shall survive the Effective Date and the termination of the Lease.

11. This Agreement is executed and delivered by Landlord and Tenant subject to the approval of the Bankruptcy Court in which Guarantor's bankruptcy case is pending. Promptly following the mutual execution and delivery of this Agreement by Landlord and Tenant, Tenant agrees, at its cost and expense, to apply to the Bankruptcy Court for its approval of this Agreement.

12. Notwithstanding anything set forth herein to the contrary, in the event that Tenant fails to meet the requirements of paragraph 2 of this Agreement by December 31, 2004 time being of the essence: (i) this Agreement shall ipso facto be deemed to be null and void ab initio; (ii) neither Landlord nor Tenant shall have any further rights, obligations or liabilities hereunder; and (iii) the Lease, the Sublease and the Guaranty shall each continue on all of the respective terms, provisions, covenants and conditions then in effect thereunder as if this Agreement had never been entered into by the parties hereto.

13. This Agreement shall bind and inure to the benefit of Landlord, Tenant and Guarantor and their respective successors and assigns. All understandings and agreements between Landlord and Tenant with respect to the surrender of the Lease Premises, the termination of the Lease and Landlord's recognition of Subtenant as its direct tenant on the terms and provisions of the Sublease are merged into this Agreement, which alone fully and completely expresses the agreement of the parties hereto with respect to the subject matter hereof.

14. This Agreement: (i) shall be governed and construed solely in accordance with the internal laws of the State of New York without regard to principles of conflicts of laws; (ii) may not be changed, modified or cancelled orally or by course of conduct, but only by an agreement in writing executed by the party to be charged; and (iii) shall not become binding or effective for any purpose until mutually executed and delivered by Landlord and Tenant.


14. This Agreement may be executed in any number of separate counterparts, each of which, when so executed, shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.


Landlord:

CONSOLIDATED EDISON CO. OF  
NEW YORK, INC.

By:   
Joseph P. Oates  
Vice President and Treasurer

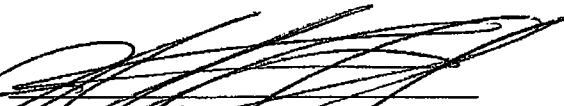
Tenant:

RCN TELECOM SERVICES INC.

By:   
Name: John Dube  
Title: Chief Restructuring Officer

The undersigned Guarantor hereby consents to:  
(i) Tenant's surrender of the Lease Premises to  
Landlord; and (ii) the termination of the Lease as  
provided hereinabove:

RCN CORPORATION

By:   
Name: John Dube  
Title: Chief Restructuring Officer

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF NEW YORK )

On this 5<sup>th</sup> day of October, 2004, before me the undersigned, personally appeared Joseph P. Oates, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Charles J. Gallagher  
Notary Public

CHARLES J. GALLAGHER  
Notary Public, State of New York  
No. 01GA4604445  
Qualified in Queens County  
Commission Expires Sept. 30, 2005

STATE OF NEW JERSEY )  
 : ss.:  
COUNTY OF MERCER )

On this 4<sup>th</sup> day of October, 2004, before me the undersigned, personally appeared John Dubel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

DAVID F. KUNZ  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES OCT 24, 2004

David F. Kunz  
Notary Public

STATE OF NEW JERSEY )  
 : ss.:  
COUNTY OF MERCER )

On this 4<sup>th</sup> day of October, 2004, before me the undersigned, personally appeared John Dubel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

DAVID F. KUNZ  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES OCT 24, 2004

David F. Kunz  
Notary Public

248420

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**ORDER UNDER 11 U.S.C. §363(b) AND BANKRUPTCY  
RULE 9019 AUTHORIZING AND APPROVING LEASE  
TERMINATION AND RECOGNITION AGREEMENT**

Upon the motion (the "Motion")<sup>1</sup> of the Debtors for entry of an Order Under 11 U.S.C. § 363(b) and Rule 9019 of the Federal Rules of Bankruptcy Procedure Authorizing and Approving the Lease Termination and Recognition Agreement; and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that notice of the Motion was good and sufficient under the particular circumstances and that no other and further notice be given; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

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<sup>1</sup> Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion.

FOUND AND DETERMINED THAT:

A. The terms of the Agreement are fair and reasonable, were negotiated in good faith and at arms' length, and constitute a sound exercise of the Debtors' business judgment;

B. The release of certain of the Debtors' long term obligations under the Master Lease and Guaranty represents an important benefit to the Debtors' estates; and

C. The consideration provided by RCN Telecom and the Debtors under the Agreement in exchange for the release of certain long term obligations under the Master Lease and Guaranty constitutes reasonably equivalent value for such releases; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.
2. Pursuant to 11 U.S.C. § 363(b) and Bankruptcy Rule 9019, the Agreement is hereby authorized and approved.



3. The requirement of Local Bankr. R. 9013-1(b) that any motion filed shall be accompanied by a separate memorandum of law is deemed satisfied by the Motion.

Dated: New York, New York  
, 2004

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT "B"**



tory Contracts and Unexpired Leases; and (IX) Deeming Class 8 Equity Interests to Have Rejected the Plan (Docket No. 194).

Dated: New York, New York  
October 5, 2004

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

/s/ D. J. Baker

D. J. Baker (DB 0085)  
(Member 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

**EXHIBIT "C"**

Name	Address
328 S. WABASH, LLC	40 E. 9TH ST. UNIT 1516 CHICAGO IL 60605
ALL RACK	361 WEST 36TH STREET NEW YORK NY 10018
ANDREWS KURTH LLP	ATTN: PETER S. GOODMAN, ESQ. (COUNSEL TO WELLS FARGO AND COMPANY) 450 LEXINGTON AVENUE NEW YORK NY 10017
ARNALL GOLDEN GREGORY LLP	ATTN: FRANK N. WHITE, ESQ., DARRYL S. LADDIN, ESQ. (COUNSEL TO VERIZON OPERATING TELEPHONE COMPANIES) 2800 ONE ATLANTIC CENTER, 1201 W. PEACHTREE STREET ATLANTA GA 30309-3450
BLACKWELL SANDERS PEPPER MARTIN LLP	ATTN: RICHARD M. BEHLER 2300 MAIN STREET, SUITE 1000 KANSAS CITY MO 64108
BLANK ROME LLP	ATTN: MICHAEL S. SIMON, ESQ (COUNSEL FOR HUDSON TELEGRAPH ASSOCIATES, L.P.) 405 LEXINGTON AVENUE NEW YORK NY 10174
CARL SANDBURG VILLAGE CONDOMINIUM ASSOCIATION II	1455 N. SANDBURG TERRACE CHICAGO IL 60610
CHARLES, CHRISTOPHER	3018 AVE I BROOKLYN NY 11210
CHICAGO ACCESS CORPORATION (AREA 2)	322 SOUTH GREEN STREET ATTN: BARBARA POPOVIC CHICAGO IL 60607
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