

**Hearing Date: December 2, 2004 at 10:00 a.m.**  
**Objection Deadline: November 19, 2004 at 4:00 p.m.**

DECHERT LLP  
David C. McGrail (DM 3904)  
30 Rockefeller Plaza  
New York, New York 10112  
(212) 698-3500

Martin J. Black  
Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
(215) 994-4000

Special Conflicts Counsel for the Debtors and  
Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
RCN CORPORATION, <u>et al.</u> ,	:	Case No. 04-13638 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**DEBTORS' FIFTH OMNIBUS OBJECTION**  
**TO CLAIMS PURSUANT TO BANKRUPTCY CODE**  
**SECTIONS 105(a) AND 502 AND BANKRUPTCY RULES 3001 AND 3007**

RCN Corporation and certain of its direct and indirect subsidiaries, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby file this objection (the "Fifth Omnibus Objection") under Bankruptcy Code sections 105 and 502 and Bankruptcy Rules 3001 and 3007 to the claims (collectively, the "Disputed Claims") of Level 3 Communications, LLC ("Level 3"), Honeywell International Inc. ("Honeywell"), and Federal

Express Corporation (“FedEx” and, together with Level 3 and Honeywell, the “Claimants”). In support of this Fifth Omnibus Objection, the Debtors rely on the Declaration of Anthony M. Horvat, dated October 21, 2004 (the “Horvat Declaration”), a copy of which is attached hereto as Exhibit A and is incorporated herein by reference, and respectfully represent as follows:

### **FACTUAL BACKGROUND**

1. On May 27, 2004 (the “Petition Date”), RCN Corporation, TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC, and Hot Spots Productions, Inc., filed voluntary petitions in this Court for reorganization relief under the Bankruptcy Code.

2. RCN Cable TV of Chicago commenced its chapter 11 case on August 5, 2004. RCN Telecom Services of Virginia, Inc., RCN Entertainment, Inc., 21<sup>st</sup> Century Telecom Services, Inc., and ON TV, Inc., commenced their chapter 11 cases on August 20, 2004.

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

4. No trustee or examiner has been appointed in these cases. On June 10, 2004, the Committee of Unsecured Creditors (the “Committee”) was appointed by the United States Trustee for the Southern District of New York (the “United States Trustee”). No other official committees have been appointed or designated in these cases.

5. On October 20, 2004, the Bankruptcy Court entered an order authorizing the retention of Dechert LLP as special conflicts counsel for the Debtors under 11 U.S.C. § 327(e).

6. 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).

7. The statutory predicates for the relief requested herein are Bankruptcy Code sections

105 and 502 and Bankruptcy Rules 3001 and 3007.

8. On June 28, 2004, Honeywell filed proof of claim number 7, in the amount of \$835.99, against RCN Corporation. A copy of this proof of claim is attached hereto as Exhibit B and is incorporated herein by reference.

9. On July 8, 2004, FedEx filed proof of claim number 14, in the amount of \$1,434.63, against RCN Corporation. A copy of this proof of claim is attached hereto as Exhibit C and is incorporated herein by reference.

10. On July 27, 2004, Level 3 filed proof of claim number 394, in the amount of \$44,752.98, against RCN Corporation. A copy of this proof of claim is attached hereto as Exhibit D and is incorporated herein by reference. The documentation attached to Level 3's proof of claim reflects an outstanding balance on account of invoice numbers 2651403 and 2651464.

11. In fact, Level 3 rendered services to RCN Telecom Services, Inc., a non-Debtor. On or about July 9, 2004, RCN Telecom Services, Inc., paid Level 3 \$39,305.19 on account of invoice #2651403 and \$56,790.69 on account of invoice #2651464. Level 3 cashed these checks (the "Checks"), copies of which are attached hereto as Exhibit E and are incorporated herein by reference.

#### **RELIEF REQUESTED**

12. By this Fifth Omnibus Objection, the Debtors seek the entry of an order (the "Proposed Order"), substantially in the form attached hereto as Exhibit F, disallowing and expunging each of the Disputed Claims in its entirety.

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

13. In the ordinary course of their business, the Debtors and their non-Debtor subsidiaries

and affiliates maintain books and records (the “Books and Records”) that reflect, among other things, their respective liabilities.

14. The Debtors and their advisers have reviewed the proofs of claim relating to the Disputed Claims and the Books and Records and have determined that the Disputed Claims should be disallowed and expunged for the following reasons, among others:

(a) as set forth in the Horvat Declaration, Honeywell’s proof of claim lacks sufficient supporting documentation and, to the extent Honeywell has a claim at all, it is against non-Debtor subsidiaries of RCN Corporation or unrelated entities;

(b) as set forth in the Horvat Declaration, FedEx’s proof of claim lacks sufficient supporting documentation and its claim is inconsistent with the Debtor’s books and records; and

(c) as set forth in the Horvat Declaration, Level 3’s proof of claim lacks sufficient supporting documentation and its claim was satisfied in full by the Checks.

15. The Debtors request that all responses to this Fifth Omnibus Objection (each, a “Response”), if any, (a) be in writing, (b) comply with the Bankruptcy Rules and the Local Bankruptcy Rules, and (c) be filed with the Bankruptcy Court in accordance with its general order number 182, as modified by orders 193 and 206, adopting electronic filing procedures (with an additional copy to the chambers of the Honorable Robert D. Drain), together with proof of service, and served by personal service, overnight delivery, or first class mail, upon the following:

**Counsel for the Debtors**

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036  
Attention: Frederick D. Morris, Esq.  
Bennett S. Silverberg, Esq.

**Special Conflicts Counsel for the Debtors**

Dechert LLP  
30 Rockefeller Plaza  
New York, New York 10112  
Attention: David C. McGrail, Esq.

-and-

Dechert LLP  
Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
Attention: Martin J. Black, Esq.

**Counsel for the Senior Lenders**

Simpson, Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017-3954  
Attention: Peter V. Pantaleo, Esq.  
Elisha Graff, Esq.

**Counsel for the Creditors' Committee**

Milbank, Tweed, Hadley & McCloy LLP  
One Chase Manhattan Plaza  
New York, NY 10005  
Attention: Susheel Kirpalani, Esq.  
Deirdre Ann Sullivan, Esq.

**United States Trustee**

The Office of the United States Trustee  
Southern District of New York  
33 Whitehall Street  
21<sup>st</sup> Floor  
New York, New York 10004  
Attention: Paul K. Schwartzberg, Esq.

**United States Bankruptcy Court**

United States Bankruptcy Court for the  
Southern District of New York  
Alexander Hamilton Custom House  
One Bowling Green  
New York, New York 10004  
Attention: Chambers of The Honorable Robert D. Drain

**CONTENTS OF RESPONSE**

16. The Debtors request that, at a minimum, each Response contain the following:
- (a) a caption setting forth the name of the Bankruptcy Court, the name of the case, the case number, and the title of the Fifth Omnibus Objection;
  - (b) the name of the creditor and description of the basis for the amount of the asserted claim;
  - (c) a concise statement setting forth the reasons why the relief requested in the Fifth Omnibus Objection with respect to such creditor should not be granted by the Bankruptcy Court, including, but not limited to, the specific factual and legal bases upon which the creditor will rely in opposing the Fifth Omnibus Objection;
  - (d) all documentation or other evidence of the claim, to the extent not included with the claim previously filed with the Bankruptcy Court, upon which the creditor will rely in opposing the Fifth Omnibus Objection at the hearing;
  - (e) the address(es) to which a reply, if any, to the Response should be sent, if different from that presented in the proof of claim; and



- (f) the name, address, and telephone number of the person (which may be the creditor or his/her/its legal representative) possessing ultimate authority to reconcile, settle, or otherwise resolve the claim on behalf of the creditor.

17. If a Response is properly filed and served in accordance with the above procedures, the Debtors will endeavor to reach a consensual resolution. If no consensual resolution is reached, the Debtors request that the Bankruptcy Court conduct a hearing with respect to this Fifth Omnibus Objection and the Response. The Debtors have notified all parties-in-interest of the date for such hearing and the date by which Responses to the Fifth Omnibus Objection must be filed and served.

18. If a creditor whose claim is subject to this Fifth Omnibus Objection and who is served with the Fifth Omnibus Objection fails to file and serve a timely Response, the Proposed Order may be entered by the Bankruptcy Court **without further notice to the creditor**.

19. If a Response contains an address for the creditor different from that stated on the objected to proof of claim, the address in the Response shall control and shall constitute the service address for other future service of papers upon that creditor.

20. The Debtors expressly reserve the right to amend, modify, or supplement this Fifth Omnibus Objection and to file additional objections to the claims that are the subject hereof or any other claims which may be asserted against the Debtors.

#### **FURTHER INFORMATION**

21. Questions about the Fifth Omnibus Objection or claims, or requests for additional information about the proposed disposition of claims hereunder should be directed to the Debtors' proposed counsel in writing at the address listed below (Attn: David C. McGrail or by telephone at

(212) 698-3564). PARTIES SHOULD NOT CONTACT THE CLERK OF THE BANKRUPTCY COURT TO DISCUSS THE MERITS OF THEIR CLAIMS.

**NOTICE AND WAIVER OF MEMORANDUM OF LAW**

22. Notice of this Fifth Omnibus Objection has been given to the United States Trustee, the Claimants, counsel to the Committee, counsel to the agent for the Debtors' prepetition credit facility, the indenture trustee for the Debtors' outstanding debt securities, and those persons who filed a notice of appearance in this case. The Debtors respectfully submit that such notice is sufficient under the circumstances and request that the Court find that no further notice of the relief requested herein is required.

23. The Debtors submit that no new or novel issue of law is presented with respect to the matters contained herein, and respectfully request that, the requirement of a separate memorandum of law under Local Bankruptcy Rule 9013-1(b) be waived.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Bankruptcy Court enter an order (i) disallowing and expunging the Disputed Claims and (ii) granting the Debtors such other and further relief as is just and proper under the circumstances.



DATED: October 21, 2004  
New York New York

/s/ David C. McGrail  
David C. McGrail (DM 3904)  
Dechert LLP  
30 Rockefeller Plaza  
New York, New York 10112  
(212) 698-3500

Martin J. Black  
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1717 Arch Street  
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