

detailing the commitment of Deutsche Bank AG Cayman Islands Branch and Deutsche Bank Securities Inc. (together, "Deutsche Bank") to provide exit financing in the form of a senior first-lien secured credit facility (the "New First-Lien Financing") and issue second-lien floating rate debt securities (the "New Second-Lien Financing," and, together with the New First-Lien Financing, the "New Senior Exit Financing"), subject to the terms and conditions contained therein and the related fee letter (the "Fee Letter"), (ii) the engagement letter (the "Engagement Letter"), (iii) the engagement indemnity letter (the "Engagement Indemnity Letter") and (iv) the senior secured financing work letter (the "Work Letter," and together with the Commitment Letter, the Fee Letter, the Engagement Letter, and the Engagement Indemnity Letter, the "Exit Financing Commitments"). The Commitment Letter, the Engagement Indemnity Letter and Work Letter are attached hereto as Exhibits A, B and C respectively. By separate motion filed contemporaneously herewith, the Debtors are seeking authority to file copies of the Fee Letter and Engagement Letter, the terms of which are described below, under seal and to provide copies of those documents only to (i) the United States Trustee, (ii) financial advisors and counsel to the Noteholders' Committee (as defined below), (iii) financial advisors and counsel to any statutory committee appointed in these chapter 11 cases, (iv) the Securities and Exchange Commission and (v) such other parties as ordered by the Court or agreed to by the Debtors and Deutsche Bank.

In support of this motion, the Debtors rely on the Affidavit of Timothy Coleman (the "Coleman Affidavit"). In further support of this motion, the Debtors respectfully represent as follows:

BACKGROUND

A. The Chapter 11 Filings

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, 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code"). The Debtors continue to manage and operate their business as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

2. No trustee or examiner has been appointed in these chapter 11 cases, and no official committees have yet been appointed or designated.

3. 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).

4. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105, 363(b), 364(c)(1), 503(b) and 507.

B. Business Operations

5. RCN is a holding company for certain direct and indirect subsidiaries (collectively, the "RCN Companies") that deliver bundled communica-

tions services, including local and long distance telephone, video programming (including digital cable television and high definition television) and data services (including cable modem, high speed Internet access and dial-up Internet) to customers over their predominantly owned network. Substantially all of RCN's operating subsidiaries are not debtors in these cases. The RCN Companies provide services in Boston and 18 surrounding communities, New York City, the suburbs of Philadelphia, the Lehigh Valley in Pennsylvania, Chicago, San Francisco and several of its suburbs, and two communities in the Los Angeles area.

6. The RCN Companies also entered into strategic joint venture relationships to achieve early penetration of certain telecommunications services markets to reduce their cost of entry. In particular, the RCN Companies acquired a 50% equity interest in Starpower Communications, LLC, which provides telecommunications services in the Washington, D.C. metropolitan area, including parts of Virginia and Maryland, under the brand name "Starpower." The RCN Companies also hold an approximate 49% equity interest in Megacable, S.A. de C.V., Megacable Telecomunicaciones, S.A. de C.V. and MCM Holdings, S.A. de C.V., collectively the largest cable television provider in Mexico and owner of 27 wireline cable systems.

7. The RCN Companies are telecommunications providers, and for the most part, compete against incumbent service providers. The telecommunica-

tions business is highly competitive and requires large capital outlays for network and equipment. Returns on investment depend on the quality, innovation and pricing of the services. The RCN Companies offer cutting edge services at prices that take into consideration the number and types of services in the bundle a customer purchases. The RCN Companies currently have in excess of one million service connections and employ approximately 2,600 employees and independent contractors.

8. RCN's directly and indirectly owned Debtor subsidiaries are Hot Spots Productions, Inc., RLH Property Corporation ("RLH"), RCN Finance, LLC ("RCN Finance"), and TEC Air, Inc. (collectively, the "Subsidiary Debtors"). None of the Subsidiary Debtors have significant operations. None of RCN's other subsidiaries or affiliates (collectively, the "Non-Debtor Affiliates") are Debtors in these cases.

C. Capital Structure and History

9. RCN was formed on September 30, 1997 when its predecessor company, C-TEC Corporation ("C-TEC"), spun-off RCN to C-TEC shareholders. Prior to the spin-off, C-TEC was an indirect, wholly-owned subsidiary of Level 3 Delaware Holdings, Inc. Since its inception, the RCN Companies have relied extensively on access to the capital markets to finance the development of a high-speed, high-capacity, fiber-optic broadband network. In addition, the RCN

Companies have accessed the capital markets to finance their strategy of expanding into new geographic areas by acquiring existing businesses. Thus, the RCN Companies have financed a significant portion of their growth, including corporate acquisitions and purchases of fixed assets, through access to secured credit facilities and the issuance of debt securities and preferred and common stock.

D. Secured Credit Facilities

10. In June 1999, the Debtors (except for RLH and RCN Finance) and certain of the Non-Debtor Affiliates, each either as a borrower or guarantor, entered into a \$1 billion senior secured credit facility (the "Senior Credit Facility") with J.P. Morgan Chase Bank ("JPMorgan Chase") as administrative agent and collateral agent and certain other lender parties (collectively the "Senior Lenders"). The Senior Credit Facility is comprised of a \$250 million seven-year revolving credit facility, a \$250 million seven-year multi-draw term loan facility and a \$500 million eight-year term loan facility, each of which is secured by a senior lien on substantially all of the RCN Companies' assets. The Senior Credit Facility is governed by a single credit agreement dated as of June 3, 1999 (as amended, the "Senior Credit Agreement"). As of April 30, 2004, approximately \$432.5 million was outstanding under the Senior Credit Facility.

11. In June 2003, RCN entered into a \$41.5 million Commercial Term Loan and Credit Agreement (the "Junior Credit Facility") with Evergreen

Investment Management Company, LLC and certain of its affiliates (collectively, "Evergreen"). As of April 30, 2004, approximately \$27.5 million was outstanding under the Junior Credit Facility. The Junior Credit Facility is secured by a junior lien on substantially all of the assets of RCN (excluding cash), including the equity of its directly owned subsidiaries (except for RLH). Pursuant to an intercreditor agreement between the Senior Lenders and Evergreen, the liens securing the Junior Credit Facility are contractually subordinated to the liens securing the Senior Credit Facility.

E. Senior Unsecured Notes

12. Between 1997 and 2000, RCN issued the following senior notes: (i) the 10% Senior Notes due October 15, 2007, issued under the Indenture dated October 17, 1997, as amended, (ii) the 11 1/8% Senior Discount Notes due October 15, 2007, issued under the Indenture dated October 17, 1997, as amended, (iii) the 9.8% Senior Discount Notes due February 15, 2008 issued under the Indenture dated February 6, 1998, as amended, (iv) the 11% Senior Notes due July 1, 2008, issued under the Indenture dated June 24, 1998, as amended, and (v) the 10 1/8% Senior Notes due January 15, 2010, issued under the Indenture dated December 22, 1999, as amended (collectively, the "Senior Notes"). The Senior Notes are unsecured obligations of RCN only, and none of the other Debtors or Non-Debtor Affiliates have any obligations thereunder. RCN's obligations under the Senior Notes were approximately \$1.1 billion as of December 31, 2003.

F. Preferred and Common Stock

13. RCN issued two series of preferred stock (the Preferred Stock). On April 7, 1999, Hicks, Muse, Tate & Furst ("Hicks Muse") purchased 250,000 shares of Series A Preferred Stock of RCN for gross proceeds of \$250 million. As a result of the payment of dividends in kind, Hicks Muse holds 353,289 shares of Series A Preferred Stock as of March 31, 2004. On February 28, 2000, Vulcan Ventures Inc. ("Vulcan"), an investment organization of Paul G. Allen, purchased 1.65 million shares of mandatorily convertible cumulative preferred stock (the "Series B Preferred Stock") of RCN for gross proceeds of \$1.65 billion. As a result of dividends and subsequent transactions, Vulcan holds 1,222,250 shares of Series B Preferred Stock and Wells Fargo & Company, the only other holder of Series B Preferred Stock, holds 251,332 shares of Series B Preferred Stock as of March 31, 2004.

14. Shares of RCN's Class A Common Stock (the "Common Stock") were listed on the NASDAQ stock exchange under the symbol RCNC. On May 12, 2004, RCN's Common Stock was delisted from the NASDAQ stock exchange and is now quoted on the OTC Bulletin Board with its present symbol of RCNC. As of December 31, 2003, there were approximately 101 million shares of

Common Stock¹ issued and outstanding and 11,424,810 shares of Class B Common Stock issued and outstanding.

G. Events Leading to Chapter 11 Filings

15. Due to the confluence of a series of events, including the continued severe slowdown in the telecommunications industry and continued limited access to the capital markets, the RCN Companies revised their growth plan during 2002. Under the revised growth plan, the RCN Companies decided to substantially curtail future capital spending and geographic expansion of their network in all existing markets to focus on customer growth in existing markets and to reduce operating expenses.

16. Despite these and other cost-savings measures, the RCN Companies determined that their projected revenues and available cash-on-hand may be insufficient to meet their working capital, debt service, capital expenditure and other requirements (including interest payments on Senior Notes) in 2004 and beyond. Accordingly, the RCN Companies began exploring alternatives to refinance or restructure their indebtedness.

¹ This amount does not include the 11,597,193 shares of Common Stock held of record by NSTAR Communications Securities Corporation ("NSTAR Communications"). In a letter dated December 24, 2003 to Mellon Investor Services, the transfer agent for the Common Stock, NSTAR Communications purported to abandon its entire interest in such shares. This transaction is also described in Amendment No. 1 to Schedule 13D, filed with the SEC on December 24, 2003 by NSTAR, an affiliate of NSTAR Communications. RCN reserves all of its rights in respect of this transaction.

17. In October 2003, the RCN Companies began preliminary discussions with an ad hoc committee of certain holders of Senior Notes (the "Noteholders' Committee") and JPMorgan Chase as administrative agent for the Senior Lenders concerning a possible restructuring transaction.

18. In connection with ongoing negotiations with the Noteholders' Committee and JPMorgan Chase, RCN chose not to make the interest payment scheduled for January 15, 2004 with respect to its 10 1/8% Senior Notes due 2010, and additionally chose not to make the interest payment scheduled for February 15, 2004 on the 9.8% Senior Discount Notes due 2008, the interest payment scheduled for April 15, 2004 on the 10% Senior Notes due 2007 and the interest payment scheduled for April 15, 2004 on the 11 1/8% Senior Discount Notes due 2007. The RCN Companies entered into forbearance agreements with the Senior Lenders, Evergreen and the Noteholders' Committee in which each agreed not to declare an event of default as a result of RCN's failure to make the interest payments. The parties to the forbearance agreements subsequently extended the forbearance period to facilitate additional negotiations.

19. The forbearance agreements allowed the RCN Companies to continue negotiating a financial restructuring with the Noteholders' Committee and JPMorgan Chase, notwithstanding the expiration of the grace period associated with the missed interest payments in respect of the aforementioned Senior Notes. During

the forbearance period, the RCN Companies sought to negotiate a comprehensive restructuring proposal in which the RCN Companies would undergo a financial restructuring through reorganization under chapter 11. Those negotiations included discussions with various entities on a possible new credit facility to replace the existing Senior Credit Facility. Such efforts resulted in the Commitment Letter with Deutsche Bank pursuant to which Deutsche Bank has committed to provide the Debtors with the New Senior Exit Financing upon the consummation of a plan of reorganization on the terms described below.

20. In addition, the Debtors, the Senior Lenders and the Noteholders' Committee have agreed to support a financial restructuring on the following terms:²

(a) On the effective date of a plan of reorganization or sooner, the existing holders of claims under the Senior Credit Facility will have such claims repaid in full in cash, unless any existing Senior Lender elects to roll its outstanding claim into the New Senior Exit Financing. All undrawn letters of credit will be either replaced on the effective date of a plan of reorganization or cash collateralized on terms agreed by the issuing bank.

² The understanding reached between the Debtors and certain of its creditors covers the broad economic terms of the financial restructuring and not all material terms expected to be contained in a plan of reorganization. The understanding is not binding on the Debtors or the creditors with whom it was negotiated and not all of the Debtors' stakeholders are party to this understanding or participated in its negotiations.

(b) On the effective date of a plan of reorganization, each holder of an allowed general unsecured claim will receive, in exchange for its total claim (including principal and interest in the case of a claim under the Senior Notes), its pro rata portion of 100% of the fully diluted new common stock of reorganized RCN, before giving effect to (i) any management incentive plan and (ii) the exercise of the equity warrants described below, if any.

(c) On the effective date of a plan of reorganization, all obligations under the Junior Credit Facility will either (i) remain outstanding on terms agreed upon between the Debtors and Evergreen or as otherwise permitted by the Bankruptcy Code or (ii) be refinanced in whole or in part.

(d) Holders of RCN's existing Preferred Stock and Common Stock will receive, on a basis to be determined, equity warrants that are exercisable into two percent of reorganized RCN's common stock (before giving effect to any management incentive plan), with a two-year term beginning on the consummation of a plan of reorganization, and set at a strike price equivalent to an enterprise valuation of \$1.66 billion. Holders of existing warrants and options will not be entitled to receive a distribution under the plan of reorganization on account of such interests.

(e) On the effective date of a plan of reorganization, the sole equity interests in reorganized RCN will consist of new common stock, the equity warrants described above and equity interests to be issued in any management incentive plan.

(f) On the effective date of a plan of reorganization, there will be no debt, security or other material obligation of reorganized RCN other than indebtedness or securities described above and obligations arising in the ordinary course of reorganized RCN's business.

RELIEF REQUESTED

21. By this motion, the Debtors seek an order pursuant to 11 U.S.C. §§ 105(a), 363(b), 364(c)(1), 503(b) and 507 authorizing, approving and ratifying the Debtors' acceptance of the Exit Financing Commitments, and authorizing the Debtors to pay those fees and expenses payable thereunder as and when they become due as administrative expenses of the estates. As set forth herein, the Debtors respectfully submit that the decision to enter into the Exit Financing Commitments was the product of an arms' length negotiation, was conducted in good faith, and represents the sound exercise of the Debtors' business judgment.

BASIS FOR RELIEF

22. During the course of ongoing negotiations with the Debtors' various creditor constituencies, the Debtors and their advisors determined that a new financing facility to replace the existing Senior Credit Facility was the most viable means for a successful restructuring. The additional working capital the Debtors would seek in such new funding would also be critical to stabilizing and maintaining

the Debtors' operations upon emerging from the restructuring process and competing in the Debtors' core lines of businesses.

23. In furtherance of that goal, and prior to commencing these chapter 11 cases, the Debtors' financial advisors approached numerous financial institutions, including traditional asset-based lenders, investment banks and commercial banks, regarding the furnishing of a commitment letter to the RCN Companies to replace the existing Senior Credit Facility. The Debtors and Blackstone received proposals from four financial institutions, which included a proposal from Deutsche Bank.

24. Over the course of several weeks, the Debtors and their advisors negotiated the economic and legal terms of each of the four proposals with the respective lenders, and reviewed multiple revisions to the proposed commitment. After careful evaluation, and after consulting with their advisors and certain creditor constituencies, the Debtors determined, in their sound business judgment, that Deutsche Bank's proposal would best meet the Debtors' restructuring goals as well as their ongoing working capital and general business needs. Based on that conclusion, the RCN Companies concentrated their efforts on negotiating and finalizing the terms of the Deutsche Bank proposal.

25. Those negotiations resulted in the execution on May 24, 2004 of the Commitment Letter and related documents that set forth Deutsche Bank's

commitment to provide the New Senior Exit Financing to the Debtors. As described in detail below, Deutsche Bank has agreed to fund fully the New Senior Exit Financing, subject to the terms and conditions set forth in the Exit Financing Commitments, which will allow the Debtors to emerge expeditiously from bankruptcy and also provide for the Debtors' ongoing working capital requirements.

26. The Debtors' request for Court approval of the New Senior Exit Financing is appropriate in light of the Senior Lenders' unwillingness to provide the Debtors with financing on terms acceptable to the Debtors. Accordingly, the Debtors will use the proceeds from the New Senior Exit Financing to repay in full the Debtors' obligations under the Senior Credit Facility, as well as to provide additional funds necessary to meet the Debtors' ongoing working capital requirements. Both the Senior Lenders and the Noteholders' Committee have approved the Exit Financing Commitments.

27. Although the Debtors acknowledge that pursuing approval of the Exit Financing Commitments at this early stage of the proceedings may be uncommon, there are important reasons for the Debtors to do so. Most significantly, the New Senior Exit Financing should greatly enhance the Debtors' ability to finalize and confirm a plan of reorganization quickly and on the terms discussed with various significant creditor constituencies prior to the Petition Date. Moreover, the Exit Financing Commitments should provide the Debtors and other parties in interest with

more certainty of the Debtors' ability to complete its restructuring. Finally, the capital markets have been particularly receptive at present to the New Senior Exit Financing and there can be no assurance that market conditions will not change for the worse. Thus, approval of the financing as provided under the Exit Financing Commitments, at this early stage of these cases, is in the best interests of the Debtors' estates and should help to facilitate the Debtors' goal of a smooth and quick emergence from chapter 11.

Proposed Terms of the New Senior Exit Financing

28. The Commitment Letter provides for a New First-Lien Financing and a New Second-Lien Financing in an aggregate amount of up to \$460 million. The New First-Lien Financing consists of (a) a \$285 million term loan facility (the "New Term Loan Facility") and (b) a \$25 million letter of credit facility (the "New L/C Facility" and, together with the New Term Loan Facility, the "New First-Lien Credit Facilities"). Other pertinent terms of the proposed New First-Lien Credit Facilities are as follows:³

Use of Proceeds: The New Term Loan Facility will be used to repay the Senior Credit Facility, finance the Transactions contemplated in these chapter 11 cases, and pay the fees and expenses incurred in connection therewith. The New L/C Facility will be used to

³ This summary and description of certain material terms of the Commitment Letter and related documents set forth below are for the convenience of the Court and parties in interest. In all instances, the actual terms of the Commitment Letter and the other New Financing Commitments shall control. Terms not otherwise defined herein shall have the meanings ascribed to them in the Commitment Letter and the attached term sheets for the respective facilities.

support certain specified obligations of the reorganized Debtors and their subsidiaries.

Interest: At the option of RCN, the Loans may be maintained from time to time as (x) Base Rate Loans, which shall bear interest at the Base Rate in effect from time to time plus the Applicable Margin or (y) Eurodollar Loans, which shall bear interest at the Eurodollar Rate (adjusted for maximum reserves) as determined by the Administrative Agent for the respective interest period plus the Applicable Margin.

"Applicable Margin" shall mean a percentage per annum equal to, in the case of Term Loans (A) maintained as Base Rate Loans, 3%, and (B) maintained as Eurodollar Loans, 4%.

"Base Rate" shall mean the higher of (x) the rate that the Administrative Agent announces from time to time as its prime lending rate, as in effect from time to time, and (y) ½ of 1% in excess of the overnight federal funds rate.

Maturity: The final maturity date of the New Term Loan Facility shall be 7 years from the Closing Date and the final maturity date of the New L/C Facility shall be 5 years from the Closing Date.

Security/Collateral: The New First-Lien Credit Facilities will be secured by (x) a first priority perfected security interest in all stock,⁴ other equity interests and promissory notes owned by RCN and the Guarantors, and (y) a first priority perfected security interest in all other tangible and intangible assets owned by RCN and the Guarantors, subject to exceptions satisfactory to Deutsche Bank.

Commitment Termination: The commitments for the New First-Lien Credit Facilities will terminate on the earlier of (x) June 30, 2004, unless on or prior to such date the Court has entered an order in form and substance satisfactory to Deutsche Bank approving the Commit-

⁴ Not more than 65% of the total outstanding voting stock of any non-U.S. subsidiary of RCN shall be pledged if the pledging thereof would give rise to adverse tax consequences to RCN.

ment Letter, the Engagement Letter, the Engagement Indemnity Letter, and the Fee Letter and RCN's obligations thereunder, or (y) December 31, 2004, unless definitive documentation with respect to the New First-Lien Credit Facilities has been executed and delivered, the Transactions have been consummated and the initial borrowings under the New First-Lien Credit Facilities have occurred.⁵

Fees and Expenses: In addition to the fees set forth in the Fee Letter described below, RCN must pay a commitment fee of 0.5% per year on the daily unutilized portion of the commitments of each Lender under the New L/C Facility, accruing commencing on the Closing Date and payable quarterly in arrears. In addition, RCN must pay a letter of credit fee equal to 4% per year on the outstanding amount of Letters of Credit, an annual Facing Fee and customary administrative charges.

Covenants: The New First-Lien Credit Facilities shall contain covenants customary for a financing facility of this size and type, including, but not limited to, limitations on other indebtedness, maximum debt to EBITDA and minimum interest coverage ratios, capital expenditure limitations and maintenance of subscriber levels.

29. The new second-lien credit facility (the "New Second-Lien Credit Facility" and, together with the New First-Lien Credit Facilities, the "New Credit Facilities") consists of \$150 million of second-lien floating rate debt securities (the "New Second-Lien Notes") which may, at the discretion of Deutsche Bank, be issued pursuant to either a loan agreement or an indenture by way of a private

⁵ Deutsche Bank's commitments for the New Senior Exit Financing will terminate if the Debtors decline to accept an Escrow Funding (or fail to satisfy the conditions precedent thereto) after the Debtors are informed of the successful syndication of the New Senior Exit Financing. In addition, if any amounts owed pursuant to the escrow arrangement described in Exhibit D to the Commitment Letter are not paid by the Debtors within three business days of the due date, then Deutsche Bank shall be permitted to terminate the escrow of funds.

placement or underwritten public sale. Other pertinent terms of the proposed New Second-Lien Credit Facility are as follows:

Use of Proceeds: The New Second-Lien Credit Facility will be used to finance, in part, the Transactions contemplated in these chapter 11 cases, and to pay the fees and expenses incurred in connection therewith.

Interest: The New Second-Lien Notes will bear interest (payable semi-annually in arrears) at the Eurodollar Rate (adjusted for maximum reserves), as determined by the Administrative Agent, for the respective interest period plus 8%.

Maturity: The final maturity date of the New Second-Lien Credit Facility shall be 7½ years from the Closing Date.

Security/Collateral: RCN and each Guarantor shall grant valid and perfected second-priority "silent" liens and security interests in the Collateral, as set forth in greater detail in the Intercreditor Agreement.

Commitment

Termination: The commitments for the New Second-Lien Credit Facility will terminate on the earlier of (x) June 30, 2004, unless on or prior to such date the Court has entered an order approving the Commitment Letter and the Fee Letter and RCN's obligations thereunder, or (y) December 31, 2004, unless definitive documentation with respect to the New Second-Lien Credit Facility has been executed and delivered, the Transactions have been consummated and the New Second-Lien Notes have been issued.⁶

Covenants: The New Second-Lien Credit Facility will contain covenants similar to the covenants contained in the New First-Lien Credit Facilities, with such modifications thereto as shall be determined by Deutsche Bank.

⁶ See also footnote 5 above.

30. The Commitment Letter also contemplates that Deutsche Bank may syndicate the New Senior Exit Financing prior to the existence of a final and non-appealable order confirming the plan of reorganization and place the funds into escrow pending such confirmation. In such event, substantially all the conditions precedent to the closing of the financing by the Debtors, as well as to the release of funds by Deutsche Bank set forth in the term sheets attached to the Commitment Letter, would then apply to the Escrow Funding and to the Escrow Release, respectively. Accordingly, as part of the approval of the Exit Financing Commitments, the Debtors are also hereby seeking approval of the material terms of the escrow funding arrangements, including fees and indemnities customary in an escrow agreement and the granting of liens and super priority claims related thereto, all as set forth herein and on terms substantially similar to the terms set forth on Exhibit D to the Commitment Letter.

The Proposed Terms of the Fee Letter

31. As is customary for financing commitments similar to the Exit Financing Commitments, the Debtors also entered into the Fee Letter which sets forth the arrangements relating to compensation for certain services rendered and to be rendered by Deutsche Bank in connection with the New Senior Exit Financing. Such compensation includes the following:

Facility Fee: 2.25% of the New First-Lien Credit Facilities and (ii) 3% of the New Second-Lien Credit Facility,⁷ payable to Deutsche Bank on the Closing Date; provided that if the Escrow Funding Date occurs prior to the Closing Date, then Deutsche Bank will be entitled to payment of one-half of the facility fees on the Escrow Funding Date, with the balance payable on the Closing Date.

Termination Fee: If, prior to September 15, 2004, the New Senior Exit Financing has been successfully syndicated (and the Lenders are prepared to fund into escrow subject to the satisfaction of certain conditions precedent) and RCN does not accept the Escrow Funding (or fails to satisfy a condition precedent thereto) and the commitments pursuant to the Commitment Letter terminate, RCN must pay Deutsche Bank a non-refundable fee of 1% of the total commitments under the New Senior Exit Financing.

Agent Fee: Annual administration fee of \$100,000 with respect to the New First-Lien Credit Facilities and an additional \$75,000 for the New Second-Lien Credit Facility, to be paid annually in advance on the Closing Date and each anniversary thereafter.

Break-Up Fee: If RCN fails to borrow under the New Credit Facilities and enters into an alternative senior financing agreement or similar restructuring transaction within one year of the date of written acceptance by the Debtors of the Commitment Letter, Deutsche Bank will be entitled to a non-refundable fee equal to 1.5% of the total commitments under the New Credit Facilities plus Deutsche Bank's out-of-pocket fees and expenses. The non-refundable fee, however, is not payable if Deutsche Bank declines to provide the New Senior Exit Financing on substantially the terms outlined in the Commitment Letter.

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Subject to certain conditions, if RCN elects not to proceed with the New Second-Lien Credit Facility, Deutsche Bank would still be entitled to a termination fee of 1.5% of the proposed commitments under the New Second-Lien Credit Facility.

Commitment Fee: ½ of 1% of the total commitment with respect to the New Senior Exit Financing, commencing on the execution of the Commitment Letter to and including the earliest of: (i) the Escrow Funding Date, (ii) the Closing Date or (iii) the date the commitments under the Commitment Letter terminate.

Related Agreements

32. To induce Deutsche Bank to arrange, structure and syndicate the New Senior Exit Financing, the Debtors paid Deutsche Bank prior to the petition date, upon execution of the Work Letter, a one-time, non-refundable work fee in the amount of \$250,000. In addition, the Debtors agreed to reimburse Deutsche Bank for all other fees and expenses arising in connection with the Exit Financing Commitments, including the expenses of Deutsche Bank's advisors (including counsel).

33. With regard to the New Second-Lien Financing, Deutsche Bank and the Debtors also entered into an Engagement Letter and Engagement Indemnity Letter, each dated May 24, 2004. The purpose of the Engagement Letter is to engage Deutsche Bank in connection with the issuance or sale, of debt instruments or securities of RCN, including but not limited to, the New Second-Lien Notes (the "Securities"), upon emergence from bankruptcy. Deutsche Bank shall have the right, but not the obligation, to (a) act as the underwriter or placement agent in connection with any public or private debt financing issuance or sale of the Securities and (b) provide RCN with capital markets and other financial advisory services in connection therewith during the term of the Engagement Letter. As compensation

for such services, and subject to certain adjustments, Deutsche Bank will be entitled to an underwriting or placement fee calculated as a percentage of the gross proceeds received from the New Second-Lien Financing, or any other financing of Securities, as well as reasonable out-of-pocket costs and expenses (including counsel).⁸

34. The Debtors have concluded that the fees described above are reasonable and appropriate for a financing of this nature and size. Moreover, the Debtors derive significant benefits from locking in these commitments for financing at this early stage in their chapter 11 cases. The Debtors respectfully request that the Court authorize, approve and ratify the payment of these fees, including any fees and indemnities arising from any escrow agreement executed on terms substantially similar to the terms set forth in Exhibit D to the Commitment Letter, as valid administrative expenses under sections 503(b) and 507 of the Bankruptcy Code.

APPLICABLE AUTHORITY

35. Bankruptcy Code section 363 authorizes a debtor-in-possession to use property of the estate in the ordinary course of business without court approval. Bankruptcy Code section 363(b) permits a debtor-in-possession to use property of the estate "other than in the ordinary course of business" after notice and

⁸ As set forth in Exhibit B, the Engagement Indemnity Letter provides that Deutsche Bank and all Indemnified Parties will be indemnified for any loss or damages arising out of the restructuring transactions except that RCN will not have to indemnify Deutsche Bank for any losses or damages arising from the gross negligence or willful misconduct of such Indemnified Person.

a hearing. Additionally, Bankruptcy Code section 105(a) allows this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]."

36. Court's in this district and elsewhere consistently have held that transactions pursuant to 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).

37. 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)).

38. The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. See In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions").

39. Under section 105(a) of the Bankruptcy Code, the Court has broad authority under its equitable powers to fashion any order or decree that would preserve or protect the value of the debtor's assets. See, e.g., Adelpia Communs. Corp. v. Rigas, 2003 U.S. Dist. LEXIS 9349, at *12 (S.D.N.Y. 2003) ("Section 105 of Title 11 provides the bankruptcy courts with a broad range of equitable powers over cases within its jurisdiction"); Griffin v. Bonapfel (In re All American of Ashburn, Inc.), 805 F.2d 1515, 1517 (11th Cir. 1986) (per curiam) (noting that section 105(a) provides authority for bankruptcy courts to protect estate property).

40. Given the importance of the New Senior Exit Financing to the Debtors' restructuring efforts, it is critical that this Court approve the Exit Financing Commitments. Courts outside this district have recognized the needs of chapter 11 debtors to enter into similar agreements if the fees are negotiated in good faith and in the best interests of the debtors' estates. See e.g., In re Magnatrax Corp., 2003 WL 22287541 at *10 (Bankr. D. Del. Nov. 17, 2003) (order approving pre-funding commitment fees for exit credit agreement in connection with plan of reorganization where parties engaged in "good faith, arms' length negotiations"); In re Carmike Cinemas, Inc., Case No. 00-33-2 (SLR), Docket No 2085 (Bankr. D. Del. Jan. 3, 2002) (order approving commitment letter in connection with plan of reorganization, including commitment and closing fees were "in the best interests of the Debtors and all parties in interest").

41. Under this standard, there is overwhelming evidence that the terms of the Exit Financing Commitments are fair and reasonable, were negotiated in good faith and at arms' length, and constitute a sound exercise of the Debtors' business judgment. Indeed, securing a commitment to provide the New Senior Exit Financing is a critical step in the Debtors restructuring. Moreover, the proposed fees and charges by Deutsche Bank are within the parameters of market fee structures for similar, extensively negotiated, financing arrangements.

42. Failure to ratify the Exit Financing Commitments at this juncture would likely impede the Debtors' restructuring efforts. Without the New Senior Exit Financing commitment, doubts may arise among the Debtors' various constituencies in these chapter 11 proceedings regarding the businesses' long-term viability. The uncertainty generated by a failure to ratify the Exit Financing Commitments will have a negative impact on the Debtors' continued operations, as stakeholders may lose confidence in the Debtors' ability to implement their restructuring goals. Thus, without this Court's approval of the Exit Financing Commitments, the Debtors' reorganization prospects will be hindered.

43. In the exercise of their business judgment, the Debtors believe that the terms of the Exit Financing Commitments and the related fees, which represent only a fraction of the amounts being committed, are reasonable based upon the benefits the Debtors will derive from the proposed Exit Financing Commitments.

The New Senior Exit Financing is essential to the financing of a plan of reorganization and the Debtors' emergence from bankruptcy. Securing the commitments at this point in the Debtors' chapter 11 cases provides all parties in interest with the added assurance that the Debtors will emerge expeditiously from these chapter 11 proceedings.

44. Indeed, if the Court fails to ratify the Exit Financing Commitments, thereby rendering the Exit Financing Commitments unenforceable, the Debtors will be forced to incur additional administrative expenses. If the Debtors are forced to pursue other sources of financing, other potential lenders will require the payment of due diligence, attorneys' and other related fees before providing the Debtors with a commitment letter if they choose to do so. Additionally, the delay in obtaining a replacement for the New Credit Facilities would disrupt negotiations and could significantly lengthen the Debtors' chapter 11 cases. As demonstrated by the extensive search undertaken by the Debtors and its advisors, there can be no assurance that another lender will commit to a new financing on terms as favorable as those proposed by Deutsche Bank.

45. Based on the benefits to be realized from entering into the Exit Financing Commitments, together with the potential harm and injury to the estates if the relief requested herein is not granted, the Debtors respectfully request that the motion be granted.

46. 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, approving and ratifying the Exit Financing Commitments (ii) authorizing, approving and ratifying the payment of the fees and expenses provided in the Exit Financing Commitments, including, but not limited to, any fees and indemnities arising from any escrow agreement executed on terms substantially similar to the terms set forth in Exhibit D to the Commitment Letter, and granting such payments priority as administrative expense claims under Section 503(b)(1) and 507(a)(1) of the Bankruptcy Code, and in the case of obligations under any escrow agreement, as well as the obligation to pay fees as described in the last sentence of the sixth paragraph of the Commitment Letter, shall constitute super priority obligations pursuant to 364(c)(1) of the Bankruptcy Code, (iii) authorizing, approving and ratifying all indemnity obligations of the Debtors set forth in the Exit Financing Commitments, (iv) to the extent the Debtors retain a contingent interest in the amounts held in escrow pursuant to any escrow arrangement, authorizing, approving

and granting Deutsche Bank a super priority lien in such amounts pursuant to Section 364(c)(1) of the Bankruptcy Code and (v) granting such other and further relief as is just and proper.

Dated: New York, New York
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