

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)
-----X

**FIRST APPLICATION OF MILBANK, TWEED, HADLEY & M^cCLOY LLP, COUNSEL
TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS, FOR INTERIM
ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND FOR
REIMBURSEMENT OF EXPENSES DURING PERIOD FROM
JUNE 10, 2004 THROUGH AND INCLUDING AUGUST 31, 2004**

Name of Applicant: Milbank, Tweed, Hadley & M^cCloy LLP

Authorized to Provide
Professional Services to: Official Committee of Unsecured Creditors

Date of Retention: July 26, 2004 (effective as of June 10, 2004)

Period for which compensation
and reimbursement is sought: June 10, 2004 – August 31, 2004

Amount of Compensation
requested: \$704,958.00

Amount of Expense
Reimbursement requested: \$50,002.45

This is a(n): X interim final application.

The total time expended for the preparation of this application is approximately 28.50 hours and the corresponding compensation requested is approximately \$ 10,412.50 (this amount is not included in this interim fee application, but will be included in the next fee application to be filed by Milbank, Tweed, Hadley & M^cCloy LLP).

This is the first interim fee application filed by Milbank, Tweed, Hadley & M^cCloy LLP in these cases.

Prior Applications:

Period Covered	Requested		Awarded	
	Fees	Expenses	Fees	Expenses
	N/A	N/A	N/A	N/A

**FIRST INTERIM FEE APPLICATION OF MILBANK, TWEED,
HADLEY & M^CCLOY LLP: AS GENERAL BANKRUPTCY COUNSEL OF THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF RCN CORPORATION
(JUNE 10, 2004-AUGUST 31, 2004)**

Name	Position; Experience	Hourly Rate	Total Hours	Total Compensation
Dennis Dunne	Financial Restructuring Partner for 7 years; admitted in 1991	\$720	198.50	\$142,920.00
Simon Friedman	Tax Partner for 7 years; admitted in 1981	\$675	1.10	\$742.50
Jeffrey Katz	Financial Restructuring Associate for 15 years; admitted in 1986	\$505	152.40	\$76,962.00
Peter Roest	Financial Restructuring Associate for 18 years; admitted in 1986	\$505	25.10	\$12,675.50
Deirdre Ann Sullivan	Financial Restructuring Associate for 13 years; admitted in 1989	\$490	466.90	\$228,781.00
Dara Panahy	Global Project Finance Associate for 6 years; admitted in 1998	\$475	20.00	\$9,500.00
Russell Kestenbaum	Tax Associate for 7 years; admitted in 1997	\$460	.50	\$230.00
James Tecce	Financial Restructuring Associate for 8 years; admitted in 1995	\$460	94.80	\$43,608.00
Mark Francini	Global Project Finance Associate for 2 years; admitted in 2002	\$395	18.00	\$7,110.00
James Bulger	Financial Restructuring Associate for 1 year; admitted in 2004	\$315	12.90	\$4,063.50
Ryan Deford	Financial Restructuring Associate for 1 year; admitted in 2004	\$315	13.90	\$4,378.50
Soham Naik	Financial Restructuring Associate for 1 year; admitted in 2004	\$315	496.90	\$156,523.50
Patrice Metz	Legal Assistant	\$205	4.40	\$902.00
Paul Fabsik	Legal Assistant	\$175	28.50	\$4,987.50
Rena Strappazon	Legal Assistant	\$160	41.20	\$6,592.00

Holly Erick	Legal Assistant	\$135	7.40	\$999.00
Scott McCabe	Legal Assistant	\$120	2.40	\$288.00
Jacqueline Clark	Managing Attorney Clerk	\$125	23.40	\$2,925.00
Rachel Feld	File Clerk	\$110	7.00	\$770.00
Total		\$436.43	1,615.30 hours	\$704,958.00

**SUMMARY TABLE OF SERVICES RENDERED DURING
MILBANK, TWEED, HADLEY & M^CCLOY LLP'S
FIRST INTERIM COMPENSATION PERIOD
(JUNE 10, 2004—AUGUST 31, 2004)**

ACTIVITY	HOURS	FEES
Adequate Protection Issues	17.90	10,136.00
Asset Sales	3.70	1,775.00
Automatic Stay Enforcement	4.30	1,836.50
Business Plan Review and Analysis	5.20	2,808.50
Claims Analysis and Estimation	277.10	115,335.50
Committee Administration	56.40	23,081.00
Committee Meetings	51.50	27,636.00
Court Hearings	59.00	26,606.00
Debtor-In-Possession Meetings	34.10	18,247.00
DIP and Exit Financing	34.40	13,365.00
Disclosure Statement	40.10	22,726.00
Employee Issues	11.40	5,797.50
Executory Contracts	2.40	1,212.00
Fee Applications: Other Professionals	2.20	693.00
File, Docket & Calendar Maintenance	60.00	11,079.50
General Communications with Creditors	8.00	3,891.50
Insurance Matters	2.10	1,029.00
Preparation of Milbank Fee Application	20.80	8,232.00
Real Property Leases	15.40	6,781.00
Regulatory Issues	152.80	64,524.00
Reorganization Plan	215.00	116,150.00
Retention of Professionals	366.60	144,064.00

Secured Transactions	6.30	2,877.50
Substantive Consolidation	163.30	72,233.50
Tax Issues	5.30	2,841.00
Total	1,615.30	\$704,958.00

**SUMMARY TABLE OF DISBURSEMENTS BILLED DURING
MILBANK, TWEED, HADLEY & M^CCLOY LLP'S
FIRST INTERIM COMPENSATION PERIOD
(JUNE 10, 2004-AUGUST 31, 2004)**

DISBURSEMENTS	AMOUNT
Document Courier	322.24
Travel	1,570.19
Computer Database Research	19,219.31
Document Processing/Overtime	18,590.00
Fax	429.00
Mail	81.61
Meals	398.28
Messenger	76.23
Photocopies	8,394.25
Telephone	921.34
TOTAL DISBURSEMENTS	\$50,002.45

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Dennis F. Dunne (DD 7543)
Susheel Kirpalani (SK 8926)
Deirdre Ann Sullivan (DS 6867)

Counsel for the Official Committee
of Unsecured Creditors

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

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TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS, FOR INTERIM
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REIMBURSEMENT OF EXPENSES DURING PERIOD FROM
JUNE 10, 2004 THROUGH AND INCLUDING AUGUST 31, 2004**

TO THE HONORABLE ROBERT D. DRAIN:
UNITED STATES BANKRUPTCY JUDGE

Milbank, Tweed, Hadley & M^cCloy LLP ("Milbank"), counsel to the Official Committee of Unsecured Creditors (the "Committee") of RCN Corporation and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, "RCN" or the "Debtors"), hereby submits its application (the "Application"), pursuant to 11 U.S.C. §§ 330 and 331, rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases adopted by the Court on June 24, 1991 and amended April 21, 1995 (together, the "Local Guidelines"), the United States Trustee Guidelines for Reviewing Applications for

Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 effective January 30, 1996 (the "U.S. Trustee Guidelines"), and the Administrative Order Under 11 U.S.C. §§ 105 And 331 Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals, dated June 22, 2004 (the "Interim Compensation Order"), for the allowance of interim compensation for professional services rendered from June 10, 2004 through and including August 31, 2004 (the "First Interim Compensation Period"), and for reimbursement of expenses incurred in connection with such services, and in support thereof respectfully represents as follows:

I. INTRODUCTION

A. Background

1. Bankruptcy Filing. Beginning on May 27, 2004, and, in some instances, periodically thereafter (the "Petition Date"), the Debtors filed voluntary petitions for 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 operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' chapter 11 cases have been procedurally consolidated for administrative purposes.
2. Committee Appointment. On June 10, 2004, the United States Trustee appointed the Committee.
3. Jurisdiction. This Court has jurisdiction over this Application pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of the Debtors' chapter 11 cases and this Application is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 330 and 331 of the

Bankruptcy Code and rule 2016 of the Bankruptcy Rules. Pursuant to the Local Guidelines, a certification regarding compliance with the Local Guidelines is attached hereto as Exhibit A.

B. Retention of Milbank and Billing History

4. Authorization for Milbank's Retention. On July 26, 2004 pursuant to the Order, Under 11 U.S.C. §§ 328 And 1103(a) And Fed. R. Bankr. P. 2014 And 5002, Authorizing And Approving Retention And Employment Of Milbank, Tweed, Hadley & McCloy LLP, Effective As Of June 10, 2004, As Legal Counsel To Official Committee Of Unsecured Creditors Of RCN Corporation et al. (the "Retention Order"), the Court authorized Milbank's retention as counsel for the Committee in these cases effective as of June 10, 2004. The Retention Order authorized compensation to Milbank pursuant to the procedures set forth in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Guidelines, the U.S. Trustee Guidelines and the local rules and orders of this Court.

5. Application. Milbank makes this interim application for approval and allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code.

6. In accordance with the Interim Compensation Order, Milbank submitted monthly fee statements to RCN seeking interim compensation and reimbursement of expenses. During the First Interim Compensation Period, Milbank submitted the following fee statements:

- (a) On July 20, 2004, pursuant to the Interim Compensation Order, Milbank filed and served its first fee statement for the period from June 10, 2004 through and including June 30, 2004 (the "First Fee Statement"). The First Fee Statement sought an allowance of \$139,421.50 as compensation for services rendered and the reimbursement of \$7,776.44 in expenses.
- (b) On August 20, 2004, pursuant to the Interim Compensation Order, Milbank filed and served its second fee statement for the period from July 1, 2004 through and including July 31, 2004 (the "Second Fee Statement"). The Second Fee Statement

sought an allowance of \$264,539.50 as compensation for services rendered and the reimbursement of \$22,220.86 in expenses.

- (c) On September 20, 2004 pursuant to the Interim Compensation Order, Milbank filed and served its third fee statement for the period from August 1, 2004 through and including August 31, 2004 (the "Third Fee Statement" and together with the First Fee Statement and the Second Fee Statement, collectively the "First Interim Fee Statements"). The Third Fee Statement sought an allowance of \$300,997.00 as compensation for services rendered and the reimbursement of \$20,005.15 in expenses.

7. Milbank has received two payments of fees or expenses during the first Interim Compensation Period totaling \$605,754.14 with respect to the First Interim Fee Statements. Milbank has applied these payments to the First Fee Statement (80% of fees and 100% of expenses), to the Second Fee Statement (80% of fees and 100% of expenses), and in part to the Third Fee Statement (77.27% of fees and 100% of expenses). There is an unpaid balance of \$8,214.71 for the First Interim Compensation Period in addition to the hold-back of 20% of fees.

8. Milbank has not entered into any agreement, express or implied, with any other party for the purpose of fixing or sharing fees or other compensation to be paid for professional services rendered in these cases.

9. No promises have been received by Milbank or any member thereof as to compensation in connection with these cases other than in accordance with the provisions of the Bankruptcy Code.

II. CASE STATUS

10. On August 20, 2004, certain of the Debtors¹ filed a chapter 11 plan (as it may be amended from time to time, the “Plan”) and a disclosure statement (as amended, the “Disclosure Statement”) in these cases. The Disclosure Statement was approved at a hearing held on October 12, 2004. The hearing to confirm the Plan is currently set for December 8, 2004.

III. APPLICATION

11. By this Application, Milbank is seeking full allowance of (a) compensation for professional services rendered by Milbank, as counsel for the Committee, during the First Interim Compensation Period and (b) reimbursement of expenses incurred by Milbank in connection with such services during the First Interim Compensation Period.

12. In this Application, Milbank seeks approval of the amount of \$704,958.00 for legal services rendered on behalf of the Committee during the First Interim Compensation Period and the amount of \$50,002.45 for reimbursement of expenses incurred in connection with the rendition of such services, for a total award of \$754,960.45.

13. Pursuant to the Interim Compensation Order, Milbank, together with all other retained professionals, was entitled to eighty percent (80%) of its fees sought in each of Milbank’s First Interim Fee Statements and reimbursement of one hundred percent (100%) of Milbank’s expenses. However, the payments Milbank has received to date are less than the 80%

¹ RCN Corporation, TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC, Hot Spots Productions, Inc., RCN Telecom Services of Virginia, Inc., RCN Entertainment Inc., and On TV, Inc. The remaining Debtors, 21st Century Telecom Services, Inc. and RCN Cable TV of Chicago, Inc., are not proponents of the Plan, but are intending to timely file their own chapter 11 plan.

of fees and 100% of expenses by \$8,214.71 of fees incurred during the First Interim Compensation Period. Milbank is, therefore, seeking a total payment of \$149,206.31 pursuant to this Application, which amount represents the unpaid balance of the amounts to be paid pursuant to the Interim Compensation Order in the amount of \$8,214.71 plus the hold-back amount, all incurred during the First Interim Compensation Period in the amount of \$140,991.60 for a total of \$149,206.31.

14. The fees sought by this Application reflect an aggregate of 1,615.30 hours of attorney and paraprofessional time spent and recorded in performing services for the Committee during the First Interim Compensation Period, at a blended average hourly rate of \$436.43 for both professionals and paraprofessionals.

15. Milbank rendered to the Committee all services for which compensation is sought solely in connection with these cases, in furtherance of the duties and functions of the Committee.

16. Milbank maintains computerized records of the time expended in the rendering of the professional services required by the Committee. These records are maintained in the ordinary course of Milbank's business. For the convenience of the Court and parties in interest, a billing summary for the First Interim Compensation Period is attached as part of the cover sheet, setting forth the name of each attorney and paraprofessional for whose work on these cases compensation is sought, each attorney's year of bar admission, the aggregate of the time expended by each such attorney or paraprofessional, the hourly billing rate for each such attorney or paraprofessional at Milbank's current billing rates and an indication of the individual amounts requested as part of the total amount of compensation requested. In addition, set forth in the billing summary is additional information indicating whether each attorney is a partner or

associate, the number of years each attorney has held such position, and each attorney's area of concentration. The compensation requested by Milbank is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under the Bankruptcy Code.

17. Attached hereto as Exhibit B are time entry records broken down in tenths of an hour by project category, based on the U.S. Trustee Guidelines, setting forth a detailed description of services performed by each attorney and paraprofessional on behalf of the Committee.

18. Milbank also maintains computerized records of all expenses incurred in connection with the performance of professional services. A summary of the amounts and categories of expenses for which reimbursement is sought, as well as a breakdown of expenses by project category and detailed descriptions of these expenses, are attached hereto as Exhibit C.

IV. SUMMARY OF PROFESSIONAL SERVICES RENDERED

19. To provide an orderly summary of the services rendered on behalf of RCN by Milbank, and in accordance with the U.S. Trustee Guidelines, Milbank has established the following separate project billing categories in connection with these cases:

- (a) Adequate Protection Issues and Litigation
- (b) Asset Sales
- (c) Automatic Stay Enforcement and Litigation
- (d) Business Plan Review and Analysis
- (e) Change of Control Transactions
- (f) Claims Analysis and Estimation
- (g) Committee Administration
- (h) Committee Meetings
- (i) Court Hearings
- (j) Customer Programs
- (k) Debtor-in-Possession Meetings and Communications
- (l) DIP and Exit Financing
- (m) Disclosure Statement
- (n) Employee Issues

- (o) Equipment/ Personal Property Leases
- (p) Exclusivity Issues
- (q) Executory Contracts
- (r) Fee Applications – Other
- (s) File, Docket and Calendar Maintenance
- (t) General Communications with Creditors
- (u) Insurance Matters
- (v) Preparation of Milbank Fee Applications
- (w) Real Property Leases
- (x) Regulatory Issues
- (y) Reorganization Plan
- (z) Reporting Requirements
- (aa) Retention of Professionals
- (bb) Rule 2004 Examinations
- (cc) Secured Transactions
- (dd) Substantive Consolidation
- (ee) Tax Issues
- (ff) Travel Time
- (gg) Utilities Advice
- (hh) Vendor Issues
- (ii) Voidable Transfers and other potential claims
- (jj) Corporate Matters

20. The following summary is intended to highlight a number of the services rendered by Milbank in the separate project billing categories where Milbank has expended a considerable number of hours on behalf of the Committee, and it is not meant to be a detailed description of the work performed. Detailed descriptions of the day-to-day services provided by Milbank and the time expended performing such services in each project billing category are fully set forth in Exhibit B.

A. Adequate Protection/Cash Collateral

21. During the First Interim Compensation Period, Milbank attorneys reviewed and negotiated an agreement regarding the use of cash collateral and adequate protection with the Debtors' senior lenders. The senior lenders claim a first priority lien in all cash collateral held by the Debtors and the non-debtor affiliates of RCN. Use of such cash collateral is critical especially for the non-debtor RCN operating entities which provide the

majority of the cable television, telephone, and internet services to RCN's customers. Pursuant to this Court's Final Order (I) Authorizing The Use Of Lender's Cash Collateral And (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 (the "Cash Collateral Order"), cash collateral is available to fund the expenses of the Debtors' chapter 11 cases and for distributions under the proposed Plan of Reorganization. Without this critical Cash Collateral Order, a successful restructuring would not be possible without alternative financing.

22. In addition, Milbank attorneys monitored inter-company transactions between the Debtors and non-debtor RCN affiliates and the legal and financial activities of non-debtors RCN affiliates with third parties to ensure such activities would not adversely impact the Debtors and the reorganization process. On behalf of the Committee, Milbank attorneys reviewed budgets and cash flow information of Debtor and non-debtor affiliates to ensure compliance with the Cash Collateral Order and in connection with the negotiation of the Plan of Reorganization.

B. Claims Analysis and Estimation

23. During the First Interim Compensation Period, Milbank attorneys reviewed the security and perfection documentation under two bank loan facilities for potential defects in respect of the attachment and/or perfected nature of the liens purported to have been created thereby.

24. The claims bar date has passed for all of the Debtors, and Milbank attorneys reviewed and analyzed both the proofs of claims and motions requesting payment of certain claims. Milbank attorneys conducted factual and legal research regarding the validity and viability of the claims and, together with the Committee's financial advisors reviewed and

analyzed the legal and economic implications of claims settlements proposed by the Debtors, as well as participated in negotiating certain of such settlements.

C. Committee Administration

25. Milbank's attention to the Committee's organizational needs enabled the Committee to promptly complete the administrative matters that were necessary to the Committee's effective participation in these cases. Following the Committee's organization and formation, Milbank attorneys drafted various documents necessary for the efficient administration of the Committee's affairs, such as the Committee bylaws that address internal decisions and governance.

26. Throughout the First Interim Compensation Period, Milbank attorneys have counseled and advised Committee members regarding their fiduciary duties to the unsecured creditor body.

27. Due to Milbank attorneys' experience in counseling various parties in interest in restructurings and bankruptcy cases, Milbank believes it brought a unique perspective and sophisticated understanding of all issues relating to the administration of the Debtors' cases.

D. Committee Communications and Meetings

28. Numerous issues arose during the First Interim Compensation Period requiring meetings of the Committee. Committee meetings generally occur weekly via teleconference. Prior to such meetings, in addition to the memoranda discussed below, Milbank typically prepared an agenda and reviewed each pending matter and all underlying documentation in connection therewith. Milbank discussed with the Committee all significant matters arising in these cases during the First Interim Compensation Period and assisted the Committee in formulating positions on issues as they arose.

29. Through Committee meetings and conference calls, and numerous other communications with members of the Committee, Milbank has assisted the Committee in fulfilling its statutory and fiduciary obligations to unsecured creditors and duties to make informed decisions regarding the numerous issues that have arisen in these cases .

30. Milbank prepared memoranda, and provided advice orally when time constraints so required, on the various pending issues for circulation to and discussion with the Committee. Milbank analyzed issues and motions filed in the Debtors' cases and discussed with the Committee members the relief sought and Milbank's recommendations in connection therewith.

E. DIP and Exit Financing

31. Milbank attorneys assisted the Debtors in the search for, and in reviewing the terms proposed in connection with, an exit facility to ensure the estates obtain the best terms available. These efforts involved numerous meetings and discussions with the Debtors' counsel and with members of the Committee to analyze numerous and complex exit financing issues. Milbank attorneys also reviewed, analyzed, and commented on drafts of term sheets, and prepared, drafted and revised corporate documents incorporating the terms of the exit facility.

32. Milbank attorneys also appeared in this Court to support the approval of the exit financing facility. Thereafter, Milbank attorneys continued to negotiate additional exit financing commitments in connection with the Plan of Reorganization.

F. File, Docket & Calendar Maintenance

33. Milbank's paraprofessionals maintained a filing and record-keeping system as well as monitored the docket in these cases. To ensure that the Committee was

apprised of filings as they occurred, Milbank paraprofessionals routinely reviewed the docket and obtained any necessary papers or exhibits on an ongoing basis.

34. In addition, Milbank paraprofessionals created a calendar tracking system to alert the Committee of deadlines in the Debtors' cases. As needed, Milbank also circulated pleadings and other documents to, and discussed upcoming hearings and motions with, the Committee.

G. Regulatory Issues

35. During the First Interim Compensation Period, Milbank attorneys carefully reviewed and consulted with the Committee on, the terms of RCN's franchise agreements, potential claims, obligations, and liabilities under such franchise agreements, and the possible effects of additional bankruptcy filings or a change in the ownership control of RCN, on the franchise agreements. Negotiation and settlement of future obligations and liabilities that could have adversely impacted RCN's ability to reorganize was critical, and Milbank attorneys reviewed and advised the Committee on the settlement proposals presented to the Debtors in each of the franchise areas, throughout the First Interim Compensation Period.

H. Disclosure Statement and Reorganization Plan

36. During the First Interim Compensation Period, Milbank attorneys negotiated the terms and reviewed drafts of the Plan and the related Disclosure Statement as well as all subsequent amendments thereto on behalf of the Committee. Milbank attorneys analyzed a wide array of issues raised during all stages of formulating and drafting the Plan, the related Disclosure Statement and the numerous related pleadings and documents. In conjunction with the foregoing, Milbank attorneys researched and analyzed numerous legal issues and attended various conferences and meetings with the Committee's, the Debtors' and the board of directors'

professionals to resolve the same. In addition, Milbank attorneys also negotiated and reviewed certain Plan Supplement documents including, a registration rights agreement, warrant agreement and amended and restated corporate charters.

I. Court Hearings and Adversary Proceedings

37. Throughout the First Interim Compensation Period, Milbank attorneys, on behalf of the Committee, prepared for and attended numerous court hearings. To prepare for these hearings, Milbank attorneys expended considerable time reviewing and analyzing pleadings filed by the Debtors and third parties and conducting independent legal and factual research. In addition, Milbank attorneys drafted and argued numerous pleadings on behalf of the Committee. Milbank attorneys were often called upon to present oral argument to this Court not only with respect to the Committee's own pleadings, but also with respect to various forms of relief sought by the Debtors or other interested parties. These hearings covered motions seeking, among other things, approval of (i) the "first day" motions, (ii) exit financing, (iii) a key employee retention plan, (iv) certain procedures for equity trading, (v) various motions to have the automatic stay lifted, and (vi) the retention of various professionals. Milbank attorneys also prepared a motion to intervene on behalf of the Committee in an adversary proceeding between RCN Corporation, RCN Cable T.V. of Chicago, Inc., and the City of Chicago and appeared for the approval of that motion.

J. Retention of Professionals

38. On behalf of the Committee, Milbank attorneys reviewed, negotiated and/or drafted several court documents regarding the retention of counsel to the Debtors, to the Committee, and to the board of directors to RCN. Milbank also reviewed and negotiated the retentions of financial advisors, crisis managers and an executive search team.

V. FACTORS TO BE CONSIDERED IN AWARDING ATTORNEYS' FEES

39. The factors to be considered in awarding attorneys fees as enumerated in In re First Colonial Corp. of America, 544 F.2d 1291, 1298-99 (5th Cir. 1977), have been adopted by most courts.² Milbank respectfully submits that the consideration of these factors should result in this Court's allowance of the full compensation sought.

- (A) The Time and Labor Required. The professional services rendered by Milbank on behalf of the Committee have required the continuous expenditure of substantial time and effort, under time pressures which sometimes required the performance of services late into the evening and, on a number of occasions, over weekends and holidays. The services rendered required a high degree of professional competence and expertise in order to be administered with skill and dispatch.
- (B) The Novelty and Difficulty of Questions. Novel and complex issues have arisen in the course of these chapter 11 cases, and it can be anticipated that other such issues will be encountered. In these cases, as in many others in which the firm is involved, Milbank's effective advocacy and creative approach to problem solving have helped clarify and resolve difficult issues and will continue to prove beneficial.
- (C) The Skill Requisite to Perform the Legal Services Properly. Milbank believes that its recognized expertise in the area of financial restructuring, its ability to draw from highly experienced professionals in other areas of its practice such as structured finance, mergers and acquisitions, litigation, environmental and regulatory law and its practical approach to the resolution of issues help maximize the distributions to the Debtors' unsecured creditors.
- (D) The Preclusion of Other Employment by Applicant Due to Acceptance of the Case. Due to the size of Milbank's financial restructuring department and the firm as a whole, Milbank's representation of the Committee has not precluded the acceptance of new clients. However, the number of matters needing attention on

² In re Nine Assocs., Inc., 76 B.R. 943, 945 (S.D.N.Y. 1987). The factors embraced by the Fifth Circuit in First Colonial were adopted by the Fifth Circuit's decision in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), except that First Colonial also included the "spirit of economy" as a factor which was expressly rejected by Congress in enacting section 330 of the Bankruptcy Code. Stroock & Stroock & Lavan v. Hillsborough Holdings Corp. (In re Hillsborough Holdings Corp.), 127 F.3d 1398, 1403 (11th Cir. 1997). The remaining First Colonial factors continue to apply to determine the reasonableness of fees awarded under the Bankruptcy Code. 3 Collier on Bankruptcy ¶ 330.04[3][c] (Lawrence P. King, et al., eds., 15th ed. 1997). In addition, a majority of the First Colonial factors are now codified in section 330(a)(3). Id.

a continuous basis has required several of Milbank's attorneys, across multiple practice groups, to commit significant portions of their time to these cases.

- (E) The Customary Fee. The compensation sought herein is based upon Milbank's normal hourly rates for services of this kind. Milbank respectfully submits that the compensation sought herein is not unusual given the magnitude and complexity of these cases and the time dedicated to the representation of the Committee. Such compensation is commensurate with fees Milbank has been awarded in other cases, as well as with fees charged by other attorneys of comparable experience.
- (F) Whether the Fee is Fixed or Contingent. Milbank charges customary hourly rates for the time expended by its attorneys and paraprofessionals in representing the Committee, and Milbank's fee is not outcome dependent.
- (G) Time Limitations Imposed by Client or Other Circumstances. As stated above, Milbank has been required to attend to various issues as they have arisen in these cases. Often, Milbank has had to perform these services under significant time constraints requiring attorneys and paraprofessionals assigned to these cases to work evenings and on weekends.
- (H) The Amount Involved and Results Obtained. The Committee represents the interests of unsecured creditors holding unsecured claims estimated at one and a half billion dollars. Through Milbank's efforts, the Committee has been an active participant in these chapter 11 cases. The Committee's participation, with Milbank's counsel and guidance, has greatly contributed to the efficient administration and prospects for reorganization of these cases.
- (I) The Experience, Reputation and Ability of the Attorneys. Milbank has a sophisticated and nationally recognized corporate reorganization and financial restructuring practice, and Milbank attorneys involved in this representation have played a major role in numerous complex restructurings including, for example, the chapter 11 cases of Enron Corp., Fruit of the Loom Inc., Adelphia Communications Corp., US Airways Group, Inc., Global Crossing Ltd., Fleming Companies, Inc., Dairy Mart Convenience Stores, Inc., Lernout & Hauspie Speech Products N.V., Teligent, Inc., World Access, Inc., ORBCOMM Global, L.P., ICO Global Communications Inc., Safety-Kleen Corp., HomePlace Stores, Inc., Hvide Marine, Inc., Sun TV and Appliances, Inc., Seven-Up/RC Bottling Company of Southern California, Inc. and Ames Department Stores, Inc. Milbank's experience enables it to perform the services described herein competently and expeditiously.
- (J) The "Undesirability" of the Case. These cases are not undesirable but, as already indicated, have required a significant commitment of time from many of Milbank's attorneys.

- (K) Nature and Length of Professional Relationship. Milbank was selected as the Committee's counsel shortly after the Committee's formation, on June 10, 2004, and was retained effective as of that date pursuant to an order of the Court dated July 26, 2004. Milbank has been rendering services continuously to the Committee since the Committee was formed, and Milbank has rendered such services in a necessary and appropriate manner.

VI. ALLOWANCE OF COMPENSATION

40. The professional services rendered by Milbank have required a high degree of professional competence and expertise to address, with skill and dispatch, the numerous issues requiring evaluation and action by the Committee. Milbank respectfully submits that the services rendered to the Committee were performed efficiently, effectively and economically, and that the results obtained to date have benefited not only the members of the Committee, but also the unsecured creditors as a whole and the Debtors' estates.

41. The allowance of interim compensation for services rendered and reimbursement of expenses in bankruptcy cases is expressly provided for in section 331 of the Bankruptcy Code:

Any professional person . . . may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered . . . as is provided under section 330 of this title.

11 U.S.C. § 331.

42. With respect to the level of compensation, section 330(a)(1)(A) of the Bankruptcy Code provides, in pertinent part, that the Court may award to a professional person, "reasonable compensation for actual, necessary services rendered." Section 330(a)(3)(A), in turn, provides that:

In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3)(A).

43. The congressional policy expressed above provides for adequate compensation in order to continue to attract qualified and competent professionals to bankruptcy cases. In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 18 (Bankr. S.D.N.Y. 1991) ("Congress' objective on requiring that the market, not the Court, establish attorneys' rates was to ensure that bankruptcy cases were staffed by appropriate legal specialists.").

44. The total time spent by Milbank attorneys and paraprofessionals during the First Interim Compensation Period was 1,615.30 hours and has a fair market value of \$704,958.00. As shown by this Application and supporting exhibits, Milbank's services were rendered economically and without unnecessary duplication of efforts. In addition, the work involved, and thus the time expended, was carefully assigned in consideration of the experience and expertise required for each particular task.

VII. EXPENSES

45. Milbank has incurred a total of \$50,002.45 in expenses in connection with representing the Committee during the First Interim Compensation Period. Milbank records all expenses incurred in connection with the performance of professional services. A summary of these expenses and detailed descriptions of these expenses, is annexed hereto as Exhibit C.

46. In connection with the reimbursement of expenses, Milbank's policy is to charge its clients in all areas of practice for expenses, other than fixed and routine overhead expenses, incurred in connection with representing its clients. The expenses charged to Milbank's clients include, among other things, telephone and telecopy toll and other charges, mail and express mail charges, special or hand delivery charges, photocopying charges, out-of-town travel expenses, local transportation expenses, expenses for working meals, computerized research and transcription costs.

47. Milbank charges the Committee for these expenses at rates consistent with those charged to Milbank's other bankruptcy clients, which rates are equal to or less than the rates charged by Milbank to its non-bankruptcy clients. Milbank seeks reimbursement from the Debtors at the following rates for the following expenses: (a) fifteen cents (\$0.15) per page for photocopying; (b) no charge for incoming facsimiles; (c) toll charges only for outgoing facsimiles; (d) 87% of computer legal research charges; (e) 87% of telephone charges; (f) 50% of facsimile charges; and (g) 75% of photocopying charges.³ In accordance with section 330 of the Bankruptcy Code, the Local Guidelines and with the U.S. Trustee Guidelines, Milbank seeks reimbursement only for the actual cost of such expenses to Milbank.⁴

48. In providing or obtaining from third parties services which are reimbursable by clients, Milbank does not include in such reimbursable amount any costs of investment, equipment or capital outlay.

³ The expenses reflected on the First Fee Statement, Second Fee Statement and Third Fee Statement have been adjusted in this Application to reflect these reduced expense amounts.

⁴ The cost of expenses Milbank is seeking reflects any discounted rates based on volume or other discounts which Milbank anticipates receiving from certain outside vendors; however, Milbank does not perform a retrospective reconciliation of any "year-end" adjustments (positive or

49. Milbank regularly charges its non-bankruptcy clients for ordinary business hourly fees and expenses for secretarial, library, word processing and other staff services because such items are not included in the firm's overhead for the purpose of setting the billing rates.

50. Attorneys at Milbank have not incurred expenses for luxury accommodations or deluxe meals. The Application does not seek reimbursement of any air travel expenses. Throughout the First Interim Compensation Period, Milbank has been keenly aware of cost considerations and has tried to minimize the expenses charged to the Debtors' estates.

VIII. WAIVER OF MEMORANDUM OF LAW

51. Based on the supporting authorities contained herein, and because this Application presents no novel issues of law, the Committee respectfully requests that the Court waive the requirement of Local Bankruptcy Rule 9013-1(b) of filing a separate memorandum of law in support of this Application.

IX. NOTICE

52. In accordance with the Order Establishing Certain Notice, Case Management and Administration Procedures entered in these cases, notice of this Motion has been given to counsel to the Debtors, counsel to the agent for the Debtor's pre-petition senior credit facility, counsel to the agent for Debtors' pre-petition junior credit facility, the United States Trustee, all other parties on the Debtors' Master Service List and all other parties not otherwise listed that have requested receipt of notices in these cases. In light of the nature of the

negative) to the actual discounted cost of such expenses.

relief requested herein, the Committee requests that such notice be deemed adequate and sufficient.

X. CONCLUSION

WHEREFORE, Milbank respectfully requests the Court to enter an order, substantially in the form attached hereto as Exhibit D, (a) allowing Milbank (i) interim compensation for professional services rendered as counsel for the Committee during the First Interim Compensation Period in the amount of \$704,958.00 and (ii) reimbursement of expenses incurred in connection with rendering such services in the aggregate amount of \$50,002.45, for a total award of \$754,960.45; (b) authorizing and directing the Debtors to pay to Milbank \$149,206.31, which is an amount equal to the difference between (i) the \$754,960.45 award and (ii) \$605,754.14, the aggregate amount that the Debtors have paid to Milbank pursuant to the Interim Compensation Order for services rendered and expenses incurred during the First Interim Compensation Period; and (c) granting such further relief as is just.

Dated: New York, New York
October 29, 2004

MILBANK, TWEED, HADLEY & M^cCLOY LLP

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