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Dennis F. Dunne (DD 7543)  
Deirdre Ann Sullivan (DS 6867)

Hearing Date: November 23, 2004  
at 10:00 a.m.  
Objection Deadline: November 18, 2004  
at 4:00 p.m.

Counsel to the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x Chapter 11  
In re: :  
: RCN CORPORATION, et al., : Case Nos. 04-13638 (RDD)  
: :  
Debtors. :  
----- x (Jointly Administered)

**NOTICE OF MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER PURSUANT TO 11 U.S.C. § 328(A) AUTHORIZING AMENDMENT TO TERMS OF EMPLOYMENT AND RETENTION OF CAPITAL & TECHNOLOGY ADVISORS LLC**

PLEASE TAKE NOTICE that upon the accompanying Motion dated November 12, 2004, the undersigned will move this Court for an Order pursuant to 11 U.S.C. § 328(a) Authorizing Amendment to Terms of Employment and Retention of Capital & Technology Advisors LLC (the "Motion").

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004 on November 23, 2004 at 10:00 a.m. Eastern Standard Time, or as soon thereafter as counsel can be heard.

PLEASE TAKE FURTHER NOTICE that any response to the Motion must be made in compliance with the Federal Rules of Bankruptcy Procedure and Local Rules of the United

States Bankruptcy Court for the Southern District of New York, must be set forth in a writing describing the basis therefore and must be filed with the Court electronically in accordance with General Order M-242 by registered users of the Court's electronic case filing system and, by all other parties in interest, on a 3-1/2 inch disk, preferably in Portable Document Format (PDF), Word Perfect or any other Windows-based word processing format (with a hard copy delivered directly to the Chambers) and served in accordance with General Order M-242 and (i) filed with the Office of the Clerk, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, with a courtesy copy to the Chambers and (ii) served in accordance with the Order Under 11 U.S.C. §§102 and 105 and Fed. R. Bankr. P. 2002, 9006 and 9007 Establishing Certain Notice, Case Management and Administrative Procedures dated June 2, 2004. Only responses timely filed and received will be considered at the hearing.

PLEASE TAKE FURTHER NOTICE that if no responses to the Motion are filed and received, the Bankruptcy Court may grant the relief requested in the Motion without any further notice.

Dated: New York, New York  
November 12, 2004

MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP

By: /s/ Deirdre Ann Sullivan  
Dennis F. Dunne (DD 7543)  
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In re: :  
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**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
FOR AN ORDER PURSUANT TO 11 U.S.C. § 328(A) AUTHORIZING  
AMENDMENT TO TERMS OF EMPLOYMENT AND RETENTION OF  
CAPITAL & TECHNOLOGY ADVISORS LLC**

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 the “Debtors”), by and through its counsel, Milbank, Tweed, Hadley & McCloy LLP, for its Motion for an Order Pursuant to 11 U.S.C. § 328(a) Authorizing Amendment to Terms of Employment and Retention of Capital & Technology Advisors LLC (the “Motion”), respectfully states as follows:

**Preliminary Statement**

1. The Committee retained Capital & Technology Advisors LLC (“C&TA”) to serve as industry and technology advisors to the Committee throughout these bankruptcy cases due to the highly technical nature of the Debtors’ businesses. The Committee and C&TA negotiated the scope of services and compensation terms related to C&TA’s employment based upon the

Committee's needs at the outset of these cases. However, as these cases proceeded it became necessary for the Committee to look to C&TA and its wealth of industry-related expertise to provide additional services and analyses related to the Debtors' businesses.

2. The Committee and C&TA negotiated, in good faith certain amendments to the terms of C&TA's engagement which are discussed in detail herein. These amendments are necessary to provide the Committee with the level of service it requires to meet its obligations in representing the constituency of unsecured creditors of the Debtors. In addition, these amendments are necessary to provide C&TA with reasonable compensation commensurate with the increased services sought by the Committee.

### **Jurisdiction**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

### **Background**

4. In order to enable the Committee to carry out its duties, the Committee deemed it necessary to retain an industry and technology advisor due to the nature of the Debtors' businesses. On June 14, 2004, the Committee retained C&TA to serve in that capacity.

5. The terms of C&TA's retention were set forth in that certain engagement letter dated as of June 14, 2004 (the "Engagement Letter").

6. Pursuant to §§ 328(a) and 1103 of the Bankruptcy Code, the Committee filed a motion for an Order authorizing its retention of C&TA.

7. The Committee's Application for Order Authorizing and Approving Under 11 U.S.C. §§ 328 and 1103 and Fed. R. Bankr. P. 2014 and 5002, the Retention of Capital and

Technology Advisors LLC, Effective as of June 14, 2004 as Industry and Technology Advisors to the Official Committee of Unsecured Creditors (the “Retention Motion”) was approved by order of the Court dated July 26, 2004.

8. The Court approved the Committee’s retention of C&TA effective as of June 14, 2004.

9. The terms of the Engagement Letter were negotiated by the Committee and C&TA and represent the foreseeable services that the Committee anticipated it would need throughout these cases.

10. The services and analyses to be provided by C&TA as set forth in the Engagement Letter and the Committee’s Retention Motion include:

- (a) analyzing the Debtors’ telecommunication operations, service delivery and technological capabilities, each as it applies to the Debtors’ current financial condition and its prospects for the Debtors’ future performance;
- (b) conducting a detailed review of the Debtors’ recent and historic financial performance, business plan, marketing plan, revenue forecasts, capital program, management and competitive environment. C&TA will continue to review and comment on the Debtors’ long-term business plan projections and be in a position to validate such projections or propose alternatives;
- (c) assisting the Committee in evaluating the Debtors’ proposed plan of reorganization and developing, evaluating, structuring and negotiating the final, definitive terms and conditions of a restructuring or plan of reorganization, including the value of the securities, if any, that may be distributed to unsecured creditors under any such restructuring or plan; analyze any merger, acquisition, divestiture, joint venture, or other transactions proposed by the Debtors;
- (d) assisting the Committee in evaluating the Debtors’ proposed bank debt refinancing transaction;
- (e) reviewing and advising the Committee with respect to operating cash flow risks and opportunities associated with the Debtors’ proposed plan of reorganization;

- (f) assisting and advising the Committee in connection with the Debtors' current contracts, both from a market level evaluation, and overall usefulness of such contracts in the context of the Debtors' proposed plan of reorganization and business plan; and
- (g) providing such other advice and assistance as may be reasonably requested by the Committee from time to time.

11. The Engagement Letter provides that C&TA will be compensated by the Debtors on a monthly basis in the amount of \$150,000 for such services.

12. The Engagement Letter further provides that in addition to the monthly fees, C&TA may request a success fee which is to be negotiated by the Committee with C&TA in good faith.

13. The aforementioned services represented the intended scope of C&TA's engagement with the Committee. As the Debtors' cases proceeded the need for additional services by C&TA became apparent and are the subject of the present Motion.

#### **Relief Requested**

14. By this Motion, the Committee requests that the Court enter an Order pursuant to § 328(a) of the Bankruptcy Code authorizing the amendments to the terms of C&TA's retention set forth herein effective as of November 1, 2004.

#### **Applicable Authority**

15. The statutory predicate for the relief requested by this Motion is § 328(a) of the Bankruptcy Code. Section 328(a) provides that:

The Trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions

prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

**Proposed Amendments to C&TA's Retention**

**A. Increase in Monthly Fee**

16. As the Debtors' cases proceeded, the Committee discovered that additional services were needed from C&TA in order for the Committee to fulfill its fiduciary obligations. To that end, the Committee and C&TA negotiated amendments to the scope of services C&TA will provide to the Committee and the amount of compensation C&TA will receive in light of its new duties. The amendments to the Engagement Letter are set forth in that certain letter date October 21, 2004 from C&TA to the Committee (the "Amendment") which is attached hereto as Exhibit A.

17. The Amendment extends the services to be performed by C&TA to include:
- (a) review and analysis of the Debtors' subscription and television programming agreements and rights, channel line-ups and tiers and advise the Committee with respect thereto; and
  - (b) assist the Committee in making recommendations to the Debtors with respect to the Debtors' subscription and programming.

18. The need for such additional services by C&TA was not contemplated, nor foreseeable at the time the Committee retained C&TA. Therefore, the original terms of C&TA's retention under the Engagement Letter are insufficient for the scope of services and additional work to be performed.

19. Due to the expanded scope of services to be provided by C&TA and the additional work to be undertaken by C&TA professionals, the Committee and C&TA negotiated an increase in the monthly fee to be paid to C&TA. Pursuant to the Amendment, the monthly fee

to be paid to C&TA will be increased by \$30,000 per month to \$180,000 effective November 1, 2004.

**B. Agreement Regarding Success Fee**

20. Furthermore, in accordance with the terms of the Engagement Letter, the Committee and C&TA negotiated, in good faith, a range for the success fee C&TA will seek at the end of its retention. The Committee and the Debtors have agreed that a success fee of no less than \$1.25 million and no greater than \$1.75 million shall be payable to C&TA upon consummation of the Debtors' cases. See Exhibit A at ¶3. The final amount of the success fee will be determined by the Committee and the Bondholders at the conclusion of these cases and will be subject to Bankruptcy Court approval.

21. The amount of the success fee is reasonable when compared to the value C&TA's services have provided to the Committee's constituency and when compared to success, transaction or restructuring fees approved by this Court for other professionals retained in these cases.<sup>1</sup>

22. Creditors have previously received notice of the range of the C&TA success fee. A statement that the Committee and the Debtors support such a success fee of no less than \$1.25 million and no greater than \$1.75 million is included in Section XV of the Debtors' approved disclosure statement relating to the Debtors' proposed plan of reorganization (the "Disclosure Statement"). The Disclosure Statement was sent to creditors on October 15, 2004.

**Waiver of Memorandum of Law**

23. Because the relief sought in this Motion is authorized by § 328(a) of the Bankruptcy Code, the Committee respectfully requests that the Court waive the requirement for

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<sup>1</sup> For example, by Order dated August 3, 2004, the Court approved Restructuring Fees of up to \$7.8 million for the Blackstone Group L.P.



the filing of a separate memorandum of law in support of this Motion pursuant to Local Rule 9013-1(b).

**Notice**

24. Notice of this Motion has been given to all parties on the Master Service List as defined in the Order Under 11 U.S.C. §§ 102 and 105 and Fed. R. Bankr. P. 2002, 9006 and 9007 Establishing Certain Notice, Case Management and Administrative Procedures dated June 2, 2004. The Committee submits that such notice will be adequate and sufficient, and, therefore, no other or further notice is required.

**Conclusion**

25. The Committee respectfully requests that the Court enter an order, substantially in the form attached hereto: (1) authorizing and approving the amendments to C&TA's retention by the Committee as set forth herein, and (2) granting the Committee such other relief the Court deems necessary.

Dated: New York, New York  
November 12, 2004

MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP

By: /s/ Deirdre Ann Sullivan  
Dennis F. Dunne (DD 7543)  
Deirdre Ann Sullivan (DS 6867)  
1 Chase Manhattan Plaza  
New York, NY 10005  
Telephone Number: (212) 530-5000

# EXHIBIT A

**Capital & Technology Advisors LLC**  
**11730 Plaza America Drive**  
**Suite 330**  
**Reston, Virginia 20190**

October 21, 2004

RCN Corporation  
105 Carnegie Center  
Princeton, New Jersey 08540

The Official Committee of Unsecured Creditors  
of RCN Corporation  
c/o Milbank, Tweed, Hadley & McCloy LLP  
One Chase Manhattan Plaza  
New York, NY 10005

Re: RCN Corporation, et al.  
Case No. 04-13638 (RDD)

Ladies and Gentlemen:

Reference is made to (i) that certain engagement letter dated as of June 14, 2004 (the "Engagement Letter") pursuant to which Capital & Technology Advisors LLC ("C&TA") agreed to provide certain industry and technology advisory services to the Official Committee of Unsecured Creditors (the "Committee") of RCN Corporation, *et al.* (collectively, the "Debtors") in connection with the Debtors' chapter 11 cases (the "Chapter 11 Cases"), pending before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), and (ii) that certain Final Retention Order dated July 26, 2004 of the Bankruptcy Court, pursuant to which the Bankruptcy Court approved the Committee's retention of C&TA as industry and technology advisor at a rate of \$150,000 per month, plus reimbursement of expenses effective as of June 14, 2004.

This letter will confirm the agreement of C&TA and the Committee to amend the Engagement Letter as follows:

1. Section 1 of the Engagement Letter is hereby amended by deleting clause g) of Section 1 in its entirety and adding the following in lieu thereof:
  - g) review and analyze all of the Debtors' subscription television programming agreements and rights, channel line-ups and tiers and advise the Committee with respect thereto;
  - h) assist the Committee in making recommendations to the Debtors with respect to the Debtors' subscription television channel line-ups and tiers; and
  - i) provide such other advise and assistance as may be reasonably requested by the Committee from time to time.

2. In connection with the expanded scope of work, the parties agree that the monthly fee payable under the Engagement Letter to C&TA shall be increased from \$150,000 to \$180,000 effective November 1, 2004.

3. In accordance with the last paragraph of Section 3 of the Engagement Letter, the Committee and C&TA agreed that if requested by C&TA, a success fee would be negotiated by the parties in good faith. This confirms that such negotiation has taken place and that the parties have agreed that a success fee of between \$1.25 million and \$1.75 million shall be payable to C&TA upon consummation of the Chapter 11 Cases. The parties acknowledge that a statement to the effect that the Committee and the Debtors support such success fee has been included in the Disclosure Statement relating to the Debtors' proposed Plan of Reorganization.

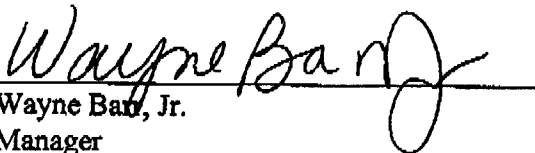
All remaining terms and condition of the Engagement Letter, as modified by the Final Retention Order, shall continue in full force and effect.

The parties acknowledge that C&TA will be filing a supplemental retention application with the Bankruptcy Court seeking Bankruptcy Court approval to expand the scope of its engagement, increase its monthly retainer and receive the success fee.

Very truly yours,

Capital & Technology Advisors LLC

By:

  
Wayne Bar, Jr.  
Manager