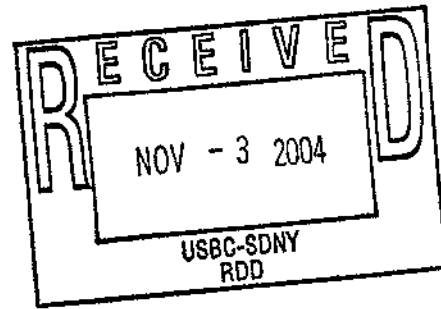


MICHAEL H. KRAFCISIN  
Post Office Box 332  
Dallastown, Pennsylvania 17313-0332  
(717) 887-8864

Respondent/Creditor, *Pro Se*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK



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

**CREDITOR'S RESPONSE TO DEBTOR'S SECOND OMNIBUS OBJECTION  
TO 11 U.S.C. §§ 502(b) AND 510 (b)  
AND FED. R. BANKR. P. 3003 AND 3007 TO CLAIMS**

**Claim No. 958**  
**Claim Amount:** Unspecified, to be determined  
**Basis of Claim:** Unpaid Compensation  
Compensatory and Punative Damamages  
Age Discrimination and Unequal Pay  
Open and Pending Complaints Under Investigation

I, Michael H. Krafcisin, as Respondent in the above-captioned matter, hereby object to the Debtors' (a) belief that a claim I filed is improper, and that (b) it is appropriate to disallow and expunge such claim on the basis that it is not an obligation of any of the Debtors' in these chapter 11 cases.

In support of this objection, I hereby declare that the following is true to the best of my knowledge, information and belief:

I personally prepared and proffered a Proof of Claim identified as Claim No. 958 in the declaration of Anthony Horvat which is part of the Debtors' Second Omnibus

Objection. Said claim was timely submitted and accepted by the Court having competent jurisdiction in this matter.

In regards to the instant claim, Mr. Horvat identifies complaints the Respondent has filed against RCN Corporation with the Department of Human Rights, State of Illinois, and the Commission on Human Relations, City of Chicago, among others. Furthermore, Mr. Horvat states in his declaration that “The Books and Records do not indicate that Mr. Krafcisin currently is, or ever was, an employee of the Debtors. Rather, the Books and Records indicate that Mr. Krafcisin was an employee of RCN Telecom Services of Illinois, LLC, a non-Debtor subsidiary of RCN Corporation.”

In response, the I wish to refute Mr. Horvat’s conclusions on the following basis:

1. In the matter before the Department of Human Rights, State of Illinois, RCN Corporation, by its attorneys, filed a Verified Response to the allegations in the Respondent’s complaint. The Verified Response was filed under the guise of RCN Corporation, not RCN Telecom Services of Illinois, LLC. In its Verified Response, RCN Corporation acknowledged that the Complainant Krafcisin was “employed with Respondent [RCN Corporation] since June 7, 1999.” [See Response to Paragraph IB2 in RCN Corporation’s Verified Response to Allegations before the Department of Human Rights, State of Illinois, attached herewith.]
2. Similarly, in the matter before the Commission on Human Relations, City of Chicago, RCN Corporation, by and through counsel, filed a Verified Response to the allegations in the Respondent’s complaint before that agency. The Verified Response was filed under the guise of RCN Corporation, not RCN

Telecom Services of Illinois, LLC. In its Verified Response, RCN Corporation acknowledged that “. . . the corporate Respondent . . . exercised direct control over any aspect of the terms or conditions of Complainant’s employment.” [See lengthy footnote 1 of RCN Corporation’s Verified Response to Complaint Allegations before the Commission on Human Relations, City of Chicago, attached herewith.]

3. In the same Verified Response before the Commission on Human Relations, RCN Corporation unequivocally declares that, “RCN denies that the listed Respondents, other than RCN Corporation, are proper Respondents. None of Complainant’s listed Respondents, other than RCN, are statutory employers . . .” [*supra.*, page 3, attached herewith.]
4. RCN Corporation’s answers in these Verified Responses, therefore, would run counter to the conclusions drawn during Mr. Horvat’s examination of the Books and Records of RCN Corporation and his subsequent declaration in this matter. As evidenced by these filings, by its own admission it is clear that RCN Corporation considered Respondent/Creditor Krafcisin in its employ.
5. Respondent/Creditor Krafcisin’s position that Mr. Horvat’s conclusion is incorrect is further buttressed by the following:
  - a. The maker of the bi-weekly payroll checks received by the Respondent/Creditor while employed by the Debtors was RCN Corporation, not RCN Telecom Services of Illinois, LLC. [See sample remittance advice, attached herewith.]

- b. A compensation letter to the Respondent/Creditor dated September 14, 2000, signed by James P. Dreher, RCN Vice President of Revenue Assurance, is on RCN letterhead and begins with “[O]n behalf of RCN Corporation . . .” [See sample document, attached herewith.]
- c. Confidentiality and Non-Compete documents signed by the Respondent/Creditor were captioned under the auspices of RCN Corporation, not RCN Telecom Services of Illinois, LLC. [See sample document, attached herewith.]
- d. Respondent/Creditor was issued Stock Options, Restricted Stock and similar incentive compensation during his employ, and the agreements governing said employee compensation were drawn by and between RCN Corporation and the Respondent/Creditor, not RCN Telecom Services, LLC., and the Respondent/Creditor. Stock Option, Restricted Stock and similar documents were signed by an officer of RCN Corporation, not RCN Telecom Services of Illinois, LLC. Further, the Respondent/Creditor received correspondence pertaining to said awards which began, “Dear RCN Employee . . .”.
- e. During his employ, the Respondent/Creditor was entitled to and participated in certain benefit programs, including but not limited to:
- RCN Corporation RCN Savings and Stock Ownership Plan
  - RCN Corporation ESPP

- Medical and similar health, life, and disability insurance where RCN Corporation was identified as the “Employer.”

[See sample document, attached herewith.]

f. A Separation Agreement and General Release proffered by the Debtors upon termination of the Respondent/Creditor’s employment with RCN Corporation were to be countersigned by a representative of RCN Corporation, not RCN Telecom Services of Illinois, LLC. [See sample document, attached herewith.] Respondent/Creditor calls the Court’s attention this nor any similar document was *never* executed, and the purpose of including it in this Response is purely for illustration and to indicate the Debtor’s state of mind in terms of its relationship with the Respondent/Creditor.

6. Based on the foregoing, it is the undersigned’s position that, based on a preponderance of the evidence submitted herein, the Respondent/Creditor was, indeed, an employee of the Debtor and that the Notice of Claim duly filed should not be disallowed and expunged as requested in the Debtor’s Second Omnibus Objection.

Rather, it is the Respondent/Creditor’s position that the Debtor’s Objection in regard to Claim No. 958 should be Overruled.

Further, the Respondent/Creditor begs leave of the Court to attempt to negotiate a fair and equitable settlement of Claim No. 958 with the Debtors and, unless no consensual resolution can be reached, that the Claim be subject to a hearing at a time and date deemed appropriate by the Court.

I declare under penalty of perjury that the forgoing is true and correct.

Executed this 1<sup>st</sup> day of November 2004.

/s/ Michael H. Krafcisin  
MICHAEL H. KRAFCISIN

**BEFORE THE STATE OF ILLINOIS  
DEPARTMENT OF HUMAN RIGHTS**

<b>MICHAEL H. KRAFCISIN,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
v.	)	<b>Charge No. 2003-CA-3324</b>
	)	
<b>RCN CORPORATION,</b>	)	
	)	
<b>Respondent.</b>	)	

**VERIFIED RESPONSE TO ALLEGATIONS**

Respondent, RCN Corporation ("RCN"), by its attorneys, Klein Dub & Holleb, Ltd., responds to the allegations contained in the above-referenced Charge as follows:

**PARAGRAPH I.A - ISSUE/BASIS**

1. **Unequal Pay, November 13, 2002, because of my age, 45.**

**RESPONSE:**

RCN denies the allegations contained in Paragraph I.A

**PARAGRAPH I.B - PRIMA FACIE ALLEGATIONS**

1. **I am 45 years of age.**

**RESPONSE:**

RCN admits the allegations contained in Paragraph I.B.1.

2. **I have satisfactorily performed my duties as a Project Manager III, and have been employed with Respondent since June 7, 1999.**

**RESPONSE:**

RCN admits the allegations contained in Paragraph I.B.2.

**CITY OF CHICAGO  
COMMISSION ON HUMAN RELATIONS**

IN THE MATTER OF:	)	
	)	
MICHAEL KRAFCISIN,	)	
	)	
Complainant,	)	Case No.: 03-E-74
	)	
and	)	
	)	
RCN CORPORATION, <i>et al.</i>	)	
	)	
Respondents.	)	

**VERIFIED RESPONSE TO COMPLAINT ALLEGATIONS**

RCN Corporation, ("RCN") by and through counsel, responds to the allegations contained in the above-referenced Complaint as follows:<sup>1</sup>

1. My name is Michael H. Krafcisin. I was born on March 4, 1958. I live at 301 East Hillside Avenue in Barrington (Cook County), Illinois. My mailing address is Post Office Box 847, Barrington, Illinois 60011-0847. My home telephone number is 847-381-3209. I am a Caucasian male.

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<sup>1</sup> In Complaint paragraph 5, Complainant set forth a laundry list of RCN corporate and RCN Chicago executives as Respondents. None of the named "Respondents," however, other than Thomas McKay, played any role in Krafcisin's separation from employment. Indeed, none other than the corporate Respondent and McKay exercised direct control over any aspect of the terms or conditions of Complainant's employment. Moreover, several of the other named Respondents are no longer employed by RCN, and most, if not all, were not served with the Complaint or any of the subsequent pleadings. As such, RCN moves to dismiss all of the individually named "Respondents" as none of them "employed one or more employees" (CCHR Regulations part 10, paragraph 12), or took any action against Krafcisin which could be deemed to be "directly or indirectly discriminatory." §2-160-030. In fact, Krafcisin does not allege any such actions against any of the individual Respondents in his entire fourteen page, sixty-two paragraph Complaint. Moreover, to the extent any or all of the individual Respondents are not dismissed, this pleading and the accompanying submission should be deemed to also be their responsive documents.



**RESPONSE:**

RCN is without knowledge to either admit or deny the allegations contained in Complaint Paragraph 1, but states it has no reason to disbelieve those allegations.

2. This is an employment complaint and it is being filed because of age discrimination committed by my former employer and its agents, RCN Corporation, also known as and/or doing business as RCN Telecom Services of Illinois, Inc., and/or RCN, LLC, et.al.

**RESPONSE:**

RCN denies the allegations contained in Paragraph 2.

3. The main Chicago office of RCN/Chicago is located at 350 North Orleans Street, 6<sup>th</sup> Floor, Chicago, Illinois 60654-1596. The main local telephone number for RCN/Chicago is 312-955-2100.

**RESPONSE:**

RCN admits the allegations contained in Paragraph 3.

4. The corporate headquarters for RCN Corporation are located at 105 Carnegie Center, Princeton, New Jersey 08540-6215. The main telephone number of RCN corporate is 609-734-3700.

**RESPONSE:**

RCN admits the allegations contained in Paragraph 4.

5. The Respondents to this complaint are:

**RCN Corporation**  
105 Carnegie Center  
Princeton, New Jersey 08540-6215  
609-734-3700

**Kevin Maguire**  
Vice President & General Manager  
RCN/Chicago  
350 North Orleans Street 6<sup>th</sup> Floor  
Chicago, Illinois 60654-1596  
312-955-2010

**David McCourt**  
Chairman of the Board &  
Chief Executive Officer  
RCN Corporation  
105 Carnegie Center  
Princeton, New Jersey 08540-6215

**Robin Linton**  
Interim Director, Employee Services  
RCN Corporation  
c/o RCN/Chicago  
350 North Orleans Street 6<sup>th</sup> Floor  
Chicago, Illinois 60654-1596

**Jeffrey White**  
Vice Chairman &  
Chief Financial Officer  
RCN Corporation  
105 Carnegie Center  
Princeton, New Jersey 08540-6215

**Tim Wyllie**  
Senior Vice President,  
Business & Operations  
RCN Corporation  
105 Carnegie Center  
Princeton, New Jersey 08540-6215

**John Filipowicz**  
Senior Vice President, Administration  
RCN Corporation  
105 Carnegie Center  
Princeton, New Jersey 08540-6215

**Ellyn Ito**  
Director, Employee Services  
RCN Corporation  
105 Carnegie Center  
Princeton, New Jersey 08540-6215

**Rosemary Haefner**  
Director, Employee Services  
RCN Corporation  
c/o RCN/Chicago  
350 North Orleans Street 6<sup>th</sup> Floor  
Chicago, Illinois 60654-1596

**Thomas McKay**  
Director, Network & Billing Operations  
RCN/Chicago  
RCN/Chicago  
350 North Orleans Street 6<sup>th</sup> Floor  
Chicago, Illinois 60654-1596  
312-955-2273

**Jade Augustine**  
Generalist, Employee Services  
RCN/Chicago  
350 North Orleans Street 6<sup>th</sup> Floor  
Chicago, Illinois 60654-1596  
312-955-2004

**RESPONSE:**

RCN denies that the listed Respondents, other than RCN Corporation, are proper Respondents. None of Complainant's listed Respondents, other than RCN, are statutory employers and all must therefore be dismissed as Respondents. Moreover, many of the listed Respondents are no longer employed at RCN, and of those that are, none other than McKay were involved in the decisionmaking process regarding Krafcisin.

CO. FILE DEPT. CLOCK VCHR. NO. 085  
RZY 100288 479510 220 0000450105 1

### Earnings Statement



RCN CORPORATION  
105 CARNEGIE CENTER  
PRINCETON, N.J 08540

Period Ending: 11/08/2002

Pay Date: 11/09/2002

Taxable Marital Status: [REDACTED]  
Exemptions/Allowances:  
Federal: [REDACTED]  
II: [REDACTED]

MICHAEL KRAFCISIN  
P. O. BOX 847  
BARRINGTON, IL 60011

Social Security Number: [REDACTED]

<u>Earnings</u>	<u>rate</u>	<u>hours</u>	<u>this period</u>	<u>year to date</u>	<u>Other Benefits and Information</u>	<u>this period</u>	<u>total to date</u>
Regular	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	F	[REDACTED]	[REDACTED]
Estimated Sick Opt	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	G.T.L.	[REDACTED]	[REDACTED]
<b>Gross Pay</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	401K Elig Wages	[REDACTED]	[REDACTED]
<b>deductions</b>					401K Match	[REDACTED]	[REDACTED]
<b>Statutory</b>					Current Match	[REDACTED]	[REDACTED]
Federal Income Tax	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Eligible Earns	[REDACTED]	[REDACTED]
Social Security Tax	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
Medicare Tax	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
IL State Income Tax	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
<b>Other</b>							
Checking 1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
Dental	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
Hlth Reimb Acc	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
Medical	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
Rta	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
Stock Pur Plan	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
401K	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
<b>Net Pay</b>	[REDACTED]	[REDACTED]	<b>30.00</b>	[REDACTED]			

\* Excluded from federal taxable wages

Your federal taxable wages this period are [REDACTED]

RCN CORPORATION  
105 CARNEGIE CENTER  
PRINCETON, N.J 08540

Advice number: 00000450105  
Pay date: 11/08/2002

Deposited to the account of  
MICHAEL KRAFCISIN

account number [REDACTED] transit ABA [REDACTED] amount [REDACTED]

**THIS IS NOT A CHECK**

**NON-NEGOTIABLE**



**PERSONAL AND CONFIDENTIAL**

350 N. Orleans Street  
Suite 600  
Chicago, Illinois 60654-1509  
(312) 955-2100 telephone  
(312) 955-2111 facsimile

September 14, 2000

PO Box 847  
Barrington, IL 60011-0847

Michael Krafcisin,

On behalf of RCN Corporation, I am pleased to inform you that effective September 1, 2000 the following changes have been made in regards to your employment with RCN.

1. An annual base salary of Salary [REDACTED] with performance based salary reviews on a twelve (12) month cycles.
2. Short Term Incentive -- 10% of base annual salary, with pay-out consistent with RCN's Short Term Incentive (STI) program: RCN Company, Departmental and Individual performance
3. Special Individual Bonus -- [REDACTED] potential, with pay-out determined at the same rate as Individual STI pay-out component of RCN STI program; maximum 100% [REDACTED]

RCN Corporation is planning to pay out our Short-Term Incentive during the February 2001 timeframe and your one time bonus payment based upon your performance. You must be an active employee to be eligible for the pay out when it is made.

You specifically acknowledge that execution of this letter does not constitute a contract of employment between you and RCN Corporation or any of its subsidiaries or affiliates.

I wish you continued successes going forward.

Sincerely,

James Dreher  
Vice President of Revenue Assurance

Employee hereby acknowledges that he/she has read and understands each of the terms and conditions set forth in this Agreement and has been advised and given an opportunity to ask questions and to consult with counsel before signing.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

RCN CORPORATION

By [Signature] Director <sup>(CB)</sup>

Its \_\_\_\_\_

EMPLOYEE:

[Signature]  
Michael Krafsin

Acknowledged and agreed this Oct day of 3, 2000.

x Edith [Signature] (CB)

Signed off via [Signature] Jim due to  
time schedule transition

x Ellen H., Jim & Edith  
all in agreement confirmed w/ Bob C.

## RCN CORPORATION

### Confidentiality and Non-Competition Agreement

THIS AGREEMENT is effective as of the date set forth below, between RCN Corporation, a Delaware corporation (the "Company") and the individual who has executed this Agreement ("Employee").

NOW, THEREFORE, in consideration of Employee's eligibility to participate in special employee program(s), including stock options granted pursuant to the RCN 2000 Quarterly Stock Option Grant program as provided under RCN's 1997 Equity Incentive Plan, and the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Employee hereby agree as follows:

#### 1. Confidential Information.

(a) Employee acknowledges that the Confidential Information (as defined below) relating to the business of the Company which Employee has obtained or will obtain during the course of his/her employment by the Company are the property of the Company. Employee agrees that, except in the performance of his/her duties for the Company, he/she will not disclose or use at any time, either during or after his/her employment with the Company, any Confidential Information without the prior written consent of the Company. Employee shall take all appropriate steps to safeguard Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) "Confidential Information" shall mean trade secrets and other proprietary and confidential information which is used, developed, or obtained by the Company relating to its business and its customers' businesses including, but not limited to: financial information; costs; pricing strategies; designs; analyses; drawings; photographs; reports; computer software, including operating systems, object codes, source codes, applications, program listings, flow charts, manuals and documentation; databases; business and operating plans; marketing strategies; business strategies; forecasts; account and supplier information; product concepts; personnel information; accounting and business methods; budgets; inventions, modifications, new developments and methods, whether patentable or unpatentable and whether or not reduced to practice; formulas; all copyrightable works; the customers of the Company and the customers' Confidential Information; and all similar and related information in whatever form. Confidential Information shall not include any information which (i) is publicly disclosed by law or in response to an order of a court or governmental agency, (ii) becomes publicly available through no fault of, or breach of this Agreement by, Employee or by a third party having no obligation of confidentiality, or (iii) has been published in a form generally available to the public prior to the date upon which Employee proposes to disclose such information. Information shall not be deemed to have been published merely because individual portions of the information have been separately published, but only if all the material features comprising such information have been published in combination.

2. Work for Hire. Employee acknowledges that any and all work or materials produced or provided by Employee during the course and scope of employment with the Company (the "Work") shall be considered a "work for hire" under the Copyright Act of 1976 and the sole and exclusive property of the Company. The Company shall have all right, title and ownership in and to the Work, including, but not limited to, the right to register the Work for copyright and/or patent

protection. To the extent that the Work shall for any reason not be considered to be a "work for hire" or to the extent otherwise necessary to effectuate the foregoing, Employee hereby conveys, transfers and assigns all its right, title and interest he/she may have now or in the future acquire in the Work to the Company, including, but not limited to, all copyrights, patents, trade secrets and other intellectual property rights, and agrees to execute all instruments necessary to accomplish such transfer and assignment as requested by the Company. Employee agrees that he/she will not at any time do or cause to be done any act or thing contesting or impairing or intended to impair the foregoing ownership rights of the Company. Employee also agrees that he/she will not duplicate or re-use the Work or any modification or similar work for any reason other than for purposes of providing services to the Company.

#### 3. Non-Competition.

- ◆ During employment this section applies to all employees
- ◆ Upon separation of employment this section will only apply to those employees at or above the level of Director

(a) Non-Compete Agreement. Employee acknowledges and agrees with the Company that Employee's services to the Company are unique in nature and/or has access to and acquired Confidential Information, and that the Company would be irreparably damaged if Employee were to provide similar services to any person or entity competing with the Company or engaged in a similar business. Employee accordingly covenants and agrees while he/she is in the Company's employ and for the Restricted Period after he/she ceases to be employed by the Company for whatever reason, Employee will not directly or indirectly own, operate, manage, control, participate in, invest in, consult with, render services for, be employed by or assist in any way any entity which is competitive with the Company. Notwithstanding the foregoing, the Employee shall be permitted to own up to two percent (2%) of the stock of a publicly-traded corporation which engages in a business which competes with the Company provided the Employee has no other relationship with such corporation. For purposes of this paragraph 3(a), "an entity which is competitive with the Company," shall mean any entity which is engaged in any of the following businesses: (i) facilities-based providers of local and long distance phone, cable television, or data services; (ii) internet service providers; (iii) direct broadcast satellite providers; (iv) private satellite master antenna television providers; and (v) any business in which the Company is engaged at the time of or within 12 months preceding the employee's termination of employment.

For purposes of this paragraph 3(a), the Restricted Period will be measured from the date the Employee ceases to be employed by the Company, and the duration will depend upon the title which the Employee holds at the time of termination. The Restricted Period will be as follows: twelve months for Senior Vice Presidents and above; six months for Vice Presidents or those at a comparable level; three months for Directors or those at a comparable level. For those at or below the title of Senior Manager or comparable level at the time of termination, paragraph 3(a) will only apply during Employee's employment.

(b) Payment. In further consideration for Employee's obligations under this Agreement, in the event Employee's employment is terminated by the Company without cause, the Company, at its sole discretion, may elect to continue to pay Employee at the Employee's then current base salary during the non-compete period set forth in paragraph 3(a), subject to the Employee

provisions will not in any way be affected or impaired thereby. Moreover, if any one or more of the provisions contained in this Agreement is held to be excessively broad as to duration, scope, activity or subject, such provisions will be construed by limiting and reducing them so as to be enforceable to the maximum extent compatible with applicable law.

(c) Complete Agreement. This Agreement, those documents expressly referred to herein and other documents among the parties of even date herewith embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way. The provisions of this Agreement may be amended and waived only with the prior written consent of the Company and Employee.

(d) Assignment. The parties agree that the Company shall have the right to assign this Agreement and Employee's obligations under this Agreement are personal to the Employee, and the Employee shall not have the right to assign or otherwise transfer his/her obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

(g) Choice of Law. All questions concerning the construction, validity and interpretation of this Agreement and the exhibits hereto will be governed by the internal law, and not the law of conflicts, of the State of New Jersey.

(h) Remedies. Each of the parties to this Agreement will be entitled to enforce its rights under this Agreement specifically, to recover damages and costs (including reasonable attorneys fees) caused by any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The parties hereto agree and acknowledge that Employee's breach of any term or provision of this Agreement will materially and irreparably harm the Company, that money damages will accordingly not be an adequate remedy for any breach of the provisions of this Agreement by Employee and that the Company in its sole discretion and in addition to any other remedies it may have at law or in equity may apply to any court of law or equity of competent jurisdiction (without posting any bond or deposit) for specific performance and/or injunctive relief in order to enforce or prevent any violations of the provisions of this Agreement.

10. Understanding of Agreement. Employee hereby acknowledges that he/she has read and understands each of the terms and conditions set forth in this Agreement and has been advised and given an opportunity to ask questions and to consult with any advisors.

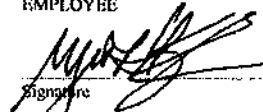
THE UNDERSIGNED has executed this Agreement on the day and year set forth below.

EMPLOYEE

Signature

Print Name

Dated:

  
MICHAEL H. KACELNIK  
9/25/04

INCENTIVE STOCK OPTION AGREEMENT  
UNDER THE  
RCN CORPORATION  
1997 EQUITY INCENTIVE PLAN

THIS AGREEMENT is made as of the 1st of June, 2000 (the "Grant Date"), by and between RCN Corporation, a Delaware corporation (the "Company"), and Michael Krafcisin (the "Employee").

WITNESSETH:

WHEREAS, the Employee is now employed by the Company in a key capacity, and the Company desires to have Employee remain in such employment and to afford Employee the opportunity to acquire, or increase, Employee's ownership of the Company's Common Stock, par value \$1.00 per share ("Stock"), so that Employee may have a direct proprietary interest in the Company's success;

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. Plan. The terms and provisions of the Company's 1997 Equity Incentive Plan (the "Plan") are incorporated herein by reference. In the event of a conflict or inconsistency between discretionary terms and provisions of the Plan and the express provisions of this Agreement, this Agreement shall govern and control. In all other instances of conflicts or inconsistencies or omissions, the terms and provisions of the Plan shall govern and control.

2. Grant of Options. Subject to the terms and conditions set forth herein and in the Plan, the Company hereby grants to the Employee, during the period commencing on the date of this Agreement and ending 5 years from the date hereof (the "Termination Date"), the right and option (the right to purchase any one share of Stock hereunder being an "Option") to purchase from the Company, at a price of \$23.375 per share, an aggregate of 1,395 shares of Stock. The Options granted hereunder are intended to be "incentive stock options" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code").

3. Vesting. The Options shall vest and become exercisable over a period of three years from the date hereof. Subject to the terms and conditions set forth herein, Employee may exercise thirty-three and one-third percent (33 1/3%) of the Options on the first anniversary of the Grant Date, an additional thirty-three and one-third percent (33 1/3%) of the Options on the second anniversary of the Grant Date, and an additional thirty-three and one-third percent (33 1/3%) of the Options on the third anniversary of the Grant Date.

4. Termination of Employment. (a) If prior to the Termination Date, the Employee shall cease to be employed by the Company by reason of a Normal Termination, retirement, disability or termination by the Company without Cause, all vesting with respect to



RCN Human Resources Department at its principal executive office, and all notices or communications by the Company to the Employee may be given to the Employee personally or may be mailed to Employee at the Employee's last known address, as reflected in the Company's records.

12. Disposition of Stock. The Employee agrees to notify the Company in writing, within 30 days of any disposition (whether by sale, exchange, gift or otherwise) of shares of Stock purchased under this Agreement, within two years from the Grant Date or within one year of the transfer of such shares of Stock to the Employee.

13. Binding Effect. Subject to Section 8 hereof, this Agreement shall be binding upon the heirs, executors, administrators and successors of the parties hereto.

14. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of law thereof.

15. Effect of Change in Control. In the event of a Change in Control, notwithstanding the vesting schedule set forth in paragraph 3 above, all of the Options shall become immediately exercisable.

16. Contingent on Execution of Confidentiality and Non-Competition Agreement. This agreement shall be of no force and effect unless and until the Confidentiality and Non-Competition Agreement which was delivered concurrently herewith has been executed and returned to RCN by the employee.

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

RCN CORPORATION

By Michael A. Adams  
Michael A. Adams  
President & Chief Operating Officer

[Signature]  
Optisec Signature

9/25/00

4

September 13, 2000



January 15, 2002

105 Carnegie Ce  
Princeton, NJ 08  
(609) 734-3700  
Fax (609) 734-6111

Dear RCN Employee:

Enclosed please find a semi-annual statement of your stock option and/or restricted stock holdings, as applicable. As you may recall, in August of 2001 we sent you a comprehensive statement of your long-term incentive holdings for the first time in an effort to improve both our communications and our level of service to you, our employees. The enclosed statement is our next step in continuing this effort.

Please review the statement carefully. If you feel that there are errors contained in the statement, please contact one of the following individuals directly, or send an e-mail to the address below:

**Saitip Vitale**  
HR Ownership Analyst  
(609) 919-5934

**Jonathan Paules**  
Sr. Mgr., HR Finance & Exec. Comp.  
(609) 734-3820

**E-mail Address:**  
[optionwizard@rcn.net](mailto:optionwizard@rcn.net)

On September 25, 2001 RCN initiated an option exchange program, giving you the opportunity to exchange your outstanding options for new options with a more favorable strike price. This exchange program came to a close on November 6, 2001, and for those employees who exchanged options, a new option grant was made on November 7, 2001.

For those of you who took advantage of the option exchange program, you will see the effect of the exchange in two ways on the enclosed statement:

- The options that you tendered for exchange have been cancelled.
- A new option grant, dated as of November 7, 2001, is listed. The number of new options granted depended upon the number of options tendered for exchange, as well as the original strike price of those options exchanged. Exchanged options with an original strike price of greater than \$16.00 were exchanged in a 1 for 2 ratio (one new option granted for every two options exchanged). Options exchanged with an original strike price of less than \$16.00 were exchanged in a 3 for 4 ratio (three new options granted for every four options exchanged).

Those who were granted new options on November 7, 2001 by virtue of exchanging at least a portion of your original options will also find enclosed two copies of a new Option Agreement. Please sign one copy of the Option Agreement and return it to **Jonathan Paules, Human Resources, 105 Carnegie Center, Princeton, NJ 08054, by February 15, 2002**. Please also review the enclosed document that describes the potential difference in the tax consequences between the options exchanged and the new options that were granted.

We look forward to helping you continue to be an integral part of RCN's success, while improving our service to you.

Sincerely,

Jonathan R. Paules  
Senior Manager, HR Finance & Executive Compensation

Enclosure(s)

NEED ASSISTANCE?  
 From Merrill Lynch?  
 Call: (800) 229-9010, 8:00 AM - 7:00 PM ET



RCN Corporation  
 RCN Savings & Stock Ownership Plan

300429 F 12711 0210KS RZY  
 KRAPCISIN, MICHAEL  
 P. O. BOX 847  
 BARRINGTON, IL 60011

STATEMENT OF ACCOUNT

Please review your statement and advise Merrill Lynch if you find discrepancies in your personal or account information. If we do not hear from you within 60 days, we will assume that all information is correct.

Your statement includes:

	page
Highlights	1
Value This Period	2
Contributions Summary	2
Activity Summary	3
Market Value Summary	3
Fund Performance	5

HIGHLIGHTS

VALUE THIS PERIOD

Beginning balance 07/01/2002  
 Net activity this period  
 Change in market value  
 Ending Balance 09/30/2002  
 Your vested balance as of 09/30/2002  
 Your portfolio's rate of return:  
 For the period

CURRENT INVESTMENT VALUE

The total market value of your investment is:  
 Allocation of your ending balance by source:

CONTRIBUTIONS

Your contributions  
 The company's contributions

CONTRIBUTIONS this period:

Employee Before Tax  
 Employer Matching ESOP



Award winning statement built year in a row



Merrill Lynch  
 INVESTMENT SERVICES



**Computershare**

Computershare Trust Co., Inc.  
 P.O. Box 240  
 Denver Colorado 80201-0240  
 Within the US, Canada & Puerto Rico: 877 324 4341  
 Outside the US, Canada & Puerto Rico: 732 491 0622  
<http://www.us.computershare.com/employees>

MICHAEL KRAFCISIN  
 P O BOX 847  
 BARRINGTON IL 60011



Account Number

[REDACTED]

Statement Period

01 Jan 2002 - 03 Oct 2002

Please advise Computershare Trust Co., Inc.  
 immediately of any discrepancies on your Statement

**RCN CORPORATION ESPP - Account Summary**

**Summary of Holdings**

Security Description	Symbol	Opening Position 01 Jan 2002	Closing Position 03 Oct 2002	Closing Share Price 03 Oct 2002 (\$)	Closing Share Value 03 Oct 2002 (\$)
RCN CORPORATION	RCNC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Summary Information**

Description	This Period 01 Jan 2002 - 03 Oct 2002 (\$)	Year to Date 01 Jan 2002 - 03 Oct 2002 (\$)
Reportable Proceeds	0.00	0.00
Reportable Dividends	0.00	0.00

Please note that your closing balance from last year and your opening balance from this year may be different if you had any activity between 12/27 and 12/31 of last year. This is due to any sales transactions initiated last year that had a settlement date during this year. If applicable, these sales transactions were reflected in your prior year statement and are also included in the "Transaction Details" of this statement.  
 Please be advised that these sales transactions will be reported correctly on your resulting Form 1099 or 1042-S of the previous Tax Year and will not be included in your Form 1099 or 1042-S for the current Tax Year.

If you need to speak to a Participant Service Representative, call weekdays between the hours of 8:00AM and 7:00PM ET at the above listed number.

This statement may not reflect the investment of all funds deducted from your pay since information may be received by us after the statement preparation date.

Please retain this statement for your records. This statement should not be used for tax reporting purposes.



Please note your statement detail appears on the reverse of this form.

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# Summary of Coverage

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**Employer:** RCN Corporation

**ASC:** 698257

**SOC:** 1A

**Issue Date:** October 8, 1999

**Effective Date:** January 1, 1999

The benefits shown in this Summary of Coverage are available for you and your eligible dependents.

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## Eligibility

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### Employees

You are in an Eligible Class if you are a regular full-time active employee of an employer participating in this Plan and have elected coverage under the Exclusive Provider Organization (EPO) plan which includes Special Comprehensive Medical Expense Coverage.

Your Eligibility Date, if you are then in an Eligible Class, is the Effective Date of this Plan. Otherwise, it is the date you complete a probationary period. Your probationary period ends on the first day of the calendar month coinciding with or next following the date you enter the service of your Employer, or, if later, the date you enter the Eligible Class.

---

### Dependents

You may cover your:

- wife or husband; and
- unmarried children who are under 19 years of age.

Any other unmarried child under age 25 who goes to school on a regular basis and depends solely on you for support will be covered as a dependent.

Your children include:

- Your biological children.
- Your adopted children.
- Your stepchildren.
- Any other child you support who lives with you in a parent-child relationship.

No person may be covered both as an employee and dependent and no person may be covered as a dependent of more than one employee.

Elect Choice



RZY  
100288

350 N. Orleans Street  
Suite 600  
Chicago, Illinois 60654-1509  
(312) 955-2100 telephone  
(312) 955-2111 facsimile

November 13, 2002

Michael Krafcisin  
P.O Box 847  
Barrington, IL 60011

Dear Michael:

**SEPARATION AGREEMENT AND GENERAL RELEASE**

RCN Corporation, its affiliates, subsidiaries, divisions, predecessors, successors and assigns, and the employees, officers, directors and agents thereof, both in their official and individual capacities (all of whom are collectively referred to throughout this Separation Agreement and General Release as "RCN"), and Michael Krafcisin ("Employee"), mutually desire to enter into this Separation Agreement and General Release ("Agreement") and acknowledge that:

Employee has been afforded a period of forty-five (45) days from the date of this Agreement to read and consider the terms set forth in the Agreement, sign, date and return it to RCN. Otherwise, this Agreement may be deemed null and void by RCN, in its sole judgement;

Employee has been afforded a period of at least forty-five (45) days within which to consider certain statistical data, available in the Employee Services office, concerning other RCN employees who are eligible for the same severance package described in this Agreement;

Employee has been encouraged to consult or seek the advice of an attorney or any other person of Employee's choosing;

In the event Employee has executed this Agreement within less than forty-five (45) days of its delivery to him/her, Employee acknowledges that such decision was entirely voluntary and was not compelled, and that he/she had the opportunity to consider this Agreement for the entire forty-five (45) day period; and

Employee has carefully considered the terms and conditions of this Agreement and Employee understands that this Agreement settles, bars and waives any and all claims and

16. FOR A PERIOD OF SEVEN (7) DAYS FROM THE DATE THAT EMPLOYEE SIGNS THIS AGREEMENT, EMPLOYEE MAY REVOKE THIS AGREEMENT BY NOTIFYING RCN IN WRITING OF THE EMPLOYEE'S INTENT TO DO SO. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THE REVOCATION PERIOD HAS EXPIRED. THIS SEVEN (7) DAY PERIOD MAY NOT BE SHORTENED BY THE PARTIES, BY AGREEMENT OR OTHERWISE.

WHEREFORE, the parties voluntarily and knowingly execute this Agreement under seal as indicated below.

EMPLOYEE

RCN CORPORATION

\_\_\_\_\_  
Michael Krafcisin

\_\_\_\_\_  
By: Rosemary Haefner

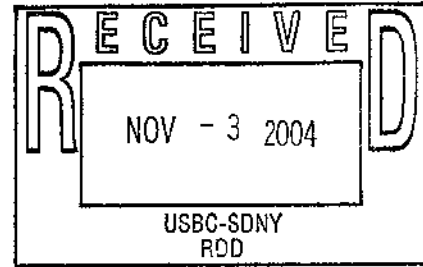
Date:

Date:

MICHAEL H. KRAFCISIN  
Post Office Box 332  
Dallastown, Pennsylvania 17313-0332  
(717) 887-8864

Respondent/Creditor, *Pro Se*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK



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

**NOTICE OF FILING**

**Claim No. 958, Michael H. Krafcisin**

TO:

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

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

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

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

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



PLEASE TAKE NOTICE that I have filed a Creditor's Response to Debtor's Second Omnibus Objection in the above-captioned cause before the United States Bankruptcy Court Southeast District of New York. A copy of this response is attached and is herewith served upon you.

Michael H. Krafcisin  
Post Office Box 332  
Dallastown, Pennsylvania 17313-0332  
(717) 887-8864

### CERTIFICATE OF SERVICE

I, Michael H. Krafcisin, Respondent/Creditor, hereby certify that I served a copy of the foregoing Creditor's Response to Debtor's Second Omnibus Objection referenced above, by overnight delivery, prepaid, on this 1<sup>st</sup> day of November, 2004, to the persons and at the addresses specified in this Notice of Filing.

  
\_\_\_\_\_  
Michael H. Krafcisin, Respondent/Creditor