

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036-6522
(212) 735-3000
Jay M. Goffman (JG 6772)
J. Gregory St. Clair (GS 8344)
Frederick D. Morris (FM 6564)

Attorneys for RCN Corporation, et al.,
Debtors and Debtors-in-Possession

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

**MOTION PURSUANT TO BANKRUPTCY CODE SECTIONS
105(a) AND 107(b) AND BANKRUPTCY RULE 9018 FOR ORDER
AUTHORIZING DEBTORS TO FILE UNDER SEAL THE FEE
LETTER AND ENGAGEMENT LETTER RELATING TO
DEBTORS' MOTION FOR ORDER AUTHORIZING, APPROVING
AND RATIFYING EXIT FINANCING COMMITMENTS AND
PAYMENT OF RELATED FEES AND EXPENSES**

RCN Corporation ("RCN") and certain of its direct and indirect
subsidiaries, debtors and debtors-in-possession in the above-captioned cases (collec-
tively, the "Debtors"), hereby submit this motion for entry of an order under 11

U.S.C. §§ 105(a) and 107(b) and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Debtors to file, under seal, the Fee Letter¹ and the Engagement Letter relating to the Debtors' motion for an order authorizing, approving and ratifying the Exit Financing Commitments and related fees and expenses (the "New Financing Motion") (Docket No. 32). The New Financing Motion sets forth the Debtors' request for authorization, approval and ratification of the Commitment Letter, the Fee Letter, the Engagement Letter, the Engagement Indemnity Letter and the Work Letter² to provide for up to \$460 million in new financing for the Debtors. In support of this motion, the Debtors respectfully represent as follows:

BACKGROUND

A. The Chapter 11 Filings

1. On May 27, 2004 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for reorganization relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to manage and

¹ Capitalized terms used but not defined herein have the meanings given to them in the New Financing Motion.

² Copies of the Commitment Letter, Engagement Indemnity Letter and the Work Letter are annexed to the New Financing Motion.

operate their business as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108 and Bankruptcy Rule 9018.

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

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

4. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105(a) and 107(b).

B. The Confidential Information

5. As part of the Exit Financing Commitments, the Debtors executed the Fee Letter, which sets forth the fees and expenses associated with the New Credit Facilities, as well as the terms of any syndication of the New Credit Facilities. In addition, the Debtors also executed the Engagement Letter, which contemplates the issuance of \$150 million of second-lien floating rate debt securities which may, at Deutsche Bank's discretion, be issued pursuant to either a loan agreement or an indenture by way of a private placement or underwritten sale.

6. Certain information contained in the Fee Letter and Engagement Letter (together, the "Confidential Materials") contain highly sensitive, confidential commercial information regarding, inter alia, Deutsche Bank's agreement to syndi-

cate the New Credit Facilities, and the terms upon which they will be syndicated, disclosure of which would cause significant harm to the Debtors. As such, the Debtors have agreed with Deutsche Bank to seek authority to file the Confidential Materials under seal and to provide for only limited disclosure and service of such documents.

RELIEF REQUESTED

7. By this motion, the Debtors seek entry of an order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, authorizing the Debtors to file the Confidential Materials under seal in the Debtors' cases in order to maintain the confidentiality of the information contained in those materials to the extent not already described and disclosed in the New Financing Motion.

8. The Confidential Materials contain, among other things, highly sensitive, confidential commercial information regarding the terms on which Deutsche Bank has agreed to syndicate the New Credit Facilities, the disclosure of which necessarily would significantly and adversely impact its ability to syndicate the facilities on the agreed-upon terms. Additionally, revelation of information included in the Confidential Materials beyond what already is described in the New Financing Motion may set a negative precedent for other financial lending institu-

tions who might potentially come forward to assist the Debtors, but fear disclosure of their fee structures and related information.

9. The Confidential Materials also contain detailed proprietary information describing the fees. This information is customarily considered by Deutsche Bank, as well as the finance lending industry in general, to be highly-sensitive and confidential information not typically disclosed to the public or made available to other competing financial institutions. While certain information with respect to fees are generally described in the New Financing Motion, given the highly competitive nature of the investment banking and financial lending industries, it is of the utmost importance to Deutsche Bank that the details of the fee structures and allocations set forth in the Confidential Materials be kept confidential so that competitors may not use the information contained therein to gain a strategic advantage over Deutsche Bank in the marketplace.

10. Finally, disclosure of the Confidential Materials is not necessary for the protection of the public, creditors of the Debtors or third parties because (a) the documents containing such materials are subject to this Court's approval in any case, (b) the Debtors propose to provide copies of the Confidential Materials to the certain parties in interest in these cases as described herein, and (c) the New Financing Motion describes the relevant fees in appropriate and sufficient detail.

11. The Debtors propose that the Confidential Materials (and any confidential information derived from the Confidential Materials) remain confidential, be filed under seal and be served on and made available only to (i) the United States Trustee for the Southern District of New York, (ii) financial advisors and counsel to the Noteholders' Committee, (iii) financial advisors and counsel to any statutory committee appointed in these chapter 11 cases, (iv) the Securities and Exchange Commission and (v) such other parties as ordered by the Court or agreed to by the Debtors and Deutsche Bank.

BASIS FOR RELIEF

12. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may --

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

13. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under the section 107(b) of the Bankruptcy Code, and provides that “[o]n motion, or on its own initiative, with or without notice, the court may make any

order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information [or] (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code” Fed. R. Bankr. P. 9018.

14. The Second Circuit has held that section 107(b) and Bankruptcy Rule 9018 do “not require that commercial information be the equivalent of a trade secret before protecting such information.” Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 28 (2d Cir. 1994). Indeed, this Court has stated that it “is required to grant that relief upon the motion of a party in interest, assuming the information is of the type listed in section 107(b).” In re Global Crossing Ltd., 295 B.R. 720, 723 (Bankr. S.D.N.Y. 2003). In addition, the Second Circuit has held that a party seeking the sealing of information is only required to show that the information is confidential and commercial, and no showing of “good cause” is necessary. Video Software Dealers Assoc., 21 F.3d at 28.

15. Most recently, this Court has held that almost identical fee information with respect to new exit financing proposed by the debtors could be filed under seal and on limited notice. See In re Adelpia Communications Corp., Case No. 02-41729 (REG) (Bankr. S.D.N.Y. June 25, 2002). In Adelpia, the debtors asked the court to file a fee letter, engagement letter and syndication letter under seal because

such agreements contained confidential commercial information, the disclosure of which would be disadvantageous and harmful to the debtors and to their bank group. Similarly, Deutsche Bank and the Debtors seek this Court's approval to file the Confidential Materials under seal and to limit disclosure of such materials in the manner set forth herein for identical reasons as those stated in the Adelphia case.

16. The Debtors submit that no new or novel issue of law is presented with respect to the matters contained herein. Because the relevant authorities in support of the requested relief are cited in this motion, the Debtors request that the requirement of the service and filing of a separate memorandum of law under Local Bankr. R. 9013-1(b) be deemed satisfied.

17. Pursuant to Bankruptcy Rule 9018, the Debtors submit no notice of this motion need be provided.

WHEREFORE, the Debtors respectfully request the Court enter an order (a) authorizing the Debtors to file the Confidential Materials under seal and (b) granting such other and further relief as the Court deems just or proper.

Dated: New York, New York
June 8, 2004

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

/s/ Jay M. Goffman

Jay M. Goffman (JG 6722)
J. Gregory St. Clair (GS 8344)
(Members of the Firm)
Frederick D. Morris (FM 6564)
Four Times Square
New York, New York 10036-6522
(212) 735-3000

Attorneys for Debtors and
Debtors-in-Possession