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Hearing Date: Nov. 18, 2004 at 10:00 a.m.

Counsel for Official Committee of
Unsecured Creditors of RCN Corp., et al.

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

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In re: : Chapter 11
: Case No. 04-13638 (RDD)
RCN CORPORATION, et al., : Jointly Administered
: :
: :
Debtors. :
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**OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF RCN CORPORATION, ET AL. TO FIRST INTERIM
APPLICATION OF WINSTON & STRAWN LLP FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

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

The Official Committee of Unsecured Creditors (the "Committee") of RCN Corporation ("RCN Corp." or the "Company") and its affiliated debtors and debtors-in-possession in the above-captioned cases (together with RCN Corp., "RCN" or the "Debtors"), hereby submits this objection (the "Objection") to the First Interim Application Of Winston & Strawn LLP ("W&S"), Counsel To The Board Directors Of RCN Corporation, et al., For Interim Compensation And Reimbursement Of Expenses, dated October 26, 2004 (Docket No. 324) (the "Fee Application") and in support thereof, respectfully represents as follows:

I. FACTUAL BACKGROUND

1. **Commencement Of Cases.** On May 27, 2004, RCN Corporation; TEC Air, Inc.; RLH Property Corporation; RCN Finance LLC; and Hot Spot Productions filed for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code"). Certain affiliates of the RCN Debtors, specifically (a) RCN Cable TV of Chicago and (b) RCN Telecom Services of Virginia, Inc.; RCN Entertainment, Inc.; 21st Century Telecom Services, Inc.; and ON TV, Inc. commenced their chapter 11 cases on (x) August 5, 2004 and (y) August 20, 2004, respectively. The United States Trustee appointed the Creditors' Committee on June 14, 2004. (See Docket No. 48).

2. **Interim Compensation Order.** On June 22, 2004, the Court entered the Administrative Order Under 11 U.S.C. §§ 105 And 331 Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals (Docket No. 72) (the "Interim Compensation Order"). Pursuant to the Interim Compensation Order, any Chapter 11 Professional (as defined in the Interim Compensation Order and including W&S) is entitled to receive 80% of its requested compensation and 100% of its expenses on a monthly basis.

3. **W&S Retention.** On July 30, 2004, W&S was retained as special counsel to RCN's Board of Directors (the "Board"), as of June 7, 2004, pursuant to Order Under 11 U.S.C. §§ 327(e) And 328 And Fed. R. Bankr. P. 2014 And 2016 Authorizing Retention Of Winston & Strawn LLP As Special Counsel To The Board Of Directors, dated July 30, 2004 (Docket No. 138) (the "W&S Retention Order"). The W&S Retention Order provides that "Winston & Strawn shall not duplicate services provided by other counsel on behalf of the Debtors." W&S Retention Order, at ¶ 4.

4. **Fee Application.** The Fee Application originally sought \$793,897.75 in fees and \$16,375.93 in expenses for the period from June 7, 2004 through September 31, 2004 ("First Fee Period"). After negotiations with the US Trustee, W&S reduced their request by \$40,000.00.

See Objection Of The United States Trustee To First Interim Applications For Compensation And Reimbursement Of Expenses (the "US Trustee Objection"), at ¶ 3 (Docket No. 344). Significantly, \$530,534.00¹ of the W&S fees results from 855.7 hours billed by just one partner. W&S Retention Order, at 6. This partner's hours charged to the RCN estates during the W&S First Fee Period annualize to about 2500 hours a year. In addition, W&S used the services of two bankruptcy specialists, at a cost of approximately \$200,000.00, even though the services of bankruptcy counsel to the Debtors were presumably adequate.

5. **Status of Reorganization Plan.** The Disclosure Statement was approved by order dated October 13, 2004 and the confirmation hearing for the Debtors' plan of reorganization is scheduled for December 8, 2004.

II. **OBJECTION**

A. **Fee Application Fails To Demonstrate Lack Of Duplication**

6. Although the W&S Retention Order requires that W&S must not duplicate services provided by counsel retained by the Debtors, the Fee Application contains *no* information regarding procedures undertaken to avoid duplication, nor does it substantively demonstrate the lack of duplication. The Committee, through its counsel, requested supplemental information from W&S which would demonstrate a lack of duplication, and while the Committee has received some supplemental information, such information was not sufficient to carry W&S' burden. The burden of proof is on W&S. See F.H. Krear & Co. v. Nineteen Named Trustees, 810 F.2d 1250, 1265 (2d Cir. 1987) ("The burden is on counsel to keep and present records from which the court may determine the nature of the work done [and] the need for it . . ."); In re Keene Corporation, 205 B.R. 690, 695 (Bankr. S.D.N.Y. 1997) ("The applicant bears the burden of proof on its claim for compensation"). As such, the Committee objects to the Fee Application.

¹ This amount does not take into account W&S' \$40,000.00 voluntary fee reduction as reflected in the US Trustee Objection.

B. Fee Application/Further Compensation Should Be Denied On Interim Basis

7. Until W&S amends the Fee Application to demonstrate a lack of duplication, and thus an entitlement to be compensated pursuant to the W&S Retention Order, the Committee objects to the Fee Application and requests that no further compensation be paid to W&S pursuant to any monthly fee statements, including pursuant to the Interim Compensation Order.

8. The Committee further reserves the right to object to any future interim or final application of W&S for compensation in these cases, including any incremental relief to that sought therein.

III. CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an order (i) requiring W&S to demonstrate that their services were not duplicative of services provided by other counsel on behalf of the Debtors, (ii) prohibiting any future interim compensation (including on a monthly basis pursuant to the Interim Compensation Order) to be paid to W&S pending further order of the Court, (iii) preserving the Committee's rights, and (iv) granting such other relief as it deems just and proper.

Dated: New York, New York
November 17, 2004

MILBANK, TWEED, HADLEY & M^CCLOY LLP

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