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

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

**APPELLANT DEBRA K. CRAIG'S DESIGNATION  
OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL  
AND STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Appellant Debra K. Craig, on behalf of the RCN Savings and Stock Ownership Plan and its participants and beneficiaries, and pursuant to Fed.R.Bankr.P. 8006, designates the following items to be included in the record on appeal and sets forth the following statement of issues to be presented on appeal from the Bankruptcy Court's November 3, 2004, Order, *Order Denying Motion of Debra K. Craig for Leave to File Late Proof of Claim* (the "Order").

APPELLANTS' DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL

Pursuant to Bankruptcy Rule 8006, Appellant hereby designates the following items

to be included in the record on appeal:

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>DOCKET NO.</u>
1.	“Order Signed on 6/23/2004, (I) Setting Bar Dates for Filing Certain Proofs of Claim, (II) Approving Procedures for Filing such Proofs of Claim, and (III) Approving Form, Manner, and Sufficiency of Notice Thereof,” filed June 23, 2004.	73
2.	“Second Order signed on August 27, 2004 (I) Setting Bar Dates for Filing Certain Proofs of Claim Related to Additional Debtors, (II) Approving Procedures for Filing Such Proofs of Claim, and (III) Approving Form, Manner and Sufficiency of Notice Thereof,” filed August 27, 2004.	185
3.	“Motion for Leave to File Proof of Claim,” filed September 22, 2004.	240
4.	“Objections of Debra Craig to Disclosure Statement For Herself and as Representative of RCN Savings and Stock Ownership Plan and Similarly Situated Participants and Beneficiaries of Savings Plan,” filed September 22, 2004.	242
5.	“Disclosure Statement with Respect to the Joint Plan of Reorganization of RCN Corporation and Certain Subsidiaries,” filed October 14, 2004.	300
6.	“Debtors’ Objection to Motion for Leave to File Proof of Claim of Debra Craig,” including exhibits, filed October 22, 2004.	312
7.	“Order Denying Motion of Debra K. Craig for Leave to File Late Proof of Claim,” filed November 3, 2004.	352

8. “Transcript of Hearing held on October 27, 2004 Regarding Motion to allow late filed claim; motion to authorize settlement of partial assignment of lease and assignment of sublease agreement; motion to authorize settlement of lease termination and recognition agreement; debtors’ objection to motion for leave to file proof of claim,” filed November 3, 2004 364

APPELLANT’S STATEMENT OF ISSUES  
TO BE PRESENTED ON APPEAL

Pursuant to Bankruptcy Rule 8006, Appellant hereby submits the following statement of issues to be presented on appeal:

1. Whether the Bankruptcy Court erred in refusing to accept a class proof of claim that a Savings Plan participant submitted on behalf of the Savings Plan only six weeks after the general bar date, where the Secretary of Labor was also empowered by statute to file the claim, and the bar date for governmental entities had not yet expired?

2. Whether the Bankruptcy Court erred in refusing to accept a class proof of claim submitted only six weeks after the general bar date by a participant in an employee retirement plan governed by ERISA, 29 U.S.C. §1001, *et seq.*, where the participant’s claim was a remedial measure intended to cure the failure of the Savings Plan fiduciaries (including the Debtor-In-Possession) to fulfill their legal obligation to protect the Savings Plan by filing such a claim before the bar date?

3. Whether the Bankruptcy Court abused its discretion in refusing to accept a class proof of claim that a Savings Plan participant submitted on behalf of the Savings Plan only six weeks after the general bar date, where, among other things:

- (i) neither the Debtor-In-Possession nor its creditors were prejudiced by the late

filing because the claim was still timely if filed by the Secretary of Labor;

- (ii) Savings Plan fiduciaries, including the Debtor-In-Possession, had a legal obligation to protect Savings Plan assets by filing such a claim on behalf of the Savings Plan before the general bar date but failed to do so;
- (iii) permitting the filing of the claim did not disrupt the judicial process since no plan of reorganization had yet been approved and no distribution to creditors had yet been made; and
- (iv) the claimant acted in good faith.

4. Whether the Bankruptcy Court erred in assuming, without record evidence,

that all class members had received notice of the bar date?

Dated: November 17, 2004  
New York, New York

Respectfully submitted,

/s/ Ronen Sarraf

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## CERTIFICATE OF SERVICE

The foregoing has been served by means of this Court's ECF/CM system on parties that have requested service through that system. In addition, copies of the foregoing have been sent to the following by U.S. first class mail:

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Dated: November 17, 2004  
New York, New York

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