

OPPENHEIMER WOLFF & DONNELLY LLP  
Steven W. Meyer (SM 0344)  
Lara O. Glaesman (LG 9583)  
Plaza VII, Suite 3300  
45 South Seventh Street  
Minneapolis, Minnesota  
(612) 607-7000

Counsel to International Business Machines Corporation

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

-----X  
In Re:

RCN CORPORATION, et al.,

Debtors.

-----X

Chapter 11

Case No. 04-13638 (RDD)

(Jointly Administered)

**MOTIONS OF INTERNATIONAL BUSINESS MACHINES CORPORATION FOR  
EXPEDITED RELIEF AND TO FILE DOCUMENT UNDER SEAL**

International Business Machines Corporation (“IBM”) files these Motions for an order for expedited relief and to allow IBM to file a document under seal. In support thereof, IBM states and alleges as follows:

**MOTIONS**

1. IBM, a Delaware corporation, is engaged in, among other things, the business of designing and manufacturing computer programs and internet systems, as well as services related to those businesses. As part of IBM’s business, it issues licenses for the use of its patents.

2. On August 11, 2004, IBM filed a proof of claim in each of the following bankruptcy cases for patent infringement: RCN Corporation, Case No. 04-13638 (Claim No. 1424), TEC Air, Inc., Case No. 04-13641 (Claim No. 1420), RLH Property Corporation, Case No. 04-13639 (Claim No. 1422), RCN Finance, LLC, Case No. 04-13640 (Claim No. 1421), and Hot Spots Productions, Inc., Case No. 04-13637 (Claim No. 1423).

3. On August 27, 2004, the Bankruptcy Court issued an order setting October 1, 2004 as the claims bar date for the additional Debtors.

4. On September 24, 2004, IBM filed a proof of claim in each of the following bankruptcy cases for patent infringement: RCN Cable TV of Chicago, Case No. 04-15120 (Claim No. 2041), RCN Telecom Services of VA, Inc., Case No. 04-15508 (Claim No. 2043), RCN Entertainment, Inc., Case No. 04-15508 (Claim No. 2044), 21<sup>st</sup> Century Telecom Services, Inc., Case No. 04-15507 (Claim No. 2042), and ON TV, Inc., Case No. 04-15506 (Claim No. 2045).

5. On October 7, 2004, the Debtors filed an objection to IBM's proofs of claim ("Objection").

6. On October 29, 2004, IBM filed a timely response to the Objection ("IBM's Response").

7. On October 29, 2004, the Debtors filed a motion for an order estimating, for the purposes of allowance, the claims of IBM.

8. As previously reported to the Court, IBM and the Debtors ("Parties") have agreed to resolve their differences. The Parties have entered into an agreement ("Agreement") evidencing the details of their settlement and have executed a stipulation withdrawing the Objection and IBM's Response, and resolving other miscellaneous matters ("Stipulation"). A redacted copy of the Agreement is attached hereto as **Exhibit A**. The Court will receive the unredacted version of the Agreement.

9. The Agreement contains confidential and proprietary information that would be potentially harmful if it were made public. Accordingly, the Parties, as part of the Agreement, agreed to request that the Court enter an order allowing the Agreement to be filed under seal.

10. IBM requests an order allowing it to file the Agreement under seal and that the Agreement remain confidential. The Debtors consent to this request.

WHEREFORE, IBM moves the Court for an order granting expedited relief and allowing IBM to file the Agreement under seal and such other relief as may be just and equitable.

**OPPENHEIMER WOLFF & DONNELLY LLP**

Dated: November 22, 2004

/s/ Steven W. Meyer  
Steven W. Meyer (SM 0344)  
Lara O. Glaesman (LG 9583)  
3300 Plaza VII  
45 South Seventh Street  
Minneapolis, Minnesota 55402  
Telephone: (612) 607-7000  
Facsimile: (612) 607-7100

**ATTORNEYS FOR INTERNATIONAL  
BUSINESS MACHINES CORPORATION**