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**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)

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

International Business Machines Corporation (“IBM”) files this Memorandum in Support of Motions for Expedited Relief and to File Document Under Seal (“Motions”). In support thereof, IBM states and alleges as follows:

**STATEMENT OF FACTS**

IBM states and realleges the facts set forth in the accompanying Motions. Unless otherwise provided herein, capitalized terms used in this Memorandum will have the same meaning ascribed to them in the Motions.

**ARGUMENT**

Bankruptcy Rule 9006(d) provides that a written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than five days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the

court. Local Rule 9006-1(b) provides that all other motions (other than discovery-related motions) shall be served at least 10 days before the return date. The Comment to Local Rule 9006-1 states that subdivision (b) of this rule is an exercise of the Court's authority to enlarge the time for service of motion papers. Bankruptcy Rule 9006(c)(1) provides that the Court, for cause shown, may order a notice period reduced. There is no Local Rule that addresses Bankruptcy Rule 9006(c)(1).

Cause exists to grant IBM expedited relief on the Motions. The cause for granting expedited relief includes the factors and considerations discussed herein. The Parties have recently negotiated a settlement of the Debtors' Objection and Motion to Estimate IBM's proofs of claim. However, a hearing is still scheduled for 10 a.m. on Tuesday, November 23, 2004, on Debtors' Motion to Estimate IBM's Claims. IBM requires the immediate allowance to file the Agreement under seal in order to finally resolve these matters, as well as avoid wasting the Court's resources.

The information contained in the Agreement includes patent and pricing information that is confidential. Like most of the technology companies, virtually all of IBM's agreements including its patent portfolio require confidentiality. The law recognizes the need to protect commercial information. E.g. see Federal Bankruptcy Rule 7026(c). The Court has wide discretion to allow documents such as this to be filed under seal. See Geller v. Branick International Realty Corp., 212 F.3d 734, 738 (2<sup>nd</sup> Cir. 2000). Further, IBM and the Debtors agree that the Agreement should be filed under seal and remain confidential. Accordingly, IBM requests that the Court enter an order allowing the Agreement to be filed under seal.

WHEREFORE, IBM moves the Court for an order granting expedited relief, 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

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