

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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**STIPULATION AND ORDER RESOLVING CLAIMS
OF INTERNATIONAL BUSINESS MACHINES CORPORATION**

RCN Corporation and certain of its direct and indirect subsidiaries, debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”), and International Business Machines Corporation (“IBM”), hereby agree and stipulate (the “Stipulation”) as follows:

WHEREAS, debtors RCN Corporation (“RCN Corp.”), TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC, and Hot Spots Productions, Inc., commenced their chapter 11 cases on May 27, 2004, debtor RCN Cable TV of Chicago commenced its chapter 11 case on August 5, 2004, and debtors RCN Telecom Services of Virginia, Inc., RCN Entertainment, Inc., 21st Century Telecom Services, Inc., and ON TV, Inc. commenced their chapter 11 cases on August 20, 2004; and

WHEREAS, on or about August 11, 2004, IBM filed with this Court proof of claim numbers 1420 through and including 1424; and

WHEREAS, on or about September 24, 2004, IBM filed with this Court proof of claim numbers 2041 through and including 2045; and

WHEREAS, through these proofs of claim, IBM asserted claims (the “IBM Pre-Petition Claims”) against each of the Debtors based on the alleged infringement of certain of

IBM's patents, including U.S. patent numbers 4,805,134, 5,319,542, 5,442,771, 5,758,072, 5,347,632, and 5,796,967 (collectively, the "IBM Patents"); and

WHEREAS, on October 7, 2004, the Debtors filed an objection (the "Objection") to the IBM Pre-Petition Claims; and

WHEREAS, on October 12, 2004, the Debtors filed their Joint Plan of Reorganization of RCN Corporation and Certain Subsidiaries (as may be amended, the "Plan")¹ and corresponding disclosure statement (the "Disclosure Statement"); and

WHEREAS, the Blackstone Group L.P., the Debtors' financial advisor, has estimated that the equity value of the Debtors will be between \$620,000,000 and \$820,000,000, and the Debtors estimate that the unsecured claims will be approximately \$1,200,000,000; and

WHEREAS, under the Plan, each holder of an Allowed Class 5 RCN General Unsecured Claim would receive New Common Stock (subject to dilution) valued at between approximately 50%-70% of the amount of its Allowed Claim; and

WHEREAS, under the Plan, each holder of an Allowed Class 5 RCN General Unsecured Claim, at its election, would receive Cash equal to 25% of the amount of its Allowed Claim, subject to the terms and conditions in the Plan; and

WHEREAS, on October 13, 2004, the Court entered an order approving the Disclosure Statement; and

WHEREAS, on October 28, 2004, IBM filed a response (the "Response") to the Objection; and

WHEREAS, on October 29, 2004, the Debtors filed a motion (the "Estimation Motion") to estimate the IBM Pre-Petition Claims; and

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

WHEREAS, on November 5, 2004, the Debtors served on IBM their First Request for Production of Documents (the “Document Request”); and

WHEREAS, in the Objection and the Estimation Motion, the Debtors assert that there is no valid basis for the IBM Pre-Petition Claims; and

WHEREAS, in the Response, IBM disputes the Debtors’ assertions and asserts the validity of the IBM Pre-Petition Claims; and

WHEREAS, because the Debtors and IBM wish to resolve their differences and avoid the costs, distractions, and delays associated with litigation (including post-bankruptcy litigation) regarding IBM’s patent infringement and other claims;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their undersigned counsel, as follows:

1. The foregoing recitals are incorporated by reference.
2. IBM is deemed to have an Allowed Class 5 RCN General Unsecured Claim in the aggregate amount of \$3,000,000, which Claim shall be Allowed for all purposes under the Plan, including for voting, feasibility, and distribution purposes.
3. As provided in the Agreement (defined below), IBM shall have no other Allowed Claim or Allowed Administrative Claim against any of the Debtors under the Plan.
4. The agreement, dated November 22, 2004 (the “Agreement”), a true and correct copy of which is filed with the Motion of International Business Machines Corporation for Expedited Hearing and to File Documents Under Seal, is incorporated herein and made a part hereof.
5. The Objection, the Response, the Estimation Motion, and the Document Request are withdrawn.

6. IBM waives its right to object to the Plan (including to any assignment of any patents or licenses to any of the Reorganized Debtors thereunder).

7. IBM shall vote in favor of the Plan, provided that the Plan is not amended in a manner that would adversely affect IBM or that would otherwise diminish or adversely affect IBM's rights under the Agreement.

8. This Stipulation and any proceedings in connection herewith are not, and shall not be construed or invoked as, an admission of any liability or wrongdoing by, or the validity of any claim against, the Debtors or any of their non-debtor affiliates, including without limitation all direct and indirect subsidiaries of RCN Corp.

9. This Stipulation is binding upon the parties, their successors, assigns, and any trustee appointed in the Debtors' bankruptcy cases.

10. The Court shall retain jurisdiction to interpret and to enforce the terms and conditions of this Stipulation and the Agreement.

11. This Stipulation represents the entire understanding of the parties hereto regarding the subject matter hereof and may not be amended or modified without the written consent of the parties and approval of the Court. This Stipulation may be executed in counterparts which, when taken together, shall constitute the entire Stipulation.

12. This Stipulation is conditioned on the occurrence of the Effective Date.

13. This Stipulation is subject to Court approval. In the event that the Court fails to approve this Stipulation, it shall be null and void and of no force and effect.

In Witness thereof, the parties hereto have duly executed this Stipulation and consent to the form, substance, and “so ordering” of this Stipulation by the Court.

Debtors and Debtors-in-Possession
By their attorneys,

Dated: November 22, 2004

/s/ David C. McGrail
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International Business Machines Corporation
By its attorneys,

Dated: November 22, 2004

/s/ Steven W. Meyer
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No Objection:

Milbank, Tweed, Hadley & McCloy
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of Unsecured Creditors
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Dated: November 22, 2004

/s/ James C. Tecce
James C. Tecce (JT 5910)

APPROVED AND SO ORDERED
this 23rd day of November, 2004.

/s/Robert D. Drain
The Honorable Robert D. Drain
United States Bankruptcy Judge