

Ronald L. Leibow (California Bar No. 38043)  
Steven F. Werth (California Bar No. 205434)  
**KAYE SCHOLER LLP**  
1999 Avenue of the Stars, Suite 1700  
Los Angeles, California 90067-6048  
Telephone: (310) 788-1000  
Facsimile: (310) 788-1200  
Email: swerth@kayescholer.com

Andrew A. Kress (New York Bar No. 8985)  
**KAYE SCHOLER LLP**  
425 Park Avenue  
New York, New York 10022  
Telephone: (212) 836-8000  
Facsimile: (212) 836-8689  
Email: akress@kayescholer.com

**Hearing Date: December 8, 2004 at 10:00 a.m.**  
**Objection Deadline: November 30, 2004 at 4:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re : Chapter 11  
: :  
RCN CORPORATION, et al., : Case No. 04-13638  
: :  
Reorganized Debtors. : Jointly Administered  
-----X

**RESPONSE OF E! ENTERTAINMENT TO DEBTORS' NOTICE  
OF ASSUMPTION OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES PURSUANT TO JOINT PLAN  
OF REORGANIZATION AND RESPONSE REGARDING  
CONFIRMATION OF JOINT PLAN OF REORGANIZATION**

E! Entertainment Television, Inc. ("E!") hereby responds to the "Notice of Assumption of Executory Contracts and Unexpired Leases Pursuant to Joint Plan of Reorganization of RCN Corporation and Certain Subsidiaries," dated October 13, 2004 (the "Assumption Notice") filed by the above-captioned Debtors (the "Debtors"). The Assumption Notice refers to an executory contract as to which E! is a third-party beneficiary. That contract is a programming agreement with RCN Corporation (the "Programming Agreement"). E! does

not oppose the Debtors' assumption of the Programming Agreement as it relates to E!, provided that the Debtors assume both of E!'s television programming services: the E! Entertainment Television Service (the "E! Service") and the Style Network (the "Style Service"). To the extent the Debtors' assumption of the Programming Agreement relates solely to the E! Service and not the Style Service, E! opposes such assumption.

E! also hereby responds to the "Notice Of (I) Hearing On Confirmation Of Joint Plan Of Reorganization Of RCN Corporation And Certain Subsidiaries, (II) Deadline And Procedures For Filing Objections To Confirmation Of Plan, and (III) Injunctions And Releases Under The Plan," dated October 13, 2004 (the "Confirmation Notice") filed by the above-captioned Debtors. The Confirmation Notice states that each of the Debtors' executory contracts will be deemed rejected on the effective date of the plan, unless certain conditions are met. E! does not oppose the confirmation of the Debtors' plan provided that the Programming Agreement is assumed, and such assumption relates both to the E! Service and Style Service. To the extent the Debtors' assumption of the Programming Agreement relates solely to the E! Service and not the Style Service, E! objects to confirmation of the Debtors' plan.

The terms of the Programming Agreement are clarified in a side letter agreement (the "Letter Agreement") dated January 1, 2002, a copy of which is attached hereto as Exhibit "A". The Letter Agreement provides for a package of launch incentives and other benefits to RCN (including a waiver of affiliate license fees), in exchange for RCN agreeing to perform launch, carriage, and distribution obligations with respect to both the E! Service and the Style Service. The Letter Agreement also provides, in the final paragraph, that a breach of RCN to perform its E! Service or Style Service obligations would result in RCN owing all waived affiliate fees for both the E! Service and the Style Service.

E! cannot confirm at this time whether the cure amount of \$0 for the pre-petition obligations owing under the Programming Agreement is correct. E! currently believes that there are no amounts outstanding based on the Programming Agreement, but E! reserves the rights it has thereunder to conduct an audit, and based thereon, to demand any amounts which may be due. Based on the above, E! does not oppose the cure amount of \$0, subject to E!'s rights as set forth below.

Under the Programming Agreement, E! has the right to audit the books and records of the Debtors to determine whether additional amounts are due and owing for past periods, including the pre-petition period. In fact, E! does periodically conduct such audits. Accordingly, E! reserves the right in the ordinary course of business to continue its audit program and to charge the Debtors (whether during the case or following the effective date of any confirmed plan of reorganization) amounts determined to be due as the result of any such audit.

Dated: New York, New York  
November 30, 2004

KAYE SCHOLER LLP  
Andrew A. Kress

By: /s/Andrew A. Kress

425 Park Avenue  
New York, New York 10022  
(212) 836-8000

# **EXHIBIT A**

Via Express Mail

As of January 1, 2002

Mr. John Murawski  
RCN Corporation  
105 Carnegie Center  
Princeton, NJ 08540

Re: Side Letter Agreement Regarding E! and style.

Dear John:

This side letter agreement ("Letter Agreement") is made as of January 1, 2002 by and between E! Entertainment Television, Inc. ("Network"), and RCN Corporation ("Affiliate"), concerning the launch and carriage of Network's television programming services known as "E! Entertainment Television" (the "E! Service") and "style." (the "style. Service"), the provision of launch and carriage incentives and certain other matters. Accordingly, the parties hereto agree as follows:

1. Affiliation Agreement. Network and Affiliate are parties to an Affiliation Agreement providing for the distribution of the E! Service, dated January 1, 1996 (the "E! Agreement"), but have not to date entered into an Affiliation Agreement for the style. Service. Affiliate has requested permission from Network to distribute both the E! Service and the style. Service through the National Cable Television Cooperative (the "NCTC"), pursuant to the terms of Network's E! and style. affiliation agreements with the NCTC (hereafter referred to separately as the "NCTC E! Agreement" and the "NCTC style. Agreement"). Network has agreed to such request, subject to the terms of this Letter Agreement, and provided that, in the event of any conflict between the terms of this Letter Agreement and the terms of the NCTC E! Agreement and/or the NCTC style. Agreement, the terms of this Letter Agreement shall control. Affiliate represents and warrants that it has all requisite right, power and authority to enter into this Letter Agreement as a binding and enforceable obligation of Affiliate.
2. NCTC Affiliation. Affiliate represents and warrants that Affiliate is presently a member in good standing of the NCTC. Affiliate has taken or will promptly take all steps necessary to affiliate with the NCTC for both the E! Service and the style. Service, including (without limitation) executing Network's NCTC System Participation Form and such other documents as are customarily required by the NCTC and/or Network (collectively referred to as the "NCTC Affiliation Documents"). Where applicable, all NCTC Affiliation Documents for both the E! Service and the style. Service shall have an effective date of January 1, 2002 (i.e., effective as of January 1, 2002, Affiliate's distribution of the E! Service and the style. Service shall be governed respectively by the NCTC E! Agreement and the NCTC style. Agreement, including, without limitation, with respect to those systems set forth on Schedule A and Schedule B attached hereto and any and all other systems which launched the E! Service and/or the style. Service prior to January 1, 2002). Affiliate agrees to remain a member in good standing of the NCTC throughout the term of the NCTC E! Agreement and the NCTC style. Agreement.

Mr. John Murawski  
As of January 1, 2002  
Page 2 of 5

3. E! Service Launch and Distribution Commitments. Affiliate hereby represents and warrants to Network that, as of the date of this Letter Agreement, each system identified on Schedule A (attached hereto and incorporated herein by this reference) launched the E! Service for the first time on the date specified (the "Initial Launch Date") and to at least the minimum number of subscribers specified. Notwithstanding anything to the contrary contained in the E! Agreement or the NCTC E! Agreement, Affiliate shall distribute the E! Service on each system listed on Schedule A on a full-time basis (24 hours per day, 7 days per week), on a single designated channel position, and on the analog "basic" or "expanded basic" level of service (i.e., the first or second most widely distributed level of service in each system, received by not less than ninety percent (90%) of each such system's total subscribers). Notwithstanding anything to the contrary contained in the E! Agreement or the NCTC E! Agreement, Affiliate shall maintain such distribution of the E! Service on each system listed on Schedule A continuously (i.e., with no right to "drop" or delete the E! Service) through the later of seven (7) years from the Initial Launch Date or the expiration of the term of the NCTC E! Agreement (the "E! Carriage Term"). Network acknowledges that the preceding E! Carriage Term is the same carriage term as Network presently requires from systems receiving an E! Service launch incentive through the NCTC.

4. E! Service Affiliate Fee Waiver. Subject to the terms and conditions set forth in this Letter Agreement, and on the condition that Affiliate is not in material breach of its launch, carriage and/or distribution obligations with respect to the E! Service, Network shall waive monthly affiliate fees for the E! Service (as set forth in Exhibit B of the E! Agreement) for each system listed on Schedule A for a period of twenty-four (24) months from the Initial Launch Date. In exchange for this affiliate fee waiver, Affiliate shall promote the E! Service and its launch on such systems via customary marketing practices (e.g. in program guides, line-up cards, direct mailings, etc.), including mutually agreed upon cross channel promotion of the E! Service where technically feasible. Network shall advise the NCTC of the date on which billing is to commence for each system listed on Schedule A, and Affiliate agrees to commence paying affiliate fees for the E! Service on such date pursuant to the terms of the NCTC E! Agreement. For clarification, Affiliate shall not be entitled to apply the NCTC's volume discount for the E! Service to any affiliate fees which Affiliate may still owe to Network for distribution of the E! Service on any Affiliate system prior to January 1, 2002. Any E! Service launches by Affiliate occurring after January 1, 2002 shall be eligible for a launch incentive to the extent a launch incentive is then being offered by Network to other NCTC members and on the same terms and conditions.

5. style. Service Launch and Distribution Commitments. Affiliate hereby represents and warrants to Network that, as of the date of this Letter Agreement, each system identified on Schedule B (attached hereto and incorporated herein by this reference) launched the style. Service for the first time on the date specified (the "Initial Launch Date") and to at least the minimum number of subscribers specified. Network and Affiliate agree that the terms and conditions of the NCTC style. Agreement (including, without limitation, the affiliate fee provisions) shall be deemed applicable to each system set forth on Schedule B from the Initial Launch Date. Notwithstanding anything to the contrary contained in the NCTC style.

Mr. John Murawski  
As of January 1, 2002  
Page 3 of 5

Agreement, Affiliate shall distribute the style. Service on each system listed on Schedule B on a full-time basis (24 hours per day, 7 days per week), on a single designated channel position, and on either (a) the analog "basic" or "expanded basic" level of service (i.e., the first or second most widely distributed level of service in each system, received by not less than ninety percent (90%) of each such system's total subscribers), or (b) a package of digital programming services. Notwithstanding anything to the contrary contained in the NCTC style. Agreement, Affiliate shall maintain such distribution of the style. Service on each system listed on Schedule B continuously (i.e., with no right to "drop" or delete the style. Service) prior to the expiration of the term of the NCTC style. Agreement (presently December 31, 2010).

6. style. Service Affiliate Fec Waiver. Subject to the terms and conditions set forth in this Letter Agreement, and on the condition that Affiliate is not in material breach of its launch, carriage and/or distribution obligations with respect to the style. Service, Network shall waive monthly affiliate fees for the style. Service for each system listed on Schedule B for a period of either (i) twenty-four (24) months from the Initial Launch Date listed for each system launching the style. Service for the first time on a level of service received by less than ninety percent (90%) of each such system's total subscribers, or (ii) sixty (60) months from the Initial Launch Date listed for each system launching the style. Service for the first time on a level of service received by ninety percent (90%) or greater of each such system's total subscribers. In exchange for this affiliate fee waiver, Affiliate shall promote the style. Service and its launch on such systems via customary marketing practices (e.g. in program guides, line-up cards, direct mailings, etc.), including mutually agreed upon cross channel promotion of the style. Service where technically feasible. Network shall advise the NCTC of the date on which billing is to commence for each system listed on Schedule B, and Affiliate agrees to commence paying affiliate fees for the style. Service on such date pursuant to the terms of the NCTC style. Agreement. Any style. Service launches by Affiliate occurring after January 1, 2002 shall be eligible for a launch incentive to the extent a launch incentive is then being offered by Network to other NCTC members and on the same terms and conditions.

7. Part-Time to Full-Time Conversion; style. Service launch in Boston and Washington. Notwithstanding the full-time carriage requirement of the E! Agreement, Affiliate is currently carrying the E! Service on a part-time basis in certain of its systems in the State of New Jersey (the "New Jersey Part-Time Systems") due to operational delays in completing a rebuild of the New Jersey Part-Time Systems (to increase their channel capacity and subscriber base). Affiliate agrees to convert carriage of the E! Service from a part-time basis to a full-time basis on each rebuilt portion of the New Jersey Part-Time Systems, on a node-by-node basis, as and when the rebuild of each node is completed, but in any event simultaneously with the first programming service delivered to subscribers of each rebuilt node. Notwithstanding the foregoing, Affiliate agrees that in each node of the New Jersey Part-Time Systems no programming service shall, after April 1, 2002 either be (i) converted from part-time to full-time carriage, or (ii) launched on the "basic" or "expanded basic" level of service prior to the conversion of the E! Service to full-time carriage in such node (unless such conversion or launch is mandated by law or regulation e.g., a "must-carry" service). The entire rebuild of

Mr. John Murawski  
As of January 1, 2002  
Page 4 of 5

the New Jersey Part-Time Systems is anticipated to be completed no later than December 31, 2004. Affiliate shall maintain distribution of the E! Service in the New Jersey Part-Time Systems continuously through the term of the NCTC E! Agreement. Further, Affiliate has agreed to launch the style. Service in Affiliate's Boston system (on or before April 1, 2002), Manhattan system (on or before May 1, 2002) and Washington, D.C. system (on or before September 1, 2002) (and to maintain carriage in such systems pursuant to the terms of the NCTC style. Agreement), and Network has agreed to refrain from pursuing any of its remedies for the part-time carriage of the E! Service in the New Jersey Part-Time Systems so long as Affiliate is not in breach of this Section 7.

8. Documentation. Affiliate shall provide Network with such documentation as Network may reasonably require to determine that Affiliate has satisfied the requirements of this Letter Agreement for receiving the affiliate fee waivers set forth in Sections 4 and 6 above. During the affiliate fee waiver period, Affiliate shall continue to remit monthly accounting statements as required under the NCTC E! Agreement and NCTC style. Agreement.

9. Failure to Fulfill Carriage and Distribution Requirements. Affiliate acknowledges and agrees that Network's agreement to offer an Affiliate Fee waiver is in exchange for Affiliate's full and complete performance of the launch, penetration and carriage commitments set forth in this Letter Agreement. If at any time during the E! Carriage Term or the style. Carriage Term, Affiliate is in material breach of any of such obligations, then, without limitation on any other remedies available to Network (including, without limitation, Network's right to seek specific performance of Affiliate's obligations hereunder if such remedy is available), the following shall apply: Within thirty (30) days of demand therefor, Affiliate shall pay to Network an amount equal to all monthly Affiliate Fees waived pursuant to this Letter Agreement, plus interest on said unpaid Affiliate Fees from the date such Affiliate Fees would have been due (if they had not been waived) until the date paid in full at a rate equal to two percent (2%) over the then current prime lending rate (as published by the Wall Street Journal), unless Affiliate has cured such material breach to Network's reasonable satisfaction within such thirty (30) day period.

Please indicate Affiliate's agreement with the above terms by signing this Letter Agreement below and returning it to me. Once executed by both parties under the "Agreed to and



Mr. John Murawski  
As of January 1, 2002  
Page 5 of 5

Accepted" heading (but not before), this Letter Agreement shall be a binding agreement of the parties and I will forward a fully executed original to you for your files.

Sincerely,





Garrett Smith  
Vice President  
Affiliate Relations

AGREED TO AND ACCEPTED:

**RCN CORPORATION**

**E! ENTERTAINMENT  
TELEVISION, INC.**

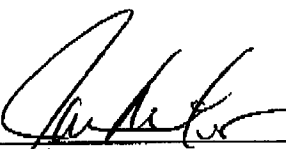
By:

  
Name: Barbara Herbs  
Its: VP, Video Resource Mgmt.  
M. Bradford Fox  
Senior Vice President  
Affiliate Relations

**SCHEDULE A**  
**E! Service Launches**

<u>Affiliate Systems</u>	<u>Area</u>	<u>Total System Subscribers</u>	<u>Network Subscribers Served</u>	<u>Date of Launch</u>	<u>Service Channel</u>
RCN Telecom of Los Angeles	CA	396	396	6/30/01	24

\* Subscriber data current as of 11/30/01

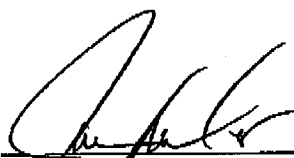
Executed and Certified By 

Date & Title 2/12/02 (GENERAL OF-VRAD) PROGRAMMING

**SCHEDULE B**  
**style. Service Launches**

<u>Affiliate Systems</u>	<u>Area</u>	<u>Analog or Digital</u>	<u>Total System Subscribers</u>	<u>Network Subscribers Served</u>	<u>Date of Service Launch</u>	<u>Channel</u>
RCN Telecom of Queens	NY	Digital	9,552	3,942	2/1/00	71
RCN Telecom of Philadelphia	PA	Analog	8,102	8,102	3/13/00	76
RCN Telecom of San Francisco	CA	Digital	7,240	4,262	1/1/00	124
RCN Telecom of Los Angeles	CA	Digital	396	316	6/30/01	127

\* Subscriber data current as of 11/30/01

Executed and Certified By 

Date & Title 2/12/02 Director of Video Programming