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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	Chapter 11
	Case Nos. 04-13638 (RDD)
RCN CORPORATION, et al.,	(Jointly Administered)

Debtors.

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**OBJECTION OF NATIONAL CABLE TELEVISION COOPERATIVE
TO ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES PURSUANT TO JOINT PLAN OF REORGANIZATION
OF RCN CORPORATION AND CERTAIN OF ITS SUBSIDIARIES**

National Cable Television Cooperative (“NCTC”), for its Objection to Assumption of Executory Contracts and Unexpired Leases Pursuant to Joint Plan of Reorganization (the “Notice”) of RCN Corporation and certain of its Subsidiaries (collectively, “RCN”), states as follows:

1. NCTC is a programming and hardware buying cooperative that represents more than 1,000 independent cable operators, their 6,500 individual systems and more than 14 million subscribers nationwide. By combining the purchasing power of member companies, the NCTC

is able to take advantage of volume discounts similar to those enjoyed by large multiple system operators (MSOs) on programming, hardware and service purchases.

2. RCN is a member of NCTC and a party to a certain Member Agreement dated as of July 1, 2000, which agreement was modified on or about December 30, 2003 (the “Agreement”) between NCTC and RCN pursuant to which RCN purchases programming and content via NCTC. In recent months, RCN’s payments to NCTC have averaged approximately \$3.8 million per month. NCTC then pays the networks for programming services on behalf of RCN.

3. One of the programmers which provides substantial services to RCN through NCTC is ESPN, Inc. (“ESPN”). Prior to RCN’s bankruptcy filing, NCTC entered into a modified agreement with respect to certain ESPN services (the “ESPN LTAP Agreement”). Subject to certain conditions and approval of NCTC, members of NCTC were afforded the opportunity to switch from the existing ESPN agreements (the “Existing ESPN Agreements”) to the ESPN LTAP Agreement. This would require RCN to sign new post-petition modified agreements with both NCTC and ESPN¹. While RCN indicated its desire to switch to the ESPN LTAP Agreement, it was not willing to assume the existing NCTC Agreement prior to seeking to modify it to include the ESPN LTAP Agreement. As a consequence, NCTC asserts that RCN continues to be bound by the terms of its Existing ESPN Agreements.

4. Effective August 1, 2004, RCN began paying for ESPN services at the rates that would apply under the ESPN LTAP Agreement. NCTC has challenged RCN’s payment at these reduced rates, maintaining that the reduced rates do not apply since RCN is not eligible to

¹ NCTC is unaware of any court order authorizing RCN to enter into such modified contracts.

participate under the ESPN LTAP Agreement. Based on information and belief ESPN also challenges RCN's payment at such reduced rates.

5. Estimated shortfalls are approximately \$112,000.00 for August and \$108,000.00 for September. The October payment is still being reconciled and the November payment will not be due until mid-December. Assuming an approximate shortfall of \$110,000 per month (subject to specific subscriber account adjustments), four months of underpayments would total approximately \$440,000.00.

6. NCTC has received a cure notice from RCN reflecting an attempt by RCN to assume its existing NCTC Agreements. NCTC's contract is identified in RCN's plan as a contract to be assumed pursuant to Section 365 of the Code. NCTC and RCN agree that there is no pre-petition shortfall in payments by RCN to NCTC; however, due to the dispute over the status of the obligations owed ESPN based on the failure to pay the full amount owed under the Existing ESPN Agreement, there will be as of the date of the hearing on confirmation an approximate administrative shortfall of \$440,000.00. This shortfall reflects the difference between the amounts that would be due from RCN under the Existing ESPN Agreements and the amounts that RCN has actually paid under the ESPN LTAP Agreement.

7. NCTC does not object to RCN's assumption of the NCTC Agreement. RCN has been a valued member of NCTC. RCN is without authority, however, to unilaterally modify post-petition its contractual obligations not only with NCTC but also with one of its programmers. As a result of RCN's payments at the improper rate, there will remain, as of the date of the confirmation, a payment shortfall with respect to the NCTC Agreement of \$440,000.00 (the "Cure Amount").² NCTC requests that the court condition any approval of

² As noted, the Cure Amount is an approximation. NCTC expressly reserves its rights to amend this number (up or down) upon completion of the ongoing reconciliation of monthly amounts due.

assumption of the NCTC Agreement on the payment of such shortfall. NCTC remains committed, subject to such approval, to work with RCN in an effort to negotiate with ESPN RCN's participation under the ESPN-LTAP Agreement and retroactive application of ESPN LTAP Agreement rates.³ If these negotiations are successful, any portion of the Cure Amount in excess of the amount owed under the ESPN-LTAP Agreement will be refunded to RCN.

WHEREFORE, for the reasons stated, NCTC requests the Notice of Assumption of Executory Contracts and Unexpired Leases Pursuant to Joint Plan of Reorganization of RCN Corporation and Certain Subsidiaries be *granted* as to the NCTC Agreement subject to the

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³ The deadline to participate in the ESPN LTAP Agreement has passed. If NCTC is unsuccessful in achieving a retroactive application of not only the rates but indeed RCN's participation in the ESPN LTAP Agreement then NCTC requests that the Court further condition RCN's assumption of the NCTC Agreement as being governed by the Existing ESPN Agreement as of the date of the bankruptcy filing.

payment of the cure amount of \$440,000.00 and for such other and further relief as the court deems just and proper.

Dated: New York, New York
December 1, 2004

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