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UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

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In re	:	
	:	Chapter 11
RCN CORPORATION, <u>et al.</u> ,	:	
	:	Case No. 04-13638 (RDD)
Debtors.	:	(Jointly Administered)
	:	
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**MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING THE FEE
 APPLICATIONS OF KASOWITZ, BENSON, TORRES &
 FRIEDMAN LLP, SPECIAL CONFLICTS COUNSEL
TO THE DEBTORS, BE FILED UNDER SEAL**

TO: THE HONORABLE ROBERT D. DRAIN,
 UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively,
 the “Debtors”), respectfully represent:

Jurisdiction, Venue and Statutory Predicates

1. This Court has jurisdiction to consider this matter pursuant to 28
 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for this motion are sections 107(b) and 105(a) of the title 11 of the United States Code (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

Background

2. On May 27, 2004, RCN and certain other Debtors filed voluntary petitions in this Court for reorganization relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").¹ RCN Cable TV of Chicago, Inc., an affiliate of RCN, commenced its chapter 11 case on August 5, 2004. Certain additional Debtors commenced their chapter 11 cases on August 20, 2004.²

3. The Debtors continue to manage and operate their business as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

¹ In addition to RCN, TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC and Hot Spots Productions, Inc., all affiliates of RCN, commenced their chapter 11 cases on May 27, 2004.

² RCN Telecom Services of Virginia, Inc., RCN Entertainment, Inc., 21st Century Telecom Services, Inc. and ON TV, Inc., all affiliates of RCN, commenced their chapter 11 cases on August 20, 2004.

4. No trustee or examiner has been appointed in these chapter 11 cases. On June 10, 2004, the United States Trustee for the Southern District of New York appointed the official committee of unsecured creditors (the “Committee”). No other official committees have been appointed or designated in these chapter 11 cases.

5. On June 22, 2004, the Court entered the Administrative Order Under 11 U.S.C. §§ 105 and 331 Establishing procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the “Interim Fee Order”). The Interim Fee Order provides *inter alia* that professionals retained in the Debtors’ cases may seek compensation (i) monthly, by serving a statement (the “Monthly Statement”) on the (a) the Debtors, (b) counsel for the Debtors, (c) counsel for the Committee, (d) the Office of the United States Trustee for the Southern District of New York (the “UST”), and (e) counsel to the agent (the “Agent”) for the Debtors’ prepetition credit facility (the “Agent’s Counsel”), and (ii) on an interim and final basis (collectively, the “Fee Applications”), pursuant to sections 330 and 331 of the Bankruptcy Code, as applicable.

6. On October 8, 2004, the Court entered an order authorizing the retention of Kasowitz, Benson, Torres & Friedman LLP (“KBT&F”) as special conflicts counsel to the Debtors.

7. On or about November, 12, 2004, KBT&F initiated, on behalf of the Debtors and certain of their non-debtor affiliates, an adversary proceeding (Adversary No. 04-04524) with the Court against Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “Merrill Action”).

Relief Requested

8. In connection with the Interim Fee Order, KBT&F is required to distribute Monthly Statements to the Debtors, the Agent’s Counsel and counsel for each of the Debtors and the Committee, and the Fee Applications must be filed publicly with the Court. By this Motion,

the Debtors respectfully request that the Court enter an order pursuant to sections 107(b) and 105(a) of the Bankruptcy Code and Rule 9018 of the Bankruptcy Rules authorizing the Debtors or KBT&F, as applicable, (i) to file KBT&F's Fee Applications, including KBT&F's detailed time and expense reports (collectively, the "Time Records") under seal with the Court and allow the Fee Application and the Time Records to remain under seal and confidential until further order of the Court, (ii) serve the Fee Applications only upon the Court, the Debtors, the UST, and counsel for each of the Debtors and the Committee³ and (iii) serve unredacted Monthly Statements to the Debtors, the UST, and counsel for each of the Debtors and the Committee, and serve Monthly Statements, with the Time Records redacted, to any other party required by the Interim Fee Order to be served Monthly Statements.

Basis for Relief

9. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. Section 107(b) provides in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may –

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; . . .

11 U.S.C. § 107(b). Rule 9018 of the Bankruptcy Rules provides for similar relief. F. R. Bankr. P. 9018 ("On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or

³ The Debtors and the Committee have a joint interest agreement to protect certain information that may be shared among the Debtors and the Committee, including the Time Records, in connection with the Merrill Action.

other confidential research, development, or commercial information"); see Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 27 (2d Cir. 1994).

10. The granting of a protective order to file documents under seal is well within the discretion of this Court. See United States v. Transport Admin Servs., 260 F.3d 909, 919 (8th Cir. 2001) (debtors may seek protective orders under sections 107(b) and 105(a) of the Bankruptcy Code); In re Ionosphere Clubs, Inc., 156 B.R. 414, 434 (Bankr. S.D.N.Y. 1993) ("[T]rial courts have 'broad discretion to . . . decide when a protective order is appropriate and what degree of protection is required.'" (quoting Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36 (1984))); In re Lomas Financial Corporation, 1991 U.S. Dist. Lexis 1589 at *3 (S.D.N.Y. 1991) (the decision whether to seal bankruptcy court records lies within the discretion of the bankruptcy court). Once the Court determines that the subject documents fall within the provisions of §107(b), "the court is required to protect a requesting party and has no discretion to deny the application." In re Barney's, Inc., 201 B.R. 703, 707 (S.D.N.Y. 1996), citing In re Orion Pictures Corp., 21 F.3d at 27. Under the plain language of Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, and in light of the Court's broad equitable powers under section 105(a) of the Bankruptcy Code to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a), the requested relief should be granted.

11. The Debtors submit that sufficient cause exists for the Court to grant the relief requested herein. KBT&F represents the Debtors and certain of its non-debtor affiliates in sensitive litigation matters including the representation of the Debtors in the Merrill Action. In order to protect the litigation strategies and work product of the Debtors which may be apparent

or inferred from the detailed time records of KBT&F, the Debtors believe that KBT&F's Fee Applications should not be made available to the public, or, in the case of the Monthly Statements, distributed to parties who do not have an interest in protecting information in connection with the Merrill Action and other litigation that KBT&F may undertake on behalf of the Debtors' and their estates.

12. The Debtors propose that the Debtors, the UST and counsel for each of the Debtors and the Committee receive copies of all of KBT&F's Fee Applications and Monthly Statements for compensation, and the Court receive unredacted copies of KBT&F's Fee Applications that will be filed under seal with the Clerk of the Court.

13. If the Fee Applications, including the Time Records and any descriptions thereof are not filed under seal (or in the case of the Monthly Statements, redacting the Time Records distributed to the Agent's Counsel and any other party required to receive Monthly Statements), highly sensitive information that goes to the core of the Debtors' litigation strategy would be revealed. Disclosure of Fee Applications, Time Records and related detail would provide adversaries involved in litigation with the Debtors an unfair advantage and, thus, would be harmful to the Debtors, their estates, and creditors.

Waiver of Memorandum of Law

14. Pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York, because there are no novel issues of law presented herein, the Debtors respectfully request that the Court waive the requirement that the Debtors file a memorandum of law in support of this Motion.

No Previous Motion

15. No previous motion for the relief requested herein has been made to this or any other court.

WHEREFORE the Debtors respectfully request entry of an order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested herein and such other or further relief as is just.

Dated: New York, New York
December 6, 2004

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

/s/ David E. Ross

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Special Conflicts Counsel for the
Debtors and Debtors in Possession

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**ORDER AUTHORIZING THE FEE APPLICATIONS OF KASOWITZ, BENSON,
TORRES & FRIEDMAN LLP, SPECIAL COUNSEL
TO THE DEBTORS, BE FILED UNDER SEAL**

Upon the motion dated December 6, 2004 (the "Motion")¹ of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for an order pursuant to sections 107(b) and 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing and directing the Clerk of this Court to file the interim and final fee applications (the "Fee Applications") of Kasowitz, Benson, Torres & Friedman LLP (KBT&F) under seal, and authorizing KBT&F to redact portions of its monthly fee statements (the "Monthly Statements"); and it appearing that the Court has jurisdiction over this matter; it appearing that no other or further notice need be provided; and it appearing that such documents must remain confidential to protect the Debtors, their estates and their creditors; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that pursuant to sections 107(b) and 105(a) of the Bankruptcy Code and Rule

¹ Capitalized terms used herein and not otherwise defined herein shall have the respective meanings assigned to such terms in the Motion.

9018 of the Bankruptcy Rules, the Debtors or KBT&F, as applicable, are authorized to file the Fee Applications under seal and to take all necessary measures to ensure the confidentiality of the Fee Applications, Time Records and the information set forth therein; and it is further

ORDERED that KBT&F's Fee Applications be served upon the Court, the Debtors, the UST, counsel for the Debtors, and counsel for the Committee; and it is further

ORDERED that copies of unredacted Monthly Statements be distributed to the Debtors, the UST, counsel for the Debtors, and counsel for the Committee in accordance with the Interim Fee Order. KBT&F shall serve Monthly Statements, with the Time Records redacted, to the Agent's Counsel and any other party (other than those set forth in the previous sentence) required to be served Monthly Statements in accordance with the Interim Fee Order.

ORDERED that the Court retains jurisdiction to enforce this Order and the confidentiality of the Fee Applications, Time Records and the redacted Monthly Statements and the information set forth therein, including the authority to impose sanctions on any party or entity that violates this Order; and it is further

ORDERED that the requirement pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that the Debtors file a memorandum of law in support of the Motion is hereby waived.

Dated: December __, 2004
New York, New York

UNITED STATES BANKRUPTCY JUDGE