

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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**DECLARATION OF JOHN S. DUBEL IN SUPPORT OF CONFIRMATION  
OF THE JOINT PLAN OF REORGANIZATION OF RCN CORPORATION  
AND CERTAIN SUBSIDIARIES**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

JOHN S. DUBEL, being duly sworn, deposes and says:

**I. BACKGROUND**

1. I am the Chief Restructuring Officer of RCN Corporation ("RCN") and its nine debtor affiliates, debtors and debtors in possession in the above captioned Chapter 11 Cases (collectively, the "Debtors"). Prior to being named as Chief Restructuring Officer on September 15, 2004, I had served as President and Chief Operating Officer of RCN since February 12, 2004.

2. I am also a principal of AP Services, LLC ("AlixPartners"). AlixPartners is a nationally recognized restructuring and turnaround advisory and consulting firm. AlixPartners professionals have extensive experience working with financially troubled companies and serving as crisis managers in large and complex restructurings out of court and in chapter 11 cases.

3. I have over 20 years of experience providing turnaround, crisis management and restructuring services to troubled companies. I have significant restructuring experience working with large and mid-size corporations. I have assisted companies in operational reorganizations and cost reductions, financial department restructurings, strategic repositionings and divestitures. My industry experience includes telecom and high tech, travel, retail and apparel, manufacturing, publishing, financial services, and oil and gas.

4. Prior to joining AlixPartners, I ran my own turnaround firm where my roles included Chief Operating Officer and Chief Restructuring Officer at CellNet Data Systems, Inc., Chief Financial Officer and Executive Committee member of Barney's New York, and Chief Financial Officer of The Leslie Fay Companies. Prior to the formation of my own company, I was a partner at a Big Five firm where I was a founding member of their Corporate Recovery Services practice. After joining AlixPartners, but prior to working with the Debtors, I served as Chief Executive Officer of Cable & Wireless America and, prior to that assignment, served

as Chief Restructuring Officer of Acterna Corporation and as Chief Financial Officer of WorldCom, Inc. during its restructuring.

5. Through the services provided during these chapter 11 cases, I have become intimately familiar with the Debtors' capital structure, businesses, operations and affairs. I and other persons employed by AlixPartners under my supervision have given advice on most of the financial and restructuring issues that arose during these cases. Our involvement has included assisting the Debtors with, among other things, (a) developing a business plan, including preparing related financial analyses and projections; (b) formulating a plan of reorganization and accompanying disclosure statement; (c) assisting in the review and preparation of a liquidation analysis; and (d) providing such other financial and business consulting services as required by the Debtors and their legal counsel.

6. I submit this declaration in support of confirmation of the Joint Plan of Reorganization of RCN Corporation and Certain Subsidiaries, dated October 12, 2004, as modified (the "Plan")<sup>1</sup>. In this declaration, I testify to certain aspects of the Plan that I understand are necessary to confirmation of the Plan, as explained to me by counsel to the Debtors. In particular, I testify regarding (i) the good faith the

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or the Disclosure Statement With Respect To The Joint Plan Of Reorganization Of RCN Corporation And Certain Subsidiaries, dated October 12, 2004 (the "Disclosure Statement").

Debtors, the Creditors' Committee, and other parties in interest with respect to the development and proposal of the Plan; (ii) the Debtors' compliance with the Bankruptcy Code and the bases for the Plan's separate classification of different claims and interests; (iii) the feasibility of the Plan; (iv) the Debtors' assumption and rejection of certain executory contracts and unexpired leases under the Plan; and (v) the consideration and necessity for the limited releases and exculpations of certain parties in interest under the Plan.

7. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my review of relevant documents, or my opinion based upon my experience and knowledge of the Debtors' operations and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized by the Debtors to submit this declaration.

## **II. GOOD FAITH DEVELOPMENT OF THE RESTRUCTURING PLAN**

8. Upon the engagement of AlixPartners effective February 11, 2004, and continuing thereafter over the course of several months under my direction, the Debtors undertook a comprehensive review of their businesses, assets, and capital needs. Also under my direction, the Debtors initiated restructuring negotiations with their principal stakeholders, including the Administrative Agent to the Senior Secured Lenders and the Ad Hoc Committee of RCN Noteholders represent-

ing the interests of holders of RCN's senior notes. During the pre-petition period after the engagement of AlixPartners on February 11, 2004, through the commencement of the cases and filing of the Plan dated October 12, 2004, the Debtors, under my direction, provided substantial information to these constituencies, which included numerous meetings between the Debtors' top management and the subsequently-formed Creditors' Committee.

9. During these meetings, a number of strategic alternatives were considered and negotiated. Discussions about these matters were very protracted and, at times, difficult. There were many occasions when the parties were in serious disagreement with one another about the approach that these cases should take. However, after careful review and consideration of the Debtors' alternatives, detailed discussions and analyses of the parties' various concerns, and numerous negotiating sessions, the parties have agreed on the terms of the Plan, which in turn represents the culmination of extraordinary efforts by all parties in interest to reach a fair, equitable, and expeditious resolution of the complex business and legal issues presented by the Debtors' chapter 11 cases.

10. The essential terms of the Plan were finalized by the parties in connection with the commencement of RCN's Chapter 11 Case on or about May 27, 2004. Indeed, the first-day papers filed in connection with such case outlined in detail the structure of the plan as agreed to by the parties. The Plan being proposed

for confirmation is premised on this agreement. The discussions that culminated in this agreement were undertaken predominantly under my direction on behalf of the Debtors.

11. Based upon this history, I strongly believe that the Plan is the product of vigorous, arms' length negotiations conducted in good faith. The Plan has been proposed in good faith and not by any means forbidden by law. The primary purpose of the Plan is not the avoidance of taxes or the avoidance of the requirements of federal and state securities laws. Rather, the Plan was filed with the legitimate and honest purpose of preserving the going concern value of the Debtors' businesses and reorganizing their business affairs and finances while maximizing value for the Debtors' creditors and interestholders.

12. The Plan is designed to allow the Debtors to reorganize by providing the Reorganized Debtors with capital structures that will allow them sufficient liquidity and capital resources to satisfy their obligations, to fund necessary capital expenditures, and to otherwise conduct their businesses as viable businesses in the geographic areas in which they operate. As a general matter, the Plan - jointly proposed by the Debtors and the Creditors' Committee - allows for the Debtors' prompt emergence from bankruptcy and contemplates, among other things, that (i) the Bank Claims will be repaid in full in Cash, (ii) the Evergreen Claims will be reinstated, as modified pursuant to the New Evergreen Credit Agreement, and (iii)

RCN General Unsecured Claims will receive Cash equal to no more than \$12,500,000 (for those making the Cash Election) and 100% of the New Common Stock of Reorganized RCN, subject to dilution by (a) the exercise of the Management Incentive Options and the New Warrants and (b) the conversion of the Convertible Second-Lien Notes.

13. In addition, the Plan contemplates that (i) Subsidiary General Unsecured Claims will receive Cash equal to 100% of the amount of each Allowed Subsidiary General Unsecured Claim and (ii) if the holders of RCN General Unsecured Claims as a class vote to accept the Plan, there shall be a distribution of (a) New Warrants to purchase common stock of Reorganized RCN in an amount equal to 1.75% of the New Common Stock to holders of Preferred Interests who vote to accept the Plan, provided the class votes to accept the Plan, and (b) New Warrants to purchase common stock of Reorganized RCN in an amount equal to 0.25% of the New Common Stock to holders of Equity Interests. Thus, the New Warrants would be exercisable into two percent of the New Common Stock of Reorganized RCN (before giving effect to the Management Incentive Options and conversion of the Convertible Second-Lien Notes).

### **III. COMPLIANCE WITH BANKRUPTCY CODE AND CLASSIFICATION SCHEME**

14. Compliance With Bankruptcy Code (11 U.S.C. § 1129(a)(2)).

The Debtors have operated as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code since their respective Petition Dates and, to the best of my knowledge, have complied in all material respects with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and all orders of this Court, including with respect to their postpetition disclosure and solicitation of acceptances of the Plan. The Debtors have appeared at the statutory meetings of creditors under section 341 of the Bankruptcy Code, and have generally filed timely operating reports with the Office of the United States Trustee. Indeed, to the best of my knowledge and belief, the Debtors have not violated any provision of the Bankruptcy Code.

15. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)).

The Plan designates seven Classes of Claims and three Classes of Interests. The Plan divides Claims against, and Interests in, the Debtors into these ten Classes on the basis of their security position, if any, and their legal ranking (i.e., debt is classified separately from equity), as follows: Class 1 (Other Priority Claims); Class 2 (Bank Claims); Class 3 (Evergreen Claims); Class 4 (Other Secured Claims); Class 5 (RCN General Unsecured claims); Class 6 (Subsidiary General Unsecured claims); Class 7 (Preferred Interests); Class 8 (Equity Interests); Class 9 (Subordinated Claims); and Class 10 (Warrant Interests). Valid factual and legal reasons exist for the various



Classes of Claims and Interests created under the Plan; the classification scheme was not proposed for the purpose of creating a consenting impaired class.

16. For example, secured Claims are classified into three separate classes (and various sub-classes) because such Claims arise from different secured obligations, each of which have a different priority. General Unsecured Claims are classified into two classes because certain claims are against RCN, the parent corporation, while other Claims are against RCN's debtor subsidiaries. Interests are classified into three separate classes because such Interests relate to three different types of equity securities, each with a different priority. Finally, Claims and Interests are treated separately because the legal rights of such classes are distinct. I believe that such Classes do not unfairly discriminate between or among holders of Claims or Interests, and that all Claims or Interests within each Class are substantially similar to the other Claims or Interests in such Class.

#### **IV. PLAN FEASIBILITY AND FINANCIAL PROJECTIONS**

17. As part of the process of confirming a plan and emerging from chapter 11, the Debtors undertook a thorough and detailed initiative to develop a go-forward business plan. The business plan underwent a detailed review by corporate personnel and management. The Projections attached to the Disclosure Statement as Exhibit D form the basis of the business plan. Business plans are, of course, subject to a variety of risks. Like all business plans, the plan that the Debtors have devel-

oped may be affected by a series of factors internal and external to the Debtors. Those factors, which are more generally described in Section III of the Disclosure Statement, include the competitive nature of the telecommunications industry, the ability of the company to procure programming services, and extensive regulatory matters. Subject to these uncertainties, however, the Debtors project that the reorganized company's liquidity will remain strong subsequent to emergence from chapter 11.

18. Indeed, I worked closely and in conjunction with the Debtors' other senior management to develop the Projections. I also worked with the Debtors' investment banker in examining the assumptions underlying the company's business strategy. Certain of the initiatives and other undertakings that I have either reviewed or participated in formulating and that inform my views of the feasibility of the company's go-forward business include the Debtors' and certain non-debtor subsidiaries' rationalization of their real estate portfolio through the termination of a number of significant lease obligations. As a result of this analysis, I believe that the business strategies and assumptions embodied in the Projections are reasonable and appropriate to provide the foundation for the Plan. Indeed, the Projections indicate that the Reorganized Debtors will have sufficient cash flow to fund their operations through 2009.

19. Based upon the foregoing and my other work with the Debtors' senior management throughout these Chapter 11 Cases, I believe that the Plan will maximize value for those stakeholders receiving distributions under the Plan. Moreover, based upon my review of the Projections, I believe that, as of the occurrence of the Effective Date and after taking into account the transactions contemplated by the Plan, the Reorganized Debtors will, on a consolidated basis, (i) be able to meet their debts as such debts mature, including the payments required to be made on the Effective Date pursuant to the Plan, (ii) not be left with unreasonably small capital to operate their businesses as a result of the Plan or any transactions contemplated by the Plan, and (iii) be solvent. Finally, based on my 20 years of experience and my analysis of, among other things, the business plan, the Projections, and the executory contracts and unexpired leases being assumed under the Plan, I am of the opinion, to a reasonable degree of certainty, that the Plan is feasible – that is, confirmation of the Plan is not likely to be followed by the liquidation of the Reorganized Debtors or by the need for a further reorganization of the Reorganized Debtors under chapter 7 of the Bankruptcy Code.

#### **V. ASSUMPTION OF EXECUTORY CONTRACTS**

20. The Debtors, with significant input and assistance from the Creditors' Committee and its advisors, have engaged in an exhaustive and thorough review of their executory contracts and unexpired leases. This review was under-

taken by numerous employees of the Debtors under the supervision of temporary employees of the Debtors provided by AlixPartners. This review entailed not only analysis of each contract and lease, but also numerous meetings and discussions about such contracts and leases and whether each one fit into the Debtors' restructuring strategy. The Creditors' Committee's financial advisor, Capital & Technology Advisors LLC, was intimately involved in the review of these matters.

21. As a general matter, the Plan provides for the rejection of all executory contracts and unexpired leases not otherwise identified for assumption in Exhibit D to the Plan. Exhibit D identifies numerous contracts and unexpired leases that the Debtors have determined to assume. The Debtors engaged in a lengthy process of reviewing each executory contract and unexpired lease to determine which contracts and leases are desirable and beneficial going forward and which are not. In particular, the Debtors considered which executory contracts and unexpired leases were consistent with their business plan and necessary for the operations of the Reorganized Debtors. I believe that the Debtors' decision regarding the assumption or rejection of their executory contracts is based on, and is within, the sound business judgment of the Debtors, and is in the best interests of the Debtors, their Estates, and their Claim and Interest holders.

22. The Plan provides for any and all monetary defaults with respect to all assumed contracts and leases to be cured. Based upon my understand-

ing of the estimated amount of all cure obligations, as determined by numerous employees of the Debtors under the supervision of temporary employees of the Debtors provided by AlixPartners, in relation to the cash resources that the Reorganized Debtors are projected to have upon consummation of its Plan, I believe that the Reorganized Debtors will have sufficient liquidity to cure or promptly cure any monetary defaults under assumed contracts and leases. Moreover, I believe that the Reorganized Debtors' streamlined capital structure and go-forward liquidity, as indicated in the Projections, afford adequate assurance to each non-debtor party of future performance by the Reorganized Debtors under each assumed contract and lease.

## **VI. THE RELEASES AND INDEMNIFICATION OBLIGATIONS ARE FAIR AND REASONABLE**

23. Pursuant to Article XIV.G of the Plan, the Debtors shall, as of the Effective Date, be deemed to have released any claim against, among others, all directors, officers, and employees serving in such capacity as of the effective date with respect to any claim arising out of willful misconduct, intentional breach of fiduciary duty, or fraud. Article XIV.G. contains similar releases by the Debtors with respect to claims against the Administrative Agent, the Senior Secured Lenders, and the Indenture Trustees.

24. Pursuant to Article XIV.H of the Plan, all holders of Claims against or Interests in the Debtors shall, as of the Effective Date, be deemed to have

released any claim against, among others, all directors, officers, and employees serving in such capacity as of the effective date, except with respect to any claim arising out of willful misconduct, intentional breach of fiduciary duty, or fraud. As explained below, the Debtors have agreed to modify this release to preserve the claims of certain objectors to the Plan.

25. Article XIV.I of the Plan provides that neither the Debtors, the Reorganized Debtors, the Creditors' Committee, the Indenture Trustees, the Administrative Agent, the Senior Secured Lenders, nor the Ad Hoc Committee of RCN Noteholders shall have any liability to the holders of any Claims or Interests on account of any acts or omissions in connection with, among other things, the administration of the chapter 11 cases or pursuit of confirmation of the Plan, except with respect to any claim arising out of willful misconduct, intentional breach of fiduciary duty, or fraud. Article XIV.J of the Plan obligates the Reorganized Debtors to indemnify any party against any loss arising out of the foregoing.

26. I am not aware of any government actions or investigations into the Debtors' affairs that could be adversely affected by the third-party releases contained in Article XIV.H. I have been advised that neither the Securities and Exchange Commission, the Department of Labor, nor any other government agency filed a proof of claim in the Debtors' cases based on any such actions. Additionally, I am not aware of any suits or other claims against board members or officers alleging

violations of any federal or state securities laws. The only suits against such persons of which I am aware were filed by several claimants alleging breaches of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"), in connection with RCN's 401(k) savings plan. I am also aware of a claim of breach of fiduciary duty filed by Edward Joyce in these Chapter 11 Cases.

27. I have been told by counsel to the Debtors that representatives of five parties in interest, including the ERISA claimants, have requested, either formally or informally, limited modifications to the third-party releases. In particular, I understand that the Department of Justice informally requested that the third-party releases be modified to exclude any claims of the United States. I also understand that Newport Associates Development Company ("NADC") informally requested inclusion of language clarifying that certain matters relating to litigation against a non-Debtor subsidiary will not be discharged. Finally, I have been advised that three objections were filed to the releases, one each by (i) Debra Craig, lead plaintiff in one of the ERISA actions; (ii) Merrill Lynch Trust Company FSB, who served as ERISA plan co-fiduciary and wants to preserve possible cross-claims for contribution and indemnity in the ERISA litigation; and (iii) Edward Joyce, who alleges in a proof of claim, among other things, breach of fiduciary duty on account of RCN's acquisition of 21<sup>st</sup> Century Telecom Group, Inc.

28. The Debtors have agreed with each of the foregoing parties to modify the Plan to include requested carve-outs to the third-party releases that preserve each of the parties' formal and informal objections. Such modification will take the form of a new paragraph XIV.I that is quoted in the brief in support of confirmation of the Plan.

29. I believe that the releases, injunctions, and related relief contained in Article XIV of the Plan, including the third-party releases as modified, are an important part of the restructuring of the RCN corporate family. They were heavily negotiated with the Creditors' Committee and other parties. Indeed, I have been advised that if the third-party releases are not approved as modified, then the directors, officers, and employees of the Debtors may assert indemnification claims against significant non-Debtor operating subsidiaries. I believe that it is important to the go-forward prospects of the RCN corporate group, including both Debtors and non-Debtors, that the potential for such claims be limited as provided for in the Plan, as modified.

30. I also believe that the releases, injunctions, and related relief also are warranted here in light of the overwhelming acceptance of the Plan by Class 5 RCN General Unsecured Creditors, which clearly evidences their endorsement of



the Plan as a whole. I have been told by the Debtors' vote tabulation agent that a total of 711 holders of Claims in Class 5 (RCN General Unsecured Claim) voted to accept the Plan, whereas only 2 holders voted against it. I have been further told that the total amount of Claims that voted in favor of the Plan is \$661 million; the total amount that voted against is only \$115 thousand.

31. I also believe that the third-party releases, plus limitations on liability and indemnification obligations, are supported by consideration that is adequate and reasonable under the circumstances. For instance, holders of Class 5 RCN General Unsecured Claims will receive 100% of the New Common Stock in Reorganized RCN in satisfaction of their Claims. This consideration was negotiated with representatives of the Creditors' Committee, who in turn represented the interests of all holders of Class 5 RCN General Unsecured Claims. Indeed, the Creditors' Committee is a co-proponent of the Plan and supports its confirmation.

32. I believe that similar considerations apply to holders of Class 2 Bank Claims and Class 3 Evergreen Claims. Class 2 Bank Claims are being paid in full in Cash under the Plan, and the Class 3 Evergreen Claims will be reinstated, as modified pursuant to an agreement entered into between the parties. Holders of Claims in both Class 2 and Class 3 support their proposed treatment under, and confirmation of, the Plan. Accordingly, they are receiving adequate and reasonable

consideration in exchange for the releases, limitations on liability, and indemnification obligations of the Plan.

33. Holders of Class 1 Other Priority Claims, Class 4 Other Secured Claims, and Class 6 Subsidiary General Unsecured Claims are Unimpaired under the Plan, so they also are receiving adequate consideration. Holders of Class 7 Preferred Interests and Class 8 Equity Interests qualify for a distribution under the Plan that they otherwise would not be entitled to receive absent the affirmative vote of holders of Class 5 RCN General Unsecured Claims; accordingly, there is consideration for such holders in support of the releases, limitations on liability, and indemnification obligations of the Plan.

34. In addition to the foregoing, the beneficiaries of the releases have contributed substantially to the Debtors' reorganization. Indeed, much of the value to be distributed under the Plan will be the result of their efforts to date. It has required untold hours of hard work by all parties to the releases to reach the point of confirmation of the Debtors' Plan. Also, many of the Debtors' officers and employees will continue to dedicate their efforts to ensuring the success of the Debtors' Plan. These efforts constitute additional consideration to all constituencies in support of the releases, limitations on liability, and indemnification obligations of the Plan.

35. For these reasons and those outlined above, I believe that the releases, limitations of liability, and indemnification obligations are fair, reasonable, important to the advancement of the Plan, and should be approved.

## VII. CONCLUSION

36. In light of the foregoing, I believe that Debtors have developed a plan of reorganization that treats all Classes fairly, equitably, and reasonably, and effectively accomplishes the restructuring of the Debtors' business operations in accordance with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. As a result, I believe the Plan is in the best interests of the Debtors' Estates and will position the Debtors to emerge successfully from their Chapter 11 Cases and maximize the returns available to creditors. Accordingly, I respectfully request that the Plan be confirmed.

Dated: December 5, 2004

/s/ John S. Dubel

JOHN S. DUBEL