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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11  
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RCN CORPORATION, et al., : Case No. 04-13638 (RDD)  
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Debtors. : (Jointly Administered)  
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**EX PARTE MOTION FOR ORDER SHORTENING NOTICE  
PERIOD AND ESTABLISHING OBJECTION DEADLINE  
AND HEARING ON MOTION OF DEBTORS FOR APPROVAL  
OF SETTLEMENT AGREEMENT BETWEEN RCN CABLE TV  
OF CHICAGO, INC., AND THE CHICAGO ACCESS CORPORATION**

RCN Corporation ("RCN") and certain of its direct and indirect subsidiaries, debtors and debtors-in-possession in the above-captioned cases (the "Debtors"), hereby move (the "Motion"), under sections 102 and 105 of 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code"), Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 9006-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), for entry of an order shortening the notice period and establishing a hearing date and time and an objection deadline with respect to the Motion (the "Settlement Motion")

of the Debtors for Approval of Settlement Agreement (the "Agreement") between RCN Cable TV of Chicago, Inc. ("RCN-Chicago") and the Chicago Access Corporation (the "CAC"). In support of the Motion, the Debtors, through their undersigned counsel, respectfully state as follows:

### **INTRODUCTION**

1. At the same time as the Debtors filed this motion, the Debtors also filed the Settlement Motion, seeking, among other things, approval of the Agreement. Rather than repeat the factual assertions set forth in the Settlement Motion, the Debtors adopt such assertions and incorporate them by reference herein.<sup>1</sup>

2. In the Agreement, RCN-Chicago agreed to file the Settlement Motion, no later than five business days after execution of the Agreement. See Agreement § 5. The Agreement was executed by the parties on the evening of December 7, 2004. RCN-Chicago also agreed to use their reasonable best efforts to obtain approval of the Agreement from this Court. See id. § 10.F.

3. In addition, on December 8, 2004, this Court entered an order approving the settlement agreement (the "City Settlement") with the City of Chicago (the "City"). The City Settlement provides that it shall not become effective until a final order shall have been entered approving the Agreement. Accordingly, this

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Motion.

Court's approval of the Agreement is necessary in order for another settlement that this Court has already approved to become effective.

4. Finally, the consummation of the Plan with respect to RCN-Chicago and 21<sup>st</sup> Century Telecom Services, Inc. (with RCN-Chicago, collectively, the "Chicago Debtors"), depends on the approval by this Court of the Agreement. In order to allow the Plan to go effective with respect to all of the Debtors as soon as possible, the Debtors have, therefore, filed this Motion seeking to shorten the notice period with respect to the Settlement Motion, as set forth herein.

#### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2).

6. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 102 and 105.

#### **RELIEF REQUESTED**

7. Through the Motion, the Debtors respectfully request that the Court enter an order establishing the objection deadline with respect to the Settlement Motion as December 15, 2004 at 12:00 p.m. (prevailing Eastern time). The Debtors also request that the Court schedule a hearing with respect to the Settlement Motion on December 16, 2004 at 10:00 a.m. (prevailing Eastern time).

### **BASIS FOR RELIEF**

8. The Debtors submit that these notice procedures are fair and reasonable under the circumstances. Specifically, as noted above, RCN-Chicago has committed to obtaining authority from this Court to enter into the Agreement as soon as possible. Moreover, approval of the Agreement is required before the Plan can become effective with respect to the Chicago Debtors. In order for the Plan to become effective with respect to all of the Debtors as soon as possible, therefore, the Debtors have requested the shortened notice set forth herein.

9. The Agreement resolves substantial disputes between the CAC and RCN-Chicago. As set forth in the Settlement Motion, unless the Agreement is approved, the Debtors do not believe that it will be possible to consummate a plan of reorganization for RCN-Chicago. In fact, if the Agreement is not approved, the Debtors believe that they will be compelled to withdraw RCN-Chicago from the Plan and delay the effective date with respect to RCN-Chicago. This will, in turn, lead to additional unnecessary delay and expense for the Debtors and their estates.

10. Accordingly, the Debtors must obtain approval of the Agreement as soon as is practicable and in all events prior to the end of 2004, if the Plan is to go effective with respect to all of the Debtors. Therefore, as set forth in the proposed form of order filed herewith, and in order to provide interested parties with as much notice as is practicable under the circumstances, the Debtors request that the

Court set the objection deadline for the Settlement Motion as December 15, 2004, at 12:00 p.m. (Eastern), and that the Court further schedule a hearing on the Settlement Motion on December 16, 2004, at 10:00 a.m. (Eastern).

11. The parties have worked to resolve their disputes as expeditiously as possible. Following the execution of the Agreement on the evening of December 7, 2004, undersigned counsel for the Debtors finalized the Settlement Motion and accompanying proposed order as quickly as possible. Indeed, the Settlement Motion was filed only two days after the hearing (the "Confirmation Hearing") on confirmation of the Plan held before this Court on December 8, 2004. Accordingly, this motion was not necessitated by any delay by the parties. Instead, as set forth above, and as explained to the Court at the Confirmation Hearing, the shortened notice period requested herein is necessary in order to obtain approval of the Agreement prior to the date on which the Plan would otherwise go effective with respect to all of the Debtors except the Chicago Debtors.

#### **APPLICABLE AUTHORITY**

12. The Debtors request approval of shortened notice and objection procedures for the Settlement Motion in accordance with Bankruptcy Code section 102, this Court's Order under 11 U.S.C. §§ 102 and 105 and Fed. R. Bankr. P. 2002, 9006 and 9007 Establishing Certain Notice, Case Management and Administrative

Procedures (Docket No. 6) (the "Case Management Order"), entered on June 2, 2004, and Bankruptcy Rules 2002, 9006 and 9007.

13. In the Settlement Motion, the Debtors seek authority from the Court to (i) enter into the Agreement, (ii) reject certain of the CAC Agreements and (iii) assume certain of the CAC Agreements, as modified. In support of the Settlement Motion, the Debtors rely on Bankruptcy Code sections 363 and 365. Motions for the use of estate property other than in the ordinary course under Bankruptcy Code section 363(b) generally require twenty days' notice. See 11 U.S.C. § 363(b); Fed. R. Bankr. P. 2002(a)(2). Similarly, a motion to approve a compromise or settlement generally can only be approved after the notice and hearing required by Bankruptcy Rule 2002. See id. 2002(a)(3); 9019(a). The hearing on such proposed use or settlement generally may not occur on less than 20 days notice. See id. 2002(a)(2), (a)(3).

14. However, Bankruptcy Code section 102(1) provides that the words "after notice and a hearing" mean "after such notice as is appropriate in the particular circumstances." 11 U.S.C. § 102(1). Moreover, Bankruptcy Code section 105 provides that the Court "may issue any order . . . necessary or appropriate to carry out the provisions of . . . [the Bankruptcy Code]." Id. § 105(a). Similarly, Bankruptcy Rules 2002(a)(2), 2002(a)(3) and 9006(c) authorize this Court to shorten the 20 day notice period and limit the parties to whom notice must be given "for

cause." Similarly, this Court's Case Management Order, which sets hearing dates and notice deadlines for presenting matters in connection with such dates, allows matters to be heard on shortened time "for cause."

15. The Debtors believe that cause exists to shorten the notice period as requested herein. As set forth above and in the Settlement Motion, the approval of the Agreement is necessary for the Plan to go effective with respect to the Chicago Debtors. Indeed, the Plan expressly provides that as a condition precedent to the effective date for the Chicago Debtors "the Claims of Chicago Access Corporation and the City of Chicago shall have been resolved by way of litigation or otherwise with the consent of the Creditors' Committee." Plan Art X.B. Similarly, the order confirming the Plan (Docket No. 483) (the "Confirmation Order"), entered by the Court on December 8, 2004, provides that "the Effective Date of the Plan with respect to the Chicago Debtors only shall occur upon the later of (i) the effective date of that certain Release and Settlement Agreement among RCN[-Chicago] . . . , RCN, and the City of Chicago . . . or (ii) the effective date of [the Agreement] . . ." Confirmation Order ¶ 51.

16. Moreover, the Parties have agreed to exercise their best efforts to have the Agreement approved as quickly as possible. Accordingly, the Debtors have sought to have the Settlement Motion heard prior to the date on which the Plan will go effective.

17. The Debtors believe that the notification and objection procedures set forth herein strike an appropriate balance between the needs of the parties to have the Settlement Motion heard prior to the effective date of the Plan and the rights of any parties that may have objections to the Settlement Motion to respond to such motion. Counsel for the United States Trustee for the Southern District of New York and counsel for the Creditors' Committee have indicated to the Debtors that they will not object to the shortened notice proposed herein.

18. The Debtors submit that no new or novel issue of law is presented with respect to the matters contained herein. Thus, the Debtors request that the requirement of the service and filing of a separate memorandum of law under Local Bankr. R. 9013-1(b) be deemed satisfied .

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) granting the Motion, (ii) shortening the notice period for the Settlement



Motion and (iii) granting such other and further relief as is just and proper.

Dated: New York, New York  
December 10, 2004

SKADDEN, ARPS, SLATE, MEAGHER  
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/s/ D. J. Baker

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**ORDER SHORTENING NOTICE PERIOD AND ESTABLISHING  
OBJECTION DEADLINE AND HEARING ON MOTION OF DEBTORS FOR  
APPROVAL OF SETTLEMENT AGREEMENT BETWEEN RCN CABLE  
TV OF CHICAGO, INC., AND THE CHICAGO ACCESS CORPORATION**

Upon consideration of the motion (the "Motion")<sup>1</sup> of the Debtors for entry of an order shortening the notice period and establishing a hearing date and time and an objection deadline with respect to the Motion of Debtors for Approval of Settlement Agreement between RCN Cable TV of Chicago, Inc., and the Chicago Access Corporation (the "Settlement Motion"); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors and their estates; and upon the Motion and all of the proceedings had before the Court; and after due deliberation thereon and sufficient cause appearing therefor, it is hereby

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.
2. The objection deadline for the Settlement Motion is December 15, 2004 at 12:00 p.m. (prevailing Eastern time).
3. The hearing on the Settlement Motion is scheduled for December 16, 2004 at 10:00 a.m. (prevailing Eastern time).
4. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall take effect immediately upon its entry.
5. The requirement under Local Bankr. R. 9013-1(b) of the service and filing of a separate memorandum of law is satisfied by the Motion.

Dated: New York, New York  
December , 2004

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Honorable Robert D. Drain  
UNITED STATES BANKRUPTCY JUDGE