

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re)	Chapter 11
)	
RCN CORPORATION, <u>et al.</u> ,)	Case No. 04-13638 (RDD)
)	
Debtors.)	(Jointly Administered)
)	

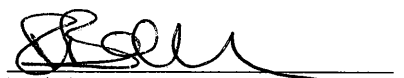
AFFIDAVIT OF MAILING

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

RACHEL BROWN, being duly sworn, deposes and says:

1. I am over the age of eighteen years and employed by Bankruptcy Services LLC, 757 Third Avenue, New York, New York and I am not a party to the above-captioned action.
2. On December 10, 2004, I caused to be served the following:
 - a) "Notice of Motion of Debtors for Approval of Settlement Agreement Between RCN Cable TV of Chicago, Inc., and the Chicago Access Corporation", dated December 10, 2004, a copy of which is attached hereto as Exhibit "A",
 - b) "Motion of Debtors for Approval of Settlement Agreement Between RCN Cable TV of Chicago, Inc., and the Chicago Access Corporation", dated December 10, 2004, a copy of which is attached hereto as Exhibit "B",
 - c) "Declaration of Kristen Smoot In Support of Motion of Debtors for Approval of Settlement Agreement Between RCN Cable TV of Chicago, Inc., and the Chicago Access Corporation", dated December 10, 2004, a copy of which is attached hereto as Exhibit "C", and
 - d) "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", dated December 10, 2004, a copy of which is attached hereto as Exhibit "D",

by causing true and correct copies enclosed securely in separate postage pre-paid envelopes, to be delivered by overnight mail for Saturday delivery to those parties listed on the annexed Exhibit "E".


Rachel Brown

Sworn to before me this

13th day of December, 2004


Notary Public

MARIAH TIFFANY MARTIN
Notary Public, State Of New York
No. 01MA6076302
Qualified In Suffolk County
Commission Expires June 24, 2006

EXHIBIT “A”

Hearing Date: December 16, 2004 at 10:00 a.m. (Eastern)
Objections Due: December 15, 2004 at 12:00 p.m. (Eastern)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
D. J. Baker (JB 0085)
Frederick D. Morris (FM 6564)
Four Times Square
New York, New York 10036-6522
(212) 735-3000

Attorneys for Debtors and
Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	: Chapter 11
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RCN CORPORATION, <u>et al.</u> ,	: Case No. 04-13638 (RDD)
	:
Debtors.	:
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**NOTICE OF MOTION OF DEBTORS FOR APPROVAL OF
SETTLEMENT AGREEMENT BETWEEN RCN CABLE TV OF
CHICAGO, INC., AND THE CHICAGO ACCESS CORPORATION**

PLEASE TAKE NOTICE that on December 10, 2004, the above-captioned debtors and debtors-in-possession (the "Debtors"), filed the attached **Motion of Debtors for Approval of Settlement Agreement between RCN Cable TV of Chicago, Inc., and the Chicago Access Corporation** (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion or the relief requested therein must be made in writing, must conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and must be (i) filed with the Bankruptcy Court in accordance with General Order M-242 (as amended) - registered users of the Bankruptcy Court's case filing system must file electronically, and all other parties in interest must file on a 3.5 inch disk (preferably in Portable Document Format (PDF)), WordPerfect or any other Windows-based word processing format); submitted in hard-copy form directly to the chambers of the Honorable Robert D. Drain, United States Bankruptcy Judge; and (ii) served upon (a) RCN-Chicago, 105 Carnegie Center, Princeton, New Jersey 08540, Attention: General Counsel; (b) Skadden, Arps, Slate, Meagher & Flom LLP, counsel to RCN and RCN-Chicago, 4 Times Square, New York, New York, 10036-6522, Attention: D. J. Baker, Esq.; (c) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attention: Paul K. Schwartzberg, Esq.; (d) Milbank, Tweed, Hadley & McCloy, counsel to the official committee of unsecured creditors, 1 Chase Manhattan Plaza, New York, New York 10005, Attention: Dennis Dunne, Esq., Deirdre A. Sullivan, Esq.; (e) Simpson Thacher & Bartlett, counsel to the agent for the Debtors' prepetition credit facility, 425 Lexington Avenue, New York, New York 10017-3955, Attention: Peter V.

Pantaleo, Esq.; and (f) HSBC Bank USA, the indenture trustee for the Debtors' outstanding debt securities, 452 Fifth Avenue, New York, New York 10001, Attention: Issuer Services (collectively, the "Notice Parties") no later than **12:00 p.m. prevailing Eastern time on December 15, 2004.**

PLEASE TAKE FURTHER NOTICE that if an objection is properly filed and received in accordance with the above procedures, a hearing on the Motion will be held before the Honorable Robert D. Drain, in the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004 on **December 16, 2004 at 10:00 a.m. prevailing Eastern time.** Only objections made in writing and timely filed and received by the Notice Parties will be considered by the Bankruptcy Court at such hearing.

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS
NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE
MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: New York, New York
December 10, 2004

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

/s/ D. J. Baker

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Attorneys for Debtors and Debtors-in-Possession

EXHIBIT “B”

Hearing Date: December 16, 2004 at 10:00 a.m. (Eastern)
Objections Due: December 15, 2004 at 12:00 p.m. (Eastern)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
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(212) 735-3000

Attorneys for Debtors and
Debtors-in-Possession

**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 DEBTORS FOR APPROVAL OF SETTLEMENT
AGREEMENT BETWEEN RCN CABLE TV OF CHICAGO, INC.,
AND THE CHICAGO ACCESS CORPORATION**

Pursuant to sections 105, 363 and 365 of 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the above-captioned debtors and debtors-in-possession (the "Debtors") hereby move (the "Motion") for entry of an order approv-

ing a settlement agreement (the "Agreement")¹ between RCN Cable TV of Chicago, Inc. ("RCN-Chicago"), and the Chicago Access Corporation ("CAC"). The Agreement, as set forth more fully herein, resolves any and all claims and disputes between the Debtors and CAC with respect to the CAC Contracts (as defined herein). In support of the Motion, the Debtors state as follows:

PRELIMINARY STATEMENT

1. On August 5, 2004, RCN-Chicago filed a voluntary petition with this Court. RCN Corporation ("RCN") and RCN-Chicago also sought relief, including injunctive relief, from this Court with respect to the denial by the City of Chicago (the "City") of a modification petition filed by RCN-Chicago on December 12, 2003, pursuant to Section 625 of the Communications Act of 1934, 47 U.S.C. § 545 (the "Modification Petition") and certain other actions taken by the City in connection with certain franchise agreements between the City and RCN-Chicago, including draws on certain letters of credit, demands on certain surety bonds and the imposition of fines and penalties.

2. On August 31, 2004 the Debtors filed their Disclosure Statement (the "Initial Disclosure Statement") with Respect to the Joint Plan of Reorganization of RCN Corporation and Certain of its Subsidiaries (Docket No. 190). Subsequently,

¹Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

on or about October 12, 2004, the Debtors revised the Initial Disclosure Statement and filed their revised Disclosure Statement (the "Revised Disclosure Statement") with Respect to the Joint Plan of Reorganization (the "Plan") of RCN Corporation and Certain Subsidiaries (Docket No. 300). The Plan provides that RCN-Chicago's plan of reorganization cannot go effective until the "Claims of Chicago Access Corporation and the City of Chicago shall have been resolved by way of litigation or otherwise" Plan at Section X.b.7.

3. After negotiating a series of standstill agreements, the City and the Debtors recently resolved their disputes. On November 19, 2004, the Debtors filed their Motion for Approval of Settlement Agreement between RCN Corporation, RCN Cable TV of Chicago, Inc., and the City of Chicago (Docket No. 405) (the "City Settlement Motion"). A hearing was scheduled with respect to the City Settlement Motion for December 8, 2004 and at that hearing this Court approved the City Settlement Motion.

4. The Modification Petition also sought to modify certain contracts between RCN-Chicago and CAC. Prior to and after the filing of RCN-Chicago's bankruptcy case, the Debtors and CAC engaged in extensive, arm's-length negotiations to resolve their various claims and disputes with respect to such modifications. On December 7, 2004, RCN-Chicago and CAC settled all of these issues and executed the Agreement.

5. As described more fully below, the Agreement, in conjunction with the settlement agreement reached with the City, allows RCN-Chicago to continue to operate in Chicago and to support the efforts of CAC, but under improved and more realistic economic terms. Accordingly, the Agreement creates substantial value for the Debtors and their estates. The Debtors believe that the Agreement is fair and equitable, avoids the risk and expense of litigation with CAC and is in the best interests of their estates. For these reasons, the Debtors believe that this Court should approve the Agreement.

BACKGROUND

6. On May 27, 2004 (the "Initial Petition Date"), certain of the Debtors² filed voluntary petitions in this Court for reorganization relief under chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code"). As noted above, RCN-Chicago commenced its chapter 11 case on August 5, 2004. Certain other affiliated Debtors commenced their chapter 11 cases on August 20, 2004.³ The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

²These are RCN, TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC and Hot Spots Productions, Inc.

³These are RCN Telecom Services of Virginia, Inc., RCN Entertainment, Inc., 21st Century Telecom Services, Inc., and ON TV, Inc.

7. No trustee or examiner has been appointed in these chapter 11 cases. On June 10, 2004, the Committee of Unsecured Creditors (the "Creditors' Committee") was appointed by the United States Trustee for the Southern District of New York (the "United States Trustee"). No other official committees have been appointed or designated in these chapter 11 cases.

JURISDICTION AND VENUE

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

9. The statutory predicates for the relief requested herein are sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rule 9019.

RELIEF REQUESTED

10. By this Motion, the Debtors seek entry of an order, under sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rule 9019, authorizing RCN-Chicago to enter into, and perform under, the Agreement, substantially in the form annexed as Exhibit 1 to the proposed form of order (attached hereto). As more fully described below, the Agreement, among other things, (i) resolves all present and future disputes between the Debtors and CAC with respect to the Areas 2, 3 and 4 CAC Contracts (as defined herein); (ii) provides for the Debtors to make a lump sum settlement payment to CAC; (iii) provides for the assumption of

the Areas 1 and 2 CAC Contracts (as defined herein and as the Area 2 CAC Agreement is modified pursuant to the Agreement); (iv) provides for the termination and rejection of the Areas 3 and 4 CAC Contracts (as defined herein); (v) resolves proof of claim number 2062, filed by CAC in RCN-Chicago's bankruptcy case on or about September 30, 2004 (the "Proof of Claim") and provides that CAC will not file any additional proofs of claim; and (vi) provides for the release of the RCN Entities from any and all claims in connection with the Areas 2, 3 and 4 CAC Contracts (as defined herein) and the Areas 2, 3 and 4 Franchises. As explained below, the Debtors believe that the Agreement is fair and equitable and in the best interests of their estates and, therefore, should be approved.

BASIS FOR RELIEF

A. The CAC Contracts

11. CAC is an entity authorized by the Chicago Cable Ordinance to operate public access cable channels in the City of Chicago.⁴ Section 4-280-370 of the Chicago Cable Ordinance states that CAC is to be funded with payments by the cable franchise operators, including the "contribution of funds for studios, equipment and technical assistance." CAC receives most of its funding from payments made by

⁴CAC was incorporated under the laws of the State of Illinois and created in accordance with Article VII, Section 40280-350 et seq. of the Chicago Cable Ordinance and has its principal offices in Chicago, Illinois.

cable companies that have been granted franchises to operate cable television systems in the City of Chicago.

12. RCN is a holding company for certain direct and indirect subsidiaries (collectively, the "RCN Companies") that deliver bundled communications services, including local and long distance telephone, video programming (including digital cable television and high definition television), and data services (including cable modem, high speed Internet access, and dial-up Internet) to customers in a number of locations including Chicago. The RCN Companies compete against incumbent service providers in Chicago and all of the other locations where the RCN Companies operate. In Chicago, RCN-Chicago entered into four, separate non-exclusive franchise agreements (collectively, the "Franchise Agreements") with the City, pursuant to which RCN-Chicago was authorized to construct, install, maintain, and operate a cable television system in Areas 1, 2, 3 and 4 (the "Franchise Areas") of Chicago. Among other things, those Franchise Agreements for Areas 2, 3 and 4 require RCN-Chicago to make certain capital payments to CAC.

13. In addition to such capital payments and consistent with its Franchise Agreements, RCN-Chicago entered into agreements with CAC for each of Franchise Area 1 (the "Area 1 CAC Contract"), Franchise Area 2 (the "Area 2 CAC Contract"), Franchise Area 3 (the "Area 3 CAC Contract") and Franchise Area 4 (the

"Area 4 CAC Contract," and with the Areas 1, 2 and 3 CAC Contracts, collectively, the "CAC Contracts").

B. Subsequent Amendments

14. Under the CAC Contracts, RCN-Chicago is obligated to pay CAC an annual flat rate fee of \$215,000 per franchise area for Franchise Areas 2, 3 and 4.

15. After the Franchise Agreements and the CAC Contracts were executed, but prior to commencement of construction in Franchise Areas 3 and 4, and after only a small portion of Area 2 had been constructed, the telecommunications industry experienced a dramatic decline. The softening economic conditions and tightening of the capital markets interfered with RCN-Chicago's ability to build out Franchise Areas 2, 3 and 4 as originally planned.⁵ Because the RCN Entities did not have the necessary resources, or the necessary ability to obtain financing, the build-out plans envisioned by RCN-Chicago became commercially impracticable.

16. Accordingly, on December 10, 2002, RCN-Chicago and the City entered into an agreement (the "Amendment") amending the Franchise Agreements for Franchise Areas 3 and 4. The Amendment deferred any construction obligations in Franchise Areas 3 and 4 until October 3, 2003, or October 3, 2004, depending on an independent review by the City of RCN-Chicago's financial status. The independ-

⁵RCN-Chicago completed its Franchise Area 1 construction obligations.

ent review was to occur by October 2, 2003, when the City was to have determined whether to extend the deferral period to October 3, 2004 or, alternatively, to enter into good faith negotiations to terminate the Franchise Agreements for Franchise Areas 3 and 4. The Amendment also prohibited RCN-Chicago from soliciting new customers or entering into any new agreements for cable television service in Franchise Areas 3 and 4. Contemporaneous amendments also postponed all of RCN-Chicago's public, educational and governmental ("PEG") capital cost payments to CAC under the CAC Contracts for Franchise Areas 3 and 4, consistent with the deferral of RCN-Chicago's obligations under its Franchise Agreements for Franchise Areas 3 and 4. In addition, in light of the financial difficulties facing RCN-Chicago, on November 12, 2002, the City approved a significantly reduced construction schedule for Franchise Area 2 for 2003, and RCN-Chicago filed a revised construction schedule and map for Franchise Area 2 for 2004.

C. The Modification Petition

17. When the telecommunications industry market conditions deteriorated even further, RCN-Chicago was unable to obtain sufficient financing to maintain its operations, much less increase the scope of such operations. Among other things RCN-Chicago estimated that the cost of completing the build-out requirements for Areas 2, 3 and 4 would exceed \$350,000,000. Therefore, on December 12, 2003, RCN-Chicago submitted the Modification Petition with the

Chicago Cable Commission (the "Commission") seeking certain changes to the Franchise Agreements and the related CAC Agreements because they had been rendered commercially impracticable by virtue of the unforeseen changes in market conditions since the time that they were entered. The Modification Petition sought to eliminate any additional construction or build out requirements, reduce the Surety Bond requirements and certain PEG payments to CAC for Franchise Area 2 and eliminate the construction requirements and all related obligations for Franchise Areas 3 and 4.

18. Following the filing of the Modification Petition, the City passed resolutions urging RCN-Chicago to comply with the Areas 2, 3 and 4 Franchise Agreements and the CAC Agreements, even though RCN-Chicago's financial condition made that impracticable. Subsequently, despite the pending Modification Petition, the City purported to impose multi-million dollar fines on RCN-Chicago for its alleged non-compliance with the very provisions of the Franchise Agreements it sought to have modified through the Modification Petition. The City also made demand on certain surety bonds for Areas 2, 3 and 4 and drew down on certain letters of credit in connection with Areas 2, 3 and 4.

C. The Bankruptcy Filings and Subsequent Litigation with the City

19. Following the initial RCN bankruptcy filings, RCN and RCN-Chicago continued for several months to negotiate with the City and CAC in an

effort to resolve their disputes concerning the Franchise Agreements and the CAC Contracts without further litigation. Given the purported damages and other fines and fees assessed against RCN and/or RCN-Chicago, however, RCN-Chicago filed its bankruptcy petition on August 5, 2004.

20. At the same time, RCN and RCN-Chicago filed an adversary complaint against the City seeking (i) injunctive relief preventing the City from taking any further actions to collect from or assess against RCN and/or RCN-Chicago any amounts in connection with the Franchise Agreements, (ii) approval of the Modification Petition and (iii) damages for the City's alleged violations of federal law, including but not limited to section 525 of the Bankruptcy Code. In addition, RCN and RCN-Chicago filed a motion for temporary restraining order.

21. As stated above, on August 31, 2004, the Debtors filed the Initial Disclosure Statement. Subsequently, on or about October 12, 2004, the Debtors revised the Initial Disclosure Statement and filed the Revised Disclosure Statement. This Court held a hearing on the Revised Disclosure Statement on October 12, 2004, following which the Court entered an order (the "Solicitation Procedures Order") (Docket No. 297) that, among other things, set December 8, 2004 as the date for the hearing (the "Confirmation Hearing") on confirmation of the Plan. At the Confirmation Hearing, the Court confirmed the Plan.

D. The CAC Proof of Claim and the Agreement

22. On or about September 30, 2004, CAC filed its proof of claim (the "CAC Proof of Claim") in RCN-Chicago's bankruptcy case, case number 04-15120. In the CAC Proof of Claim, CAC asserted an unsecured, nonpriority claim in the amount of \$1,275,000.00 for RCN-Chicago's purported failure to make certain payments due under the Areas 2, 3 and 4 CAC Contracts prior to the date on which RCN-Chicago filed its bankruptcy case.

23. On December 7, 2004, the Debtors and CAC entered into the Agreement to compromise, settle and release all disputes between them, subject to this Court's approval.

THE SETTLEMENT AGREEMENT

24. The following are the most significant terms and conditions of the Agreement:⁶

- Payment. Within two (2) business days of the Effective Date (as defined herein), the Debtors shall pay CAC \$2,150,000.00 (the "Settlement Payment").
- Rejection of Areas 3 and 4 CAC Contracts. Effective as of the Effective Date (as defined herein), the Areas 3 and 4 CAC Contracts shall be rejected and all of the rights and obligations

⁶The descriptions set forth in this Motion are intended solely to highlight for the Court and interested parties the most significant terms of the Agreement. All parties are directed to the Agreement for the complete and controlling terms. In the event there are any inconsistencies between the Agreement and the summary set forth herein, the terms of the Agreement control.

of RCN-Chicago under such contracts shall be extinguished. Any and all claims arising from or concerning the Areas 3 and 4 CAC Contracts that CAC now has or may after the Effective Date have shall be released.

- Assumption of the Areas 1 and 2 CAC Contracts. The Areas 1 and 2 CAC Contracts (as the latter is modified by the Agreement) shall be assumed by RCN-Chicago and any and all Area 2 cure costs associated with such assumption shall be deemed satisfied by the payment of the Settlement Amount.
- Withdrawal of the CAC Proof of Claim. Within two (2) business days following the wire payment of the Settlement Payment, CAC shall withdraw the CAC Proof of Claim.
- Settlement and Release. Subject to the occurrence of the Effective Date (as defined herein), the parties shall be granted releases as set forth in the Agreement.
- Effective Date. The Agreement shall become effective (the "Effective Date") on the date that is the later to occur of (i) receipt of a final and non-appealable order from the Court approving the Agreement and (ii) the "Effective Date of the City Settlement Agreement" (as defined in the Agreement).

APPLICABLE AUTHORITY

25. By this Motion, the Debtors seek an order pursuant to Bankruptcy Rule 9019 and sections 105, 363 and 365 of the Bankruptcy Code approving the Agreement. While the Debtors are prepared to vigorously litigate the CAC Proof of Claim and their disputes with CAC with respect to the CAC Contracts, if necessary, the Debtors believe that the Agreement is fair and reasonable and that approval of the Agreement is in the best interests of their estates and creditors.

A. Approval of the Agreement is Proper under Bankruptcy Rule 9019.

26. Bankruptcy Rule 9019 provides, in pertinent part, as follows:

Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

27. Settlements and compromises are "a normal part of the process of reorganization." Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968). Moreover, in bankruptcy cases, settlements are strongly favored over litigation:

[P]ublic policy strongly favors pretrial settlement in all types of litigation because such cases, depending on their complexity, "can occupy a court's docket for years on end, depleting the resources of parties and taxpayers while rendering meaningful relief increasingly elusive." . . . Second, litigation costs are particularly burdensome on a bankrupt estate given the financial instability of the estate.

Shearson Lehman Bros., Inc. v. Munford, Inc. (In re Munford, Inc.), 97 F.3d 449, 455 (11th Cir. 1996) (quoting United States Oil & Gas v. Wolfson, 967 F.2d 489, 493 (11th Cir. 1992)).

28. Debtors-in-possession may, in the exercise of their business judgment, enter into settlements. See In re Dow Corning Corp., 198 B.R. 214, 222 n.7 (Bankr. E.D. Mich. 1996); In re Sanner Contracting Corp., 181 B.R. 465, 470 (Bankr. D. Ariz. 1995) (court has wide discretion to approve settlements between

trustees and creditors). Importantly, in evaluating such settlements, the Court should not substitute its judgment for that of the parties. See Hicks, Muse & Co. v. Brandt (In re Healthco Int'l, Inc.), 136 F.3d 45, 50 n.5 (1st Cir. 1998) (bankruptcy court should not substitute its business judgment for that of trustee).

29. In order to obtain court approval of a settlement under Bankruptcy Rule 9019(a), a debtor must demonstrate that the settlement is fair and equitable, reasonable and in the best interests of the debtor's estate. See, e.g., In re Ionosphere Clubs, Inc., 156 B.R. 414, 426 (S.D.N.Y. 1993), aff'd, 17 F.3d 600 (2d Cir. 1994). The decision to approve a particular settlement then lies within the sound discretion of the Court. See, e.g., Nellis v. Shugrue, 165 B.R. 115, 123 (S.D.N.Y. 1994). In exercising its discretion, the Court makes an independent determination that the settlement is fair and reasonable, but it can and should consider the determination by the debtor-in-possession that the settlement is fair and reasonable. Id. at 122; In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993); In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 759 (Bankr. S.D.N.Y. 1992) ("A [c]ourt may properly give weight to the debtor's informed judgment that a settlement is fair and reasonable and consider the competency of the counsel who favor the compromise"). In addition, the Court exercises its discretion giving consideration, as noted above, to "the general public policy favoring settlements." In re Hibbard Brown & Co., Inc., 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); see also

Nellis v. Shugrue, 165 B.R. 115, 123 (S.D.N.Y. 1994) ("the general rule [is] that settlements are favored and, in fact, encouraged . . .").

30. A settlement should be approved unless it "fall[s] below the lowest point in the range of reasonableness." In re Teltronics Servs., Inc., 762 F.2d 185, 189 (2d Cir. 1985); see also Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983). Moreover, the Court need not decide the numerous questions of law and fact raised by a settlement but, rather, should "canvass the issues" so that the reasonableness of the settlement may be evaluated. Id.; In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993); In re Hermitage Inn, Inc., 66 B.R. 71, 72 (Bankr. D. Colo. 1986) ("the court's assessment does not require resolution of the issues, but only their identification").

31. Specifically, in determining whether to approve a settlement, courts generally consider "(1) the probability of success . . .; (2) the difficulties that may be encountered in collection; (3) the complexity of the litigation and the attendant expense, inconvenience, and delay; and (4) the paramount interest of the creditors." Prudential Lines, Inc. v. American Steamship Owners Mutual Protection and Indemnity Assoc., Inc. (In re Prudential Lines, Inc.), 170 B.R. 222, 247 (S.D.N.Y. 1994); In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993).

32. The Debtors believe that the settlement embodied in the Agreement falls well within the range of reasonableness. First, while the Debtors, through litigation with CAC (with respect to the CAC Proof of Claim and otherwise) might ultimately obtain relief similar to or better than the modifications provided in the Agreement, the success of such litigation, like any litigation, is uncertain. At a minimum, the Debtors would face considerable legal and evidentiary hurdles and any such litigation would likely remain unresolved for a substantial period of time.

33. Moreover, if this Court were to decide against RCN-Chicago, the results for RCN-Chicago could be significant. As noted above, CAC has asserted a claim against RCN-Chicago in excess of \$1,200,000 for claims arising prior to the petition date for RCN-Chicago, alone. If the Motion is not granted and the Agreement is not approved, the Debtors believe that CAC would assert additional amounts allegedly owed under the CAC Contracts that arose after the petition date for RCN-Chicago. Moreover, it is likely that CAC would assert that certain of such claims were entitled to administrative or other priority under the Bankruptcy Code.

34. In addition, as the Plan is currently structured, RCN-Chicago would not be able to reject the CAC Contracts, to the extent such contracts are executory at all, without incurring substantial claims for rejection damages. Under the current plan of reorganization for RCN-Chicago, as reflected in the Plan, all claims against RCN-Chicago would be paid in full upon the effective date of the

Plan. Accordingly, if the Agreement is not approved, and the Debtors are unsuccessful in any litigation with CAC or otherwise unable to settle with CAC, the bankruptcy of RCN-Chicago would possibly evolve from a reorganization to a liquidation.

35. Accordingly, notwithstanding the Debtors' belief in the merits of any litigation they might undertake with respect to CAC, the probability of success and the attendant potentially disastrous consequences in the event that the Debtors did not succeed in any such litigation, favor approving the Agreement.

36. Additionally, any such litigation would likely be complex and require that the Debtors seek relief similar to the relief sought with respect to the City and the Franchise Agreements, i.e., among other things, a declaration that the CAC Contracts should be modified because they are commercially impracticable in light of the almost complete collapse of the telecommunications industry and the attendant severe restriction in financing available to telecommunications companies, like RCN-Chicago, for expanding cable systems.

37. Given that the Debtors have recently settled their disputes with the City through the City Settlement Motion and have dramatically scaled back their future build-out obligations in Chicago, payment to CAC in accordance with the CAC Contracts would be detrimental to the Debtors and their estates. To prove their case in any such litigation, the Debtors likely would be required to obtain testimony

from one or more experts about the current state of the telecommunications industry, the history of the collapse of the telecommunications industry and the ability of telecommunications companies in general and RCN-Chicago in particular to finance expansions of cable networks in light of the current market conditions. Moreover, trying the case would require extensive discovery and, importantly, significant trial time from the Court.

38. Any litigation with CAC also would lead to delay and additional expense for the Debtors and their estates. Discovery alone would cause significant delay and expense for the Debtors and their estates, and a trial of the adversary proceeding would require significant time from the Court. Any such litigation also would likely lead to extensive delay and unnecessary expense in connection with the Debtors' bankruptcy cases.

39. A hearing on the confirmation of the Plan was held on December 8, 2004. The Plan is a joint plan involving all of the Debtors, including RCN and RCN-Chicago. Given the potential liabilities faced by RCN-Chicago, it would be difficult at best to consummate any plan for RCN-Chicago, other than a liquidating plan, absent a resolution of the dispute with CAC. It is likely, in such a case, that the Debtors would have to withdraw RCN-Chicago from the Plan and pursue confirmation of a separate plan for RCN-Chicago. Accordingly, unless the litigation with CAC is resolved promptly after the hearing on confirmation of the Plan, the Debtors

likely would face significant delay in their bankruptcy cases and/or the additional expense of withdrawing the Plan with respect to RCN-Chicago.

40. Considering these factors, the Debtors have determined that approval of the Agreement is in the best interests of their estates and their creditors. The Agreement is a reasonable settlement of the disputes between CAC and the Debtors, allowing RCN-Chicago to continue doing business in an area that is important to the future of RCN and RCN-Chicago. Moreover, any scenario that does not reflect RCN-Chicago's changed economic reality and future obligations places RCN-Chicago at a competitive disadvantage in an intensely competitive business and market. The Agreement balances the need of CAC to obtain funding for its programming with the business demands of RCN-Chicago that such funding obligations be commensurate with the presence of RCN-Chicago in the Chicago market. Accordingly, the Court should, in the sound exercise of its discretion, approve the Agreement.

B. Approval of the Agreement is Proper under Sections 105 and 363 of the Bankruptcy Code.

41. Entry into the Agreement, and the accompanying termination of the Areas 3 and 4 CAC Contracts and modification of the Area 2 CAC Contract, to the extent it is not an ordinary course transaction, is also a reasonable exercise of the Debtors' business judgment. Accordingly, the Court should approve the Agreement under sections 105 and 363 of the Bankruptcy Code.

42. Section 105(a) of the Bankruptcy Code provides that the Court "may 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). As set forth above, approval of the Agreement is necessary to resolve the disputes with CAC and allow the implementation of the Plan with respect to RCN-Chicago.

43. Furthermore, section 363(b) provides that a debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." *Id.* § 363(b). In this instance, the Debtors believe that the entry into the Agreement and the corresponding modification of the Area 2 CAC Contract and termination of the Areas 3 and 4 CAC Contracts, is an ordinary course transaction. However, to the extent that the entry into the Agreement is "other than in the ordinary course of business," the Court should approve the Agreement under section 363(b) of the Bankruptcy Code.

44. The use of assets outside the ordinary course by a debtor, including the decision to enter into, modify or terminate an agreement, will be approved if such use has a sound business justification. See, e.g., Committee of Equity Sec. Holders v. Lionel Corp (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (bankruptcy court may only authorize expenditure of funds under section 363(b) of the Bankruptcy Code if it finds a "good business reason" for the expenditure). This business judgment rule shields a debtor's management from judicial

second-guessing and affirms the general principal that a debtor-in-possession, not a court, should manage such debtor's ongoing business operations. See In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("the Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a Debtor's management decisions"). Once the debtor articulates a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A. 2d 858, 872 (Del. 1985)).

45. As discussed above, the Agreement has a sound business justification. Through the Agreement, RCN-Chicago will obtain beneficial modifications to the Area 2 CAC Contract. Specifically, RCN-Chicago will be able to continue operating in Areas 1 and 2, and will no longer face the substantial past due PEG fees that CAC purports are due under the Area 2 CAC Contract or the future PEG fees for Area 2 that are disproportionate to the number of subscribers that RCN-Chicago serves in that area. In addition, the Areas 3 and 4 CAC Contracts, locations where RCN-Chicago had completed no construction and which are covered by franchise agreements that the City and RCN-Chicago have agreed to terminate (as set forth in the City Settlement Motion), would be rejected.

46. The Agreement was reached only after extended arms' length negotiations between the Debtors and CAC. During these negotiations, the Debtors considered, among other things, (i) the relative strengths of the legal positions of the parties to the Agreement, (ii) the costs and uncertainties of continuing to operate under the CAC Contracts and (iii) the costs and risks associated with litigation with CAC. As a result of these negotiations and considerations, the Debtors concluded that a consensual resolution was preferable to undertaking time-consuming and expensive litigation.

47. The Debtors have demonstrated a sound business justification for entry into the Agreement. In their business judgment, the Debtors have concluded that the Agreement is in the best interests of their estates. Accordingly, the Court should enter an order approving the Agreement.

C. Assumption of the Area 1 CAC Contract and the Modified Area 2 CAC Contract and Rejection of the Areas 3 and 4 CAC Contracts are Sound Exercises of RCN-Chicago's Business Judgment and Should Therefore be Approved.

48. Through the Agreement and the proposed form of order accompanying this Motion, RCN-Chicago seeks to assume the Area 1 CAC Contract and the Area 2 CAC Contract (as the latter is modified by the Agreement). In addition, RCN-Chicago seeks authority to reject the Areas 3 and 4 CAC Contracts. The assumption of the Area 1 CAC Contract and the modified Area 2 CAC Contract is a reasonable exercise of the business judgment of RCN-Chicago. Similarly, the

rejection of the Areas 3 and 4 CAC Contracts is a reasonable exercise of the business judgment of RCN-Chicago. Accordingly, this Court should enter an order, substantially in the form annexed hereto, approving the Agreement and authorizing the contract assumptions and rejections set forth therein.

49. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject an executory contract or an unexpired lease." 11 U.S.C. § 365(a). In determining whether to approve a debtor's decision to assume or reject an executory contract, a court looks to whether the debtor demonstrated a sound business purpose for such assumption or rejection. See, e.g., In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996); In re Federated Dept. Stores, 131 B.R. 808, 811 (S.D. Ohio 1991). Specifically, a debtor must demonstrate that such rejection or assumption will benefit the debtor's estate. See In re Riodizio, 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); see also Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw. 1985) ("Under the business judgment test, a court should approve a debtor's proposed rejection if such rejection will be benefit the estate").

50. The business judgment standard, as noted above, shields a debtor's management from judicial second-guessing and affirms the general principal that a debtor-in-possession, not a court, should manage such debtor's ongoing business operations. See In re Johns-Manville Corp., 60 B.R. at 615-16.

51. When applying the "business judgment" rule in the context of the assumption or rejection of executory contracts under section 365 of the Bankruptcy Code, courts show great deference to a debtor's decision. See, e.g., National Labor Relations Board v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984); In re Trans World Airlines, 261 B.R. 103, 120-21 (Bankr. D. Del. 2001) (debtor's decision to reject an executory contract should be upheld "unless it is the product of 'bad faith, or whim or caprice'"); Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor's decision to assume an executory contract "should be granted as a matter of course").

52. In this instance, the assumption of the Area 1 CAC Contract and the Area 2 CAC Contract and the rejection of the Areas 3 and 4 CAC Contracts, on the terms and conditions set forth in the Agreement, will provide tremendous benefits to the Debtors and their estates. RCN-Chicago has already built out Area 1 in accordance with the Area 1 Franchise Agreement and is complying with the Area 1 CAC Contract. RCN-Chicago believes that it can operate a profitable enterprise in Area 1 of the City. In addition, RCN-Chicago believes that providing cable services in Area 2 of the City will likewise be a profitable enterprise.

53. In contrast, RCN-Chicago does not believe that the build out of network facilities and the establishment of operations in Areas 3 and 4 of the City

would be profitable. Indeed, through the City Settlement Motion recently approved by this Court, RCN-Chicago has rejected and terminated the Areas 3 and 4 Franchise Agreements. Accordingly, payment of any PEG fees to the CAC for these areas would not be recoverable by RCN-Chicago from any customers in Areas 3 and 4, and would therefore have to be recovered through RCN-Chicago's rates to its customers in Areas 1 and 2 of the City - a result that would place RCN-Chicago at a significant competitive disadvantage with respect to other cable companies currently operating in Areas 1 and 2 of the City. In the exercise of its business judgment, therefore, RCN-Chicago has decided to reject the Areas 3 and 4 CAC Contracts and assume the Area 1 CAC Contract and the modified Area 2 CAC Contracts.

54. In sum, the Debtors have satisfied the requisite standards for (i) approval of the Agreement as a settlement of disputes between the Debtors and CAC, (ii) assumption of the Area 1 CAC Contract and the modified Area 2 CAC Contract and (iii) rejection of the Areas 3 and 4 CAC Contracts. Accordingly, the Court should approve the Agreement.

55. The Debtors submit that no new or novel issue of law is presented with respect to the matters contained herein. Because the relevant authorities in support of the requested relief are cited in this Motion, 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 (A) authorizing RCN-Chicago to (i) enter into the Agreement, (ii) reject the Areas 3 and 4 CAC Contracts and (iii) assume the Area 1 Contract and the modified

Area 2 CAC Contract and (B) granting the Debtors such other and further relief as is just.

Dated: New York, New York
December 10, 2004

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/s/ D. J. Baker

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Attorneys for Debtors and Debtors-in-Possession

**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.	:
	:
-----	x

**ORDER AUTHORIZING SETTLEMENT AGREEMENT
BETWEEN RCN CABLE TV OF CHICAGO, INC., AND THE
CHICAGO ACCESS CORPORATION**

Upon the motion, dated December 10, 2004 (the "Motion"),¹ of the above-captioned debtors and debtors-in-possession (the "Debtors"), for an order approving a settlement agreement (the "Agreement") between RCN Cable TV of Chicago, Inc. ("RCN-Chicago"), and Chicago Access Corporation ("CAC"), with respect to any proofs of claim filed in these bankruptcy cases by CAC and/or certain other fees and claims in connection with the CAC Contracts; and the Court being satisfied with the representations made in the Motion that the Agreement is necessary and in the best interests of the Debtors and their estates; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

¹ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

FOUND that:²

- A. The Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and venue in this district is proper under 28 U.S.C. §§ 1408 and 1409;
- B. Due and proper notice of the Motion has been given and no other or further notice is required;
- C. RCN-Chicago has exercised sound business judgment in deciding to enter into the Agreement;
- D. The Agreement is fair, reasonable and in the best interests of RCN, RCN-Chicago, their estates, creditors and other parties-in-interest and is appropriate in light of the relevant factors;
- E. RCN-Chicago has exercised sound business judgment and has satisfied the requirements of 11 U.S.C. § 365 in deciding to (i) assume the Areas 1 and 2 CAC Contracts (as the latter is modified by the Agreement) and (ii) reject the Areas 3 and 4 CAC Contracts; and
- F. It is in the best interests of RCN-Chicago, its estate, creditors and other parties-in-interest to (i) enter into the Agreement, (ii) assume the Area 1

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

CAC Contract and the modified Area 2 CAC Contract and (iii) reject the Areas 3 and 4 CAC Contracts; and it is therefore,

ORDERED, ADJUDGED and DECREED that:

1. The Motion is GRANTED as set forth herein.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived or settled, and all reservations of rights included therein, are overruled on the merits.
3. RCN-Chicago is authorized to enter into the Agreement, in substantially the form annexed hereto as Exhibit 1, the terms and conditions of which are hereby approved.
4. The Debtors, CAC and each of their officers, directors, employees and agents, are authorized to take any actions and execute any documents necessary to consummate the Agreement.
5. The terms and provisions of the Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of the Debtors and each of their estates and creditors, and CAC and its successors and assigns, and any affected third parties including, but not limited to, any trustee, responsible person, estate administrator, representative or similar person subsequently appointed for or in connection with the Debtors' estates or affairs in these cases or in any subsequent case(s) under the Bankruptcy Code involving the Debtors.

6. The Area 1 CAC Contract is hereby assumed by RCN-Chicago, as of the Effective Date, and there are no cure costs associated with such assumption.

7. The Area 2 CAC Contract, as amended by the Agreement, is hereby assumed by RCN-Chicago, as of the Effective Date, and all cure costs associated with such assumption have been deemed satisfied.

8. CAC shall have no claim, whether secured, unsecured, priority, administrative, or otherwise, against any of the Debtors, their estates, subsidiaries, affiliates, legal successors and/or assigns arising by reason of any act, omission, transaction or occurrence taken or occurring at any time in connection with, arising from or concerning the Area 2 CAC Contract.

9. The Areas 3 and 4 CAC Contracts are rejected as set forth in the Agreement.

10. CAC shall withdraw the CAC Proof of Claim as set forth in the Agreement.

11. The Debtor shall pay to CAC, upon the Effective Date, the Settlement Payment, in full and complete discharge, satisfaction and release of any claims, whether secured, unsecured, priority, administrative, or otherwise that were actually asserted, or that could have been asserted, in the CAC Proof of Claim, any request for administrative expense payment, or otherwise with respect to the Area 2 CAC Contract.

12. Upon the occurrence of the Effective Date, the parties shall grant the mutual releases set forth in the Agreement.

13. Notwithstanding Bankruptcy Rule 6004(g), this Order shall take effect immediately upon entry.

14. This Court shall retain jurisdiction to decide any disputes arising between any of the Debtors and CAC with respect to the Order, the Agreement, the CAC Proof of Claim, the assumption of the Areas 1 and 2 CAC Contracts (as the latter is modified by the Agreement) and the rejection of the Areas 3 and 4 CAC Contracts.

Dated: New York, New York
December __, 2004

Honorable Robert D. Drain
United States Bankruptcy Judge

EXHIBIT 1

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** ("Agreement") is entered into this 7th day of December, 2004, by and between RCN Cable TV of Chicago, Inc. ("RCN-Chicago"), and Chicago Access Corporation ("CAC"). RCN-Chicago and CAC are hereinafter referred to as the "Parties" and each as a "Party."

WHEREAS, RCN-Chicago is a Delaware corporation with its principal place of business at 350 North Orleans Street, Chicago, Illinois.

WHEREAS, CAC is a non-profit Illinois corporation created in accordance with Article VII, Section 4-280-350, *et seq.*, of the Chicago Cable Communications Ordinance, with its principal offices at 322 South Green Street, Chicago, Illinois.

WHEREAS, RCN-Chicago submitted a Petition for Modification ("Modification Petition") to the City of Chicago (the "City") on December 12, 2003 pursuant to Section 625 of the Communications Act, 47 U.S.C. § 545, seeking, *inter alia*, to modify certain network build-out and related provisions of its Areas 2, 3, and 4 Franchises.

WHEREAS RCN-Chicago filed a petition for relief under Chapter 11 on August 5, 2004 (the "RCN-Chicago Bankruptcy") and concurrently RCN-Chicago and RCN Corporation ("RCN Corp.") filed an adversary complaint (the "Bankruptcy Complaint") in the Bankruptcy Court seeking modification of the Areas 2, 3 and 4 Franchise Agreements as set forth in the Modification Petition and other declaratory, injunctive and equitable relief pursuant to the Bankruptcy Code.

WHEREAS, RCN-Chicago, its parent RCN Corporation, and the City executed a Release and Settlement Agreement on November 12, 2004 (the "City Settlement Agreement"), a copy of which is attached hereto for reference as Exhibit A, to resolve their disputes, pursuant to which, as of the Effective Date of the City Settlement Agreement, RCN-Chicago, RCN Corp. and the City agreed, among other things, to terminate the Areas 3 and 4 Franchises, and to modify the Area 2 Franchise (i) to eliminate all further construction build-out obligations by limiting the Area 2 Franchise to the homes and businesses that can be served by lateral connections to RCN-Chicago's existing network facilities, and (ii) to permit RCN-Chicago to terminate the Area 2 Franchise without penalty before the end of its term.

WHEREAS, CAC believes that, because of RCN-Chicago's financial condition, including its being in bankruptcy, it is in its best interest for RCN-Chicago to pay, and CAC to receive, the Settlement Payment in full and complete satisfaction of amounts owed by RCN-Chicago to CAC under the Area 2 Franchise and the Area 2 CAC Agreement as of the CAC Settlement Effective Date and the amounts which would, absent this Agreement, become due in the future under the Area 2 Franchise and the Area 2 CAC Agreement.

WHEREAS, pursuant to negotiations between RCN-Chicago and CAC, the Parties have agreed to compromise, settle and release all RCN Claims and CAC Claims upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in exchange for the benefits and undertakings described herein and other good and valuable consideration as more fully described below, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The foregoing Recitals are true and correct and shall be incorporated herein as in integral part of this Agreement.

2. **DEFINITIONS.** The following definitions apply to this Agreement:

A. "Area 1 Franchise" means the Cable Television Franchise Agreement for Franchise Area 1 of the City that was effective as of June 24, 1996 and was acquired by RCN-Chicago by virtue of its acquisition of 21st Century Cable TV, Inc.

B. "Area 2 Franchise," "Area 3 Franchise," and "Area 4 Franchise" mean the three separate Cable Television Franchise Agreements for Franchise Areas 2, 3, and 4 of the City executed on December 7, 2000 by RCN-Chicago and the City and, with respect to the Areas 3 and 4 Franchises, as amended on December 10, 2002.

C. "Area 2 CAC Agreement," "Area 3 CAC Agreement," and "Area 4 CAC Agreement" mean the three separate agreements for Franchise Areas 2, 3 and 4 of the City executed on September 1, 2000 between RCN-Chicago (known at the time as 21st Century Cable TV of Chicago, Inc.) and CAC.

D. "Areas 3 and 4 Deferral Agreements" means the two separate agreements executed on December 12, 2002 between RCN-Chicago and CAC amending the September 1, 2000 Areas 3 and 4 CAC Agreements.

E. "Area 1 CAC Agreement" means the agreement for Franchise Area 1 of the City executed on January 26, 1996 between 21st Century Cable TV, Inc. and CAC, which agreement was amended on December 8, 2000 and assigned to RCN-Chicago by virtue of its acquisition of 21st Century Cable TV, Inc.

F. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of New York that is presiding over the Chapter 11 filings of RCN Corporation and RCN-Chicago.

G. "RCN Released Entities" means RCN-Chicago and any and all of its current, former and future parent companies, affiliates, subsidiaries, owners, partners, executives, administrators, officers, directors, employees, shareholders, agents, attorneys, insurers, representatives, heirs, successors and assigns.

H. "CAC Released Entities" means CAC, and any and all of its current, former and future executives, administrators, officers, directors, employees, agents, attorneys, insurers, representatives, heirs, successors and assigns.

I. "RCN Claims" means any and all claims, controversies, liabilities, suits, actions, causes of action, demands, obligations, damages, judgments, costs, expenses and attorneys' fees, known or unknown, vested or contingent, direct or indirect, whether in tort, contract, statutory or otherwise (collectively, "Claims"), that any of the RCN Released Entities may have had or may now have against the CAC Released Entities arising out of and relating to RCN-Chicago's compliance with the Areas 2, 3 and 4 Franchises and the Areas 2, 3 and 4 CAC Agreements as of the Effective Date of this Agreement, including without limitation all Claims with respect to payments due or alleged to be due from any RCN Released Entity to CAC pursuant to the Areas 2, 3 and 4 Franchises and the Areas 2, 3 and 4 CAC Agreements, all Claims with respect to any future payments due or alleged to be due from any RCN Released Entity to CAC pursuant to the Areas 2, 3 and 4 Franchises and the Areas 2, 3 and 4 CAC Agreements, and all disputes raised by the Modification Petition and related Bankruptcy Court proceedings, all other court proceedings filed by RCN-Chicago, the Resolution adopted on February 11, 2004 by the Chicago City Council, and the Chicago Cable Commission Resolution #807 adopted on February 10, 2004.

J. "CAC Claims" means any and all Claims that any of the CAC Released Entities may have had or may now have against the RCN Released Entities arising out of and relating to RCN-Chicago's compliance with the Areas 2, 3 and 4 Franchises and the Areas 2, 3 and 4 CAC Agreements as of the Effective Date of this Agreement, including without limitation all Claims with respect to payments due or alleged to be due from any RCN Released Entity to CAC pursuant to the Areas 2, 3 and 4 Franchises and the Areas 2, 3 and 4 CAC Agreements, all Claims with respect to any future payments due or alleged to be due from any RCN Released Entity to CAC pursuant to the Areas 2, 3 and 4 Franchises and the Areas 2, 3 and 4 CAC Agreements, and all disputes raised by the Modification Petition and related Bankruptcy Court proceedings, all other court proceedings filed by RCN-Chicago, the Resolution adopted on February 11, 2004 by the Chicago City Council, and the Chicago Cable Commission Resolution #807 adopted on February 10, 2004.

K. "CAC Settlement Effective Date" means the date that is the later to occur of (i) receipt of a final and non-appealable order from the Bankruptcy Court approving this Agreement, and (ii) the Effective Date of the City Settlement Agreement.

L. "Effective Date of the City Settlement Agreement" shall have the meaning set forth in Section 3 of the City Settlement Agreement, a copy of which is attached hereto for reference as Exhibit A.

3. AREAS 3 AND 4 FRANCHISES AND CAC AGREEMENTS.

A. The Parties acknowledge that the City Settlement Agreement calls for the termination of the Areas 3 and 4 Franchises without imposing any penalty on RCN-Chicago or requiring any payment from RCN Chicago or on RCN-Chicago's behalf and that, as a result, pursuant to the terms of the Areas 3 and 4 Deferral Agreements, RCN-Chicago will be excused

from payment of, and CAC cannot recover, the deferred balances of amounts otherwise due under the Areas 3 and 4 CAC Agreements as of the CAC Settlement Effective Date .

B. The Parties agree and acknowledge that, in light of the termination of the Areas 3 and 4 Franchises as set forth in the City Settlement Agreement, RCN-Chicago shall have no future obligations to CAC under the Areas 3 and 4 Franchises and the Areas 3 and 4 CAC Agreements following the CAC Settlement Effective Date.

C. In light of the termination of the Areas 3 and 4 Franchises, the Areas 3 and 4 CAC Agreements shall be rejected by RCN-Chicago as of the CAC Settlement Effective Date and CAC will not have any damages for the rejection of the Areas 3 and 4 CAC Agreements. Upon such rejection, all of the Parties' rights and obligations pursuant to the Areas 3 and 4 CAC Agreements shall be extinguished and the CAC Release of RCN shall apply to any and all past, current and future obligations of RCN-Chicago with respect to services provided by RCN-Chicago pursuant to the Areas 3 and 4 CAC Agreements and the Areas 3 and 4 Franchises. Nothing herein affects, or entitles RCN-Chicago to any refund of, payments previously made under the Areas 3 and 4 Franchises or the Areas 3 and 4 CAC Agreements.

4. AREA 2 FRANCHISE AND CAC AGREEMENT.

A. RCN-Chicago shall pay CAC the amount of Two Million One Hundred-Fifty Thousand Dollars (\$2,150,000) in immediately available funds (the "Settlement Payment"), by wire transfer to the following bank account no later than two (2) business days after the CAC Settlement Effective Date:

MB Financial Bank, N.A.
Chicago Access Corporation Account
Acct #0410918
Routing #071001737

B. The Settlement Payment shall constitute payment in full for (i) any and all payments due or alleged to be due from any RCN Released Entity to CAC pursuant to the Area 2 Franchise and the Area 2 CAC Agreement as of the CAC Settlement Effective Date, including without limitation, any and all amounts necessary, or alleged to be necessary, to cure any outstanding obligations to CAC under the Area 2 Franchise and the Area 2 CAC Agreement as of the CAC Settlement Effective Date, and (ii) any and all future payments due or alleged to be due from any RCN Released Entity to CAC pursuant to the Area 2 Franchise and the Area 2 CAC Agreement with respect to services provided in Area 2 by an RCN Released Entity throughout the remaining term of the Area 2 Franchise and the Area 2 CAC Agreement.

C. As of the wire transfer of the Settlement Payment in accordance with subsection 4.A above, the Area 2 CAC Agreement shall be amended to provide that the Settlement Payment constitutes full payment in lieu of and in substitution for any and all unpaid past-due, current and future payment obligations set forth in the Area 2 CAC Agreement, and the CAC Release of RCN-Chicago shall apply to all such payment obligations and to any and all past, current and future payment obligations to CAC set forth in the Area 2 Franchise. Nothing herein affects, or

entitles RCN-Chicago to any refund of, payments previously made under the Area 2 Franchise or the Area 2 CAC Agreement.

D. CAC acknowledges that Section 4 of the City Settlement Agreement provides that RCN-Chicago may in the future determine to terminate the Area 2 Franchise without penalty before the end of its term and agrees that such an early termination shall also serve to terminate without penalty the Area 2 CAC Agreement and extinguish any and all further obligations by any RCN Released Entity pursuant to the Area 2 CAC Agreement, as amended by this Agreement, as of the date that RCN-Chicago service in Area 2 ceases. An early termination of the Area 2 Franchise will have no effect on CAC's right under this Agreement to retain the full Settlement Payment.

5. **RCN-CHICAGO COMMITMENTS.** No later than five (5) business days following execution of this Agreement by both Parties, RCN-Chicago shall file a motion with the Bankruptcy Court seeking to have (i) this Agreement approved; (ii) the Areas 3 and 4 CAC Agreements rejected as of the CAC Settlement Effective Date; (iii) the Area 1 CAC Agreement assumed as of the CAC Settlement Effective Date; and (iv) the Area 2 CAC Agreement, as amended by this Agreement, assumed as of the CAC Settlement Effective Date.

6. **CAC COMMITMENTS.** Within two (2) business days following the wire transfer of the Settlement Payment in accordance with subsection 4.A above, CAC shall withdraw the proof of claim it filed at the Bankruptcy Court on or about September 30, 2004 (Claim # 2062), and CAC shall not file any additional proofs of claim or requests for payment of administrative expenses with respect to the Areas 1 and 2 Franchises or the Areas 1 and 2 CAC Agreements.

7. **MUTUAL RELEASES.**

A. Upon the CAC's receipt of the Settlement Payment, and subject to the other conditions set forth in this Agreement, the CAC Released Entities do hereby release and forever discharge the RCN Released Entities from all CAC Claims against the RCN Released Entities (the "CAC Release of RCN").

B. Upon the CAC Settlement Effective Date, and subject to the other conditions set forth in this Agreement, the RCN Released Entities do hereby release and forever discharge the CAC Released Entities from all RCN Claims against the CAC Released Entities (the "RCN Release of CAC").

C. This Agreement is intended to and does settle all RCN Claims and CAC Claims, and nothing contained herein shall constitute an admission by any Party as to the merits of any claims, positions or arguments that they have or might assert with respect to the disputes settled by this Agreement, and nothing in this Agreement shall be construed as an admission by any Party of any liability of any kind to any other Party.

D. The Parties agree that any and all claims and disputes settled pursuant to this Agreement shall be forever extinguished and that neither Party shall take the position – in connection with any future matters or course of dealing between the Parties or their successors or

assigns, including but not limited to the renewal, extension, amendment, assignment, transfer or other modification of existing CAC Agreements or future CAC agreements – that RCN-Chicago should be treated more or less favorably because of these claims and disputes or their settlement pursuant to this Agreement.

E. For the avoidance of doubt, these releases shall not be construed to release either CAC or RCN-Chicago from the terms of this Agreement.

8. **BINDING EFFECT.** This Agreement shall be binding on both Parties as of the CAC Settlement Effective Date.

9. **NOTICES.** All notices and communications shall be in writing and shall be given to the Parties at the following addresses, or such other addresses as a Party shall provide to the other in writing in accordance with the terms of this paragraph.

If to CAC:

Executive Director
Chicago Access Corporation
322 South Green Street
Chicago, IL 60607-3544
Fax: (312) 738-2519

If to RCN-Chicago:

General Manager
RCN Cable TV of Chicago, Inc.
350 North Orleans Street
Chicago, IL 60654
Fax: (312) 955-2111

With copy to:

General Counsel
RCN Corporation
105 Carnegie Center
3rd Floor
Princeton, NJ 08540
Fax: (301) 531-2725

All notices shall be sent by registered or certified mail, return receipt requested, sent by Federal Express or similar overnight delivery service with a signed receipt, or sent by facsimile transmission to the telephone numbers set forth above and confirmed by first class mail to the receiving Party's address set forth above, and shall be deemed given on the second business day after such mailing or delivery.

10. REPRESENTATIONS AND WARRANTIES.

A. Subject to the wire transfer of the Settlement Payment in accordance with this Agreement and the other conditions set forth in this Agreement, each Party promises not to bring any additional claims, actions, suits or proceedings against any other Party, directly or indirectly, regarding or relating in any manner to the CAC Claims and RCN Claims, as appropriate, and each Party further covenants and agrees that this Agreement is a bar to any such claim, action, suit or proceeding including, but not limited to any preference action by RCN-Chicago or any trustee appointed in the bankruptcy case filed by RCN Corp. or the RCN-Chicago Bankruptcy;

B. Each Party represents and warrants that it is the sole and lawful owner of all right, title and interest in all CAC Claims and RCN Claims, as appropriate, and that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any CAC Claims or RCN Claims. Each Party to this Agreement shall indemnify the other, shall defend the other, and shall hold the other harmless from and against any claims based upon or arising in connection with any such prior assignment, transfer, lien and/or right, or any such purported assignment, transfer, lien and/or right;

C. The undersigned represent and warrant to each other that they are duly authorized to execute this Agreement on behalf of the applicable Party hereto;

D. The Parties represent and warrant that they have read and understand this Agreement, that they intend to be legally bound by it, and that its terms, provisions and conditions have been fully explained to them by their attorneys;

E. Each Party represents and warrants that, subject to Bankruptcy Court approval, it is authorized to perform its obligations in accordance with the terms of this Agreement; and

F. Each Party represents and warrants that it will use its best efforts to obtain all necessary approvals for this Agreement.

11. VOLUNTARY AGREEMENT. This Agreement is freely and voluntarily given by the Parties, without any duress or coercion, and after each Party has consulted with its counsel. Each Party has carefully and completely read all of the terms and provisions of this Agreement. Each of the Parties understands and agrees that this Agreement is in the nature of a settlement and compromise of RCN Claims and CAC Claims. Both RCN-Chicago and CAC intend to settle and satisfy all claims, judgments, and controversies encompassed by the RCN Claims and the CAC Claims to avoid litigation.

12. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their successors in interest, assigns, personal representatives and heirs.

13. COUNTERPARTS. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all Parties hereto, notwithstanding that all Parties shall not have signed the same counterpart.

14. **HEADINGS.** The headings in this Agreement are for convenience of reference only and are not a material part of this Settlement Agreement. They shall not be used in determining the intent of the Parties.

15. **GOVERNING LAW.** This Agreement shall be governed by and construed, and the legal relations between the Parties determined, in accordance with the laws of the State of Illinois.

16. **ATTORNEYS FEES AND OTHER COSTS.** The Parties shall each bear and be solely responsible for their respective costs and expenses in connection with this Agreement, including but not limited to, their respective attorneys' fees and other costs generated in connection with the disputes giving rise to this Agreement, in the negotiation, preparation and drafting of this Agreement, and in securing any and all required approvals of this Agreement.

17. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties hereto and supercedes any and all prior representations, agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement. Nothing in this Agreement shall modify or amend the terms of the Area 1 CAC Agreement or, except as expressly set forth in this Agreement, modify or amend the Area 2 CAC Agreement.

18. **AMENDMENTS AND MODIFICATIONS.** No amendment or modification of this Agreement shall be effective until it is reduced to writing and approved and executed by all Parties to this Agreement and approved in accordance with all applicable statutory and judicial rules and procedures.

19. **ADDITIONAL DOCUMENTS.** RCN-Chicago and CAC agree to cooperate fully and execute all supplemental documents and take all additional actions that may be necessary to give full force and effect to this Agreement.

[This area intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

CHICAGO ACCESS CORPORATION

By: Barbara Popovic
Barbara Popovic
Executive Director

RCN CABLE TV OF CHICAGO, INC.

By: Thomas McKay
Tom McKay
General Manager

EXHIBIT A

City Settlement Agreement

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Agreement") is entered into by RCN Cable TV of Chicago, Inc. ("RCN-Chicago"), RCN Corporation ("RCN Corp." and, collectively with RCN-Chicago, "RCN"), and the City of Chicago, Illinois ("City"). RCN-Chicago, RCN Corp. and the City are hereinafter referred to as the "Parties" and each as a "Party."

RECITALS

WHEREAS RCN-Chicago is a Delaware corporation with its principal place of business at 350 North Orleans Street, Chicago, Illinois.

WHEREAS RCN Corp. is a Delaware corporation with its principal place of business at 105 Carnegie Center, Princeton, New Jersey.

WHEREAS the City is a municipality located in the State of Illinois with its principal offices at 121 N. LaSalle Street, Chicago, Illinois.

WHEREAS RCN-Chicago submitted a Petition for Modification to the City on December 12, 2003 pursuant to §625 of the Communications Act, 47 U.S.C. §545 seeking to modify certain network build-out and related provisions of the Areas 2, 3 and 4 Franchises on the grounds of commercial impracticability (the "Modification Petition").

WHEREAS the Chicago Cable Commission adopted three resolutions on February 21, 2004 finding that RCN-Chicago was in breach of certain of its network build-out and related obligations with respect to Franchise Areas 2, 3 and 4 and assessed certain liquidated damages and fines for such violations. ("Chicago Cable Commission February 21 Resolutions").

WHEREAS RCN Corp. filed a petition for relief under Chapter 11 on May 27, 2004 ("RCN Bankruptcy").

WHEREAS RCN-Chicago filed a petition for relief under Chapter 11 on August 5, 2004 ("RCN-Chicago Bankruptcy"), and concurrently RCN-Chicago filed an adversary complaint in the Bankruptcy Court seeking modification of the Areas 2, 3 and 4 Franchise Agreements as set forth in the Modification Petition and other declaratory, injunctive and equitable relief pursuant to the Bankruptcy Code.

WHEREAS pursuant to negotiations between the City and RCN-Chicago, the Parties have agreed to compromise, settle and release all RCN Claims and City Claims (as defined herein) upon the terms and conditions hereinafter set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration set forth herein, the sufficiency and receipt of which are hereby acknowledged, and in consideration of and subject to the performances, conditions and promises contained in this Agreement, the City and RCN agree as follows:

SECTION 1: RECITALS. The foregoing Recitals are true and correct and shall be incorporated herein as in integral part of this Agreement.

SECTION 2: DEFINITIONS. The following definitions apply to this Agreement:

A. "Area 2 Franchise," "Area 3 Franchise," and "Area 4 Franchise" mean the three separate Cable Television Franchise Agreements for Franchise Areas 2, 3, and 4 of the City executed on December 7, 2000 by RCN-Chicago and the City.

B. "Area 1 Franchise" means the Cable Television Agreement for Franchise Area 1 of the City that was effective as of June 24, 1996 and was acquired by RCN-Chicago as a result of its acquisition of 21st Century Cable TV of Chicago, Inc. on April 28, 2000.

C. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of New York that is presiding over the Chapter 11 filings of RCN Corp. and RCN-Chicago.

D. "CAC" means the Chicago Access Corporation.

E. "Corporate Surety Bonds" means those three (3) performance bonds filed by RCN-Chicago with the City as required by Section 5.3 of the Areas 2, 3 and 4 Franchises and consisting of Bond Nos. 103344480, 103344479, and 103344476, dated December 7, 2000 and issued by Travelers Casualty & Surety Company of America ("Travelers"), each in the amount of Three Million Dollars (\$3,000,000).

F. "Letters of Credit" means those three (3) unconditional and Irrevocable Standby Letters of Credit deposited by RCN-Chicago with the City, as required by Section 6 of the Areas 2, 3 and 4 Franchises and consisting of (i) Irrevocable Standby Letter of Credit No. 629, dated September 3, 2003, issued by Lakeside Bank in favor of the City in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000), and (ii) Irrevocable Standby Letters of Credit Nos. S231702PHL and S235870PHL, dated January 11, 2001, issued by PNC Bank, each in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000).

G. "Litigation" means Adversary Proceeding No. 04-03666 filed in the Bankruptcy Court and all related and pending litigation that seeks adjudication of the RCN Claims and the City Claims.

H. "RCN Released Entities" means RCN-Chicago, RCN Corp., and any and all of their current, former and future parent companies, affiliates, subsidiaries, owners, partners, executives, administrators, officers, directors, employees, shareholders, agents, attorneys, insurers, representatives, heirs, successors and assigns.

I. "City of Chicago Released Entities" means the City, and any and all of its current, former and future elected and appointed officials, executives, administrators, officers, directors, employees, agents, attorneys, insurers, representatives, heirs, successors, assigns, political subdivisions, agencies and any instrumentalities thereof.

J. "RCN Claims" means any and all claims, controversies, liabilities, suits, actions, causes of action, demands, obligations, damages, judgments, costs, expenses and attorneys' fees, known or unknown, vested or contingent, direct or indirect, whether in tort, contract, statutory or otherwise (collectively, the "Claims"), that RCN Released Entities may have had or may now have against the City of Chicago Released Entities arising out of and relating to disputes raised by the Modification Petition and related bankruptcy court proceedings, all other court proceedings filed by RCN-Chicago, the Resolution adopted on February 11, 2004 by the Chicago City Council, the Chicago Cable Commission February 21 Resolutions, and, with respect to the Areas 3 and 4 Franchises, any and all other Claims that RCN Released Entities may have had or may now have against the City of Chicago Released Entities arising out of, relating to, or pursuant to RCN-Chicago's compliance with the Areas 3 and 4 Franchises and its obligations under the Chicago Cable Ordinance with respect to Franchise Areas 3 and 4.

K. "City Claims" means any and all Claims that the City of Chicago Released Entities may have had or may now have against the RCN Released Entities arising out of and relating to those disputes raised by the Modification Petition and related bankruptcy court proceedings filed by RCN-Chicago, the Resolution adopted on February 11, 2004 by the Chicago City Council, the Chicago Cable Commission February 21 Resolutions, and, with respect to the Areas 3 and 4 Franchises, any and all other Claims that the City of Chicago Released Entities may have had or may now have against the RCN Released Entities arising out of, relating to, or pursuant to RCN-Chicago's compliance with the Areas 3 and 4 Franchises and its obligations under the Chicago Cable Ordinance with respect to Franchise Areas 3 and 4.

SECTION 3: EFFECTIVE DATE.

A. Except as provided herein and with respect to the mutual releases contained in Section 3, this Agreement shall be effective upon the later to occur of (i) receipt of a final and non-appealable order from the Bankruptcy Court approving this Agreement and the Dark Fiber IRU Agreement dated November 12, 2004 (the "IRU Agreement"), such order providing, among other things, that the terms and provisions of this Agreement shall be binding in all respects upon, and shall inure to the benefit of, the RCN Released Entities, their estates, and their creditors, and the City of Chicago Released Entities, and shall be binding in all respects upon any affected third parties, notwithstanding any subsequent appointment of any trustee(s) or similar party under any Chapter of the Bankruptcy Code, as to which trustee(s) or similar party such terms and provisions likewise shall be binding and such order approving, and (ii) receipt of final City Approvals (as defined below) of this Agreement (the "Effective Date"); provided, however, that all of the following conditions have been met prior to such time:

i. The City shall certify that it has completed its review of the financial information provided by RCN regarding RCN's financial ability to meet the construction build-out requirements set forth in the Areas 2, 3 and 4 Franchises.

ii. RCN and CAC shall have settled their disputes with respect to current and future payments due from RCN-Chicago no later than November 30, 2004, and within five (5) business days following execution of the settlement with CAC, RCN shall have filed a motion at the Bankruptcy Court seeking to have such settlement approved, and a final order approving such settlement shall have been issued by the Bankruptcy Court.

iii. RCN and the City shall have executed the IRU Agreement.

iv. No later than five (5) business days following execution of this Agreement by both Parties, RCN shall have filed a motion with the Bankruptcy Court seeking to have (a) this Agreement approved; (b) the IRU Agreement approved; (c) the Area 1 Franchise; and the Area 2 Franchise, as amended herein, assumed; and (d) the Area 3 and 4 Franchises rejected. The Parties agree that the IRU Agreement contains highly sensitive and confidential information, the release of which would be detrimental to both RCN and to the City, that it shall therefore be submitted to the Bankruptcy Court under seal and/or with appropriate and necessary redactions of the confidential information, and that both Parties will support the need for confidentiality. To the extent that RCN requests redaction of material that the City deems unnecessary, the provisions with respect to confidentiality contained in Paragraph 28 of the IRU Agreement shall control.

v. No later than five (5) business days following execution of this Agreement, the City shall have initiated the necessary procedures for approval of the Agreement by any person or entity whose approval is necessary in order for the Agreement to become effective, including but not limited to approval by the City Council of the City of Chicago ("City Approvals").

B. This Agreement is subject to each of the conditions set forth in this Section 3 and in the event that any or all of the conditions set forth in this Section 3 are not met, this Agreement shall be null, void and of no further force and effect and the Parties shall be entitled to assert the positions they have taken with respect to their claims and disputes prior to reaching this Agreement.

SECTION 4: TERMINATION AND MODIFICATION OF FRANCHISES.

A. Termination of the Areas 3 and 4 Franchises. As of the Effective Date of this Agreement, RCN-Chicago agrees to reject, pursuant to 11 U.S.C. §365, the Areas 3 and 4 Franchises, and the City agrees that such rejection is a voluntary termination by the City without any penalty or payment from RCN-Chicago or on RCN-Chicago's behalf. The City further agrees that it will not file any proof of claim seeking damages for the rejection of the Areas 3 and 4 Franchises. Upon such rejection, all of RCN-Chicago's rights and obligations pursuant to the Areas 3 and 4 Franchises shall be extinguished. As such, all rights of RCN-Chicago to use the streets and public ways of the City in Franchise Areas 3 and 4 for purposes of construction and operation of a cable television system will be terminated and the City will release, acquit and forever discharge RCN-Chicago from any and all current and future obligations set forth in the Areas 3 and 4 Franchises.

B. Modification of the Area 2 Franchise. As of the Effective Date of this Agreement, the Area 2 Franchise shall be modified as follows and assumed by RCN-Chicago pursuant to 11 U.S.C. section 365 as follows:

i. The geographic area in which RCN-Chicago shall be entitled to offer cable television services pursuant to the Area 2 Franchise shall be limited to the homes and businesses that can be served by lateral connections to RCN-Chicago's existing network

facilities in Area 2 as of the Effective Date of this Agreement. Other than the homes and businesses in Area 2 that can be served by laterals from existing network facilities, the right of RCN-Chicago to use the streets and public ways of the City in Area 2 for purposes of construction and operation of a cable television system is terminated and the City will release, acquit and forever discharge RCN-Chicago from any and all current and future network build-out obligations set forth in the Area 2 Franchise as amended herein; provided, however, that all other terms and conditions of the Franchise Agreement for Area 2 shall remain in full force and effect for so long as RCN-Chicago provides cable television service pursuant to the Area 2 Franchise, including but not limited to the requirements of Section 12 of the Area 2 Franchise as to any maintenance or repair work conducted by RCN-Chicago with respect to existing network facilities, which requirements shall also apply to any new laterals constructed by RCN-Chicago in the public rights-of-way, and Section 5 as to Insurance, Letter of Credit and Bond obligations; and provided further that the Letter of Credit required by the Area 2 Franchise shall be replenished by RCN within ten (10) days of the Effective Date of this Agreement.

ii. This Agreement is intended to and does settle all existing and future claims with respect to RCN-Chicago's construction build-out obligations in Area 2, and in the event that RCN-Chicago may in the future determine that it will not continue to provide cable television services in Area 2 pursuant to the Area 2 Franchise, as modified by this Agreement, RCN-Chicago shall be entitled to terminate the Area 2 Franchise and cease providing service to affected subscribers without penalty; provided, however, that RCN-Chicago shall not cease providing cable services in Area 2 until cable television service from an alternate cable service provider is available to affected cable television service subscribers or for six (6) months from the date of such notice, whichever is sooner; and provided further that RCN-Chicago's right to terminate the Area 2 Franchise Agreement without penalty and cease providing service in Area 2 shall not vest until at least one hundred and twenty (120) days following the Effective Date.

C. Within two (2) business days following receipt of the Payment set forth (and as defined) in Section 5 of this Agreement, the City shall certify to RCN in writing ("City Certification") that it has received the Payment and that it thereby releases any and all claim to the Corporate Surety Bonds for the Areas 3 and 4 Franchises.

D. In the event the Payment is not made, RCN-Chicago agrees that the City shall have the right on the third day after the Effective Date of the Agreement to request and receive payment from the Corporate Surety Bonds as liquidated damages. RCN-Chicago additionally agrees that it will certify to Travelers that, if the City makes such a request on the third day after the Effective Date, the City is entitled to payment of \$3,450,000 from the Corporate Surety Bonds and that none of RCN-Chicago, its parent or affiliates, successors, assigns, or agents, including any trustee in this bankruptcy case, shall assert any defense or objection to payment to the City of the \$3,450,000 from the Corporate Surety Bonds. Upon receipt of the Corporate Surety Bond payment, the Payment shall be deemed satisfied.

SECTION 5: PAYMENT.

In consideration of the modification of the Area 2 Franchise as set forth in Section 4.B of this Agreement only, (i) RCN shall pay to the City the amount of Four Million Five Hundred Thousand Dollars (\$4,500,000) ("Payment"), and (ii) RCN and the City shall enter into the IRU Agreement. The Payment shall be made as follows:

A. The City shall retain One Million Fifty Thousand Dollars (\$1,050,000) previously drawn down by the City from the Letters of Credit on February 23, 2004; and

B. RCN will pay to the City the amount of Three Million, Four Hundred and Fifty Thousand Dollars (\$3,450,000) in immediately available funds by wire transfer to the following City bank account no later than two (2) business days after the Effective Date of this Agreement:

Bank One City Main Account
Account #: 1105825
Routing #: 071000013
Attention: Mark Mitrovich

SECTION 6: REPRESENTATIONS AND WARRANTIES.

A. Subject to the terms of this Agreement, the City and RCN each represent and warrant as follows:

i. Except as authorized by this Agreement, each Party promises not to bring any additional claims, actions, suits or proceedings against any other Party, directly or indirectly, regarding or relating in any manner to the City Claims and RCN Claims, as appropriate, and each Party further covenants and agrees that this Agreement is a bar to any such claim, action, suit or proceeding including, but not limited to any preference action by RCN or any trustee appointed in the RCN Bankruptcy or the RCN-Chicago Bankruptcy;

ii. Each Party represents and warrants that it is the sole and lawful owner of all right, title and interest in all City Claims and RCN Claims, as appropriate, and that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any City Claims or RCN Claims. Each Party to this Agreement shall indemnify the other, shall defend the other, and shall hold the other harmless from and against any claims based upon or arising in connection with any such prior assignment, transfer, lien and/or right, or any such purported assignment, transfer, lien and/or right;

iii. The undersigned represent and warrant to each other that they are duly authorized to execute this Agreement on behalf of the applicable Party hereto;

iv. The Parties represent and warrant that they have read and understand this Agreement, that they intend to be legally bound by it, and that its terms, provisions and conditions have been fully explained to them by their attorneys; and

v. Each Party represents and warrants that, subject to the approvals set forth in Section 3 of this Agreement, it is authorized to perform its obligations in accordance with the terms of this Agreement.

B. RCN represents and warrants that it will use its best efforts to obtain all necessary approvals, including Bankruptcy Court approval, for this Agreement.

C. The City represents and warrants that it will use its best efforts to obtain all necessary City Approvals for this Agreement.

D. The warranties and representations of this Agreement are deemed to survive the Effective Date of this Agreement.

SECTION 7: PENDING LITIGATION.

Within five (5) business days following the receipt of the City Certification set forth in Section 4A(i) of this Agreement, RCN shall withdraw its Petition for Modification and take such actions as necessary to dismiss all Litigation with prejudice.

SECTION 8: MUTUAL RELEASES.

A. Upon the Effective Date of this Agreement, and subject to the City's receipt of the Payments set forth in Section 5 herein, the dismissal of the Litigation set forth in Section 7 herein, and the other conditions set forth in this Agreement, including but not limited to the execution of the Dark Fiber IRU Agreement, the City of Chicago Released Entities do hereby release the RCN Released Entities, and does forever discharge the City Claims as hereinabove defined in Section 2, including, but not limited to, any and all liquidated damages, penalties and/or fines assessed against RCN-Chicago by the City in the Chicago Cable Commission February 21 Resolutions (the "Release of RCN").

B. Upon the Effective Date of this Agreement and subject to the dismissal of the pending litigations set forth in Section 7 herein, the issuance by the City of the City Certification and the other conditions set forth in this Agreement, the RCN Released Entities do hereby release and forever discharge the City of Chicago Released Entities from all RCN Claims against the City of Chicago Released Entities (the "Release of the City").

C. This Agreement is intended to and does settle all RCN Claims and City Claims, and nothing contained herein shall constitute an admission by any Party as to the merits of any claims, positions or arguments that they have or might assert with respect to the disputes settled by this Agreement, and nothing in this Agreement shall be construed as an admission by any Party of any liability of any kind to any other Party.

D. Subject to the City's right to enforce the Area 2 Franchise as modified herein and the Dark Fiber IRU Agreement, the Parties agree that any and all claims and disputes settled pursuant to this Agreement shall be forever extinguished and as such shall not in any manner be used by any Party in connection with any future matters or course of dealing between the Parties,

including but not limited to the renewal, extension, amendment, assignment, transfer or other modification of existing or future cable franchise or other right-of-way use agreements.

E. These releases shall not be construed to release either the City or RCN from the terms of this Agreement.

SECTION 9: GENERAL PROVISIONS.

A. Governing Law. This Agreement shall be governed by, and enforced in accordance with the laws of the State of Illinois.

B. Benefit and Burden. The covenants, conditions, agreements, terms and provisions herein contained shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective heirs, executors, administrators, personal representatives, successors and assigns.

C. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

D. Compromise of Disputed Claims. Each of the Parties understands and agrees that this Agreement is in the nature of a settlement and compromise of RCN Claims and City Claims. Both the City and RCN intend to settle and satisfy all claims, judgments and controversies encompassed by the City Claims and RCN Claims to avoid further litigation.

E. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supercedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.

F. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

G. Amendments and Modifications. No amendment to or modification of this Agreement shall be effective until it is reduced to writing and approved and executed by all Parties to this Agreement and approved in accordance with all applicable statutory and judicial rules and procedures.

H. No Third Party Beneficiaries. No claim as a third Party beneficiary under this Agreement by any person shall be made, or be valid, against the City or RCN.

I. Additional Documents. The City and RCN agree to cooperate fully and execute all supplemental documents, and to take all additional actions that may be necessary to give full force and effect to the basic terms and intent of this Agreement.

J. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to constitute an original.

K. Attorneys' Fees and Other Costs. The Parties shall each bear and be solely responsible for their respective costs and expenses in connection with this Agreement, including but not limited to their respective attorneys' fees and other costs generated in connection with the disputes giving rise to this Agreement, and in securing any and all required approvals of this Agreement.

L. Proof of Claim Deadline. RCN shall extend the deadline for the City to file a proof of claim in the RCN-Chicago Bankruptcy through and including March 31, 2005.

[this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this ____ day of _____, 2004.

RCN CABLE TV OF CHICAGO, INC.

CITY OF CHICAGO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

RCN CORPORATION

By: 

Name: Deborah M. Kayster

Title: Sr. VP. Gen Counsel + Corp. Sec.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 12th day of November, 2004.

RCN CABLE TV OF CHICAGO, INC.

CITY OF CHICAGO

By: Thomas M McKay

By: _____

Name: Thomas M McKay

Name: _____

VP / General Manager

Title: _____

RCN CORPORATION

Name: _____

Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 12th day of November, 2004.

RCN CABLE TV OF CHICAGO, INC.

CITY OF CHICAGO

By: _____

Name: _____

Title: _____

By:  _____

Name: JACK A. PACE

Title: Assistant Corporation Counsel

RCN CORPORATION

By: _____

Name: _____

Title: _____

EXHIBIT “C”

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
D. J. Baker (JB 0085)
Frederick D. Morris (FM 6564)
Four Times Square
New York, New York 10036-6522
(212) 735-3000

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

	-----	x
	:	
In re	:	Chapter 11
	:	
RCN CORPORATION, <u>et al.</u> ,	:	Case No. 04-13638 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
	-----	x

**DECLARATION OF KRISTEN SMOOT IN SUPPORT OF
MOTION OF DEBTORS FOR APPROVAL OF SETTLEMENT
AGREEMENT BETWEEN RCN CABLE TV OF CHICAGO, INC., AND THE
CHICAGO ACCESS CORPORATION**

STATE OF ILLINOIS)
) ss:
COOK COUNTY)

Kristen Smoot declares and says:

1. I am the Director of Regulatory Affairs for RCN Corporation ("RCN").
2. I have reviewed the Motion (the "CAC Settlement Motion") of Debtors for Approval of Settlement Agreement between RCN Cable TV of Chicago,

Inc. ("RCN-Chicago") and the Chicago Access Corporation (the "CAC") filed in this Court on or about December 10, 2004.

3. Except as otherwise noted, I have personal knowledge of the factual assertions set forth in the CAC Settlement Motion and, if called as a witness, would testify competently thereto.¹

4. The facts set forth in the CAC Settlement Motion are true and correct to the best of my information, knowledge and belief.

5. I believe the settlement agreement between RCN-Chicago and the CAC is fair, reasonable, and in the best interest of the Debtors, including RCN-Chicago.

6. I also believe the terms of this settlement agreement are the result of RCN-Chicago's valid business judgment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 10, 2004, Chicago, Illinois.

/s/ Kristen Smoot
Kristen Smoot

¹ Certain of the facts set forth in the CAC Settlement Motion relate to matters within the knowledge of other employees of RCN and/or RCN-Chicago and my verification of such facts herein is based on information provided by them.

EXHIBIT “D”

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

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

----- x

**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")¹ 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

¹ 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 10, 2004

/s/Robert D. Drain
Honorable Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT “E”

Chicago Access Corporation
Attn.: Barbara Popovic, Executive Director
322 South Green Street
Chicago, IL 60607

Andrew J. Enschede, Esq.
Greenberg Traurig, LLP
(Attorneys for the City of Chicago)
77 West Wacker Drive, Suite 2500
Chicago, IL 60601

Name	Address
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ALL RACK	361 WEST 36TH STREET NEW YORK NY 10018
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