

Hearing Date: March 3, 2005 at 10:00 a.m. (Eastern)
Responses Due: February 25, 2005 at 4:00 p.m. (Eastern)

DECHERT LLP
David C. McGrail (DM 3904)
30 Rockefeller Plaza
New York, NY 10112
(212) 698-3500

Martin J. Black
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103
(215) 994-4000

Special Conflicts Counsel for the Debtors and
Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**SUMMARY SHEET FOR FINAL APPLICATION OF DECHERT LLP
FOR ALLOWANCE OF COMPENSATION FOR PROFESSIONAL SERVICES
RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED
FROM SEPTEMBER 14, 2004 THROUGH AND INCLUDING JANUARY 28, 2005**

Name of Applicant: Dechert LLP

Date of Retention: October 20, 2004 nunc pro tunc to September 14, 2004

Period for which compensation and reimbursement is sought: September 14, 2004 through and including January 28, 2005.

Total fees incurred and requested: \$131,337.40

Amount of expense reimbursement sought as actual, reasonable, and necessary: \$5,313.86

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Pursuant to Bankruptcy Code §§ 330 and 331 and Bankruptcy Rule 2016, the law firm of Dechert LLP (“Dechert”), special counsel for the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), hereby makes this final application (the “Final Application”) for an order awarding it reasonable compensation for actual and necessary services rendered to the Debtors (330.74 professional hours and 27.40 paraprofessional hours) from September 14, 2004 through and including January 28, 2005 (the “Application Period”), in the

amount of \$131,337.40, and for reimbursement of actual and necessary expenses incurred in connection therewith, in the amount of \$5,313.86, for a total of \$136,651.26.

In support thereof, Dechert respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these cases and this Application in this District 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). The statutory predicates for the relief sought herein are Bankruptcy Code §§ 330 and 331 and Bankruptcy Rule 2016.

GENERAL BACKGROUND

2. On May 27, 2004, debtors RCN Corporation, TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC, and Hot Spots Productions, Inc., filed voluntary petitions in this Court for chapter 11 protection under the Bankruptcy Code.

3. Debtor RCN Cable TV of Chicago commenced its chapter 11 case on August 5, 2004. Debtors RCN Telecom Services of Virginia, Inc., RCN Entertainment, Inc., 21st Century Telecom Services, Inc., and ON TV, Inc. commenced their chapter 11 cases on August 20, 2004.

4. On June 10, 2004, the Committee of Unsecured Creditors (the “Committee”) was appointed by the United States Trustee for the Southern District of New York (the “United States Trustee”).

5. On and after August 11, 2004, International Business Machines Corporation (“IBM”) asserted a pre-petition claim against RCN Corporation in the amount of \$37,600,000 and pre-petition claims against the other Debtors in unliquidated amounts.

6. On October 7, 2004, the Debtors filed an objection (the “IBM Objection”) to IBM’s claims.

7. On October 21, 2004, the Debtors filed their fifth omnibus objection (the “Fifth Omnibus Objection”) to claims.

8. On October 28, 2004, IBM filed a response (the “Response”) to the IBM Objection.

9. On October 29, 2004, the Debtors filed a motion (the “Estimation Motion”) to estimate IBM’s claims.

10. On November 5, 2004, the Debtors served on IBM their first request for production of documents (the “Document Request”).

11. Following a hearing held on November 23, 2004, this Court “so ordered” a stipulation (the “Stipulation”) resolving the IBM Objection, the Response, the Estimation Motion, and the Document Request. Pursuant to the Stipulation, IBM was deemed to have a \$3,000,000 allowed general unsecured claim against RCN Corporation.

12. Following a hearing held on December 2, 2004, this Court entered an order granting the Fifth Omnibus Objection.

13. The Debtors’ joint plan of reorganization was confirmed by this Court on December 12, 2004.

BACKGROUND OF THE APPLICATION

14. This Application is filed in accordance with the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Cases, dated April 19, 1995 (the “Amended Professionals Guidelines”), the Executive Office of United States Trustees’ Guidelines for Reviewing Applications for Compensation and Reimbursement of

Expenses Filed Under 11 U.S.C. § 330, dated May 17, 1996 (the “U.S. Trustee Guidelines” and together with the Amended Professionals Guidelines, the “Guidelines”), and this Court’s Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated June 22, 2004.

15. On October 20, 2004, pursuant to Bankruptcy Code § 327(e), this Court entered an order authorizing the Debtors to retain and employ Dechert as their counsel, nunc pro tunc to September 14, 2004. A true and correct copy of that order is attached hereto as Exhibit A and is incorporated herein by reference.

16. With offices in New York, Philadelphia, Washington, D.C., Boston, Charlotte, Princeton, Harrisburg, Hartford, Newport Beach, Palo Alto, San Francisco, London, Luxembourg, Brussels, Frankfurt, Munich, and Paris, Dechert is a full-service law firm with broad experience and expertise in the fields of intellectual property bankruptcy, corporate reorganization, and debtors’ and creditors’ rights, as well as in many other areas of practice.

17. Martin J. Black, a partner in the Intellectual Property Practice Group at Dechert, has had primary responsibility for this engagement. Mr. Black was assisted by various attorneys and paraprofessionals. The names and hourly rates for all such attorneys and paraprofessionals are attached hereto as Exhibit B. The Certification of Martin J. Black in support of the Application is attached hereto as Exhibit C.

18. There is no agreement or understanding between Dechert and any other person, other than members of Dechert, for the sharing of compensation to be received for services rendered in this case. Dechert represents that it has no agreement or understanding that may be prohibited by 18 U.S.C. § 155.

19. This Application does not detail every correspondence, drafting session, meeting, discussion, pleading prepared, or conference held, all research conducted, or each of the numerous tasks performed by Dechert during the Application Period. Those matters are set forth in detail in the contemporaneous time records attached hereto as Exhibit D, which, in accordance with the U.S. Trustee Guidelines, are divided into specific matters and indicate the name of the professional or paraprofessional who rendered the services, a description of the services provided, the professional's billing rate, and the amount of time (calculated primarily in tenths of an hour) expended.

SUMMARY OF REQUESTED COMPENSATION

20. During the Application Period, Dechert expended a total of 330.74 professional hours and 27.40 paraprofessional hours on services rendered on behalf of the Debtors and requests reasonable compensation in the amount of \$131,337.40 for such services. Dechert utilized its existing hourly rate structure and charges its non-bankruptcy clients for similar services performed by these professionals and paraprofessionals at the same rates with respect to similar matters.

21. During the Application Period, in rendering services to the Debtors, Dechert incurred reasonable, actual, and necessary expenses in the amount of \$5,313.86. An itemized account of such actual and necessary expenses, and a summary thereof, is attached hereto as Exhibit E. All such expenses are reflected in the books and records of Dechert, contemporaneously maintained in the ordinary course of its business.

DESCRIPTIONS OF SERVICES RENDERED

22. The following are narrative descriptions summarizing the areas to which Dechert has devoted substantial attention during the Application Period.

RESOLUTION OF IBM'S CLAIMS

23. Dechert assisted the Debtors in successfully limiting IBM's patent infringement claims to a single \$3,000,000 allowed claim against RCN Corporation, a \$34.6 million reduction in the face amount of the claim.

24. IBM's claims were based on complex patent and related issues, and Dechert analyzed those issues and identified the Debtors' best arguments with respect thereto. It engaged in extensive negotiations with IBM's counsel in an effort reach a consensual resolution of IBM's claims. Dechert also prepared for a hearing on the intellectual property and other issues surrounding IBM's claims, in the event that a consensual resolution was not reached.

25. In connection with these efforts, Dechert drafted numerous pleadings and related documents, including the IBM Objection, the Estimation Motion, the Documents Request and a corresponding protective order, a motion to expedite or compel production of documents, a detailed memorandum setting forth the relevant issues and implications of various strategies, and the Stipulation and corresponding agreement.

26. As described in the Estimation Motion, the Debtors' failure to reach a resolution with respect to IBM's claims could have significantly delayed or completely derailed the Debtors' confirmation process.

27. During the Application Period, Dechert spent 296.34 hours on resolving IBM's claims, for a fee of \$111,356.40 or 85% of the total fees incurred.

FIFTH OMNIBUS OBJECTION

28. Dechert carefully reviewed the proofs of claims that were the subject of the Fifth Omnibus Objection. After determined that such claims should be disallowed and expunged in their entirety, Dechert drafted and served the Fifth Omnibus Objection. Following a

hearing on the Fifth Omnibus Objection, this Court disallowed and expunged those claims by order dated December 2, 2004.

29. During the Application Period, Dechert spent 18.90 hours on the Omnibus Objection, for a fee of \$5,258.50 or 4% of the total fees incurred.

FEE/EMPLOYMENT APPLICATIONS

30. Dechert drafted, filed, and served its application for retention in these cases.

31. Dechert also prepared, filed, and served this Application.

32. During the Application Period, Dechert spent 43.0 hours on its fee and employment applications, for a fee of \$14,722.50 or 11% of the total fees incurred.

STATUTORY AUTHORITY

33. Bankruptcy Code § 330 provides the statutory authority for compensating attorneys and paraprofessionals employed by the estate, providing for the payment of interim compensation to, inter alia, “any professional person[s] employed under Section 327 or 1103 of [the Bankruptcy Code].”

34. Although economy in the administration of bankruptcy estates is a fundamental objective of the Bankruptcy Code, Congress did not intend “economy” to be paramount above all else:

Bankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys serving in a case under Title 11 at the same rate as the attorney ... would be compensated for comparable services other than in a case under Title 11 ... Notions of economy of the estate in fixing fees are outdated and have no place in the Bankruptcy Code.

124 Cong. Rec. H 11,089-92 (daily ed. Sept. 28, 1978) (statement of House Leader).

35. Accordingly, “compensation in bankruptcy matters [must] be commensurate with the fees awarded for comparable services in non-bankruptcy cases.” In re Ames Dep’t Stores, Inc., 76 F.3d 66, 71 (2d Cir. 1996) (internal quotation omitted). In determining the definition of “reasonable compensation” under Bankruptcy Code § 330(a)(1), courts look to the factors set forth in § 330(a)(3)(A) of the Bankruptcy Code, which provides that:

In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--

- (a) the time spent on such services;
- (b) the rates charged for such services;
- (c) whether the services were necessary to the administration of, or beneficial at the time at which the services were rendered toward the completion of, a case under this title;
- (d) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (e) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in case other than cases under this title.

36. As noted in In re Guyana Dev. Corp., 201 B.R. 462 (Bankr. S.D. Tex. 1996), Bankruptcy Code § 330(a)(3) is a codification of the factors set forth in Johnson v. Georgia Highway Express, Inc., which provided guidelines for evaluating fee applications. See Johnson, 448 F.2d 714 (5th Cir. 1974) (evaluating fee applications based on (1) time and labor required; (2) novelty and difficulty of questions presented; (3) skill required to perform legal services properly; (4) preclusion of other employment due to acceptance of case; and (5) the customary fee paid for such services in the same legal market). Under the standard set forth in

Bankruptcy Code § 330(a) and related case law, Dechert's representation of the Debtors in these cases warrants payment of its fees and reimbursement of its expenses.

37. The Court has broad discretion in deciding whether to allow, and in determining the amount of, the compensation. Matter of Nine Assocs., Inc., 76 B.R. 943, 944 (Bankr. S.D.N.Y. 1987). It may employ a "lodestar approach" to calculate awards of attorneys' fees. New York: State Ass'n for Retarded Children, Inc. v. Carey, 71 F.2d 1136, 1146 (2d Cir. 1983). The lodestar method multiplies the hours spent on a case, based on attorney time records, by a reasonable hourly rate of compensation for each attorney based on prevailing market rates for private law firms such as Dechert. In re McLean Industries, Inc., 88 B.R. 36 (Bankr. S.D.N.Y. 1988). The difficulty, complexity, and contingent nature of the case may also lead to reasonable and just compensation in excess of the amounts required by the lodestar approach. Matter of Stable Mews Assocs., 49 B.R. 395 (Bankr. S.D.N.Y. 1985); In re Chriss, 38 B.R. 655 (Bankr. S.D.N.Y. 1984).

DETERMINATION OF DECHERT'S REQUESTED FEES AND EXPENSES

38. Dechert has utilized its existing hourly rate structure and has calculated its request for compensation by multiplying the hours of time spent on services rendered on behalf of the Debtors by the hourly rate previously assigned to each attorney or paraprofessional rendering such services. Dechert respectfully submits that the fees sought herein are customary and based on its normal criteria in matters of this type and are commensurate with fees Dechert has been awarded in other Chapter 11 cases.

39. Dechert deems the fair and reasonable value of its professional services rendered during the Application Period to be \$131,337.40. Based upon the total attorneys' and paraprofessionals' time expended, and a resulting blended hourly rate for professionals of

\$366.72 per hour, Dechert believes the compensation requested herein to be reasonable and appropriate.

40. Dechert also seeks reimbursement of its actual, reasonable, and necessary out-of-pocket expenses in the aggregate amount of \$5,313.86. These expenses were incurred during the course of rendering professional services on behalf of the Debtors during the Application Period.

NOTICE

41. Notice of this Motion has been given to the United States Trustee, counsel to the Committee, counsel to the agent for the Debtors' pre-petition credit facility, the indenture trustee for the Debtors' outstanding debt securities, and those persons who filed notices of appearance in this case. The Debtors respectfully submit that such notice is sufficient under the circumstances and request that the Court find that no further notice of the relief requested herein is required.

WAIVER OF MEMORANDUM OF LAW

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

NO PRIOR APPLICATION

43. No previous application for the relief sought herein has been made to this or any other Court.

CONCLUSION

44. In accordance with the factors enumerated in Bankruptcy Code § 330(a), the amounts requested herein by Dechert are fair and reasonable given (a) the complexity of this

case; (b) the actual time expended; (c) the nature and extent of the services rendered; (d) the value of such services; and (e) the cost of comparable services other than in cases under the Bankruptcy Code.

WHEREFORE, Dechert respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit F, awarding it \$131,337.40 as the fair and reasonable value of its actual and necessary professional services rendered to the Debtors during the Application Period, (ii) awarding it \$5,313.86 as reimbursement for its actual and necessary expenses incurred during the Application Period, and (iii) awarding it such other and further relief as is just and proper.

DATED: January 28, 2005
New York New York

/s/ David C. McGrail
David C. McGrail (DM 3904)
Dechert LLP
30 Rockefeller Plaza
New York, New York 10112
(212) 698-3500

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