

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In the Matter

6 of

Case No.

04-13638

7 RCN CORPORATION,

8 Debtors.

9 -----x

10 July 30, 2004

11 United States Custom House

12 One Bowling Green

13 New York, New York 10004

14 Motion for Interim and Final Orders to

15 Establish Notification and Hearing Procedures;

16 Final Hearing of Application Authorizing the

17 Retention of the Blackstone Group LP; Hearing on

18 Retention of AP Services, LLC as Crisis Managers.

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20 B E F O R E:

21 HON. ROBERT D. DRAIN,

22 U.S. Bankruptcy Judge.
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A P P E A R A N C E S :

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Attorneys for the Debtors
Four Times Square
New York, New York 10036

BY: JAY GOFFMAN, ESQ.,
FREDERICK D. MORRIS, ESQ.

MILBANK, TWEED, HADLEY & McCLOY LLP
Attorneys for Creditors' Committee
One Chase Manhattan Plaza
New York, New York 10005

BY: DENNIS F. DUNNE, ESQ.,
DEIRDRE ANN SULLIVAN, ESQ.

SIMPSON THACHER & BARTLETT LLP
Attorneys for Blackstone Group LP
425 Lexington Avenue
New York, New York 10017

BY: KENNETH S. ZIMAN, ESQ.

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P R O C E E D I N G S :

THE COURT: RCN.

MR. GOFFMAN: Good morning, your Honor. Jay Goffman of Skadden, Arps on behalf of RCN, the debtors. We are very happy to report today that the only matters on the calendar are uncontested. We have essentially two retention matters and one continued motion for the first day.

The first motion to be would be the motion with respect to our order for setting procedures for trading equity interest. As your Honor will recall, that order was entered on an interim basis, and as part of our first day orders it was continued month to month on an interim basis based upon an initial objection by Andrews and Kurth on behalf of Wells Fargo. We have now worked out the final issues which involved with Wells Fargo. There have been some slight modifications to the proposed order to accommodate those concerns, and I'm happy to report that that order is now fully consensual to go forward.

THE COURT: Okay. On a final basis.

MR. GOFFMAN: Final basis.

THE COURT: All right. Well, in

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2 light of that and there being no other objections
3 to it, I'll grant that motion.

4 MR. GOFFMAN: Thank you, your Honor.

5 The other matters we have today are
6 really simply retention orders. I am also happy to
7 report that they are also consensual. Again, they
8 are the retentions of Alix Partners Services LLC as
9 crises managers, and the retention of Blackstone as
10 our financial advisors.

11 Again, as your Honor may recall,
12 objections were filed on the first day, again, by
13 Belkin and Wells Fargo, by Andrews and Kurth. They
14 have not filed any further objections in connection
15 with the further revised objection dates, and as I
16 recall, you felt that they were not coming to
17 prosecution with their objections.

18 The orders have been negotiated with
19 the creditors' committee. There are certain
20 modifications which have been negotiated; I'm going
21 to allow the creditors' committee to present on the
22 record those modifications. Revised orders have
23 been submitted to your Honor. I would note, your
24 Honor, that we made some additional modifications
25 last evening to the Alix Partners' order to

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2 basically conform it to the some changes that had
3 been in the Blackstone order, and I'll describe
4 them and let counsel for the committee also. But
5 basically it was designed to make it clear that the
6 circumstances under which Alix Partners might or
7 might not be able to request a success fee from
8 this court. There were certain instances where
9 they couldn't, and in the prior order they talk
10 about liquidations or conversions to Chapter 7.
11 And we make it clear that what we are talking about
12 is in the major case as opposed to if we confirm a
13 successful major case and ultimately liquidated
14 certain shells. And then there have been certain
15 final modifications that have been going on in the
16 hallway this morning on the Blackstone litigation
17 agreement, but they have, I am told, resulted in
18 agreed upon language that will be presented to the
19 court.

20 THE COURT: Okay.

21 MR. GOFFMAN: And with that, your
22 Honor, I'd like to turn it over.

23 THE COURT: Okay.

24 MR. DUNNE: Good morning, your
25 Honor. Dennis Dunne from Milbank Tweed on behalf

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2 of the official creditors' committee.

3 Let me deal with the Alix Partners'
4 retention application first. That has fewer
5 comments. Basically Alix Partners is seeking both
6 monthly fees at an hourly rate subject to 330
7 review, and a success transaction structure fee,
8 call it what you will. We have agreed that they
9 continue to get paid on a monthly basis pursuant to
10 the hourly rate set out in their application and
11 330 application, and that with respect to any fee,
12 that's deferred completely until a future
13 application. No consumption will be granted --

14 THE COURT: Success fee.

15 MR. DUNNE: Yes, success fee. No
16 consumption, will be granted or denied, we will all
17 reserve our rights to deal with it at the end of
18 the case.

19 THE COURT: All right.

20 MR. DUNNE: That takes care of Alix
21 Partners. With respect to Blackstone, there have
22 been a number of changes negotiated in the hall
23 this morning. And let me just walk through those,
24 and then we will submit an order this afternoon
25 after we can all vet the language with our clients.

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2 Basically we've reduced the
3 magnitude of the success fee down to 7.8 million.
4 That success fee will not be tied to any particular
5 services whether it ends up being a lot of exit
6 financing work at Blackstone, or an M and A
7 process, or just a structuring fee for the
8 equitization of the bonds. However you slice it,
9 it still comes out to 7.8 million dollars; it's
10 both cap and set at 7.8 million dollars.

11 There will be no fee in the event of
12 a liquidation of the estate, no success fee in the
13 event of a liquidation of the estate provided that
14 more than 50 percent of the assets are sold as a
15 going concern, there may be. And let me get to
16 that, which is if there is a trustee in Chapter 11
17 appointed or a conversion to Chapter 7 and a
18 trustee thereafter appointed, Blackstone will no
19 longer have to do any work for the estate, their
20 engagement terminates. But since they have tail
21 provision in their engagement letter they can seek
22 the payment of the tail if the triggers to it are
23 met; however, we are reserve our rights to review
24 of that under 330 for reasonableness, et cetera,
25 based on the facts and circumstances of the case at

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the time. In shorthand, they are not getting the 328 protection in those circumstances.

THE COURT: Where a trustee is appointed.

MR. DUNNE: Correct. And that being said, if we sell the assets, substantially all the assets as a going concern prior to the appointment of a trustee or conversion, their success fee of 7.8 million will be earned then.

THE COURT: So that doesn't count as liquidation.

MR. DUNNE: Correct. But not payable until we actually either have an effective date of a Chapter 11 plan or distributions commence under the a Chapter 7 plan. And with that, that's a fair amount of language changes in the order. Conceptually, I think that's it. Mr. Ziman I'm sure will correct, clarify, hog tie.

MR. ZIMAN: Good morning, your Honor. Kenneth Ziman of Simpson Thacher and Bartlett on behalf of the Blackstone Group LP. I think Mr. Dunne actually got it all right so there's no need to hog tie him.

THE COURT: Okay.

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2 MR. ZIMAN: Essentially, as I said,
3 Blackstone is prepared to work for the estate and
4 earn it's fee in the circumstances that Mr. Dunne
5 outlined, where he basically doesn't earn the fee,
6 it's basically not given.

7 THE COURT: So when you look at the
8 engagement letter, it refers to various types of
9 fees; it's now just a fee.

10 MR. ZIMAN: It's a flat 7.8 success
11 fee your Honor.

12 THE COURT: Very well. And all the
13 other provisions about the U.S. Trustee's
14 reservation of rights, the indemnification
15 provisions in the order, those are all the same.

16 MR. ZIMAN: Yes.

17 MR. DUNNE: Correct.

18 THE COURT: Well, that all appears
19 to be an improvement, as far as the estate is
20 concerned. So subject to your drafting that and
21 being comfortable with it yourselves and submitting
22 it to court, I will approve it. You don't need a
23 further hearing.

24 MR. DUNNE: Thank you.

25 MR. ZIMAN: Thank you.

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2 MR. GOFFMAN: The only other thing,
3 your Honor, is we had on presentment was the
4 debtor's motion to obtain Winston and Strawn as
5 special counsel on 327(e). Again, the language has
6 been worked out with the creditors' committee. We
7 would have just put it on by presentment, but we
8 understand the creditors' committee would like to
9 at least make a statement with respect to it to
10 make sure all the language is all agreed upon.

11 THE COURT: Well, when you say the
12 language agreed upon, the language in what was
13 presented is agreed upon or is there a new order?

14 MR. GOFFMAN: It was the order that
15 was sent down yesterday, your Honor.

16 THE COURT: So we have a copy.

17 MR. GOFFMAN: The language has not
18 been changed from what we sent down yesterday.

19 THE COURT: Okay.

20 MR. DUNNE: Your Honor Dennis Dunn
21 on behalf of the committee. Again, just a few
22 points, just for the record. The committee has
23 agreed in the spirit of cooperation to the
24 retention of Winston and Strawn as counsel to the
25 board of directors. We have made a couple of

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2 changes in the order. One is we've agreed to
3 narrow the scope to avoid any duplication with
4 other professionals retained. We reviewed their
5 fees to date; we've asked for a bunch of that and
6 it turned out to be unworkable, so we are going to
7 rely on the normal channels of 330 review for their
8 fees.

9 Last week -- there's a new paragraph
10 which basically deals with the potential for future
11 adversity. We understand that currently Winston
12 and Strawn doesn't represent any of the directors
13 in any litigation, but there is the possibility
14 that some action is brought against the board in
15 the future; we've all reserved our right on that.
16 There's a paragraph at the end of the order simply
17 saying that if that occurs we can come back to your
18 Honor and take a look at that adversity, and then
19 disqualified on a perspective basis or not.
20 Winston reserved their right to argue if not, and
21 if their service hasn't developed, we will be back
22 in front of you, but we hope that doesn't happen.
23 And I think that's it.

24 THE COURT: Okay.

25 MR. GOFFMAN: With that, your Honor,

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if we may hand up the orders.

THE COURT: Yes, that's fine.

MR. GOFFMAN: Thank you, your Honor.

And as your Honor knows, we've
adjourned the motion with respect to the protocol.
We hope and expect to work that out over the next
few days.

THE COURT: Okay, very good.

MR. GOFFMAN: Thank you, your Honor.

MR. DUNNE: Thank you, your Honor.

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C E R T I F I C A T E

STATE OF NEW YORK }
 } ss.:
COUNTY OF WESTCHESTER }

I, Denise Nowak, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2004.

DENISE NOWAK