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2 UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 RCN CABLE TV OF CHICAGO, INC. et al.,
Plaintiffs,

Case No.
04-03666

5 vs.
6 CITY OF CHICAGO,
Defendants.

7 -----x
8 August 6, 2004
9 United States Custom House
One Bowling Green
10 New York, New York 10004

11 Motion for Temporary Restraining Order;
12 Motion for Preliminary Injunction.

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14
15 UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

16 -----x
17 In the Matter

18 of Case No.
19 RCN CORPORATION, 04-13638
20 Debtors.

21 -----x
22 Motion to Amend Order (1) Authorizing
23 Debtors' Continued use of Existing Bank Account and
24 Cash Management System, and (2) Authorizing
25 Intercompany Transactions filed by RCN Corporation.

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

4 -----x

In the Matter

5 of

Case No.

6 04-15120

RCN CABLE TV OF CHICAGO, INC.,

7 Debtors.

8 -----x

9
10 Motion for Joint Administration; Motion
11 to Amend Order (1) Authorizing Debtors' Continued
12 Use of Existing Bank Account and Cash Management
13 System, and (2) Authorizing Intercompany
14 Transactions filed by RCN Corporation; Notice of
15 Hearing of Matters Scheduled for Hearing.

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18 B E F O R E:

HON. ROBERT D. DRAIN,

19
20 U.S. Bankruptcy Judge.

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2 A P P E A R A N C E S:
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1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.

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

3 THE COURT: RCN Cable TV of Chicago.

4 MR. ST. CLAIR: Good morning, your
5 Honor. Gregg St. Clair with Skadden, Arps, Meagher
6 and Flom. We represent RCN Corporation and its
7 affiliated debtor subsidiaries.

8 First of all, your Honor, we want to
9 thank the court for making this time available on
10 such short notice to hear this matter this morning.
11 There were really two matters on the docket. The
12 first one is the first day hearing for the RCN
13 Cable TV of Chicago, the first day hearing. The
14 second is the adversary proceeding and related
15 request for a TRO.

16 I'm glad to say that I believe we
17 have an announcement for the adversary proceeding
18 and won't need to litigate that this morning. So I
19 would propose, your Honor, if it's acceptable with
20 the court to take up the first day hearing first
21 with RCN Chicago.

22 THE COURT: That's fine.

23 MR. CLARK: Your Honor, yesterday
24 RCN Chicago filed a voluntary Chapter 11 petition.
25 RCN Chicago is wholly owned indirect subsidiary of

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.
2 RCN Corporation. RCN Chicago is not an operating
3 entity, it doesn't have any employees, it is a
4 party to several executory contracts, but otherwise
5 it doesn't conduct any business operations. The
6 RCN company in Chicago operations are conducted
7 through RCN's parent, RCN Telecom Services of
8 Illinois, which is not a Chapter 11 debtor.

9 RCN Chicago is a party to several
10 finance agreements with the city of Chicago,
11 pursuant to which RCN Chicago has certain rights
12 and is subject to certain obligations with respect
13 to providing cable TV service to the Chicago
14 metropolitan area. The primary reason for RCN
15 Chicago's filing is that it has been unable to
16 resolve a dispute that it has with respect to those
17 franchise agreements with the city of Chicago.

18 Your Honor, what the debtors would
19 like to do essentially is to add the subsidiary RCN
20 Chicago to the existing jointly administered
21 Chapter 11 cases and to make the relief that's
22 already been entered with respect to those cases
23 applicable to the new RCN Chicago debtors. We
24 think most of this we can accomplish through a
25 motion which we will serve out on notice which we

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.
2 plan to file and serve this afternoon. But there
3 are two issues that we thought we needed to address
4 in the first days hearing, both of which are the
5 motions that are before you for joint
6 administration and cash management procedures.

7 We think both of these really are
8 just procedural, they don't affect substantive
9 rights. With respect to joint administration, we
10 are simply asking that RCN Chicago be added to the
11 jointly administered cases of its affiliates and be
12 administered together. With respect the to cash
13 management, the only change is really to advise the
14 definition of debtors in the existing cash
15 management that your Honor already entered to
16 include RCN Chicago. The court has already
17 approved the cash management system that the debtor
18 and non debtors use, the only effect is now to take
19 RCN Chicago from the definition of a non debtor
20 subsidiary to a debtor subsidiary, but there's no
21 change to the cash management itself.

22 Both of these motions were provided
23 yesterday to the U.S. Trustee, the counsel to the
24 committee and counsel to the lenders. The U.S.
25 Trustee has asked us to represent to your Honor

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.
2 that they have reviewed the motions and have no
3 objection to the relief requested.

4 So unless the court has any
5 questions or would like any additional detail on
6 the motions, we would rely on the affidavit that we
7 provided of the chief restructuring officer, Mr.
8 Horvath, for the factual party, and ask that the
9 orders be entered.

10 THE COURT: Okay. Does anyone have
11 anything to say on these two motions?

12 MR. KADISH: Your Honor, let me just
13 be heard briefly. Allen Kadish, Greenberg Traurig
14 on behalf of the City of Chicago. I'm here this
15 morning on the TRO morning. I frankly didn't know
16 that the first day hearings were being held. I
17 don't know that the city would have any issues with
18 respect to these procedural motions. Clearly there
19 was no notice provided. So if there's any other
20 business transaction this morning, it might be
21 appropriate to give the city five days or ten days
22 to show up with any objections to the orders as
23 entered, I might suggest.

24 THE COURT: Well, these are really
25 innocuous motions. The procedural consolidation

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.
2 motion is just that, it's procedural not
3 substantive and as such, no substantive rights are
4 affected. And the cash management system is the
5 existing system. It just for purposes of really
6 just acknowledging the fact, which is that there's
7 been a filing, it shifts the definition from non
8 debtor to debtor. So I think these are truly
9 innocuous motions.

10 MR. KADISH: I don't know if there
11 were any other motions.

12 THE COURT: There are no other
13 motions on for today, so I think you will get a
14 notice on anything else.

15 MR. ST. CLAIR: That's correct, your
16 Honor, we'll serve a note on the motions.

17 THE COURT: All right. I've
18 reviewed the motions, and consistent with what I
19 just said, I think these are really in the nature
20 of reasonable procedural devices to actually move
21 to the next stage of the case, which is giving
22 people notice on anything that's more substantive
23 and in complying with the existing cash management
24 order, and recognizing obviously that this debtor
25 has filed for Chapter 11. So I'll approve the

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.

2 motion.

3 MR. ST. CLAIR: Thank you, your
4 Honor.

5 Also, yesterday, your Honor, we
6 filed pro hac vice motions for several Skadden Arps
7 attorneys, including my partner, Tony Clark, and
8 with the court's permission, I'll let Mr. Clark
9 address the court on the adversaries.

10 THE COURT: I saw those motions and
11 those will be entered today.

12 MR. ST. CLAIR: Thank you, your
13 Honor.

14 MR. CLARK: Good morning, your
15 Honor. Tony Clark with Skadden Arps for the
16 plaintiffs in the adversary proceeding. As Mr. St.
17 Clair has indicated, we have resolved at least
18 today's fight, the TRO. Mr. Kadish and I spoke
19 briefly before the hearing. We've reached
20 agreement that we would ask the court to enter a
21 stand still order that we will draft up and submit
22 to the court later today or on Monday. Essentially
23 it would say that the city of Chicago will take no
24 objection action pending a hearing of a preliminary
25 application and your Honor's determination of that

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.
2 application. The city will take no action to draw
3 down to the bonds, the surety bonds that you've
4 heard about and seen in the papers. RCN will take
5 no action to impair those bonds or will keep those
6 bonds in place to that they are there in the event
7 that the city has rights under those bonds, and
8 otherwise the parties reserve their rights.

9 THE COURT: All right.

10 MR. CLARK: So all we are looking
11 today, and Mr. Kadish can confirm or correct what I
12 just said, but we would ask the court, if you can,
13 to look at the calendar and see where you can hear
14 us on the preliminary injunction; we have a little
15 bit of discovery we need to take between now and
16 then, but I think we can be heard fairly promptly.

17 THE COURT: All right.

18 MR. KADISH: Your Honor, I think
19 that's right, and I appreciate the way it was
20 described, and we will go back and work on an
21 order, hopefully a short, precise to the point
22 order. And that simply brings us to a preliminary
23 hearing. But it's worthwhile for the court to
24 understand today that the city reserves all its
25 rights and positions. We want the cable contractor

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.
2 to go to work every day and perform. If daily
3 fines are appropriate, they will continue to
4 accrue. If ultimately a decision is rendered the
5 other way, then it will be retroactive, but all the
6 rights of all the parties will stay in place until
7 a preliminary hearing. We do contest the facts or
8 the factual presentation. We do contest the legal
9 arguments made.

10 Your Honor, at this point we don't
11 even know if jurisdiction is proper for these
12 disputes. The point is if there is a problem of
13 immediacy and emergency is that they are afraid the
14 city will resort to the bond, the city won't,
15 pending the preliminary hearing. All other rights
16 will have to be reserved and presented then in the
17 litigation going forward.

18 THE COURT: Okay. And am I right
19 from your remarks that it's just bonds now, that
20 the letters of credit are fully drawn?

21 MR. CLARK: The letters of credit
22 were drawn down, I don't know what time, probably
23 about by 9:05 on that Monday morning following the
24 February Saturday meeting when the fines were
25 assessed, so they are gone.

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.

2 THE COURT: Okay.

3 MR. CLARK: There are letters of
4 credit out there, your Honor, just so that we are
5 all clear, that are providing collateral for the
6 bonds, but the letters of credit that were directly
7 for the benefit of the city have been drawn.

8 THE COURT: Okay. And I'm right
9 also that the debtor is reserving all of its
10 rights, including its point that the continuance of
11 the fines violates its automatic stay.

12 MR. CLARK: That's correct, your
13 Honor.

14 THE COURT: All right. Had you two
15 of you discussed a date for preliminary injunction
16 hearing?

17 MR. CLARK: We are had not, your
18 Honor. We just discussed the fact that he's going
19 to want some discovery from us and we're going to
20 want some discovery from him, but we haven't really
21 gotten into the details of how much time we need.
22 I would think a preliminary injunction, depending
23 on whether or not your Honor wants to hear live
24 witnesses on that. If you do I would think a
25 three, four hour hearing, if you don't, probably a

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.
2 up couple of hours for presentation and argument.

3 THE COURT: Well, one of the points
4 the debtor makes is the 525 issue, so that may
5 require live testimony.

6 MR. CLARK: Okay.

7 THE COURT: I don't know at this
8 point, but it may.

9 MR. CLARK: Then I would think, your
10 Honor, a half a day for a hearing would probably be
11 sufficient.

12 THE COURT: Are you looking for
13 something toward the end of September?

14 MR. CLARK: If it wasn't exactly at
15 the end of September. September 30th sticks in my
16 mind as a date I know I have a conflict with, but
17 any time prior to that would be fine, your Honor.

18 MR. KADISH: Your Honor, we were
19 looking for something a litter short, even if the
20 court could accommodate ten days.

21 THE COURT: I have an opening on
22 Thursday the 23rd.

23 MR. KADISH: Of August?

24 THE COURT: Of September. And the
25 reason I'm putting it out a little bit is not only

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.
2 because of discovery, but I think the parties may
3 want to -- you raised it yourself, they may want to
4 raise jurisdictional issues, at least as to certain
5 of the relief sought, and I think it would be
6 useful to have just a preliminary injunction
7 hearing. You may want to submit additional papers
8 and response papers to whatever the city enters.

9 MR. CLARK: Your Honor, Mr. Kadish
10 raised the issue, it's an issue we are aware of, we
11 have researched it and looked at it. And candidly,
12 given the way the statutes are drafted and given
13 the way Section 108 of the Bankruptcy Code works, I
14 think it's in our interests, as well as the city's
15 if that issue is going to be raised, to have the
16 issue raised and resolved recently promptly. So
17 that if we end up -- I don't think we will, but if
18 we ended up having to go back out to Illinois, we
19 could do it in time.

20 THE COURT: Okay.

21 MR. CLARK: I think we've got two
22 years to do it, your Honor, but somebody may argue
23 for a shorter period of time.

24 MR. KADISH: Your Honor, we just
25 haven't gotten into it, and we anticipate there are

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.
2 going to be some substantive arguments here.

3 THE COURT: Does the 23rd work for
4 your client on that last point?

5 MR. CLARK: It works for me, your
6 Honor.

7 THE COURT: Okay.

8 MR. KADISH: I don't know; is there
9 a way we can bring it in a little? I don't know
10 that the city -- we certainly were expecting
11 something along the order of ten days or ten days
12 plus, and not a month and a half.

13 THE COURT: Well, you know, I think
14 given the issues involved in this, they may want
15 ten days plus at this point, but it may make sense
16 to think about this a little more.

17 MR. CLARK: With a little extra
18 time, your Honor, maybe the whole thing goes away.
19 We're going to try.

20 THE COURT: Well, maybe. I think
21 the 23rd; you have the republican convention where
22 I don't think anyone is going to be flying into New
23 York at the end of the month; and then --

24 MR. KADISH: Your Honor.

25 THE COURT: -- things are fairly

1 RCN CORPORATION - RCN CABLE TV OF CHICAGO, INC.
2 busy the week before the 23rd.

3 MR. KADISH: Understood. And no
4 disrespect to the court. Let me just make sure
5 that that sits well with our client as we prepare
6 an agreed order this afternoon.

7 THE COURT: Okay.

8 MR. KADISH: Thank you.

9 MR. CLARK: What time is that, your
10 Honor?

11 THE COURT: 10:00.

12 MR. CLARK: That's all we have, your
13 Honor. Thank you very much.

14 MR. KADISH: Thank you. The.

15 THE COURT: The pretrial conference
16 on the adversary will be on the same date. Things
17 will be a lot clearer at that point, I'm sure, on
18 the hearing.

19 MR. CLARK: Very good.

20 MR. KADISH: Thank you, Judge.

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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