

SWIDLER BERLIN LLP  
 Special Regulatory Counsel  
 3000 K Street N.W., Suite 300  
 Washington, D.C. 20007  
 202-424-7500  
 Andrew D. Lipman  
 Jean L. Kiddoo

*Hearing Date: March 3, 2005 at 10:00 AM*  
*Objection Deadline: February 25, 2005 at 4:00 PM*

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 PURSUANT TO UNITED STATES TRUSTEE GUIDELINES  
 FOR REVIEWING APPLICATIONS FOR COMPENSATION  
 AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. § 330**

**SECOND AND FINAL APPLICATION**

**NAME OF APPLICANT:** Swidler Berlin LLP (formerly Swidler Berlin Shereff  
 Friedman, LLP)  
**TIME PERIOD:** Approval of Interim Compensation for period from October 1,  
 2004 through and including December 23, 2004 and Final  
 Compensation for period from May 27, 2004 through and  
 including December 23, 2004  
**ROLE IN CASE:** Special Regulatory Counsel  
**DATE OF RETENTION** June 22, 2004 *nunc pro tunc* to May 27, 2004  
**CURRENT APPLICATION:** Fees Requested: \$269,799.50  
 Expenses Requested: \$9,043.32  
**PRIOR APPLICATIONS:** Fees Previously Requested: \$83,335.75  
 Fees Previously Awarded: \$66,668.60  
 Expenses Previously Requested: \$1,694.31  
 Expenses Previously Awarded: \$1,694.31

**SUMMARY FEES – SECOND INTERIM PERIOD**

<b>Name of Professional</b>	<b>Title</b>	<b>Department</b>	<b>Year Admitted</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Amount</b>
Andrew D. Lipman	Partner	Telecommunications, Media and Technology	1977	8.00	\$540.00	\$4,320.00
Jean L. Kiddoo	Partner	Telecommunications, Media and Technology	1980	314.20	505.00	158,671.00
				24.30	252.50	6,135.75
Catherine Wang	Partner	Telecommunications, Media and Technology	1986	11.30	500.00	5,650.00
Elise Scherr Frejka	Associate	Bankruptcy	1990	4.50	410.00	1,845.00
Laurie Elise Dieterich	Of Counsel	Telecommunications, Media and Technology	1987	14.60	390.00	5,694.00
Charles A. Rohe	Of Counsel	Telecommunications, Media and Technology	1989	0.30	385.00	115.50
Edward S. Quill	Associate	Telecommunications, Media and Technology	1995	5.80	350.00	2,030.00
M. Renee Britt	Legal Assistant	Telecommunications, Media and Technology	N/A	11.10	175.00	1,942.50
Lagan Srivastava	Legal Assistant	Bankruptcy	N/A	0.50	120.00	60.00
				394.60		\$186,463.75

<b>Professionals</b>	<b>Blended Rate</b>	<b>Hours Billed</b>	<b>Compensation</b>
Partners	\$488.48	357.80	\$174,776.75
Of Counsel	389.90	14.90	5,809.50
Associates	376.21	10.30	3,875.00
Support Staff		11.60	2,002.50
<b>BLENDED RATE</b>	\$472.54	394.60	\$186,463.75

**SUMMARY FEES – SECOND INTERIM PERIOD**

**RCN REGULATORY WORK**

<b>Name of Professional</b>	<b>Title</b>	<b>Department</b>	<b>Year Admitted</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Amount</b>
Andrew D. Lipman	Partner	Telecommunications, Media and Technology	1977	8.00	\$540.00	\$4,320.00
Jean L. Kiddoo	Partner	Telecommunications, Media and Technology	1980	24.70	505.00	12,473.50
				4.80	252.50	1,212.00
Catherine Wang	Partner	Telecommunications, Media and Technology	1986	11.30	500.00	5,650.00
Elise Scherr Frejka	Associate	Bankruptcy	1990	4.50	410.00	1,845.00
Laurie Elise Dieterich	Of Counsel	Telecommunications, Media and Technology	1987	1.40	390.00	546.00
Edward S. Quill	Associate	Telecommunications, Media and Technology	1995	5.80	350.00	2,030.00
M. Renee Britt	Legal Assistant	Telecommunications, Media and Technology	N/A	11.10	175.00	1,942.50
Lagan Srivastava	Legal Assistant	Bankruptcy	N/A	0.50	120.00	60.00
				72.10		\$30,079.00

<b>Professionals</b>	<b>Blended Rate</b>	<b>Hours Billed</b>	<b>Compensation</b>
Partners	\$484.74	48.80	\$23,665.50
Of Counsel	390.00	1.40	546.00
Associates	376.21	10.30	3,875.00
Support Staff		11.60	2,002.50
<b>BLENDED RATE</b>	\$417.18	72.10	\$30,079.00

**SUMMARY FEES – SECOND INTERIM PERIOD**

**CHICAGO LITIGATION WORK**

<b>Name of Professional</b>	<b>Title</b>	<b>Department</b>	<b>Year Admitted</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Amount</b>
Jean L. Kiddoo	Partner	Telecommunications, Media and Technology	1980	289.50	\$505.00	\$146,197.50
				19.50	252.50	4,923.75
Laurie Elise Dieterich	Of Counsel	Telecommunications, Media and Technology	1987	13.20	390.00	5,148.00
Charles A. Rohe	Of Counsel	Telecommunications, Media and Technology	1989	0.30	385.00	115.50
				322.50		\$156,384.75

<b>Professionals</b>	<b>Blended Rate</b>	<b>Hours Billed</b>	<b>Compensation</b>
Partners	\$489.06	309.00	\$151,121.25
Of Counsel	389.89	13.50	5,263.50
<b>BLENDED RATE</b>	\$484.91	322.50	\$156,384.75

**SUMMARY EXPENSES – SECOND INTERIM PERIOD**

Description	Amount
Delivery Services	\$18.84
Federal Express	210.44
Photocopy & Printing	56.40
Postage	11.56
Publication/Subscriptions	1.54
Telephone	170.74
Travel/Airfare	3,486.00
Travel/Lodging	2,330.92
Travel/Meal Expenses	483.42
Travel/Parking	292.00
Travel/Taxis	279.75
Travel/Telephone	5.90
Travel/Tips	1.50
<b>TOTAL EXPENSES</b>	<b>\$7,349.01</b>

**RCN REGULATORY WORK - SECOND INTERIM PERIOD**

<b>Description</b>	<b>Amount</b>
Delivery Services	\$18.84
Federal Express	164.62
Photocopy & Printing	55.00
Postage	11.56
Publication/Subscriptions	0.77
Telephone	5.35
Travel/Airfare	233.00
Travel/Lodging	204.06
Travel/Parking	32.00
Travel/Taxis	4.00
<b>TOTAL EXPENSES</b>	<b>\$729.20</b>

**CHICAGO LITIGATION WORK - SECOND INTERIM PERIOD**

<b>Description</b>	<b>Amount</b>
Federal Express	45.82
Photocopy & Printing	1.40
Publication/Subscriptions	0.77
Telephone	165.39
Travel/Airfare	3,253.00
Travel/Lodging	2,126.86
Travel/Meal Expenses	483.42
Travel/Parking	260.00
Travel/Taxis	275.75
Travel/Telephone	5.90
Travel/Tips	1.50
<b>TOTAL EXPENSES</b>	<b>\$6,619.81</b>

**SUMMARY FEES**

**ALL FEE PERIODS**

<b>Name of Professional</b>	<b>Title</b>	<b>Department</b>	<b>Year Admitted</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Amount</b>
Andrew D. Lipman	Partner	Telecommunications, Media and Technology	1977	20.40	\$540.00	\$11,016.00
Gerald Adler	Partner	Corporate	1982	0.30	520.00	156.00
Richard A. Goldberg	Partner	Corporate	1978	6.50	520.00	3,380.00
Scott M. Zimmerman	Partner	Corporate	1984	0.40	520.00	208.00
Jean L. Kiddoo	Partner	Telecommunications, Media and Technology	1980	438.60	505.00	221,493.00
				38.20	252.50	9,645.50
Catherine Wang	Partner	Telecommunications, Media and Technology	1986	11.30	500.00	5,650.00
Russell M. Blau	Partner	Telecommunications, Media and Technology	1982	0.80	495.00	396.00
Elise Scherr Frejka	Associate	Bankruptcy	1990	4.50	41.00	1,845.00
Laurie Elise Dieterich	Of Counsel	Telecommunications, Media and Technology	1987	28.80	390.00	11,232.00
Charles A. Rohe	Of Counsel	Telecommunications, Media and Technology	1989	1.30	385.00	500.50
Edward S. Quill	Associate	Telecommunications, Media and Technology	1995	5.80	350.00	2,030.00
M. Renee Britt	Legal Assistant	Telecommunications, Media and Technology	N/A	12.50	175.00	2,187.50
Lagan Srivastava	Legal Assistant	Bankruptcy	N/A	0.50	120.00	60.00
				569.90		\$269,799.50

**BLENDED RATE**

<b>Professionals</b>	<b>Blended Rate</b>	<b>Hours Billed</b>	<b>Compensation</b>
Partners	\$487.80	516.50	\$251,944.50
Of Counsel	389.78	30.10	11,732.50
Associates	376.21	10.30	3,875.00
Support Staff		13.00	2,247.50
<b>BLENDED RATE</b>	\$480.60	569.90	\$269,799.50

**SUMMARY FEES – ALL FEE PERIODS**  
**RCN REGULATORY WORK**

<b>Name of Professional</b>	<b>Title</b>	<b>Department</b>	<b>Year Admitted</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Amount</b>
Andrew D. Lipman	Partner	Telecommunications, Media and Technology	1977	20.40	\$540.00	\$11,016.00
Gerald Adler	Partner	Corporate	1982	0.30	520.00	156.00
Richard A. Goldberg	Partner	Corporate	1978	6.50	520.00	3,380.00
Scott M. Zimmerman	Partner	Corporate	1984	0.40	520.00	208.00
Jean L. Kiddoo	Partner	Telecommunications, Media and Technology	1980	107.20	505.00	54,136.00
				7.20	252.50	1,818.00
Catherine Wang	Partner	Telecommunications, Media and Technology	1986	11.30	500.00	5,650.00
Russell M. Blau	Partner	Telecommunications, Media and Technology	1982	0.80	495.00	396.00
Elise Scherr Frejka	Associate	Bankruptcy	1990	4.50	41.00	1,845.00
Laurie Elise Dieterich	Of Counsel	Telecommunications, Media and Technology	1987	10.00	390.00	3,900.00
Edward S. Quill	Associate	Telecommunications, Media and Technology	1995	5.80	350.00	2,030.00
M. Renee Britt	Legal Assistant	Telecommunications, Media and Technology	N/A	12.50	175.00	2,187.50
Lagan Srivastava	Legal Assistant	Bankruptcy	N/A	0.50	120.00	60.00
				187.40		\$86,782.50

**BLENDED RATE**

<b>Professionals</b>	<b>Blended Rate</b>	<b>Hours Billed</b>	<b>Compensation</b>
Partners	\$498.12	154.10	\$76,760.00
Of Counsel	390.00	10.00	3,900.00
Associate	376.21	10.30	3,875.00
Support Staff		13.00	2,247.50
<b>BLENDED RATE</b>	\$463.09	187.40	\$86,782.50



**SUMMARY FEES – ALL FEE PERIODS**

**CHICAGO LITIGATION WORK**

<b>Name of Professional</b>	<b>Title</b>	<b>Department</b>	<b>Year Admitted</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Amount</b>
Jean L. Kiddoo	Partner	Telecommunications, Media and Technology	1980	331.40	\$505.00	\$167,357.00
				31.00	252.50	7,827.50
Laurie Elise Dieterich	Of Counsel	Telecommunications, Media and Technology	1987	18.80	390.00	7,332.00
Charles A. Rohe	Of Counsel	Telecommunications, Media and Technology	1989	1.30	385.00	500.50
				382.50		\$183,017.00

**BLENDED RATE**

<b>Professionals</b>	<b>Blended Rate</b>	<b>Hours Billed</b>	<b>Compensation</b>
Partners	\$483.40	362.40	\$175,184.50
Of Counsel	389.68	20.10	7,832.50
<b>BLENDED RATE</b>	478.48	382.50	\$183,017.00

**SUMMARY EXPENSES – ALL FEE PERIODS**

Description	Amount
Delivery Services	\$63.03
Federal Express	210.44
Parking	7.65
Photocopy & Printing	162.00
Postage	28.35
Publication/Subscriptions	1.54
Secretarial Services	10.00
Telephone	180.18
Travel/Airfare	4,333.50
Travel/Lodging	2,672.66
Travel/Meal Expenses	574.82
Travel/Parking	337.00
Travel/Taxis	454.75
Travel/Telephone	5.90
Travel/Tips	1.50
<b>TOTAL EXPENSES</b>	<b>\$9,043.32</b>

**SUMMARY EXPENSES – ALL FEE PERIODS**

**RCN REGULATORY WORK**

Description	Amount
Delivery Services	\$18.84
Federal Express	\$208.81
Parking	7.65
Photocopy & Printing	156.00
Postage	15.90
Publications/Subscriptions	0.77
Secretarial Services	10.00
Telephone	9.67
Travel/Airfare	847.50
Travel/Lodging	545.80
Travel/Meal Expenses	80.41
Travel/Parking	77.00
Travel/Taxis	159.00
<b>TOTAL EXPENSES</b>	<b>\$2,137.35</b>

**SUMMARY EXPENSES –ALL FEE PERIODS**

**CHICAGO LITIGATION**

Description	Amount
Federal Express	45.82
Photocopy & Printing	6.00
Postage	12.45
Publications/Subscriptions	0.77
Telephone	170.51
Travel/Airfare	3,486.00
Travel/Lodging	2,126.86
Travel/Meal Expenses	494.41
Travel/Parking	260.00
Travel/Taxis	295.75
Travel/Telephone	5.90
Travel/Tips	1.50
<b>TOTAL EXPENSES</b>	<b>\$6,905.97</b>

**SUMMARY BY TASK**

**ALL FEE PERIODS**

Task Code	Fees	Expenses
RCN Regulatory Work	\$86,782.50	\$2,137.35
Chicago Litigation Work	183,017.00	6,905.97
Total	\$269,799.50	\$9,043.32

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**SECOND AND FINAL APPLICATION OF SWIDLER BERLIN LLP,  
AS SPECIAL REGULATORY COUNSEL, FOR FINAL ALLOWANCE OF  
COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND FOR  
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED  
FROM MAY 27, 2004 THROUGH AND INCLUDING DECEMBER 23, 2004**

TO THE HONORABLE ROBERT D. DRAIN,  
UNITED STATES BANKRUPTCY JUDGE:

Swidler Berlin LLP (formerly Swidler Berlin Shereff Friedman, LLP) (“Swidler”), as Special Regulatory Counsel, for RCN Corporation (“RCN”), and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), submits its second and final application (the “Final Application”) pursuant to sections 330(a) and 331 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for a final allowance of compensation for professional services rendered by Swidler for the period commencing May 27, 2004, through and including December 23, 2004 (the “Compensation Period”), and for reimbursement of its actual and necessary expenses incurred during the Compensation Period, respectfully represents:

## **Background**

1. On May 27, 2004 (the “Petition Date”), the Debtors filed with this Court voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are continuing to possess their property and manage their businesses under sections 1107 and 1108 of the Bankruptcy Code.

2. On the Petition Date the Debtors sought authority to retain Swidler as Special Regulatory Counsel. By Final Order dated June 22, 2004, the Debtors were authorized to retain Swidler as Special Regulatory Counsel effective *nunc pro tunc* as of the Petition Date.

3. On December 8, 2004, this Court entered its Findings of Fact, Conclusions of Law and Order Confirming (the “Confirmation Order”) the Joint Plan of Reorganization (the “Plan”).

4. On December 21, 2004 (the “Effective Date”), the plan became effective.

## **Summary of Professional Compensation and Reimbursement of Expenses Requested**

5. This Application has been prepared in accordance with the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases adopted on April 19, 1995 (the “Local Guidelines”), and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, adopted on January 30, 1996 (the “UST Guidelines”). Pursuant to the Local Guidelines, a certification regarding compliance with the same is attached hereto as Exhibit A.

6. Swidler seeks allowance of final compensation for professional services rendered as Special Regulatory Counsel during the Compensation Period in the aggregate amount of \$269,799.50, and for reimbursement of expenses incurred in the rendition of such services in the

amount of \$9,043.32. During the Compensation Period, Swidler attorneys and paraprofessionals expended a total of 569.90 hours for which compensation is requested.

7. There is no agreement or understanding between Swidler and any other person, other than members of the firm, for the sharing of compensation for services rendered in this case.

8. The fees charged by Swidler in this case are billed in accordance with its existing billing rates and procedures in effect during the Compensation Period. The rates Swidler charges for the services rendered by its professionals and paraprofessionals in these Chapter 11 cases are the same rates Swidler charges for professional and paraprofessional services rendered in comparable non-bankruptcy related matters. Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable non-bankruptcy cases in a competitive national legal market.

9. Pursuant to the UST Guidelines, annexed hereto as Exhibit B are schedules setting forth all Swidler professionals and paraprofessionals who have performed services in these Chapter 11 cases during the Compensation Period, the capacity in which each such individual is employed by Swidler, the department in which each individual practices, the hourly billing rate charged by Swidler for services performed by such individual, the aggregate number of hours expended in this matter and the fees billed therefore, allocated by discrete task code, and the year in which each professional was first licensed to practice law.

10. Annexed hereto as Exhibit C are schedules specifying the categories of expenses for which Swidler is seeking reimbursement, allocated by discrete task code, and the amounts for each such expense category.

11. Swidler maintains computerized records of the time spent by all Swidler attorneys and paraprofessionals in connection with the rendition of services in these Chapter 11 cases. Annexed hereto as Exhibit D are contemporaneously maintained time entries for each individual providing services during the period October 1, 2004 through and including December 23, 2004. Included herein and made a part of Exhibit D is the expense detail required by the UST Guidelines.

12. Pursuant to the terms of the Order of this Court establishing procedures for monthly compensation and reimbursement of expenses of professionals, dated June 22, 2004, Swidler has submitted three (3) monthly fee statements (the "Fee Statements") for the period of October 1, 2004 through and including December 23, 2004 as follows:

<u>Invoice No.</u>	<u>Fee Statement Date</u>	<u>Month</u>	<u>Billed Amount</u>	<u>Payment</u>
277399	11/19/2004	October 2004	\$11,667.50	\$9,427.43
277400	11/19/2004	October 2004	67,424.75	58,451.18
279270	12/20/2004	November 2004	8,262.00	6,654.95
279271	12/20/2004	November 2004	54,028.00	45,262.53
281004	01/18/2005	December 2004	10,149.50	0.00
281005	01/18/2005	December 2004	34,932.00	0.00
<b>TOTAL</b>			<b>\$186,463.75</b>	<b>\$119,796.09</b>

13. To the extent time or disbursement charges for services rendered or disbursements incurred relate to the Compensation Period, but were not processed prior to the preparation of this Application, Swidler reserves the right to request additional compensation for such services and reimbursement of such expenses.

14. Swidler reserves its right to supplement this Application pending a hearing on the Application.

15. Swidler currently holds an escrow retainer balance of \$49,727.31 for post-petition services and post-petition expenses.



16. This is Swidler's second and final application for compensation and reimbursement of expenses. On October 27, 2004, Swidler filed its first application (the "First Interim Application") for interim allowance of compensation in the amount of \$83,335.75 (80% of which equals \$66,668.60) and for reimbursement of expenses in the amount of \$1,694.31 for services rendered during the period May 27, 2004 through and including September 30, 2004. On November 1, 2004, the US Trustee filed a Notice of Objection with the Court, objecting to the payment of holdback amounts until the commencement of the proceeding. On November 19, 2004, the Court entered an Order awarding interim fees in the amount of \$66,668.60 (representing 80% of \$83,335.75) in fees and \$1,694.31 (representing 100% of \$1,694.31) in expenses incurred, but did not authorize payment of holdback amounts.

#### **Qualifications of Swidler**

17. Swidler has been the Debtors' primary counsel for federal, state and local telecommunications regulatory issues since the Company was founded, and as such has represented the Debtors before the Federal Communications Commission (the "FCC"), state and local regulatory and municipal authorities, and federal and state courts. Swidler's services have related primarily to counseling and representing the Debtors as to federal, state and local regulatory issues arising from the Debtors' construction, installation, operation, and acquisition of advanced fiber optic networks and their provision of telecommunications, video programming and Internet services over those networks. Swidler has also counseled the Debtors extensively and represented the RCN Companies in litigation before the FCC and state regulatory agencies and in federal and state courts. Swidler's representation of the Debtors on the matters described above was active on the Petition Date.

18. Swidler's Telecommunications, Media and Technology Practice Group is one of the country's largest telecommunications practices. Its practice includes virtually every aspect of

federal, state and international telecommunications law and related fields, including regulatory, transactional, securities, international, litigation, legislative, and land use. Swidler's practice extends to all 50 states, U.S. territories, and many international markets.

**Summary of Services Performed During the Current Compensation Period**

19. Swidler has rendered extensive professional services for or on behalf of the Debtors during the Compensation Period. Rather than burden the Court with an overly detailed or lengthy recitation of each and every matter Swidler addressed during the Compensation Period, the following is a summary description of the primary services rendered by Swidler during the Compensation Period, which highlights the benefits conferred upon the Debtors, their estates and other parties-in-interest as a result of Swidler's efforts. All of the professional services rendered by Swidler are set forth in the computerized time records maintained by Swidler, and the Court is respectfully referred to those records for the specific details of all of the work performed by Swidler.

20. Swidler was required to render substantial professional services during the Compensation Period on a wide array of matters, including, without limitation:

- a. Special Regulatory Counsel (Task Code: Regulatory): Swidler's work in this category was for the preparation of certain Bankruptcy Court filings, including certain regulatory sections of the Plan of Reorganization, Disclosure Statement, advice with respect to required approvals by local franchises, and state and federal telecommunications authorizations, advise and negotiations regarding amendment of local cable franchises to eliminate certain liabilities, and the preparation of documents in support of Swidler's retention and Monthly Fee Statements.
- b. Special Regulatory Counsel – RCN Chicago (Task Code: Chicago Litigation): Swidler's work in this category relates to litigation with the City of Chicago over RCN Chicago's compliance with certain of its cable franchise obligations.

21. Swidler has rendered substantial professional services to the Debtors and their estates in fulfilling its professional responsibilities during the Compensation Period. These large

and complex Chapter 11 cases, and the numerous regulatory issues raised during these proceedings, has required thoughtful effort by the partners and associates of Swidler. Swidler submits that it has addressed these issues in a professional, expeditious and efficient manner.

22. The foregoing professional services performed by Swidler were necessary and appropriate to the administration of these Chapter 11 cases. The professional services performed by Swidler were in the best interests of the Debtors, their estates, and other parties-in-interest. Compensation for the foregoing services as requested is commensurate with the complexity, importance and nature of the problems, issues or tasks involved.

23. Most of the services performed by members and associates of Swidler during the Compensation Period were rendered by the Telecommunications, Media and Technology (formerly "Telecommunications") Practice Group at Swidler. Swidler has a preeminent practice in this area and enjoys a national reputation for its expertise.

24. During the Compensation Period, Swidler's hourly billing rates for attorneys involved in this engagement ranged from \$350 to \$540 per hour. Allowance of compensation in the amount requested would result in a blended hourly billing rate for attorneys of approximately \$480.43 (based on 556.90 hours for attorneys at Swidler's regular billing rates in effect at the time of performance of services). Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable bankruptcy cases in a competitive legal market. As noted, attached hereto as Exhibit B is a schedule listing each Swidler professional and paraprofessional who performed services in these cases during the Compensation Period, the hourly rate charged by Swidler for services performed by each such individual and the aggregate number of hours and charges by each individual.

### **The Compensation Requested**

25. There are numerous factors to be considered by the Court in determining allowances of compensation. *See, e.g., In re First Colonial Corp.*, 544 F.2d 1291 (5th Cir. 1977), cert. denied, 431 U.S. 904 (1977); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974); In re Drexel Burnham Lambert Group Inc., 133 B.R. 13 (Bankr. S.D.N.Y. 1991). See also In re Nine Associates, Inc., 76 B.R. 943 (S.D.N.Y. 1987); In re Cuisine Magazine, Inc., 61 B.R. 210 (Bankr. S.D.N.Y. 1986).

26. The perspective from which an application for an allowance of compensation should be viewed in a reorganization case was aptly stated by Congressman Edwards on the floor of the House of Representatives on September 28, 1978, when he made the following statement in relation to section 330 of the Bankruptcy Code:

[B]ankruptcy 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 and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title 11. Contrary language in the Senate report accompanying S.2266 is rejected, and Massachusetts Mutual Life Insurance Co. v. Brock, 405 F.2d 429, 432 (5th Cir. 1968) is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in a bankruptcy code. 124 Cong. Rec. H11,089 (daily ed. Sept. 28, 1978) (emphasis added). See also In re McCombs, 751 F.2d 286 (8th Cir. 1984); In re Drexel Burnham Lambert Group Inc., 133 B.R. at 13; In re Carter, 101 B.R. 170 (Bankr. D.S.D. 1989); In re Public Service Co. of New Hampshire, 93 B.R. 823 (Bankr. D.N.H. 1988); In re White Motor Credit Corp., 50 B.R. 885 (Bankr. N.D. Ohio 1985).

27. The philosophy underlying the adoption of section 330 of the Bankruptcy Code is equally applicable to interim compensation. The Bankruptcy Code provides that the same considerations apply to making interim awards of compensation under section 331 as to final allowances under section 330. *See In re Public Service Co.*, 93 B.R. at 826; In re International

Horizons, Inc., 10 B.R. 895 (Bankr. N.D. Ga. 1981). Section 331 of the Bankruptcy Code

provides:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the Court may allow and disburse to such applicant such compensation or reimbursement. 11 U.S.C. § 331.

28. In awarding compensation pursuant to sections 330 and 331 of the Bankruptcy Code to professional persons employed under section 327 of the Bankruptcy Code, the Court must take into account, among other factors, the cost of comparable non-bankruptcy services.

Section 330 of the Bankruptcy Code provides, in pertinent part, for payment of:

- a. reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by such person; and
- b. reimbursement for actual, necessary expenses. 11 U.S.C. § 330(a)(1).

29. The professional services rendered by Swidler have required an expenditure of substantial time and effort. During the Compensation Period, 569.90 recorded hours were expended by Swidler's professionals in the rendition of the required professional services for which Swidler seeks compensation.

30. Time and labor devoted, however, is only one of many pertinent factors to be considered in awarding attorney compensation. The number of hours expended must be considered in light of (i) the amount involved and the results achieved to date; (ii) the novelty and difficulty of the questions presented; (iii) the skill requisite to perform properly the legal services; (iv) the preclusion of other employment on behalf of other clients; (v) the customary

fee charged to a private client for the services rendered; (vi) awards in similar cases; (vii) time constraints required by the exigencies of the case, including the frequency and amount of time required to be devoted other than during regular business hours; (viii) the experience, reputation and ability of the attorneys rendering services; and (ix) the nature and length of the professional relationship with the client (the “Johnson Factors”). *See Johnson v. Georgia Highway Express*, 488 F.2d at 717-19 (enumerating the “Johnson Factors” to be considered in awarding attorneys’ fees in equal employment opportunities cases under Title VII); *In re First Colonial Corp.*, 544 F.2d at 1298 (applying the Johnson Factors in bankruptcy cases).

31. The majority of the Johnson Factors are codified in section 330(a) of the Bankruptcy Code, and have been applied by various courts in making determinations that requested attorneys’ fees constitute reasonable compensation. The Supreme Court has clearly articulated that the “lodestar method”<sup>1</sup> is presumed to subsume the Johnson Factors, as does section 330(a) of the Bankruptcy Code. *See, e.g., Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air*, 483 U.S. 711 (“Delaware Valley II”), *on remand*, 826 F.2d 238 (3d Cir. 1987); *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 478 U.S. 546 (1986) (“Delaware Valley I”); *United States Football League v. National Football League*, 887 F.2d 408, 413 (2d Cir. 1989), *cert. denied*, 493 U.S. 1071 (1990); *Lindy Bros. Builders Inc. v. American Radiator and Standard Sanitary Corp.*, 487 F.2d 161 (3d Cir. 1973), *vacated on other grounds*, 540 F.2d 102 (3d Cir. 1976); *In re Cena’s Fine Furniture, Inc.*, 109 B.R. 575 (E.D.N.Y. 1990); *In re Drexel Burnham Lambert Group Inc.*, 133 B.R. at 13.

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<sup>1</sup> Application of the “lodestar method” involves multiplying the number of hours reasonably expended on the case by the reasonable hourly rate of compensation for each attorney. *In re Grant Assocs.*, 154 B.R. 836, 843 (S.D.N.Y. 1993). This method of calculating attorney fees is appropriate in light of section 330(a) of the Bankruptcy Code, which serves as a starting point, permitting bankruptcy courts, in their own discretion, to consider other factors, such as the novelty and difficulty of the issues, the special skills of counsel, and their results obtained. *In re Copeland*, 154 B.R. 693, 698 (Bankr. W.D. Mich. 1993).

32. Swidler respectfully submits that application of the foregoing criteria more than justifies the compensation requested in this Application.

33. Swidler has encountered novel and difficult legal problems during the course of the Compensation Period, involving many areas of expertise. The professional services rendered in these Chapter 11 cases have been performed by attorneys with broad expertise and high levels of skill in their practice area or specialty. This highly professional and expert group of attorneys has ensured that this representation has progressed in an efficient manner.

34. During the Compensation Period, Swidler has been required to furnish extensive services, which have often occupied a substantial portion of the time of its attorneys. If this were not a case under the Bankruptcy Code, Swidler would charge the Debtors and expect to receive on a current basis, an amount at least equal to the amounts requested herein for the professional services rendered. Pursuant to the criteria normally examined in bankruptcy cases, and based upon the factors to be considered in accordance with sections 330 and 331 of the Bankruptcy Code, the results that have been achieved during the Compensation Period more than substantiate charges in that amount. The services that Swidler has rendered have produced benefits that have inured to the Debtors, their estates and their creditors.

35. In view of the foregoing, Swidler respectfully requests that it be allowed reasonable final compensation in the amount of \$269,799.50 for professional services rendered as Ordinary Course Professionals and \$9,043.32 for reimbursement of expenses incurred in the rendition of such services. Swidler's services as Special Regulatory Counsel justifies final compensation at least in the amount requested. Thus, Swidler requests that one hundred (100%) percent of such compensation be allowed. In view of the policy underlying sections 330 and 331 of the Bankruptcy Code that attorneys in bankruptcy cases be compensated on parity with

attorneys practicing in other fields, it is respectfully submitted that final compensation should be allowed as requested.

### **Swidler's Staffing and Billing Practices**

36. Swidler has assigned the work performed during the Compensation Period to attorneys having the experience and specialization to perform the services required efficiently and properly, often to the exclusion of providing services for other clients of Swidler. Moreover, to provide the required services on the most economical basis possible, Swidler assigned as much work as possible that did not require significant levels of experience to associates.

37. This Application summarizes the time and effort required of Swidler attorneys and paraprofessionals during the Compensation Period to address the complex legal issues and a variety of other matters that have arisen. During the Compensation Period, the Debtors called on Swidler to furnish extensive services that often fully occupied the time of its attorneys. In short, the services that Swidler has rendered, thus far, have, in Swidler's view, produced benefits that have inured to all parties-in-interest in this case.

### **Actual and Necessary Disbursements by Swidler**

38. As set forth in Exhibit C hereto, Swidler has disbursed \$9,043.32 as actual and necessary expenses incurred in providing professional services during the Compensation Period.

39. With respect to photocopying and printing expenses, Swidler routinely charges its clients \$0.20 per page. This charge includes the cost of maintaining the duplicating facilities and the actual cost involved with respect to duplication. These charges are intended to cover Swidler's direct operating costs for photocopying and printing facilities, which costs are not incorporated into the Swidler hourly billing rates. Only clients who actually use photocopying, printing, and other office services of the types set forth in Exhibit C are separately charged for such service. The effect of including such expenses as part of the hourly billing rates would



impose that cost upon clients who do not require extensive photocopying and document production facilities and services. The amount of the standard photocopying and printing charge is intended to allow Swidler to cover the related expenses of its photocopying and printing services. A determination of the actual expenses per page for photocopying and printing, however, is dependent on both the volume of copies and the total expenses attributable to photocopying and printing on an annual basis.

40. Swidler imposes no charge for incoming or outgoing facsimile transmissions, except for long distance telephone charges incurred in sending facsimiles.

41. It is Swidler's practice to use computer-assisted legal research when time pressures have rendered it impracticable to conduct such research manually. It is also Swidler's practice to use computer-assisted research to assist its clients and to reduce the amount of time spent by attorneys and paraprofessionals in manual research when it is anticipated that the resulting manual research would result in a greater cost to the client.

42. The legal services summarized by this Application and rendered by Swidler as Special Regulatory Counsel during the Compensation Period were substantial, professional, and beneficial to the Debtors' Chapter 11 cases. They were reasonable and necessary to the preservation and maximization of the Debtors' estates.

43. As noted above, the amounts sought by Swidler consist only of actual and reasonable billable time expended by attorneys and legal support staff (\$269,799.50) and actual and necessary disbursements made by Swidler (\$9,043.32) during the Compensation Period. As demonstrated throughout this Application, the other factors typically considered in determining compensation – including, complexity, results achieved, special expertise, magnitude of the

matter, and professional standing -- all militate toward the conclusion that the amount of compensation requested by Swidler is necessary, fair, and reasonable.

### **Memorandum of Law**

44. Swidler submits that the relevant legal authorities are set forth herein and that the requirement pursuant to Local Bankruptcy Rule 9013-1 that Swidler file a memorandum of law in support of this Application is satisfied.

### **Notice**

45. Notice of this Application has been given in accordance with the Interim Compensation Order. Swidler submits that such notice is adequate and sufficient.

### **Conclusion**

46. In light of (a) the complexity of this Chapter 11 case, (b) the results achieved, (c) the significant contributions made and time devoted, (d) awards of compensation in similar cases, and (e) other factors pertinent to the allowance of compensation, Swidler believes that the compensation sought herein is fair and reasonable and is authorized under the relevant provisions of the Bankruptcy Code.

WHEREFORE, Swidler Berlin LLP respectfully requests (i) allowance of compensation for professional services performed by Swidler for the period from October 1, 2004 through and including December 23, 2004 in the amount of \$186,463.75 for professional services rendered as Special Regulatory Counsel, and reimbursement of actual and necessary out-of-pocket expenses in the amount of \$7,349.01; (ii) payment of the holdback amounts for the period May 27, 2004 through September 30, 2004; (iii) final allowance of compensation for professional services performed by Swidler in the amount of \$269,799.50 and reimbursement of actual and necessary out-of-pocket expenses in the amount of \$9,043.32 for the period from May 27, 2004 through

and including December 23, 2004 (the “Complete Compensation Period”) (iv) authorization for the Debtors to pay Swidler such sums as are awarded; and (v) such other and further relief as the Court may consider just and proper.

Dated: February 4, 2005

Respectfully Submitted,

SWIDLER BERLIN LLP  
*Special Regulatory Counsel*

By: \_\_\_\_\_ /s/  
Jean L. Kiddoo  
3000 K Street N.W., Suite 300  
Washington, D.C. 20007  
202-424-7500

**EXHIBIT A**

SWIDLER BERLIN LLP  
*Special Regulatory Counsel*  
3000 K Street N.W., Suite 300  
Washington, D.C. 20007  
202-424-7500  
Andrew D. Lipman  
Jean L. Kiddoo

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

**CERTIFICATION PURSUANT TO GUIDELINES  
FOR FEES AND DISBURSEMENTS**

I, Jean L. Kiddoo, hereby declare that the following is true and correct to the best of my knowledge, information and belief:

1. I am a member of the firm of Swidler Berlin LLP (“Swidler”), and I have read the foregoing Application and am familiar with its contents.

2. I have personally performed or overseen many of the legal services rendered by Swidler as Special Regulatory Counsel to the Debtors and Debtors in Possession, and I am familiar with the work performed by the attorneys, other professionals, and paraprofessionals of Swidler in connection with this matter.

3. I have reviewed the Application, and the facts set forth therein are true and correct to the best of my knowledge, information and belief. Additionally, I have reviewed the Amended Guidelines for Fees and Disbursements for Professionals in the Southern District of New York Bankruptcy Cases adopted by the Court on April 19, 1995, the United States Trustee

Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, adopted on January 30, 1996, and this Court’s order dated June 22, 2004, establishing procedures for interim compensation of professionals in these cases (collectively, the “Orders”). In particular, I certify that:

- a. To the best of my knowledge, information and belief, formed after reasonable inquiry, the Application complies with the Orders;
- b. To the best of my knowledge, information and belief, formed after reasonable inquiry, the request for a final allowance and payment of compensation for services rendered and reimbursement for expenses incurred (hereinafter, the “Compensation”), as otherwise set forth in the Application falls within the Guidelines with respect to the Compensation requested for all services rendered and expenses incurred except as set forth herein and in the Application; and
- c. The Compensation sought in the Application is billed at rates and charged in accordance with the practices customarily employed by Swidler and generally accepted by Swidler’s bankruptcy and non-bankruptcy clients (except as have been reduced to comply with the Guidelines).
- d. Swidler has provided a copy of the Application to the Debtors, counsel for the Debtors, counsel for the Official Committee of Unsecured Creditors and the Office of the United States Trustee.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 4, 2005.

\_\_\_\_\_  
/s/  
Jean L. Kiddoo

## EXHIBIT B

### FEES – ALL TASK CODES

<b>Name of Professional</b>	<b>Title</b>	<b>Department</b>	<b>Year Admitted</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Amount</b>
Andrew D. Lipman	Partner	Telecommunications, Media and Technology	1977	20.40	\$540.00	\$11,016.00
Gerald Adler	Partner	Corporate	1982	0.30	520.00	156.00
Richard A. Goldberg	Partner	Corporate	1978	6.50	520.00	3,380.00
Scott M. Zimmerman	Partner	Corporate	1984	0.40	520.00	208.00
Jean L. Kiddoo	Partner	Telecommunications, Media and Technology	1980	438.60	505.00	221,493.00
				38.20	252.50	9,645.50
Catherine Wang	Partner	Telecommunications, Media and Technology	1986	11.30	500.00	5,650.00
Russell M. Blau	Partner	Telecommunications, Media and Technology	1982	0.80	495.00	396.00
Elise Scherr Frejka	Associate	Bankruptcy	1990	4.50	41.00	1,845.00
Laurie Elise Dieterich	Of Counsel	Telecommunications, Media and Technology	1987	28.80	390.00	11,232.00
Charles A. Rohe	Of Counsel	Telecommunications, Media and Technology	1989	1.30	385.00	500.50
Edward S. Quill	Associate	Telecommunications, Media and Technology	1995	5.80	350.00	2,030.00
M. Renee Britt	Legal Assistant	Telecommunications, Media and Technology	N/A	12.50	175.00	2,187.50
Lagan Srivastava	Legal Assistant	Bankruptcy	N/A	0.50	120.00	60.00
				569.90		\$269,799.50

### BLENDED RATE

<b>Professionals</b>	<b>Blended Rate</b>	<b>Hours Billed</b>	<b>Compensation</b>
Partners	\$487.80	516.50	\$251,944.50
Of Counsel	389.78	30.10	11,732.50
Associates	376.21	10.30	3,875.00
Support Staff		13.00	2,247.50
<b>BLENDED RATE</b>	\$480.60	569.90	\$269,799.50

**FEES – RCN REGULATORY WORK**

<b>Name of Professional</b>	<b>Title</b>	<b>Department</b>	<b>Year Admitted</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Amount</b>
Andrew D. Lipman	Partner	Telecommunications, Media and Technology	1977	20.40	\$540.00	\$11,016.00
Gerald Adler	Partner	Corporate	1982	0.30	520.00	156.00
Richard A. Goldberg	Partner	Corporate	1978	6.50	520.00	3,380.00
Scott M. Zimmerman	Partner	Corporate	1984	0.40	520.00	208.00
Jean L. Kiddoo	Partner	Telecommunications, Media and Technology	1980	107.20	505.00	54,136.00
				7.20	252.50	1,818.00
Catherine Wang	Partner	Telecommunications, Media and Technology	1986	11.30	500.00	5,650.00
Russell M. Blau	Partner	Telecommunications, Media and Technology	1982	0.80	495.00	396.00
Elise Scherr Frejka	Associate	Bankruptcy	1990	4.50	41.00	1,845.00
Laurie Elise Dieterich	Of Counsel	Telecommunications, Media and Technology	1987	10.00	390.00	3,900.00
Edward S. Quill	Associate	Telecommunications, Media and Technology	1995	5.80	350.00	2,030.00
M. Renee Britt	Legal Assistant	Telecommunications, Media and Technology	N/A	12.50	175.00	2,187.50
Lagan Srivastava	Legal Assistant	Bankruptcy	N/A	0.50	120.00	60.00
				187.40		\$86,782.50

**BLENDED RATE**

<b>Professionals</b>	<b>Blended Rate</b>	<b>Hours Billed</b>	<b>Compensation</b>
Partners	\$498.12	154.10	\$76,760.00
Of Counsel	390.00	10.00	3,900.00
Associate	376.21	10.30	3,875.00
Support Staff		13.00	2,247.50
<b>BLENDED RATE</b>	\$463.09	187.40	\$86,782.50

**FEES – CHICAGO LITIGATION**

<b>Name of Professional</b>	<b>Title</b>	<b>Department</b>	<b>Year Admitted</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Amount</b>
Jean L. Kiddoo	Partner	Telecommunications, Media and Technology	1980	331.40	\$505.00	\$167,357.00
				31.00	252.50	7,827.50
Laurie Elise Dieterich	Of Counsel	Telecommunications, Media and Technology	1987	18.80	390.00	7,332.00
Charles A. Rohe	Of Counsel	Telecommunications, Media and Technology	1989	1.30	385.00	500.50
				382.50		\$183,017.00

**BLENDED RATE**

<b>Professionals</b>	<b>Blended Rate</b>	<b>Hours Billed</b>	<b>Compensation</b>
Partners	\$483.40	362.40	\$175,184.50
Of Counsel	389.68	20.10	7,832.50
<b>BLENDED RATE</b>	478.48	382.50	\$183,017.00



## EXHIBIT C

### EXPENSES – ALL TASK CODES

Description	Amount
Delivery Services	\$63.03
Federal Express	210.44
Parking	7.65
Photocopy & Printing	162.00
Postage	28.35
Publication/Subscriptions	1.54
Secretarial Services	10.00
Telephone	180.18
Travel/Airfare	4,333.50
Travel/Lodging	2,672.66
Travel/Meal Expenses	574.82
Travel/Parking	337.00
Travel/Taxis	454.75
Travel/Telephone	5.90
Travel/Tips	1.50
<b>TOTAL EXPENSES</b>	<b>\$9,043.32</b>

**EXPENSES – RCN REGULATORY WORK**

<b>Description</b>	<b>Amount</b>
Delivery Services	\$18.84
Federal Express	\$208.81
Parking	7.65
Photocopy & Printing	156.00
Postage	15.90
Publications/Subscriptions	0.77
Secretarial Services	10.00
Telephone	9.67
Travel/Airfare	847.50
Travel/Lodging	545.80
Travel/Meal Expenses	80.41
Travel/Parking	77.00
Travel/Taxis	159.00
<b>TOTAL EXPENSES</b>	<b>\$2,137.35</b>

**EXPENSES – CHICAGO LITIGATION**

<b>Description</b>	<b>Amount</b>
Federal Express	45.82
Photocopy & Printing	6.00
Postage	12.45
Publications/Subscriptions	0.77
Telephone	170.51
Travel/Airfare	3,486.00
Travel/Lodging	2,126.86
Travel/Meal Expenses	494.41
Travel/Parking	260.00
Travel/Taxis	295.75
Travel/Telephone	5.90
Travel/Tips	1.50
<b>TOTAL EXPENSES</b>	<b>\$6,905.97</b>

## **EXHIBIT D**

Copies of the daily time records are being provided to the Court and the Office of the United States Trustee. Parties in interest required to be served with Swidler's monthly fee statements pursuant to the Interim Compensation Order have previously been furnished with such daily time records. Copies of the time records will be made available to other parties in interest upon reasonable request.

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