

HEARING DATE: March 3, 2005
HEARING TIME: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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|----------------------------------|---|-------------------------|
| In re: | : | Case No. 04-13638 (RDD) |
| | : | |
| RCN CORPORATION, <u>et al.</u> , | : | Chapter 11 |
| | : | |
| Debtors. | : | Jointly Administered |
| | : | |
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**OBJECTION OF THE UNITED STATES TRUSTEE TO FINAL
APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES**

TO THE HONORABLE ROBERT D. DRAIN, BANKRUPTCY JUDGE:

The United States Trustee for the Southern District of New York (the "United States Trustee") has reviewed the following application seeking a final award of compensation and reimbursement of expenses.

| <u>APPLICANT</u> | <u>FEES</u> | <u>EXPENSES</u> |
|---|----------------|-----------------|
| Winston & Strawn, LLP Counsel to Board | \$1,111,789.75 | \$31,598.45 |

The United States Trustee makes the following objections to the award of compensation and reimbursement of expenses in the amounts sought for the reasons set forth below:

1. The Winston & Strawn final fee application fails to include the \$40,000 reduction that the applicant agreed upon in order to settle the United States Trustee's objection to Winston & Strawn's first interim fee application. On or about November 1, 2004, the United States Trustee provided Winston & Strawn a draft copy of an objection to the applicant's first interim fee

application for the period of 6/7/04 - 9/31/04. Rather than litigate the matter, Winston & Strawn agreed to reduce its fee request by \$40,000. The United States Trustee memorialized this agreement in the response it filed with the Court to all of the interim fee applications. A copy of that response is annexed hereto as Exhibit A. A review of the fees sought in the current application, see Cumulative Summary of Monthly Fee Statements at page 5 of Winston & Strawn final application, appears to demonstrate that the applicant seeks \$793,897.75 for the period of 6/7/04 - 9/31/04. This amount does not reflect the \$40,000 reduction previously agreed upon with the United States Trustee. Therefore, the applicant's fees should be reduced by \$40,000.00.

2. In addition, the Winston & Strawn partners in this case failed to delegate any substantial work to associates that would bill the estate at a lower hourly rate. For the current period (10/1/04 - 12/16/04) Winston & Strawn partners billed the estate for 515.9 hours of services. Associates at Winston & Strawn were only assigned 47.8 hours of services. In fact, Robert Bostrom, the Winston & Strawn partner with the highest billing rate (\$620/hour) assigned to this case, billed 233 hours to this estate during the current period. No associate provided more than 19.9 hours of services during the current period. For the entire case, Winston & Strawn partners billed the estate for 1,799.9 hours of services, representing \$1,054,803.25 in fees. Associates at Winston & Strawn

provided a mere 101.8 hours of services, representing \$29,555.00 of fees. No associate provided more than 40 hours of services to this case.

3. A review of the Winston & Strawn time records demonstrate that partners performed tasks typically assigned to lower billing associates. By way of example, the time records for the current period contain numerous entries showing Winston & Strawn partners performing research, a task usually assigned to associates^{1/}. Accordingly, the applicant's fees should be reduced.

^{1/} Examples of partners performing research are as follows: on 10/26/04, R. Bostrom charged the estate \$1,550 to "Review and analyze case law re director liability in ERISA suites". On 10/27/04 L. Van Auken charged the estate an undetermined amount due to lumping to "collect[] background information re related SDNY cases, DNJ and Judge Chesler; various calls and emails re same". On 11/01/04 L. Thompson charged the estate \$2,079 for "Research and analysis of ERISA issues and Board fiduciary duties. On 11/04/04 D. Neier charged the estate \$1,404 to "Research for Fishler and Van Auken co-debtor stay of D&O 401(k) litigation". On 11/08/04 L. Van Auken charge the estate \$2,288 to "review[] cases re divergent interests of directors, officers, fiduciaries and non fiduciaries."

WHEREFORE, the United States Trustee respectfully requests that the Court sustain the objections contained herein and grant such other and further relief as it may deem just and proper.

Dated: New York, New York
February 14, 2005

Respectfully submitted,

DEIRDRE A. MARTINI
UNITED STATES TRUSTEE

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