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Response Deadline:
April 8, 2005 at 4:00 p.m.
Hearing Date:
April 18, 2005 at 10:00 a.m.

Counsel for Official Committee of
Unsecured Creditors of RCN Corp., et al.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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

**OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF RCN CORPORATION, ET AL. TO APPLICATION
OF WINSTON & STRAWN LLP, COUNSEL TO BOARD OF DIRECTORS
OF RCN CORPORATION, ET AL., FOR FINAL ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

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

The Official Committee of Unsecured Creditors (the "Committee")¹ of RCN Corporation ("RCN Corp.") and its affiliated debtors and debtors in possession in the above-captioned cases (together with RCN Corp., the "Debtors"), hereby submits this objection (the "Objection") to the Final Application Of Winston & Strawn LLP ("W&S"), Counsel To Board Directors Of RCN Corporation, et al., For Compensation And Reimbursement Of Expenses, dated February 4, 2005 (Docket No. 541) (the "Final Fee Application"), which requests final

¹ The Committee continues in existence to, among other things, "review, and if necessary, interpose and prosecute objections to Professional Claims [(as defined therein)]." See Plan (as defined below) Article XIV.O.

approval of \$1,111,789.75 in fees and \$31,598.45 in expenses incurred by W&S between June 7, 2004 and December 16, 2004, and in support thereof, respectfully represents as follows:

I. PRELIMINARY STATEMENT

1. ***W&S Exceeded Scope Of Its Limited Mandate.*** Section 327(e) of the Bankruptcy Code authorizes the ***debtor in possession*** to retain attorneys "for a specified purpose" -- other than conducting the chapter 11 case, which task is entrusted to the debtor's retained bankruptcy (or "327(a)") counsel. In certain cases, boards of directors of chapter 11 debtors have sought to extrapolate from this provision the ability to retain their own counsel compensated with estate funds. While this has been permitted (including in the instant case), the underlying and basic assumption is that such counsel (a) is authorized ***only*** to represent the board with respect to discrete, "board-specific" issues, e.g., indemnification and fiduciary duties; (b) should not duplicate the services of the debtor's 327(a) counsel; and (c) accordingly, should limit its fees to a small proportion of those incurred by the debtor's 327(a) counsel. As demonstrated below, the Committee does not believe that the Final Fee Application falls within these parameters.

2. W&S originally proposed to represent the board in connection with the aforementioned director-specific issues, ***without duplication of the efforts of the Debtors' 327(a) counsel.*** Indeed, the W&S Retention Order specifically set forth the "no-duplication" requirement. Given the size of the fees requested in the Final Fee Application, which (a) total 18.59% of the Debtors' 327(a) counsel's fees; (b) exceed 60% of the Committee's counsel's fees; and (c) exceed the Court's suggested guideline stated at the November 18, 2004 interim hearing (which would have approached 4.46% of the Debtors' 327(a) counsel's fees), it appears W&S either undertook matters outside the scope of its retention or duplicated the Debtors' 327(a) counsel's efforts. As the United States Trustee has pointed out in its objection, W&S's fees also are "top heavy" in as much as a disproportionate amount of time submitted for approval in the Final Fee Application (86.93% of all hours) was performed at the partner level.

3. ***Evidence Of Duplication.*** Notably, the Final Fee Application contains no evidence that W&S did not duplicate the efforts of the Debtors' 327(a) counsel. Instead, W&S attorneys and para-professionals dedicated 2070.3 hours to these cases over approximately six months and incurred fees attending to issues that fall within the province of 327(a) counsel's expertise, e.g., negotiating and documenting the plan, formulating bankruptcy case strategy, examining financial reports prepared by retained advisors, examining whether to file operating companies and other subsidiaries and examining substantive consolidation -- to name a few. Considering the identical interests of the board and the Debtors with respect to these issues, the question presented (and which W&S bears the burden of refuting) is whether W&S incurred fees inconsistent with its limited role of advising the board.

4. ***Discovery Of Committee Members Is Inappropriate.*** W&S previously indicated that demonstrating the reasonableness of its fees will require W&S to propound deposition notices on Committee members, maintaining that if W&S's fees exceed expectations, that excess is attributable to actions taken by the Committee. Such discovery would not only be inappropriate and irrelevant, but also would be contrary to the Court's prior admonition against retaliatory action by W&S. Moreover, the Committee has not objected to any work W&S performed that relates specifically to the Committee (e.g., time entries where "the Committee" appears), which appears to account for approximately 83.98 hours. Similarly, the Committee does not object to any work W&S performed relating to the retention of Mr. Peter Aquino (the current Chief Executive Officer of Reorganized RCN), which appears to account for approximately 44.35 hours. Instead, the Committee's objection relates to W&S's involvement in issues where the Debtors and the board have identical interests -- which are the responsibility of Debtors' 327(a) counsel. W&S justifying its fees with respect to these matters does not present an occasion to depose Committee members.

II. INTRODUCTION

5. *Case Status.* On May 27, 2004, RCN Corporation; TEC Air, Inc.; RLH Property Corporation; RCN Finance LLC; and Hot Spot Productions filed for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code").² The United States Trustee appointed the Committee on June 14, 2004. (See Docket No. 48).

6. *Chapter 11 Plan.* On December 8, 2004,³ the Court confirmed the Joint Plan Of Reorganization Of RCN Corporation And Certain Subsidiaries (the "Plan"). The Plan went effective on December 21, 2004.

III. FACTUAL BACKGROUND

A. W&S Retention Application

7. W&S originally maintained its services would be limited to advising RCN Corp.'s Board of Directors (the "Board") on discrete, "Board-specific" issues, e.g., (a) corporate governance matters; (b) fiduciary duties; (c) matters (including investigations) involving the Securities and Exchange Commission, the Federal Communications Commission, and other governmental authorities; (d) litigation that might be brought against the Board, including securities class actions or shareholder derivative suits; and (e) the Board's obligations regarding "operations" as well as "developments" in the chapter 11 cases.⁴ The Committee initially opposed the W&S Retention Application, questioning whether section 327(e) of the Bankruptcy

² Certain affiliates of the RCN Debtors, specifically (a) RCN Cable TV of Chicago and (b) RCN Telecom Services of Virginia, Inc.; RCN Entertainment, Inc.; 21st Century Telecom Services, Inc.; and ON TV, Inc. commenced their chapter 11 cases on (x) August 5, 2004 and (y) August 20, 2004, respectively.

³ See Findings Of Fact And Conclusions Of Law Relating To And Order Under 11 U.S.C. § 1129(a) And (b) And Fed. R. Bankr. P. 3020 Confirming Joint Plan Of Reorganization Of RCN Corporation And Certain Subsidiaries (Docket No. 483).

⁴ See Debtors' Application For Order Under 11 U.S.C. §§ 327(e) And 328 And Fed. R. Bankr. P. 2014 And 2016 Authorizing Retention Of Winston & Strawn LLP As Special Counsel To Board Of Directors, dated July 8, 2004 (Docket No. 101) (the "W&S Retention Application"). A copy of the W&S Retention Application (without exhibits) is attached hereto as Exhibit A.

Code -- which applies to the retention of attorneys to represent *the trustee (or debtor in possession)* -- authorized the Board to use estate funds to compensate its own attorneys. It also was concerned that W&S might duplicate the efforts of the Debtors' 327(a) counsel. Notwithstanding such concerns, the Committee ultimately agreed to W&S's retention after it received assurances W&S would not perform duplicative services. Indeed, the W&S Retention Order⁵ expressly required that "*Winston & Strawn shall not duplicate services provided by other counsel on behalf of the Debtors.*" W&S Retention Order at ¶ 4 (emphasis added).

B. W&S Interim Fee Application & Committee Interim Objection

8. The W&S Interim Fee Application⁶ requested fees of \$793,897.75 and expenses of \$16,375.93 for the four-month period from June 7, 2004 through September 31, 2004. After negotiations with the Office of the United States Trustee, W&S reduced the requested fees by \$40,000.00.⁷ That agreement, however, did not address the Committee's concerns because, among other things, the W&S Interim Fee Application neither indicated the procedures W&S undertook to avoid duplication nor substantively demonstrated the lack of duplication, notwithstanding the W&S Retention Order's prohibition of duplication.⁸

⁵ See Order Under 11 U.S.C. §§ 327(e) And 328 And Fed. R. Bankr. P. 2014 And 2016 Authorizing Retention Of Winston & Strawn LLP As Special Counsel To Board Of Directors, dated July 30, 2004 (Docket No. 138) (the "W&S Retention Order"). A copy of the W&S Retention Order is attached hereto as Exhibit B.

⁶ First Interim Application Of Winston & Strawn LLP, Counsel To Board Of Directors Of RCN Corporation, Et Al., For Interim Compensation And Reimbursement Of Expenses, dated October 26, 2004 (Docket No. 324) (the "W&S Interim Fee Application"). A copy of the W&S Interim Fee Application is attached hereto as Exhibit C.

⁷ See Objection Of United States Trustee To First Interim Applications For Compensation And Reimbursement Of Expenses (Docket No. 344) (the "US Trustee Objection") at ¶ 3.

⁸ See Objection Of Official Committee Of Unsecured Creditors Of RCN Corporation, Et Al., To First Interim Application Of Winston & Strawn LLP For Interim Compensation And Reimbursement Of Expenses, dated November 17, 2004 (Docket No. 390) (the "Committee Interim Objection"). A copy of the Committee Interim Objection is attached hereto as Exhibit D.

C. November 18 Hearing

9. At the hearing held on November 18, 2004, based on part on the Committee Interim Objection (and in part on the Court's own, independent concerns), the Court ultimately subjected W&S's fees to a fifty-percent (50%) holdback. The Court noted the services W&S were not only duplicative, but beyond the Court's expectations for such a limited engagement.⁹

IV. OBJECTION

W&S Has Failed To Satisfy Its Burden Of Demonstrating Reasonableness Of Fees Requested In Accordance With Section 330 Of Bankruptcy Code

A. W&S Bears Burden

10. It is axiomatic that the applicant bears the burden of proof with respect to fees. See F.H. Krear & Co. v. Nineteen Named Trustees, 810 F.2d 1250, 1265 (2d Cir. 1987) ("The burden is on counsel to keep and present records from which the court may determine the nature of the work done [and] the need for it ..."); In re Keene Corporation, 205 B.R. 690, 695 (Bankr. S.D.N.Y. 1997) ("The applicant bears the burden of proof on its claim for compensation").

B. Amounts Requested Are Disproportionate To Scope Of Retention

11. The Final Fee Application requests approximately \$1.1 million in fees and \$31,000 of expenses. These amounts are disproportionate to the fees that typically would be incurred by a law firm with similar responsibilities, namely advising the Board on discrete "director-specific" issues. Notably, W&S's fees equal 18.59% of Debtors' 327(a) counsel's fees¹⁰

⁹ See Tr., Hearing, Nov. 18, 2004 (Docket No. 473) (hereinafter, "Transcript") at 12:15-12:21; 13:4-13:10; 14:5-14:7 ("I think it goes well beyond what I certainly anticipated in terms of the services rendered. And secondly, I am concerned about both duplication and the time itself put in, even in respect of services that I would have anticipated I think that the services that are to be provided pursuant to that type of retention [e.g., the Board] should be quite limited given the expertise of the debtor's counsel and the general overlap of the board's interests with the debtor's interests"). A copy of the Transcript is attached hereto as Exhibit E. See also Order Granting Interim Applications For Allowance Of Fees For Professional Services Rendered And Reimbursement Incurred, dated November 19, 2004 (Docket No. 426) (the "Interim Fee Order"), a copy of which as attached hereto as Exhibit F.

¹⁰ See Final Application Of Skadden, Arps, Slate, Meagher & Flom LLP Seeking Allowance Of Fees For Professional Services Rendered And Disbursements Incurred As Counsel For Debtors For

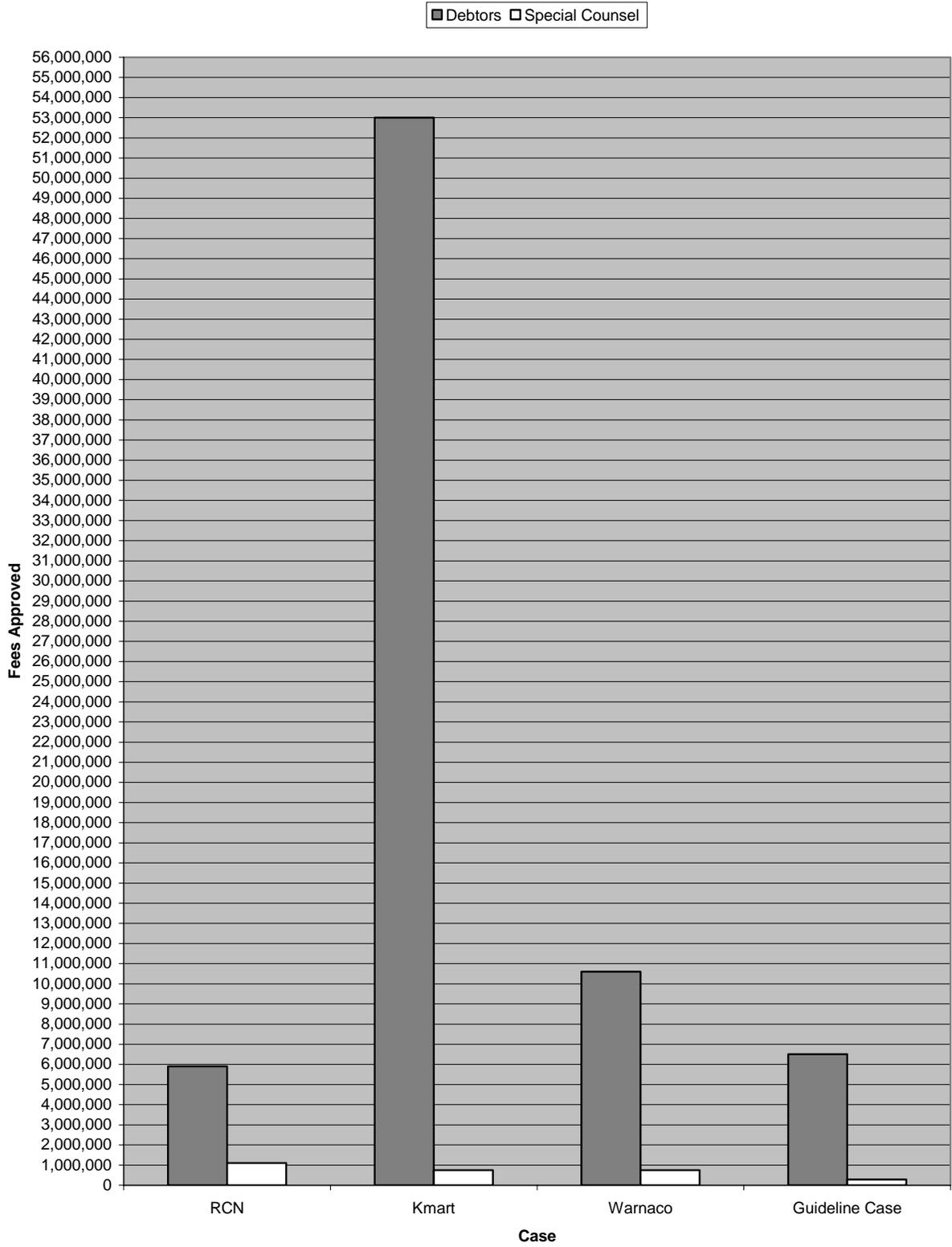
and a staggering 61.35% of the Committee's counsel's fees.¹¹ These percentages far exceed both the informal guidelines suggested by the Court when examining the W&S Interim Fee Application for director engagements (which would have approached 4.46% of the Debtors' 327(a) counsel's fees),¹² as well as fees paid to counsel in other cases that undertook similar engagements.¹³

Period From May 27, 2004 Through December 21, 2004, dated February 5, 2005 (Docket No. 546) (requesting compensation of \$5,981,366.75 in fees and reimbursement of \$205,313.81 in expenses).

¹¹ See Final Application Of Milbank, Tweed, Hadley & McCloy LLP, Counsel To Official Committee Of Unsecured Creditors, For Final Allowance Of Compensation For Services Rendered And For Reimbursement Of Expenses During Period From June 10, 2004 Through And Including December 21, 2004, dated February 4, 2005 (Docket No. 547) (requesting compensation of \$1,812,347.50 in fees and reimbursement of \$97,285.50 in expenses).

¹² See Tr. at 13:23-14:7 (noting prior case where directors' counsel fees were approved: "[t]he debtor's law firm billed approximately six and a half million dollars that was allowed. The director's counsel billed and it was allowed \$290,000 for a year's worth of work").

¹³ See, e.g., In re K-Mart Corp., No. 02-2474(SPS) (Bankr. N.D. Ill.) (counsel fees incurred in representing independent board members in connection with chapter 11 cases, litigation based on pre-petition and post-petition claims brought by shareholders and creditors, and in representing non-independent directors on no-conflict matters were capped at \$750,000 (including expenses) and totaled 1.4% of debtors' counsel fees) (see Docket Nos. 14, 699, 3238, 15686, 15705, 19775 and 19782); In re Warnaco, No. 01-41643 (RLB) (Bankr. S.D.N.Y.) (counsel fees incurred in representing board's audit committee in evaluating expected charge to earnings and restatement of Warnaco's financial results and in supporting audit committee's ongoing oversight responsibility for integrity of financial statements totaled 7.1% of debtors' counsel fees) (see Docket Nos. 4, 154, 288, 345, 1310, 1415, 1822 and 2032).



C. Fee Application Is "Top Heavy"

12. As the United States Trustee has underscored, partners performed an inordinate amount of services for which compensation is requested in the Final Fee Application. Specifically, 1799.9 hours out of a total of 2070.3 (86.93%) were billed by partners. Associates' time accounts for only 4.91% (101.8 hours), and para-professional time accounts for the remaining 8.14% (168.6 hours). Moreover, the attorney with the highest billing rate (\$620/hr.) billed the most hours (1,088.7 hours, or 52.59% of all hours billed).

D. No Evidence Of Lack Of Duplication

13. The Final Fee Application contains *no* information regarding procedures undertaken to avoid duplication, nor does it substantively demonstrate the lack of duplication. To the contrary, the Final Fee Application is replete with time entries suggesting W&S performed numerous tasks which the Debtors' 327(a) counsel already had undertaken. Indeed, with respect to the activities which W&S maintains in the Final Fee Application that it performed during the chapter 11 cases, many of them were competently performed by the Debtors' 327(a) counsel (see Final Fee App. At 15-16):

Activity Description In Final Fee Application	Whether Consistent With W&S Retention
(1) "Daily contact with Board involving informing and consulting members re: fiduciary duties under the Bankruptcy Code, Chapter 11 bankruptcy process as it relates to business going forward and business/bankruptcy strategy"	Debtors' 327(a) counsel was charged with developing bankruptcy strategy and attending to operational issues and possessed the expertise to advise the Board with respect to these issues; W&S's retention was limited to advising Board on discrete director issues
(2) "Supervised appropriate service of pleadings and notices"	Work properly delegated to associates and para-professionals
(3) "Performed general document review and maintained project list, case calendar, and case docket of documents filed with the Court"	Same as (2) above
(4) "Prepared agendas, various presentations and attended all Board Meetings either telephonically or personally"	Consistent with mandate in W&S Retention Order; <u>provided</u> Board meetings were convened to examine "Board-specific" issues, <u>e.g.</u> , discussions of fiduciary duties; if convened as part of the Debtors' exercise of their business judgment in making decisions with respect to the chapter 11 cases, <u>e.g.</u> , plan consideration and whether to sell certain assets, they fall outside confines of W&S's retention and should have been handled by Debtors' 327(a) counsel
(5) "Conducted numerous internal team meetings <i>to discuss case strategy</i> and possible causes of action"	To the extent "case strategy" means crafting overall business and reorganization plans and roadmaps to emergence, these topics should have been handled by the Debtors' 327(a) counsel
(6) "Reviewed and analyzed all retention applications of professionals , attention to preparation of all Monthly Fee Statements"	Review of "all" retention applications for other professionals falls within the province of Debtors' 327(a) counsel, the Committee, and the United States Trustee
(7) "Performed legal research on various topics, including D&O insurance, audit committee issues, as well as contract rights as they relate to StarPower deal"	Same as (4) above
(8) "Attended to other miscellaneous matters, including but not limited to preparation and distribution of monthly fee statements and interim and final fee applications"	Same as (2) above
(9) "Participated in all plan negotiations, reviewed and commented on several rounds of plan of reorganization drafts, attended numerous meetings and teleconferences regarding plan strategy, negotiations, financial outlook presentations and steering committee issues"	The Debtors' 327(a) counsel was entrusted with "all" plan negotiation and documentation, as well as strategy and financial outlook; W&S's plan review should have been limited to "director specific" issues
(10) "Attended and participated in meetings and teleconferences with Aon Corp. regarding D&O insurance issues, prepared and filed motion relating to same"	Consistent with mandate in W&S Retention Order
(11) "Reviewed various legal documents and agreements relating to StarPower Operating Agreement, Pepco, Corvis and D.E. Shaw"	Same as (4) above
(12) "Explored disposition of RCN Entertainment for Board"	Same as (4) above; moreover, this is a subsidiary, and W&S represented the board of directors of the parent company
(13) "Extensively analyzed and researched D&O, ERISA and class action issues"	Consistent with mandate in W&S Retention Order
(14) Defense of securities actions	Consistent with mandate in W&S Retention Order

14. The Final Fee Application lumps W&S's fees into four major categories. Specifically, 92.32% of all fees fall into the following categories: (i) Case Administration (which includes general "plan" time entries) (15.35%); (ii) "Other Contested Matters (excluding Assumption/Rejection motions)" (16.92%); (iii) "Business Operations" (which also includes general "plan" time entries) (41.89%); and (iv) "Plan and Disclosure Statement" (18.15%).

15. Closer inspection of the time entries in these categories reveals W&S dedicated time to a number of issues that were the responsibility of the Debtors' 327(a) counsel. The most notable time entries relate to (i) ambiguous "bankruptcy strategy," "plan negotiation" and "plan review" and (ii) action with respect to the operating companies and subsidiaries (recall W&S only was retained with respect to the board of directors of the *parent* company, RCN Corp.). Certainly these issues reflect a complete overlap in interest between the Board and the Debtors and therefore should have been handled by the Debtors' 327(a) counsel. This is especially true with respect to the negotiation and documentation of the plan beyond director-specific issues, e.g., indemnification, exculpation and releases. Other "pure chapter 11" issues already were being handled -- and should have been handled -- by the Debtors' 327(a) counsel, e.g., examining Blackstone's financial reports; reviewing asset dispositions (StarPower/Pepco); reviewing franchise issues; reviewing accounting procedures; examining ground leases; examining specific claims asserted against the Debtors (e.g., Merrill, Kemper) and evaluating substantive consolidation.¹⁴

¹⁴ See Exhibit G (containing list of time entries, date of entries, amount of time with respect to each entry and respective attorneys listed in the following chart). Certain time entries were "split" ratably in the event the activity description listed more than one issue or topic; meaning, if the time entry stated "confer re: Aquino; Board of Director duties; and StarPower (3)," 1 hour is allocated to each activity in the chart.

Issue/ Topic/ Phrase Appearing In Day Note Entry	Aggregate Time (Hours)	Comment
(1) Accounting issues/ fresh start accounting	4.35	The Committee objects. <u>See</u> (7) below.
(2) Aquino retention	44.35	The Committee has no objection.
(3) Bankruptcy alternatives and filings	28.90	The Committee objects. Whether to file subsidiary operating companies is a decision within the Debtors' business judgment and hence capably handled by the Debtors' 327(a) counsel; moreover, W&S represented the board of directors of the <i>parent company only</i> , and issues relating exclusively to subsidiaries simply were not appropriate for W&S's consideration
(4) Bankruptcy/case strategy	67.10	The Committee objects. Case strategy, crafting a business plan and outlining a path toward emergence similarly were entrusted to the Debtors' 327(a) counsel
(5) Blackstone financial presentations	30.95	The Committee objects. The company's financial performance has no bearing on "director-specific" issues
(6) Creditors' Committee	83.98	The Committee has no objection.
(7) Deutsche Bank financing; D.E. Shaw; senior bank debt refinancing	9.20	The Committee objects. As with (3), counseling the Debtors in the exercise of their business judgment is capably handled by the Debtors' 327(a) counsel; moreover, exit financing is a "pure chapter 11" matter falling squarely within the realm of "conducting the case"
(8) Franchise and real estate; ground leases	10.30	The Committee objects. Same as (7)
(9) KERP	10.60	The Committee objects. Same as (7)
(10) Megacable	7.00	The Committee objects. Same as (7)
(11) Merrill/Kemper	42.30	The Committee objects. Same as (7)
(12) Operating companies/ subsidiaries	29.21	The Committee objects. Same as (3) and (7)
(13) "Plan" general (negotiation, review and documentation)	245.80	The Committee objects. Same as (3) and (7)
(14) Plan director-specific	69.20	The Committee has no objection; the time entries appear to reflect where W&S dedicated time to plan review for these "director-specific" issues, suggesting that all other "plan" time was duplicative of bankruptcy counsel's efforts
(15) StarPower/Pepco	57.60	The Committee objects. Same as (3) and (7)
(16) Substantive consolidation	20.86	The Committee objects. Same as (3)

E. Discovery Of Committee Members Is Neither Necessary Nor Appropriate

16. In defense of the W&S Interim Application, W&S intimated its fees might have exceeded expectations because the Board spent considerable time responding to issues raised by the Committee -- and that the Committee therefore had no cause to complain with respect W&S's fees.¹⁵ One specific area mentioned was the retention of Mr. Peter Aquino as the Chief Executive Officer of Reorganized RCN.¹⁶ As a consequence, W&S maintains discovery of Committee members is an integral part of proving the reasonableness of the fees requested in the Final Fee Application.

17. The Committee does not object to time W&S dedicated to "Committee" issues. Indeed, in the time detail attached to W&S's fee requests, the word "Committee" appears in activity descriptions relating to approximately 83.98 hours. The same is true with respect to time W&S dedicated to examining the Aquino retention, which appears in activity descriptions relating to approximately 44.35 hours. The Committee views depositions of its members as entirely inappropriate, retaliatory and inconsistent with the Court's prior comments.¹⁷ W&S bears the burden of proving its fees were reasonable and non-duplicative, and depositions of

¹⁵ See Tr. at 16:15-17:6 ("[W&S:] I think there is going to be a need for testimony, and I think that testimony is going to go into some extremely sensitive affairs with respect to both the board, the debtors, and particularly the committee and we will be seeking depositions from the committee on this issue if they go forward with their objection. And it sounds to me like your Honor has some questions, so I think we're going to go forward in any event and take depositions of the committee members and their actions in this case and some of the problems that we encountered").

¹⁶ See Tr. at 23:22-24:8 ("[W&S:] Mr. [Aquino], of course, was a retained professional of the committee but the committee insisted he become the head of RCN that caused all sorts of different issues in the case, very complex issues. And I think the only way to address that properly is to have discovery from the parties who will not testify voluntarily as to what was going on").

¹⁷ See Tr. 22:11-22:21 ([Committee:] "I note that counsel for [Wintson &] Strawn indicated that they may seek discovery of the Committee. [Court:] No, I hope it doesn't become an issue and frankly when I looked at the time records, maybe I'm missing something, but the committee doesn't pop up that much, so I hope there's no sort of punitive aspect of this").

Committee members will not shed any light on whether W&S provided services beyond the scope of its mandate or that were duplicative of the Debtors' 327(a) counsel.¹⁸

V. RESERVATION OF RIGHTS

18. The Committee expressly reserves its right to amend or supplement the Objection and to introduce evidence supporting the Objection at the hearing to consider the Final Fee Application.

¹⁸ The Committee also requests clarification of whether W&S remitted funds in excess of the 20% holdback it previously received after the Court subjected its fees to a 50% holdback. Specifically, with respect to the \$793,897.75 requested in the W&S Interim Fee Application, the Court awarded \$356,948.87, noting "[t]his requires Winston & Strawn to refund to the Debtors any amounts previously paid in excess of \$356,948.88 for the period from June 7, 2004 through September 30, 2004." See Interim Fee Order, Schedule A, n.1. The W&S First Interim Fee Application indicates it already had received payment with respect to fees of \$635,118.20 for this period (see W&S First Interim Fee App. at 4), requiring remittance of \$278,169.32. The Final Fee Application states, however, that W&S disgorged \$142,955.26 and has received only \$516,280.07 (or 46.44% of all fees requested). See W&S Final Fee App. at 5. Still, the summary page appearing in the Final Fee Application indicates W&S received 80% of its fees through November 16, 2004 and 50% of its fees going forward through December 16, 2004 (\$774,847.80, or 69.69% of all fees requested).

VI. CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an order (i) sustaining the Objection and (b) granting such other relief as the Court deems just and proper.

Dated: New York, New York
April 8, 2005

MILBANK, TWEED, HADLEY & M^CCLOY LLP

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