

Hearing Date: April 18, 2005 at 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**DECLARATION OF DAVID NEIER IN SUPPORT OF MOTION
PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a)
AND 107(b) AND BANKRUPTCY RULE 9018 FOR AN ORDER AUTHORIZING
WINSTON & STRAWN LLP TO FILE UNDER SEAL ITS RESPONSE
TO THE OBJECTIONS OF THE COMMITTEE AND U.S. TRUSTEE TO THE
FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF
EXPENSES OF WINSTON & STRAWN LLP AND DIRECTING THAT ALL
PROCEEDINGS WITH RESPECT THERETO BE CONDUCTED *IN CAMERA***

David Neier, under penalty of perjury, declares that:

1. I am a member of the firm of Winston & Strawn LLP (“Winston”), which maintains offices for the practice of law at 200 Park Avenue, New York, New York 10166. I submit this Declaration in support of Winston’s motion for entry of an order under 11 U.S.C. §§ 105(a) and 107(b) and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (1) authorizing Winston to file, under seal, its Response to the Objections of the Committee and Trustee (“Response”) to the Final Application of Winston & Strawn, LLP, Counsel to the Board of Directors of RCN Corporation, *et al.*, for Compensation and Reimbursement of Expenses, dated February 4, 2005 (the “Final Application”); and (2) directing that any and all proceedings in connection with said Final Application, including the hearing before this Court presently scheduled for Monday, April 18, 2005, at 10:00 a.m., shall be conducted *in camera*.

2. On May 27, 2004, RCN Corporation (“RCN”) and certain of its affiliated entities (collectively, the “Debtors”) filed petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). Five other RCN subsidiaries filed chapter 11 bankruptcy petitions during August 2004.

3. In June 2004, Winston was retained to provide advice to the Board of Directors of RCN (the “Board”) and perform legal services in connection with these Chapter 11 cases.

4. In its Final Application, Winston seeks an award of \$1,143,388.20, for work performed on behalf of the Board from June 7, 2004 through December 16, 2004. This figure represents fees of \$1,111,789.75 and expenses of \$31,598.45. The Official Committee of Unsecured Creditors (the “Committee”) and the United States Trustee (the “Trustee”) have filed objections to Winston’s Final Application.

5. Winston requests entry of an order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, authorizing the Debtors to file pleadings and exhibits and present evidence in support of its Final Application (the “Confidential Materials”) under seal so as to maintain the confidentiality of the information contained in those materials.

6. The Confidential Materials contain, among other things, highly sensitive, confidential communications between the Board and its counsel protected by the attorney-client privilege. In addition, the Confidential Materials contain information related to various defenses and positions considered by the Board and its counsel with respect to ongoing litigation against certain Board members. *See, e.g., Thomas v. McCourt, et al.*, No. 04-5068 (D.N.J.) and related cases. Disclosure of this information would be highly prejudicial to the Debtors.

7. In addition, the Confidential Materials disclose the substance of negotiations between and among representatives of the Debtors, the Board, the senior secured lenders and the Committee, their counsel and other professional advisors. This information is highly sensitive and confidential, as it relates to efforts undertaken to resolve demands made upon the Board by the Committee that could impact the Debtors and Board members in ongoing litigation and potentially harm Debtors' ongoing business.

8. Finally, disclosure of the Confidential Materials is not necessary for the protection of the public, creditors of the Debtors or third parties because (a) the documents containing such materials are subject to this Court's approval in any case, (b) Winston proposes to provide copies of the Confidential Materials to the certain parties in interest in these cases as described herein, and (c) Winston's Final Application describes the relevant fees in appropriate and sufficient detail.

WHEREFORE, I respectfully request that the Court enter an order authorizing Winston to file its Response under seal and directing that all further pleadings relating thereto be filed under seal and all proceedings to be held in connection therewith, including the hearing presently scheduled for Monday, April 18, 2005, be conducted *in camera*, and granting such other and further relief as the Court deems just and proper.

Dated: April 14, 2005

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 14, 2005

/s/David Neier
David Neier