

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

**RCN CORPORATION, et al.,**

Debtors.

Chapter 11

Case Nos. 04-13638 (RDD)

(Jointly Administered)

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**OBJECTION OF NATIONAL CABLE TELEVISION COOPERATIVE  
TO DEBTORS' MOTION FOR STIPULATION AND ENTRY OF FINAL ORDER  
(I) AUTHORIZING THE USE OF LENDERS' CASH COLLATERAL, AND (II) GRANTING  
ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§361 AND 363**

National Cable Television Cooperative ("NCTC"), as and for its objection to the motion (the "Motion") of RCN Corporation ("RCN") and certain of its subsidiaries and affiliates (collectively, the "Debtors") for stipulation and entry of a final order (i) authorizing the use of Lenders' Cash Collateral, and (ii) granting adequate protection pursuant to §§361 and 363 of Title 11 of the United States Code (the "Bankruptcy Code") states, as follows:

**BACKGROUND**

1. NCTC is a programming and hardware buying cooperative that represents more than 1,000 independent cable operators, their 6,500 individual systems and more than 14 million subscribers nationwide. By combining the purchasing power of member companies, the NCTC is able to take advantage of the same volume discounts that large multiple system operators (MSOs) qualify for on programming, hardware and service purchases.

2. RCN is a co-op member of NCTC and a party to a certain Member Agreement dated as of July 1, 2000, which agreement was modified on or about December 30, 2003 (the "Agreement") between NCTC and RCN pursuant to which RCN purchases programming time and

content from NCTC. Pursuant to the Agreement, RCN is obligated to pay NCTC monthly in advance for programming services that NCTC provides for RCN's benefit. In recent months, RCN's payment obligations to NCTC have averaged approximately \$3.8 million per month. NCTC in turn pays the networks for programming services on behalf of RCN.

**NCTC REQUESTS THAT FINAL APPROVAL  
OF THE CASH COLLATERAL FACILITY BE DENIED**

3. By the Motion, the Debtors seek final approval of a cash collateral facility that is strictly tied to a budget (the "Budget") which details anticipated expenses in various line items.<sup>1</sup> The Budget, however, is devoid of any real detail as to the nature and extent of the expenditures proposed to be made thereunder, and there is no line item for NCTC.

4. NCTC has contacted counsel to RCN, to determine whether RCN's monthly obligation to NCTC is included somewhere in the Budget. Unfortunately, NCTC has not received any assurance that post-petition payments due to NCTC are budgeted, despite the fact that discussions with RCN representatives make it clear that RCN fully expects NCTC to continue render post-petition services under the Agreement.

5. NCTC is prepared to continue to render services, but is unwilling to do so in the absence of a budget that includes payments to NCTC for such services. To date, the Debtors have not provided NCTC with any reasonable assurance that the cash collateral facility contemplates payment to NCTC in accordance with the terms of the Agreement.

6. The Budget which accompanies the stipulation is lacking in detail, and seemingly makes no provision for the pre-payments to NCTC under the Agreement. In light of the Debtors' apparent desire for NCTC to perform post-petition, this is a critical omission from the Budget. NCTC

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<sup>1</sup>Terms not defined herein shall have the meanings ascribed to them in the Motion.

should not be asked to provide services and obligate itself to providers on behalf of RCN if RCN's funding and Budget do not contemplate the payments to NCTC, at the Debtors' current monthly "burn rate" of \$3.8 million. NCTC's risk is heightened by the position that RCN has taken post-petition to the effect that it intends to revert to original payment terms (i.e., pre-December 31, 2003 modification to the contract) of forty-five days from date of service.<sup>2</sup> Such a position would require NCTC to be at risk post-petition for as much as \$6 million in a grossly undersecured estate,<sup>3</sup> and even more if RCN was permitted to continue to operate beyond a payment default using the benefits of its NCTC contract.

7. Under the terms of the proposed cash collateral facility, the Lenders would be granted liens and claims in all unencumbered assets and other rights that might otherwise be available to unsecured creditors, leaving the RCN estate without any meaningful unencumbered assets.<sup>4</sup> In addition, the recent summary of schedules filed with this Court suggests that the estate has assets of \$38 million and liabilities of \$2.5 billion. Hence, any promise of an administrative claim is illusory unless such claim is funded by the lenders pursuant to a cash collateral carve-out or a preservation to the Debtors or a trustee of a Section 506(c) surcharge right. Consequently, if the Debtors' motion is granted, NCTC (and other administrative creditors) will have nowhere to look for recovery in the event of a post-petition payment default by the Debtors under the Agreement.

8. NCTC should be not expected to perform in an abyss, or be required to underwrite or serve as a guarantor of the Debtors' post-petition operations. NCTC is entitled to assurance that the Debtors' cash collateral facility makes express and adequate provisions for payment of post-petition services to be rendered by NCTC under the Agreement; if the Debtors are not prepared to demonstrate

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<sup>2</sup> Prior to the modification of payment terms, payment was due 15 days after submission of an end of the month invoice. For example, had the payment terms not been modified, payment for June 2004 services would have been invoiced on June 30 with payment due on July 15 (45 days from first service).

<sup>3</sup> Calculated based on a month and a half of service rendered.

<sup>4</sup> Although the Interim Order provides for a carve out of Chapter 5 actions from the Replacement Liens, there appears to be no corresponding limitation on the scope of the 507(b) Claims.

that they are capable of paying administrative expenses, then they should not be permitted to remain in chapter 11 or continue to receive benefit under the Agreement.

9. For all of the foregoing reasons, NCTC respectfully submits that that the cash collateral facility should not be approved in its current form, and requests modification of the cash collateral facility and the Budget consistent with this objection.

### **CONCLUSION**

**WHEREFORE**, NCTC requests that the Motion for approval of the cash collateral facility on a final basis be denied.

Dated: New York, New York  
June 18, 2004

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