

**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)  
: :  
: (Jointly Administered)  
Debtors. :

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**STIPULATION AND AGREED ORDER RESOLVING CLAIMS OF  
THE KEMPER INSURANCE COMPANIES AND THE DEBTORS'  
OBJECTION UNDER 11 U.S.C. §§ 105(a), 502(b), 503 AND 507, FED. R.  
BANKR. P. 3007 AND THE BAR DATE ORDER TO PROOFS OF  
CLAIM FILED BY KEMPER INSURANCE COMPANIES**

This stipulation and agreed order (the "Stipulation") is entered into by and between RCN Corporation ("RCN") and each of its subsidiaries and affiliates (collectively, the "RCN Companies"), on the one hand, and the Kemper Insurance Companies (collectively, "Kemper")<sup>1</sup> and Broadspire Services, Inc. ("Broadspire"), on the other hand, each by their respective undersigned attorneys.

**RECITALS**

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<sup>1</sup> The Kemper Insurance Companies are American Motorists Insurance Company, Lumbermens Mutual Casualty Company, American Protection Insurance Company, and American Manufacturing Mutual Company, and each of its and their parent corporations, subsidiaries, affiliates, legal successors and assigns.

WHEREAS, on May 27, 2004 (the "Petition Date"), certain of the debtors and debtors-in-possession in the above-captioned jointly administered bankruptcy cases (collectively, the "Debtors") filed voluntary petitions (the "Initial Cases") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") for reorganization relief under chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code");<sup>2</sup>

WHEREAS, RCN Cable TV of Chicago, Inc., commenced its chapter 11 case (the "Chicago Case") on August 5, 2004;

WHEREAS, certain other affiliated Debtors commenced their chapter 11 cases (the "Affiliated Cases" and together with the Initial Cases and the Chicago Case, collectively, the "Bankruptcy Cases") on August 20, 2004;<sup>3</sup>

WHEREAS, since the Petition Date, the Debtors have operated their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

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<sup>2</sup> RCN Corporation ("RCN"), TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC and Hot Spots Productions, Inc. (collectively, the "Initial Debtors") commenced their chapter 11 cases on May 27, 2004.

<sup>3</sup> RCN Telecom Services of Virginia, Inc., RCN Entertainment, Inc., 21<sup>st</sup> Century Telecom Services, Inc. and ON TV, Inc. commenced their chapter 11 cases on August 20, 2004.

WHEREAS, on June 23, 2004, the Court entered an order approving the Motion For Order under 11 U.S.C. Section 105 and Fed. R. Bankr. P. 2002(a)(7) And 3003(c)(3) (I) Setting Bar Dates for Filing Certain Proofs of Claim, (II) Approving Procedures for Filing Such Proofs of Claim, and (III) Approving Form, Manner, and Sufficiency of Notice Thereof (Docket No. 21) and establishing August 11, 2004 as the deadline for filing proofs of claim;

WHEREAS, on or about August 9, 2004, Kemper and Broadspire filed proof of claim numbers 1025 through and including 1029 (the "Kemper Proofs of Claim") against the following debtors:

- TEC Air, Inc. (Case Number 04-13641), proof of claim number 1025;
- RCN Finance, LLC (Case Number 04-13640), proof of claim number 1026;
- RLH Property Corporation (Case Number 04-13639), proof of claim number 1027;
- Hot Spots Production, Inc. (Case Number 04-13637), proof of claim number 1028; and
- RCN Corporation (Case Number 04-13638), proof of claim number 1029;

WHEREAS, on September 28, 2004, the Debtors filed their Objection under 11 U.S.C. §§ 105(a), 502(b), 503 and 507, Fed. R. Bankr. P. 3007 and the Bar

Date Order to Proofs of Claim Filed by Kemper Insurance Companies (the "Kemper Claims Objection"), objecting to the Kemper Proofs of Claim;

WHEREAS, on November 30, 2004, the parties hereto executed the Term Sheet, a true and correct copy of which is attached hereto as Exhibit A; and

WHEREAS, rather than litigate the disputes between them, the parties hereto have agreed to resolve their differences on the terms set forth herein.

## **TERMS AND CONDITIONS**

NOW THEREFORE, in consideration of the foregoing, the parties hereto hereby agree and stipulate as follows:

1. This stipulation and order shall become effective (the "Effective Date") upon its entry as a final and non-appealable order of the United States Bankruptcy Court for the Southern District of New York).

2. No sooner than ten (10) business days after the establishment of a third party trust account (the "Fund"), and in no event before the date that is five (5) business days after the Effective Date, the RCN Companies shall pay an amount sufficient to fully fund the Fund in the amount of \$4.9 million, which amount the parties agree is at least equal to 175% of the total amount currently estimated to be owed by any and/or all of the RCN Companies under any policies, agreements or other contracts between Kemper and/or Broadspire, on the one hand, and any and/or all of the RCN Companies, on the other hand (collectively the "Insurance Policies"). The parties hereto agree that the cash held by Kemper and/or Broadspire in various escrows and/or accounts as part of the Security shall be transferred to such Fund by Kemper and/or Broadspire as part of the \$4.9 million payment by the RCN Companies provided herein. The parties hereto further agree that there will be established on the Effective Date and from the Fund a separate escrow account (the "Working Escrow") in the amount of \$350,000 to be used by

Kemper and/or Broadspire for the payment of Monthly Invoices (as defined herein) in accordance with paragraphs 11-13 of the Stipulation.

3. Kemper and Broadspire believe that they held, as of November 1, 2004, security (the "Security") for the obligations of certain of the RCN Companies under the Insurance Policies in the form of certain amounts held in one or more escrow accounts, secured letters of credit and other forms of security, in an amount of at least \$6.5 million, which amount is subject to an accounting as set forth herein (the "Accounting"). The RCN Companies believe that the amount of the Security held by Kemper and/or Broadspire was at least \$6.8 million, which amount is subject to the Accounting.

4. In order to facilitate the establishment of the Fund, the parties hereto shall take all steps necessary to return the Security to the RCN Companies and/or otherwise release such Security to the RCN Companies, as set forth in paragraph 5 below.

5. No later than June 10, 2005 at 5:00 p.m. (Eastern), Kemper and Broadspire shall provide the Accounting to RCN. Specifically, Kemper and Broadspire shall provide one or more spreadsheets detailing the balances in any and all accounts held by Kemper and/or Broadspire as of the Petition Date and invoices sent and payments received by Kemper and/or Broadspire from the RCN Companies from the Petition Date through the date of execution of the Stipulation. RCN shall, in turn, have through and including June 17, 2005 at 5:00 p.m. (Eastern) to review the Accounting. If the parties

cannot reach agreement with respect to the Accounting and the amount of funds belonging to the RCN Companies held by Kemper and/or Broadspire, then the RCN Companies will submit the dispute on motion, on or before July 1, 2005 (unless such date is extended by mutual agreement of the parties hereto), to the Bankruptcy Court for resolution.

Pending the resolution of any dispute with respect to the Accounting and the amount of funds belonging to the RCN Companies held by Kemper and/or Broadspire as security, the RCN Companies shall have no obligation to contribute any amounts in addition to the cash Security already held by Kemper and/or Broadspire to the Fund. Upon resolution of any such dispute, however, the RCN Companies agree to pay into the Fund the difference (the "Fund Difference") between the amount of the cash Security that is determined to be held by Kemper and/or Broadspire plus the amount of any invoices paid by Kemper and/or Broadspire from such Security that were due and payable as of October 1, 2004, including any invoices sent to the RCN Companies after November 1, 2004, and \$4.9 million. Simultaneously with the payment of the Fund Difference by the RCN Companies, Kemper and/or Broadspire will release the Security.

6. All costs and expenses, including but not limited to legal fees and expenses incurred after the Effective Date, associated with establishing, maintaining, administering and/or terminating the Fund shall be paid from the amounts held in the Fund at the time such costs and expenses are incurred. The trustee or other custodian responsi-

ble for the Fund shall be authorized on a monthly basis to deduct the reasonable costs and/or expenses associated with administering the Fund from the amounts held by the Fund. To the extent that any such costs or expenses are paid directly by any of the parties hereto, such parties shall be entitled to payment from the Fund.

7. Upon the Effective Date (as defined herein) Kemper and Broadspire shall have an allowed, contingent, non-recourse, unliquidated claim (the "Remaining Claim") against RCN and shall withdraw all claims against any of the RCN Companies, filed in any of the bankruptcy cases (except the claim allowed herein against RCN)

8. The Remaining Claim shall be satisfied solely from the amounts in the Fund at the time such claim becomes liquidated and non-contingent.

9. Upon the Effective Date, Kemper and Broadspire shall release the RCN Companies, and each of their respective subsidiaries, affiliates, legal successors and assigns, from any and all liability under the Insurance Policies (except to the extent that such liabilities can be satisfied by any amounts in the Fund at the time such liabilities become liquidated and non-contingent) including but not limited to any and all claims, whether or not currently known by the parties, and regardless of whether such claims are secured, unsecured, priority, administrative, or otherwise, that were actually asserted, or that could have been asserted, in the Kemper Proofs of Claim or otherwise, by Kemper



and/or Broadspire against any of the RCN Companies, their respective subsidiaries, affiliates, legal successors and assigns with respect to, related to or arising in connection with the Insurance Policies, and including but not limited to any costs, fees or other expenses in connection with any use of the on-line claims system, known as KRMS, including future use in connection with the Insurance Policies; provided, however, that nothing herein shall be deemed to release the RCN Companies from any breach of the Stipulation.

10. Kemper and/or Broadspire will continue to invoice RCN on a monthly basis (each such invoice, hereinafter, a "Monthly Invoice") for any amounts due under the Insurance Policies (such amounts, hereinafter, the "Monthly Payments"), in accordance with the terms and provisions of the Insurance Policies. Upon sending a Monthly Invoice to RCN, Kemper and/or Broadspire shall be authorized to draw from the Working Escrow the amount of such Monthly Invoice.

11. In the event that RCN disputes a Monthly Invoice or portion thereof (each such disputed Monthly Invoice, hereinafter, a "Disputed Monthly Invoice"), notice of such Disputed Monthly Invoice or portion thereof, shall be provided to the trustee or other custodian responsible for the Fund and to Kemper (if the Disputed Monthly Invoice was sent by Kemper) or Broadspire (if the Disputed Monthly Invoice

was sent by Broadspire) within ten (10) business days of the date on which RCN receives such Monthly Invoice from Kemper and/or Broadspire.

12. In the event that RCN agrees with a Monthly Invoice or portion thereof, RCN will sign such Monthly Invoice, indicate the amount of such Monthly Invoice that is not subject to dispute and forward a copy of such signed Monthly Invoice to Kemper and/or Broadspire and the trustee or other custodian responsible for the Fund. The Trustee shall then pay the undisputed amount of such Monthly Invoice to the Working Escrow.

13. In the event that any Monthly Invoice or portion thereof paid from the Fund subsequently becomes a Disputed Monthly Invoice in accordance with Paragraph 11 of the Stipulation, the trustee or other custodian responsible for the Fund shall withhold the amount of such Disputed Monthly Invoice or portion thereof from future payments to the Working Escrow until such time as the Disputed Monthly Invoice or portion thereof is resolved between the parties in accordance with the dispute resolution procedures set forth in the Insurance Policies. In the event that, as a result of the withholding of the amounts of such Disputed Monthly Invoices, the balance in the Working Escrow is less than \$150,000, then the parties hereto agree that Kemper and/or Broadspire shall have the right to seek emergency relief, upon at least two (2) business days' notice to the RCN Companies, from the Bankruptcy Court, or in the event that jurisdiction has vested

exclusively in the United States District Court for the Northern District of Illinois (the "District Court") in accordance with paragraph 23 of the Stipulation, from the District Court.

14. Any payments made from the Fund shall reduce the amount of the Fund and the RCN Companies shall not be required or otherwise obligated to contribute any additional amounts to the Fund.

15. Beginning on a date that is not more than one year after the Effective Date, the parties will undertake a standard collateral review to determine an amount that represents the projected amounts owed under the Insurance Policies by the RCN Companies. The parties agree that the Fund shall be no more than 175% of such amount. To the extent that 175 % of such amount exceeds the amount of the Fund, the amount of the Fund shall not increase. To the extent that 175% of such amount is less than the amount of the Fund, the Fund shall be reduced to 175% of such amount and the difference shall be returned to the RCN Companies.

16. If within three (3) months of such collateral review, the parties are unable to agree upon the appropriate amount in the Fund the parties agree to undertake the dispute resolution procedures set forth in the Insurance Policies. The parties further agree to be bound by any decision reached after such dispute resolution procedures with respect to the amount in the Fund.

17. On a date that not more than two (2) years from the Effective Date, the parties shall meet in an attempt to determine an amount that represents the remaining amounts owed by the RCN Companies under the Insurance Policies. At such time, the parties will agree upon a formula and process for determining a "buy out" amount (the "Buy Out Amount"). The Buy Out Amount will subsequently be paid from the Fund to Kemper or to such other third-party with respect to which the parties to this Stipulation reasonably agree has made an offer of a Buy Out Amount that is acceptable to all of the parties. Any amounts remaining in the Fund after the payment of the Buy Out Amount will be returned to RCN and the Fund will be dissolved or otherwise terminated.

18. If within three (3) months of such meeting, the parties are unable to agree upon a Buy Out Amount, the parties agree to undertake the dispute resolution procedures set forth in the Insurance Policies. The parties further agree to be bound by any decision reached after such dispute resolution procedures with respect to the Buy Out Amount.

19. Pending any decision in accordance with paragraph 18 of the Stipulation, the parties agree to meet prior to the date that is two (2) years and six (6) months after the Effective Date and every six (6) months thereafter to conduct a standard collateral review and adjustment of the Fund in accordance with Paragraphs 15 and 16 of the Stipulation.

20. Notwithstanding the foregoing, nothing herein shall preclude the parties from agreeing upon, or one of the parties from offering, at any time prior to the two year anniversary of the Effective Date, a Buy Out Amount and proceeding in accordance with Paragraphs 17-19 of the Stipulation. The parties hereto shall make all reasonable efforts to cooperate in effectuating a Buy Out.

21. Except as set forth in the Stipulation, the parties agree that the terms and conditions of the Insurance Policies will remain in effect.

22. No alterations, modifications, supplements, changes, amendments, waivers, or termination of the Stipulation shall be valid unless in writing and executed by all of the parties hereto and approved by the Court. No waiver of any of the provisions of the Stipulation shall constitute a waiver of any other provisions (whether or not similar). No statement made or action taken in the negotiation of the Stipulation may be used by any party for any purpose whatsoever.

23. The Stipulation shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction. In the event any party shall institute a legal action as a result of a default in the other party's performance under this Stipulation, or for any breach of this Stipulation, any such action shall be brought exclusively in the Bankruptcy Court, or if the Bankruptcy Cases are no

longer open, in the District Court. Any of the parties hereto consent to personal jurisdiction and venue in the Bankruptcy Court and/or the District Court in connection with disputes arising under this Stipulation.

24. It is expressly understood and agreed that there have not been any promises, agreements, warranties, representations, or inducements, whether oral or written, express or implied, made by any party hereto, except to the extent expressly set forth herein.

25. The Stipulation shall be binding upon and inure to the benefit of the parties hereto, their parents, subsidiaries and affiliated corporations, their successors and assigns (including any third party purchaser) and each of their agents, representatives, and successors and assigns, including but not limited to any subsequently appointed Chapter 7 or Chapter 11 Trustee or Examiner, and further including any trustee or statutory committee heretofore or hereafter appointed in these bankruptcy case and/or any trustee, receiver or similar entity appointed with respect to Broadspire, Kemper and/or any of the Kemper Insurance Companies.

26. The Stipulation contains the entire agreement of the parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings, and agreements, whether oral or written, express or implied, between and among the parties hereto regarding the subject matter of the Stipulation.

27. The Stipulation constitutes a settlement of disputes among the parties hereto. If the Stipulation is withdrawn, cancelled or not approved by the Bankruptcy Court for any reason, or otherwise does not become a final and nonappealable order, then (i) the parties hereto fully reserve any and all of their rights; (ii) the provisions of this Stipulation shall be of no force and effect; and (iii) nothing contained herein shall be deemed to be an admission or concession of, or be in any way binding upon, any of the parties in any way, including but not limited to in connection with any future or pending litigation regarding the Kemper Proofs of Claim.

28. Each party hereby expressly represents and warrants that the individual executing the Stipulation on its behalf is fully authorized by such party to execute this Stipulation and to bind such party.

29. The Stipulation may be executed in any number of original or facsimile counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

30. The parties have participated jointly in the negotiation and drafting of the Stipulation. In the event an ambiguity or question of intent or interpretation arises, the Stipulation shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of the Stipulation.

31. The Court shall retain jurisdiction to hear any matters or disputes arising from or relating to the Stipulation.

32. The Stipulation shall not become effective until it has been approved by the Court.



IN WITNESS WHEREOF, Broadspire, Kemper and the Debtors, by  
their undersigned counsel, have executed the Stipulation as of the 10<sup>th</sup> day of June, 2005.

AGREED AND STIPULATED:

/s/ D.J. Baker  
D. J. Baker (DB 0085)  
(Member of the Firm)  
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SO ORDERED this 13th day of June, 2005

/s/ ROBERT D. DRAIN  
Honorable Robert D. Drain  
UNITED STATES BANKRUPTCY JUDGE

# **EXHIBIT A**