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Attorneys for RCN Corporation, et al.,
Reorganized Debtors

**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
:
:
Reorganized Debtors. :
-----X

**RCN'S MOTION SEEKING ENTRY OF ORDER, UNDER
11 U.S.C. § 107(b) AND FED. R. BANKR. P. 9018, AUTHORIZING
IT TO FILE PLEADINGS UNDER SEAL**

RCN Corporation, one of the Reorganized Debtors in the above-captioned cases ("RCN"), through its undersigned counsel, hereby seeks entry of an Order, under 11 U.S.C. § 107(b) and Fed. R. Bankr. P. 9018, authorizing it to file its motion, dated November 14, 2005 (the "Motion"), under seal, and, in support thereof, respectfully represents as follows:

JURISDICTION

1. Pursuant to 28 U.S.C. § 1334, the Court has jurisdiction over the Motion, which is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this Motion is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein are sections 105(a) and 107(b) of the Bankruptcy

Code and Federal Rule 9018.

BASIS FOR RELIEF

2. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from disclosure of certain confidential information. This section provides:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may –

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information. . .

11 U.S.C. § 107(b)(1)

3. Bankruptcy Rule 9018 sets forth the procedures by which a party may move for relief under section 107(b)(1) of the Bankruptcy Code, and provides, in pertinent part, that, "[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information" Fed. R. Bankr. P. 9018.

4. While RCN recognizes that public interest is served when public access to court records is assured, and that such access preserves public confidence in the integrity of the judicial process, that public right to access is not absolute. See, e.g., Nixon v. Warner Communications, Inc., 435 U.S. 589, 598 (1978). Section 107(b) of the Bankruptcy Code (as well as Fed.R.Civ.P. 26(c)) are congressionally sanctioned exceptions to this right, and represent an entrustment of requisite discretion to the trial judge to limit public access when, in the words of Rule 26(c), "justice so requires." In addition, RCN has been out of bankruptcy for some time, and notice concerns that are

paramount in a bankruptcy case are not nearly as important in what is, essentially, a two-party dispute.

5. It is established law that section 107(b) and Bankruptcy Rule 9018 do "not require that commercial information be the equivalent of a trade secret before protecting such information." Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 28 (2d Cir. 1994). Indeed, courts have held that a party seeking the sealing of information is only required to show that the information is confidential and commercial, and no showing of "good cause" is necessary. Orion Pictures, 21 F.3d at 28.

6. Consistent with the foregoing, the proposed Order annexed hereto also provides that, to the extent that information contained in the Motion is discussed at the hearing on the Motion, (i) such discussions shall take place outside the presence of parties not authorized to receive the Motion in accordance with this Order; and (ii) any transcript of such discussions shall be designated confidential and filed under seal.

NOTICE

7. RCN will serve notice of this Motion on the counterparty to this dispute. RCN respectfully submits that, given the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

8. No previous motion for the relief sought herein has been made to this or any other Court.

CONCLUSION

9. For all the foregoing reasons, the Court should enter an Order, in the form attached hereto as Exhibit A, (a) granting the Motion, (b) authorizing RCN to file the Motion under seal; and (c) granting RCN such other and further relief as the Court deems just and proper.

Dated: November 14, 2005

MILBANK, TWEED, HADLEY & M^cCLOY LLP

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EXHIBIT A

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: : Case No. 04-13638 (RDD)
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**ORDER, UNDER 11 U.S.C. § 107(b) AND FED. R. BANKR. P. 9018,
AUTHORIZING RCN TO FILE PLEADINGS UNDER SEAL**

Upon consideration of the motion dated November 14, 2005 (the "Sealing Motion"), of RCN Corporation for entry of an order pursuant to sections 105(a) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") authorizing RCN to file its motion, dated November 14, 2005 (the "Motion"), under seal; and it appearing that the relief requested in the Sealing Motion is warranted under the circumstances; and all objections thereto having been overruled or withdrawn pursuant to the terms of this Order; and after due deliberation and due and sufficient cause appearing therefor; it is hereby:

ORDERED that the Sealing Motion is granted on the terms of this Order;
and it is further

ORDERED that pursuant to sections 105 (a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, RCN is authorized to file the Motion under seal; and it is further

ORDERED that the Motion and any information derived therefrom shall remain confidential, and shall be served on and made available only to (a) RCN and its advisors, (b) the counterparty to the bilateral dispute that is the subject of the Motion, and (c) such counterparty's counsel (collectively, the "Authorized Parties"); and it is further

ORDERED that any Authorized Party receiving a copy of the Motion shall be bound by the terms of this Order and shall keep (a) the information contained in the Motion and (b) the fact of the filing of the Motion in strictest confidence consistent with the terms of this Order and not disclose such information to any person or entity (other than its own legal counsel or financial advisors); and it is further

ORDERED that any (a) responsive or related pleadings or (b) any pleadings that reference or disclose any of the information, or concern any of the issues, contained in the Motion, in each case, shall be filed under seal and shall be served only on the Authorized Parties; and it is further

ORDERED that, to the extent there is a hearing with respect to the Motion, (i) such hearing shall take place outside the presence of parties not authorized to receive the Motion in accordance with this Order; and (ii) any transcript of such hearing shall be designated confidential and filed under seal; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: _____

UNITED STATES BANKRUPTCY JUDGE