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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of Case No.  
04-B-13638

RCN CORPORATION,

Debtor.

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April 18, 2005  
United States Customs House  
One Bowling Green  
New York, New York 10004

Application for final professional  
compensation for Winston & Strawn, LLP,  
special counsel, et cetera

B E F O R E:

HON. ROBERT D. DRAIN,  
Bankruptcy Judge.

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**A P P E A R A N C E S:**

**WINSTON & STRAWN LLP**  
**Attorneys for Debtor**  
**200 Park Avenue**  
**New York, New York 10166**  
**BY: DANID NEIER, ESQ.,**  
**of Counsel**

**MILBANK TWEED HADLEY & McCLOY LLP**  
**Attorneys for Official**  
**Committee of Unsecured**  
**Creditors**  
**One Chase Manhattan Plaza**  
**New York, New York 10005**  
**BY: JAMES C. TECCE, ESQ.,**  
**of Counsel**

**CAROLYN S. SCHWARTZ, ESQ.**  
**Office of the United States**  
**Attorney**  
**33 Whitehall Street**  
**New York, New York 10004**  
**BY: PAUL SCHWARTZBERG, ESQ.,**  
**of Counsel**

1 RCN CORPORATION

2 P R O C E E D I N G S

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4 THE COURT: RCN Corporation.

5 MR. NEIER: Good morning,

6 Your Honor, David Neier, from Winston &

7 Strawn.

8 Your Honor, with respect to

9 Winston & Strawn's fee app, there were

10 conversations between the committee and the

11 United States Trustee, and we reached a

12 proposed settlement that we'd like to

13 present to Your Honor.

14 THE COURT: Okay.

15 MR. NEIER: The proposed

16 settlement would be that Winston would have

17 a deduction on its fees of one-third, so it

18 would be awarded two-thirds.

19 THE COURT: One-third of the

20 total sought?

21 MR. NEIER: Yes, one-third of

22 the total.

23 THE COURT: Is that correct?

24 MR. TECCE: James Tecce from

25 the law firm of Milbank Tweed Hadley

1 RCN CORPORATION

2 McCloy, on behalf of the committee..

3 Yes, Your Honor, that is true.

4 THE COURT: Mr. Schwartzberg?

5 MR. SCHWARTZBERG: That is

6 correct, yes, Your Honor. We have no

7 objection.

8 THE COURT: I appreciate your  
9 alerting this to me on Friday, it will save  
10 me plowing through several months of time  
11 records which I don't particularly like to  
12 do.

13 I find, based on my reading of  
14 the papers and my review of the time  
15 records in connection with the interim  
16 hearing, that this is a reasonable  
17 settlement, particularly in light of the  
18 fact that the committee truly represents  
19 the only economic interests in the case at  
20 this point and is well represented and  
21 capable of analyzing the facts. So I will  
22 approve the application on that basis.

23 MR. NEIER: Thank you, Your  
24 Honor.

25 I am not sure if our order has

1 RCN CORPORATION  
2 been totally signed off on. We are having  
3 trouble with the math and the chart. We  
4 have no problem with the language.

5 MR. TECCE: That is  
6 correct. I don't have a problem with the  
7 order except for as I was asking, the last  
8 chart I was just working with Mr. Neier,  
9 the last page.

10 THE COURT: You could e-mail  
11 it to chambers and resolve your  
12 disagreement. And if you still have some  
13 confusion about the numbers, you could  
14 e-mail the chart to chambers.

15 MR. NEIER: We e-mailed a  
16 prior version. We will e-mail an agreed  
17 upon one to chambers today.

18 THE COURT: The first motion  
19 didn't have the chart.

20 MR. NEIER: We probably had  
21 two e-mails, the chart was there and will  
22 make it easier to get to.

23 THE COURT: This is more for  
24 Mr. Schwartzberg's benefit than anyone  
25 else's. This application caused me to

## 1 RCN CORPORATION

2 rethink the whole topic of retaining  
3 counsel for a board. And having thought  
4 about it a fair amount, I initially was  
5 thinking I would have a per se rule against  
6 it completely but I am persuaded and that I  
7 have convinced myself that is not the right  
8 approach, that there is a legitimate  
9 purpose served under the statute for board  
10 counsel. But in the future these  
11 retentions do need to be very carefully  
12 prescribed so that counsel has more  
13 guidance on what is propensible and what is  
14 not.

15 In this case it appeared  
16 ironic if we had done that, there would not  
17 be the benefit that we got from this. But  
18 it is important to point out it is limited  
19 to an advisory function to the board, not  
20 an advocacy function; i.e. the estate  
21 should not be paying to protect board  
22 members from litigation. That is really  
23 covered by insurance or through  
24 indemnification rights, and importantly  
25 there should be some sort of mechanism

## 1 RCN CORPORATION

2 early on to alert the Court if the boards,  
3 as is its right, is calling on counsel to  
4 perform services that normally would be  
5 performed by the Debtor's main 327(a)  
6 counsel, so that at least the Court could  
7 be aware of some sort of shift at that  
8 point. So I guess we will just keep an  
9 eye open for the next application like  
10 this.

11 MR. SCHWARTZBERG: Thank you,  
12 Your Honor. We will.

13 MR. NEIER: Thank you, Your  
14 Honor.

15 MR. TECCE: Thank you.  
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RCN CORPORATION  
C E R T I F I C A T E

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

I, MINDY ROTHMAN-CORCORAN, a  
Shorthand Reporter and Notary Public  
within and for the State of New York, do  
hereby certify:

I reported the proceedings in the  
within-entitled matter and that the within  
transcript is a true record of such  
proceedings.

I further certify that I am not  
related, by blood or marriage, to any of  
the parties in this matter and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 24th day of April,  
2005.

MINDY ROTHMAN-CORCORAN



<p style="text-align: center;"><b>A</b></p> <p><b>advisory</b> 6:19  <b>advocacy</b> 6:20  <b>agreed</b> 5:16  <b>alert</b> 7:2  <b>alerting</b> 4:9  <b>amount</b> 6:4  <b>analyzing</b> 4:21  <b>app</b> 3:9  <b>appeared</b> 6:15  <b>application</b> 1:19  4:22 5:25 7:9  <b>appreciate</b> 4:8  <b>approach</b> 6:8  <b>approve</b> 4:22  <b>April</b> 1:16 8:21  <b>asking</b> 5:7  <b>Attorney</b> 2:16  <b>Attorneys</b> 2:5,9  <b>Avenue</b> 2:5  <b>awarded</b> 3:18  <b>aware</b> 7:7</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>B</b> 1:21  <b>Bankruptcy</b> 1:2,23  <b>based</b> 4:13  <b>basis</b> 4:22  <b>behalf</b> 4:2  <b>benefit</b> 5:24 6:17  <b>blood</b> 8:16  <b>board</b> 6:3,9,19,21  <b>boards</b> 7:2  <b>Bowling</b> 1:17</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>C</b> 2:2,12 3:2 8:2,2  <b>calling</b> 7:3  <b>capable</b> 4:21  <b>carefully</b> 6:11  <b>CAROLYN</b> 2:15  <b>case</b> 1:9 4:19 6:15  <b>caused</b> 5:25  <b>certify</b> 8:10,15  <b>cetera</b> 1:20  <b>chambers</b> 5:11,14</p>	<p>5:17  <b>chart</b> 5:3,8,14,19,21  <b>Chase</b> 2:11  <b>committee</b> 2:10 3:10  4:2,18  <b>compensation</b> 1:20  <b>completely</b> 6:6  <b>confusion</b> 5:13  <b>connection</b> 4:15  <b>conversations</b> 3:10  <b>convinced</b> 6:7  <b>Corporation</b> 1:11  3:1,4 4:1 5:1 6:1  7:1 8:1  <b>correct</b> 3:23 4:6 5:6  <b>counsel</b> 1:20 2:7,13  2:19 6:3,10,12 7:3  7:6  <b>COUNTY</b> 8:4  <b>Court</b> 1:2 3:4,14,19  3:23 4:4,8 5:10,18  5:23 7:2,6  <b>covered</b> 6:23  <b>Creditors</b> 2:10  <b>Customs</b> 1:17</p> <hr/> <p style="text-align: center;"><b>D</b></p> <p><b>D</b> 1:22 3:2  <b>DANID</b> 2:7  <b>David</b> 3:6  <b>day</b> 8:21  <b>Debtor</b> 1:13 2:5  <b>Debtor's</b> 7:5  <b>deduction</b> 3:17  <b>disagreement</b> 5:12  <b>DISTRICT</b> 1:3  <b>DRAIN</b> 1:22</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p><b>E</b> 1:21,21 2:2,2 3:2,2  8:2,2  <b>early</b> 7:2  <b>easier</b> 5:22  <b>economic</b> 4:19  <b>else's</b> 5:25  <b>ESQ</b> 2:7,12,15,18</p>	<p><b>estate</b> 6:20  <b>et</b> 1:20  <b>eye</b> 7:9  <b>e-mail</b> 5:10,14,16  <b>e-mailed</b> 5:15  <b>e-mails</b> 5:21</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p><b>F</b> 1:21 8:2  <b>fact</b> 4:18  <b>facts</b> 4:21  <b>fair</b> 6:4  <b>fee</b> 3:9  <b>fees</b> 3:17  <b>final</b> 1:19  <b>find</b> 4:13  <b>firm</b> 3:25  <b>first</b> 5:18  <b>Friday</b> 4:9  <b>function</b> 6:19,20  <b>further</b> 8:15  <b>future</b> 6:10</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>G</b> 3:2  <b>Good</b> 3:5  <b>Green</b> 1:17  <b>guess</b> 7:8  <b>guidance</b> 6:13</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>Hadley</b> 2:9 3:25  <b>hand</b> 8:21  <b>hearing</b> 4:16  <b>hereunto</b> 8:20  <b>HON</b> 1:22  <b>Honor</b> 3:6,8,13 4:3,6  4:24 7:12,14  <b>House</b> 1:17</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>important</b> 6:18  <b>importantly</b> 6:24  <b>indemnification</b>  6:24  <b>initially</b> 6:4</p>	<p><b>insurance</b> 6:23  <b>interested</b> 8:18  <b>interests</b> 4:19  <b>interim</b> 4:15  <b>ironic</b> 6:16  <b>i.e</b> 6:20</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p><b>James</b> 2:12 3:24  <b>Judge</b> 1:23</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>keep</b> 7:8</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>language</b> 5:4  <b>law</b> 3:25  <b>legitimate</b> 6:8  <b>light</b> 4:17  <b>limited</b> 6:18  <b>litigation</b> 6:22  <b>LLP</b> 1:20 2:4,9</p> <hr/> <p style="text-align: center;"><b>M</b></p> <p><b>main</b> 7:5  <b>Manhattan</b> 2:11  <b>marriage</b> 8:16  <b>math</b> 5:3  <b>matter</b> 1:8 8:12,17  8:19  <b>McCLOY</b> 2:9 4:2  <b>mechanism</b> 6:25  <b>members</b> 6:22  <b>Milbank</b> 2:9 3:25  <b>MINDY</b> 8:7,24  <b>months</b> 4:10  <b>morning</b> 3:5  <b>motion</b> 5:18</p> <hr/> <p style="text-align: center;"><b>N</b></p> <p><b>N</b> 2:2 3:2  <b>need</b> 6:11  <b>Neier</b> 2:7 3:5,6,15  3:21 4:23 5:8,15  5:20 7:13  <b>New</b> 1:3,18,18 2:6,6  2:11,11,17,17 8:3</p>
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<p>8:4,9  <b>normally</b> 7:4  <b>Notary</b> 8:8  <b>numbers</b> 5:13</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>O</b> 1:21 3:2  <b>objection</b> 4:7  <b>Office</b> 2:16  <b>Official</b> 2:9  <b>Okay</b> 3:14  <b>one-third</b> 3:17,19,21  <b>open</b> 7:9  <b>order</b> 4:25 5:7  <b>outcome</b> 8:18</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>P</b> 2:2,2 3:2  <b>page</b> 5:9  <b>papers</b> 4:14  <b>Park</b> 2:5  <b>particularly</b> 4:11,17  <b>parties</b> 8:17  <b>PAUL</b> 2:18  <b>paying</b> 6:21  <b>perform</b> 7:4  <b>performed</b> 7:5  <b>persuaded</b> 6:6  <b>Plaza</b> 2:11  <b>plowing</b> 4:10  <b>point</b> 4:20 6:18 7:8  <b>prescribed</b> 6:12  <b>present</b> 3:13  <b>prior</b> 5:16  <b>probably</b> 5:20  <b>problem</b> 5:4,6  <b>proceedings</b> 8:11,14  <b>professional</b> 1:19  <b>propensible</b> 6:13  <b>proposed</b> 3:12,15  <b>protect</b> 6:21  <b>Public</b> 8:8  <b>purpose</b> 6:9</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>R</b> 1:21 2:2 3:2 8:2</p>	<p><b>RCN</b> 1:11 3:1,4 4:1  5:1 6:1 7:1 8:1  <b>reached</b> 3:11  <b>reading</b> 4:13  <b>really</b> 6:22  <b>reasonable</b> 4:16  <b>record</b> 8:13  <b>records</b> 4:11,15  <b>related</b> 8:16  <b>reported</b> 8:11  <b>Reporter</b> 8:8  <b>represented</b> 4:20  <b>represents</b> 4:18  <b>resolve</b> 5:11  <b>respect</b> 3:8  <b>retaining</b> 6:2  <b>retentions</b> 6:11  <b>rethink</b> 6:2  <b>review</b> 4:14  <b>right</b> 6:7 7:3  <b>rights</b> 6:24  <b>ROBERT</b> 1:22  <b>ROTHMAN-CO...</b>  8:7,24  <b>rule</b> 6:5</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>S</b> 2:2,15 3:2  <b>save</b> 4:9  <b>SCHWARTZ</b> 2:15  <b>Schwartzberg</b> 2:18  4:4,5 7:11  <b>Schwartzberg's</b>  5:24  <b>se</b> 6:5  <b>served</b> 6:9  <b>services</b> 7:4  <b>set</b> 8:21  <b>settlement</b> 3:12,16  4:17  <b>shift</b> 7:7  <b>Shorthand</b> 8:8  <b>signed</b> 5:2  <b>sort</b> 6:25 7:7  <b>sought</b> 3:20  <b>SOUTHERN</b> 1:3</p>	<p><b>special</b> 1:20  <b>ss</b> 8:4  <b>State</b> 8:3,9  <b>States</b> 1:2,17 2:16  3:11  <b>statute</b> 6:9  <b>Strawn</b> 1:20 2:4 3:7  <b>Strawn's</b> 3:9  <b>Street</b> 2:17  <b>sure</b> 4:25</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>T</b> 8:2,2  <b>Tece</b> 2:12 3:24,24  5:5 7:15  <b>Thank</b> 4:23 7:11,13  7:15  <b>thinking</b> 6:5  <b>thought</b> 6:3  <b>time</b> 4:10,14  <b>today</b> 5:17  <b>topic</b> 6:2  <b>total</b> 3:20,22  <b>totally</b> 5:2  <b>transcript</b> 8:13  <b>trouble</b> 5:3  <b>true</b> 4:3 8:13  <b>truly</b> 4:18  <b>Trustee</b> 3:11  <b>Tweed</b> 2:9 3:25  <b>two</b> 5:21  <b>two-thirds</b> 3:18</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>United</b> 1:2,17 2:16  3:11  <b>Unsecured</b> 2:10</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>version</b> 5:16</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>way</b> 8:18  <b>WHEREOF</b> 8:20  <b>Whitehall</b> 2:17  <b>Winston</b> 1:20 2:4</p>	<p>3:6,9,16  <b>within-entitled</b> 8:12  <b>WITNESS</b> 8:20  <b>working</b> 5:8</p> <hr/> <p style="text-align: center;"><b>X</b></p> <hr/> <p><b>x</b> 1:5,14</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>York</b> 1:3,18,18 2:6,6  2:11,11,17,17 8:3  8:4,9</p> <hr/> <p style="text-align: center;"><b>0</b></p> <hr/> <p><b>04-B-13638</b> 1:10</p> <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>10004</b> 1:18 2:17  <b>10005</b> 2:11  <b>10166</b> 2:6  <b>18</b> 1:16</p> <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <p><b>200</b> 2:5  <b>2005</b> 1:16 8:22  <b>24th</b> 8:21</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>327(a)</b> 7:5  <b>33</b> 2:17</p>
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