

# Ríos Ferrer, Guillén-Llarena, Treviño y Rivera, S.C.

ABOGADOS



INSURGENTES SUR No. 1605  
TORRE MURAL, PISO 12  
COL. SAN JOSE INSURGENTES  
MEXICO, D.F., 03900  
MÉXICO

TELEFONO (52-55) 5662-6348  
FAX (52-55) 5662-6350  
E-MAIL rfygll@riosferrer.com.mx  
www.riosferrer.com.mx

RICARDO RÍOS FERRER ● DAVID GUILLÉN-LLARENA ● ROBERTO RÍOS FERRER ● FRANCISCO TREVIÑO MORENO ● JULIO RIVERA DE LOS REYES ● RAFAEL BANZO LETOSA ● FRANCISCO FRANCO LARA ● MARIO RODRIGUEZ MALPICA

**MEGA CABLE, S.A. DE C.V., and  
MCM HOLDING, S.A. DE C.V.**

**VS**

**RCN INTERNATIONAL HOLDINGS, INC.**

**ARBITRATION PETITION**



**GENERAL SECRETARY OF THE INTERNATIONAL COURT OF ARBITRATION OF THE  
INTERNATIONAL CHAMBER OF COMMERCE  
P R E S E N T.**

**RODOLFO MORALES DE LA GARZA** on behalf of **MEGA CABLE, SOCIEDAD ANONIMA  
DE CAPITAL VARIABLE** (“MEGA CABLE, S.A. DE C.V.”); and

**ALEJANDRO M. HERNANDEZ BRINGAS** on behalf of **MCM HOLDING, SOCIEDAD  
ANONIMA DE CAPITAL VARIABLE** (“MCM HOLDING, S.A. DE C.V.”);

Attesting herein our respective powers of attorneys and legal capacity duly evidenced with the public deeds attached hereto as “**Exhibit 1**” and “**Exhibit 2**”, jointly conforming among **MEGA CABLE, S.A. DE C.V.** and **MCM HOLDING, S.A. DE C.V.** (*litis consorcio activo*) “**The Plaintiffs**” of this arbitration proceeding (hereinafter jointly referred to as “**Megacable**” or as otherwise specifically named hereunder by each of their names).

All of the Plaintiffs are hereby represented by their attorneys dully authorized to practice law in México Messrs. Ricardo Ríos Ferrer and/or David Guillén Llarena, whom are hereby

expressly authorized and fully empowered by Plaintiffs to act on their name and behalf within the arbitration process including all the necessary powers and capacity to file documents, petitions, motions, promote and request any evidence, appear in any hearing and express any argument in the benefit of Plaintiffs claims. Likewise, for purpose of authorizing the assistance in the arbitration process, Plaintiffs hereby grant sufficient authority to Messrs. Julio Gutierrez Morales, Jorge Torres Martínez and/or Roberto Ríos Artigas, in order to assist in any arbitration proceeding or receive any notice related thereto.

Plaintiffs hereby designate as domicile to hear and receive notices, Avenida Insurgentes Sur número 1605, 12<sup>th</sup> floor, "Torre Mural", Col. San José Insurgentes, C.P. 03900, in this city, telephones 5662-6348, telefax 5662-6350, e-mail [rrios@riosferrer.com.mx](mailto:rrios@riosferrer.com.mx) and [dguillen@riosferrer.com.mx](mailto:dguillen@riosferrer.com.mx).

Based on Article 4 of the Rules of Arbitration of the International Chamber of Commerce, (hereinafter "**The Rules of Arbitration of the ICC**") we hereby submit an **ARBITRATION PETITION** against the company **RCN INTERNATIONAL, INC.** to whom the Private Shareholders make the following claims:

- 1.- The formal declaration of rescission and termination of all the Transaction Documents (as defined below).
2. The enforcement of RCN Int.'s (as defined below) withdrawal ("retiro") from Megacable's (as defined below) capital pursuant to Megacable's By-laws and Articles 213 and 220 of the General Business Corporations Law ("*Ley General de Sociedades Mercantiles*"); for this redemption purpose, the value of RCN Int.'s shares in Megacable is their book value as set forth in the fifth paragraph, insert (ii), Article 13<sup>th</sup>., of Megacable's By-Laws. "**Exhibit 3**"

Pursuant Section 3 of Article 4 above-mentioned Rules, we hereby submit the following information:

**a) NAME IN FULL, DESCRIPTION AND ADDRESS OF EACH OF THE PARTIES.**

**THE PLAINTIFFS:**

**A.**

Megacable, S.A. de C.V., and

**B.**

MCM Holding, S.A. de C.V.

**THE DEFENDANT:**

**RCN INTERNATIONAL HOLDINGS, INC.**, domiciled in Presidents Plaza, Building One, 196 Van Buren Street, Suite 300, Herndon, VA. 20170, or 105 Carnegie Center, Princeton, New Jersey 08540., and

**JOINING PLAINTIFFS:**

It is also hereby announced to this Court that the following individuals attempts to file and adhere to this claim, in their capacity of Shareholders of Mega Cable, S.A. de C.V. and MCM Holding (herein referred as the "**Private Shareholders**"):

1. Ildelfonso Fernández Salido
2. Julián Aguilera Campoy
3. Julián Aguilera Urrea
4. Ángel Ramón de Jesús Robinson Bours Urrea
5. Marina Guadalupe Robinsón Bours Ruy Sánchez de Alvarado
6. Martha Guadalupe Robinsón Bours Ruy Sánchez de Larraguibel
7. Lucia Margarita Bours Ruy Sánchez de Valenzuela

8. Beatriz Marina Bours Muñoz
9. Rossana Robinson Bours Muñoz
10. Anabella Robinson Bours Muñoz
11. Jesús Rodolfo Robinson Bours Muñoz
12. Mónica Robinson Bours Muñoz
13. Jesús Enrique Robinson Bours Muñoz
14. Manuel Urquijo Beltrán
15. Gloria Griffith Anduro
16. Javier Robinson Bours Almada
17. Francisco Javier R. Bours Castelo
18. Juan Robinson Bours Almada
19. Ernesto Fernando Echavarría Salazar
20. Trigio Cañedo Urías
21. Daniel Fernando Ramos Cabello
22. Enrique Yamuni Robles, and,
23. Scotiabank Inverlat, S.A., Institución de Banca Múltiple, Grupo Financiero Scotiabank Inverlat, División Fiduciaria.

**b) DESCRIPTION OF THE NATURE AND CIRCUMSTANCES OF THE DISPUTE GIVING RISE TO THE CLAIM**

1.- The controversy consists in the following:

- 1.1. Megacable and the Private Shareholders dispute RCN Int'l's manifestation purporting to comply with all the Transaction Documents (as defined below);
- 1.2. Megacable and the Private Shareholders dispute RCN Int.'s manifestations purporting to continue participating in Megacable's corporate governance and capital.

- 1.3. Megacable and the Private Shareholders maintain the Support and Guaranty Agreement was breached or terminated on or about December 8, 2004 pursuant to the terms of the RCN Corp. Plan of Reorganization, as confirmed by order of the United States Bankruptcy Court for the Southern District of New York.
- 1.4. Megacable and the Private Shareholders maintain that as a consequence of the actions mentioned in 1.1 through 1.3 above Megacable is that there was a material breach of the Transaction Documents, including without limitation, the Subscription Agreement, which gives rise to: (i) the rescission and termination of all the Transaction Documents, and (ii) the withdrawal of RCN Int.'s Relevant Shares (as defined hereunder) from Megacable's capital.

The origin of the controversy arises under, and is related to the group of contracts entered into among Megacable, C-TEC Corporation, C-TEC International Inc., and the Private Shareholders, consisting in: i) "The Subscription Agreement", "**Exhibit 4**"; ii) "The Support & Guarantee Agreement" both executed as of 19<sup>th</sup> of January of 1995, "**Exhibit 5**"; iii) "The Shareholders Agreement", executed as of 24<sup>th</sup> of January 1995, "**Exhibit 6**"; and iv) the Megacable By-Laws as amended on December 16<sup>th</sup>., 1994 (in the case of Megacable) and on December 11, 2001 (in the case of MCM Holding and Megacable Telecomunicaciones, S.A. de C.V.), "**Exhibits 7**". All these documents were included in the definition "Transaction Documents" contained in Article I of the Subscription Agreement (hereinafter collectively denominated the "Transaction Documents"). C-TEC Corp. was succeeded by RCN Corporation. (hereinafter "RCN Corp."), and C-TEC Int.'s corporate name was changed to RCN International Holdings, Inc. (hereinafter "RCN Int.").

Pursuant to the Subscription Agreement and to the Shareholders Meeting minutes of Megacable dated December 16<sup>th</sup>., 1994, RCN Int., initially subscribed a total of 37'000,000 shares, divided as follows: 9'250,000 are Series "B" common shares; 27'750,000 are limited voting Series "D" shares; that in turn are distributed as follows: 13,875,000 pertain to Subseries "D-1" and 13'875,000 pertain to Subseries "D-2" (defined in the Subscription

Agreement as the "Initial Shares"). In the case of MCM Holding, RCN Int. subscribed a total of 45'258,066 shares. All of the Initial Shares represent 40% of Megacable's and 48.93% of MCM Holding outstanding capital, respectively, as of the date of this petition. All of these Megacable and MCM Holdings' shares issued to RCN Int. are subject to the legal effects of this arbitration petition (hereinafter referred to as the "Relevant Shares"), and exclude any other share acquired by RCN from any shareholder, including shares acquired in proportion to these particular shares by reason of capital increases subsequent to such acquisition.

2.- The Transaction Documents, have common purposes: to allow RCN Int. to become a Megacable shareholder and the regulation of the legal and economic relations of the Private Shareholders, of RCN Int., and of RCN Corp., within Megacable, as well as the commercial activity and corporate governance of the latter. The Transaction Documents are subject to one same condition: that RCN Int. remains as shareholder of Megacable with the support of RCN Corp. The Private Shareholders and Megacable's consent to allow RCN Int. to become a Megacable shareholder was also made subject to the continuing existence and performance of all the Transaction Documents. Additionally, the Transaction Documents were executed on or about the same date; and by the same parties or by parties closely related amongst them. The Transaction Documents were executed as part of a single integrated transaction and no individual Transaction Document would have been executed but for the execution of all of the Transaction Documents.

RCN Int.'s entry as a shareholder of Megacable was consented by Megacable through the Subscription Agreement and pursuant to it and to the rest of the Transaction Documents the Private Shareholders granted their waiver to subscribe the capital increase of the Relevant Shares that were subscribed by RCN Int., as evidenced by Megacable's Shareholders Meeting minutes dated December 16<sup>th</sup>, 1994. The Private Shareholders' consent in the capital increase, and Megacable's consent in the Subscription Agreement, was predicated on the premise that RCN Int.'s ownership to the Relevant Shares is conditioned to the continuing performance of all the Transaction Documents. Therefore,

RCN Int.'s title over the Relevant Shares is not free and clear; it is encumbered by the condition that it is interdependent with the continuing obligations of all parties to the Transaction Documents'. Pursuant to the express words of the Transaction Documents, Megacable and the Private Shareholders consented to RCN Int.'s entry in Megacable's capital, upon the condition that the Transaction Documents were executed and remained honored, otherwise, all of the shareholders of Megacable, including RCN Int., would become deprived of the material protections and obligations that were bargained by all parties in the Transaction Documents to their benefit and to the benefit of Megacable itself. Clearly, the intent of all parties was to subject RCN Int.'s continuing title over the Relevant Shares to the fate of the Transaction Documents; conversely, the continuing existence of the Transaction Documents are subject to RCN Int.'s continuing title over the Relevant Shares.

3. As discussed below, pursuant to the Plan of Reorganization and the Confirmation Order, RCN Corp. was required to either expressly assume the Support and Guaranty Agreement pursuant to the provisions of the Bankruptcy Code (Exhibit 9, Art. VII.A) or was required to expressly except its pre-bankruptcy obligations under the Support and Guaranty Agreement from the discharge provisions of the Plan and the Bankruptcy Code (Exhibit 9, Atr XIV). RCN Corp. did neither, resulting in a breach of the Support and Guaranty Agreement and /or a release of all of RCN Corp.'s obligations under the Support and Guaranty Agreement. Pursuant to the Transaction Documents this rejection, breach or termination of the Support & Guarantee Agreement by RCN Corp. constitutes a sufficient and unequivocal evidence of a rejection, breach or the termination of all of the Transaction Documents, including the Subscription Agreement, as well as of RCN Int.'s ownership of the Relevant Shares.<sup>1</sup> However, under Mexican Law and pursuant to Megacable's By-Laws RCN Int.'s redemption

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<sup>1</sup> The Disclosure Statement in Support of Joint Plan of Reorganization, dated October 12, 2004. "Exhibit 8".  
Joint Plan of Reorganization of RCN Corporation and Certain Subsidiaries, dated the 12th of October, 2004. "Exhibit 9".  
Plan Supplement with Respect to Joint Plan of Reorganization of RCN Corporation and Certain Subsidiaries, dated the 19th of November, 2004. "Exhibit 10".  
The Motion For an Order Approving the Assumption of Certain Executory Contracts, dated November 30, 2004. "Exhibit 11".

of the Relevant Shares has to meet certain formalities. The Private Shareholders and Megacable hereby claim the full performance of, and compliance with, these formalities.

A necessary consequence of the rejection, breach or termination of the Support & Guarantee Agreement and, thus, of the rest of the Transaction Documents is RCN Int.'s withdrawal or redemption of its Relevant Shares from Megacable.<sup>2</sup>

The withdrawal formalities are hereby petitioned to be fully performed by RCN Int. Megacable is willing to redeem RCN Int's Relevant Shares pursuant to such requirements and at the value specifically stated in Megacable's By-Laws to apply in that particular case.

4.- Each Transaction Document has mixed and specific purposes, that are part of a single transaction described above. Therefore RCN Int's continuing interest in Megacable is dependent upon the continued performance by all parties of all obligations under the Transaction Documents (*contratos coaligados*).

**4.1. Subscription Agreement.** Governed by Mexican law, the Subscription Agreement, is a complex contract because it has different purposes. On one part, it regulates the subscription of the Relevant Shares issued by Megacable in favor of RCN Int. On the other, it contains continuing obligations that remain in effect after the subscription above mentioned, and subsist while RCN Int. remains as shareholder of Megacable.

**4.2. Shareholders Agreement.** Governed by Mexican law, the several purposes of the Shareholders Agreement are the regulation of the management and corporate governance of Megacable; and the restrictions imposed on the transfer of shares, among others.

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<sup>2</sup> The memorandum of Law in Support of Confirmation of the Plan, dated December 6, 2004. "Exhibit 12".  
The Findings of Fact and Conclusions of Law and Order Confirming the Plan, dated December 8, 2004. "Exhibit 13".  
The January 5, 2005, transcript of a Bankruptcy Court hearing concerning the assumption of executory contracts.  
"Exhibit 14".



**4.3. Support & Guarantee Agreement.** Governed by New York law, the Support & Guarantee Agreement, is also a complex contract having different purposes. On one part, RCN Corp. as indirect parent of RCN Int., guaranteed to Megacable and to the Private Shareholders, that RCN Int. would have the necessary resources to pay for the subscription of the Relevant Shares issued by Megacable pursuant to the Subscription Agreement. On the other, RCN Corp. assumed certain negative obligations (*obligaciones de no hacer*) before Megacable and the Private Shareholders, such as (i) to remain as controlling shareholder of RCN Int. (Section 2.1.); (ii) not to allow any transfer of shares issued by Megacable and owned by RCN Int. (Article 2.2.); (iii) not to compete, in any way or through any vehicle, whether directly or indirectly, with the Megacable business (Section 2.4.); and (ii) not to enter into Conflictive Agreements, as such term is defined in the Shareholders Agreement (Section 1.1).

**4.4. Megacable By-Laws (“Estatutos”).** Governed by Mexican law, the By-Laws of each of Megacable and MCM Holding regulate primarily the corporate governance of each company; however, it may only achieve such purpose if supplemented by the Transaction Documents. The Subscription Agreement required Megacable’s By-Laws to be modified in order to reflect the corporate rights of RCN Int. agreed in the Shareholders Agreement. The Private Shareholders, again, granted their consent at the shareholders’ meeting that resolved upon the modifications to Megacable’s By-laws, pursuant to the terms of the Transaction Documents. As a result, these By-Laws were amended and restated by the Private Shareholders as part of the covenants contained in the Subscription Agreement and in the Shareholders Agreement. Therefore, the Private Shareholders’ consent to such modifications and the resulting amendments are an inextricable part of the Subscription and of the Shareholders Agreement, and consequently, integrate a material part of the Transaction Documents taken as a single contractual relationship.

5.- The Transaction Documents as a whole implement the transaction described above. The economic and objective connections among them (*contratos coaligados*), include, the regulation of the commercial and corporate activities of Megacable and RCN Int.'s entry as a Megacable shareholder; with the support of RCN Corp. These common purposes may be achieved only with the fulfillment of the obligations that each party assumed under each Transaction Document.

Among all of the Transaction Documents, there is an interdependent coordination relationship, and none of them are subordinated to the other because the obligations that each contain are bilateral, reciprocal and are driven by the same common purposes noted above, subject to the same condition: that RCN Int. remains as shareholder of Megacable. Conversely, RCN Int.'s interest in the Relevant Shares is subject to the existence and performance of all the Transaction Documents.

Moreover, the rejection or termination of the Support and Guarantee Agreement, as part of the Transaction Documents, is a material breach of the Transaction Documents. Megacable relied upon RCN Corp.'s continuing obligations under the Support and Guarantee Agreement to induce Megacable and the Private Shareholders to execute the rest of the Transaction Documents.

6. The interdependence of the Transaction Documents arises not only from an objective connection. It derives too from the intent and will of the parties who expressly agreed to act in pursuit of accomplishing a single transaction. Following is an illustrative list of provisions from each Transaction Document, that evidences the foregoing:

6.1.- Recital A of the Subscription Agreement states that RCN Corporation Inc, is a corporation organized under the laws of Pennsylvania, and that directly or indirectly owns 100% if the capital stock of RCN Int.

**6.2.** Recital C of the Subscription Agreement states that the intent of the parties is to enter this and other agreements with the purpose of establishing a long-term cooperation agreement.

**6.3.** Section 8.11, "Integration", of the Subscription Agreement states that this contract, as well as its Annexes and Exhibits (that include each of the Transaction Documents), constitute the complete and integrated agreement of the parties.

**6.4.** Article V of the Subscription Agreement conditions the parties obligations thereunder to the execution and delivery of the Support & Guarantee Agreement and of the Shareholders Agreement; moreover, also as a condition precedent, the By-Laws of Megacable had to be amended and restated to read in their entirety substantially as set forth in Exhibit A-1 to the Shareholders Agreement.

**6.5.-** Section 1 of the Subscription Agreement, "Definitions", defined as "Transaction Documents", each of the following agreements; the Subscription Agreement, the Shareholders Agreement, the Control Trust Agreement, the Support and Guarantee Agreement and any certificate or instrument delivered pursuant to the Subscription Agreement (including Megacable's By-Laws).

**6.6.-** Clause 8.1, paragraph 4, states that the Subscription Agreement may be terminated at any time prior to the subscription closing, upon notice given by Megacable if RCN Corp., breaches any material covenant or agreement in any Transaction Document or if any representation or warranty made by the RCN Int., or RCN Corp., pursuant to any Transaction Document is false in any material respect when made. In this way the parties expressly stated that the effects of a breach under any Transaction Document, would cause a cross default under all other Transaction Documents, thus, all would be terminated prior to that closing. It should be noted that this section is cited herein with the exclusive purpose of evidencing the intent of the

parties in that they purported to group all Transaction Documents and to link them by their purpose and legal effects.

**6.7.** Clause 8.3, (e) of the Subscription Agreement; Clause 9.2 (e) of the Shareholders Agreement and Clause 4.4. (e) of the Support and Guarantee Agreement, state in identical terms in each case, that the arbitration tribunal may consolidate an arbitration proceeding under that agreement, with any other arbitration proceeding under any other Transaction Document. That controversies arising under different Transaction Documents may be consolidated by the arbitration tribunal into a single arbitration proceeding is an express agreement to consider all the Transaction Documents as a single contractual relationship.

**6.8.-** Recital A of the Shareholders Agreement, states that RCN Int., has subscribed the Initial Shares issued to it by Megacable pursuant to the Subscription Agreement. To reach this point, the Subscription Agreement and the Support and Guarantee Agreement had been executed and delivered.

**6.9.-** Recital C of the Shareholders Agreement states that the By-Laws of Megacable were amended to adapt them pursuant to the agreements entered under the Transaction Documents.

**6.10.-** Clause 7.4 (g) of the Shareholders Agreement states that in case RCN Int., or RCN Corp., breaches any of their respective and material obligations under any of the Transaction Documents, both will lose their rights regarding the corporate governance deadlock provisions ("Impasse", as such term is defined in this agreement).

**6.11.-** Recital A of the Support and Guarantee Agreement states that RCN Corp. directly or indirectly owns all of the issued and outstanding capital stock of RCN Int.

**6.12.-** Recital B of the Support and Guarantee Agreement states that in connection with the closing of the Subscription Agreement, RCN Int. and the Private Shareholders agreed to enter into a Shareholders Agreement to regulate the management of Megacable, the restrictions on the transfer of shares and other matters related to that company.

**6.13.** The NOW THEREFORE paragraph of the Support and Guarantee Agreement, states that the purpose of this contract is to induce Megacable to enter into the Subscription Agreement and Megacable and the Private Shareholders to enter into the Shareholders Agreement. This statement expressly links all of these contracts since the time of their execution and until RCN Int. ceases to be a shareholder of Megacable.

**6.14.** Article One of the transitory provisions of Megacable's By-Laws state that these will be valid until RCN Int. ceases to hold the "Required Percentage" in Megacable's capital, as such term is defined in the Shareholders Agreement (this cross-reference is made by the By-Laws), at which time these transitory provisions will cease to have any further legal effect and shall be deemed to have been stricken from Megacable's By-Laws.

**6.15.** The Shareholders Meeting minutes of Megacable, dated December 16<sup>th</sup>, 1994, generally contain the following: (i) the amendment of Megacable's By-Laws to conform to the Subscription and to the Shareholders Agreement requirements, (ii) issue of the Initial Shares and their subscription by C-TEC Int., and (iii) the authorization to execute the Transaction Documents. Item Three of these minutes states that the shareholders were informed by the meeting's Chairman that the Board of Directors resolved upon the establishment of an strategic alliance through the subscription of the Initial Shares, with the purpose of obtaining from such new partner not just fresh capital, but also successful experience in other countries as well as technical capacity to support the development of Megacable's activities. These objectives became the purposes of the Transaction Documents and reflect the original intent of the Plaintiffs (*motivo*

*determinante de la voluntad*) to have a continuing relationship governed by all of the Transaction Documents, including Megacable's By-Laws. The foregoing makes evident the interdependence among (i) the consent to amend Megacable's By-Laws; (ii) the waiver to subscribe the Initial Shares; (iii) the authorization to execute the rest of the Transaction Documents; and (iv) the subscription of the Initial Shares by RCN Int., with the rest of the Transaction Documents.

**6.16.** Note that as described above:

1. A condition precedent to the execution of the Shareholders Agreement was the execution of the Support & Guarantee Agreement and of the Subscription Agreement;
2. In turn, the Support & Guarantee Agreement was executed to induce the Plaintiffs to execute the Subscription and the Shareholders Agreement;
3. The Shareholders Meeting of Megacable, dated December 16<sup>th</sup>., 1994, took the following actions:
  - i. Amendments to the Megacable By-laws that were justified by the Chairman of Megacable to the Private Shareholders, based on the Transaction Documents that allowed RCN Int.'s entry in Megacable's capital with the purpose of sharing its business expertise;
  - ii. The consent of the Private Shareholders to the subscription of the Relevant Shares by RCN Int., evidenced by their waiver to subscribe such shares, was based also on the purposes of the Transaction Documents;
  - iii. The grant of special powers of attorney by the Shareholders Meeting of Megacable to the signatories of the Transaction Documents was predicated on the objectives and purposes of allowing RCN Int. to become a shareholder of Megacable.