

# 2006 BCSECCOM 720

November 15, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 -Continuous Disclosure Obligations - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The securities that are being issued will only be outstanding for a short period of time before they are redeemed for other securities; the original securities are being issued for tax reasons only, not so the shareholders continue to have an interest in the issuer; the securityholders will not retain any securities of the issuer following the arrangement or reorganization

## **Applicable British Columbia Provisions**

National Instrument 51-102, s. 13.1

Form 51-102F5, s. 14.2

In the Matter of  
the Securities Legislation of

British Columbia, Alberta, Saskatchewan, Manitoba Ontario, Quebec, Yukon  
Territory, Nunavut, New Brunswick, Nova Scotia  
and Newfoundland and Labrador  
(the “Jurisdictions”)

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Amtelecom Income Fund  
(the “Applicant”)

## **MRRS Decision Document**

## **Background**

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application of the Applicant for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the Applicant be exempt from the requirements of Item 14.2 of Form 51-



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102F5 *Information Circular* of National Instrument 51-102 *Continuous Disclosure Obligations* to include the following financial statements in the Applicant's management information circular (the "Circular") prepared in connection with the special meeting (the "Meeting") of the Applicant's unitholders (the "Unitholders") to consider and approve the Reorganization (as defined below):

- (a) financial statements of ACI, AHLF, AI, AI LP, Cable, Cable LP and Amalco MFC (all as defined below and referred to herein collectively as the "Amtelecom Entities"), and
- (b) financial statements in respect of a probable significant acquisition of the Business (as defined below) by AHLF, AI LP, Cable LP and Amalco MFC;

(the "Requested Relief").

Under the Mutual Reliance Review System ("MRRS") for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-101 — *Definitions* have the same meaning in this decision unless they are otherwise defined herein.

### **Representations**

1. The Applicant is a limited purpose trust established under the laws of Ontario pursuant to an amended and restated declaration of trust dated as of February 25, 2003. The Applicant is authorized to issue an unlimited number of units ("Units"). As of November 6, 2006, 7,284,427 Units were issued and outstanding.
2. The Applicant holds all of the voting common shares and the notes issued by Amtelecom Communications Inc. ("ACI"), an Ontario corporation, and all of the Units in Amtelecom Holdings Limited Partnership ("AHLF"), which collectively carry on the Amtelecom telecommunications, cable television, Internet and data transmission businesses (the "Business").



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3. The Applicant completed its initial public offering pursuant to a long form prospectus dated January 16, 2003.
4. The Applicant is not in default of any of its obligations under the Legislation.
5. It is proposed that the Applicant's present organizational structure undergo an internal reorganization (the "Reorganization") to replace ACI with the existing operating limited partnership (AHLP), which will carry on the Business through three subsidiary limited partnerships (People's Tel Limited Partnership, Amtelecom Limited Partnership, and Amtelecom Cable Limited Partnership).
6. The Applicant has scheduled the Meeting to approve the Reorganization for December 14, 2006.
7. The Reorganization will occur on a tax-deferred basis for the Applicant and its Unitholders resident in Canada. After giving effect to the Reorganization, the direct and indirect interests of the Applicant in the assets of AHLP and its general partner and in the Business will be the same as the interests that the Fund held in ACI and the Business immediately prior to the Reorganization.
8. As part of the Reorganization:
  - (a) ACI will settle all inter-company accounts and will dispose of its net current assets and liabilities to Amtelecom Inc. ("AI"). ACI's credit agreements will be assigned to AHLP;
  - (b) the Applicant will form two new limited partnerships (Amtelecom Limited Partnership ("AI LP") and Amtelecom Cable Limited Partnership ("Cable LP")). All of the operating assets of the two current operating companies, AI and Amtelecom Cable Inc. ("Cable"), will be transferred to AI LP and Cable LP, respectively. AI will receive, in consideration for the aforementioned operating assets, 100,000 Class A AI LP units and Cable will receive 100,000 Class A Cable LP units;
  - (c) the Applicant will distribute to Unitholders Class A shares (the "Class A Shares") of a wholly-owned subsidiary corporation (referred to hereafter as "Amalco MFC"), incorporated for the purpose of effecting the Reorganization, as a return of capital on the date of the Reorganization;



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- (d) Amalco MFC will amalgamate with ACI, AI and Cable and the Applicant will acquire the assets of the amalgamated entity in exchange for Units;
  - (e) the Class A Shares distributed to Unitholders will be redeemed by Amalco MFC in exchange for the Units it received in the preceding step;
  - (f) the Units received by Unitholders upon the redemption of the Class A Shares in the preceding step will be automatically consolidated on the same date as the Reorganization; and
  - (g) the Applicant and AHLP will enter into an agreement whereby the Applicant will transfer all of the Class A AI LP units and Class A Cable LP units formerly owned by Amalco MFC to AHLP in consideration for the issuance by AHLP of 100,000 AHLP LP units.
9. Neither the number of issued and outstanding Units nor the relative holdings of Units by any Unitholder will be altered as a result of the completion of the Reorganization.
10. The Class A Shares and additional Units distributed to Unitholders will be outstanding for an instant in time on the date of the Reorganization prior to their automatic redemption and consolidation, respectively.
11. The Applicant's audited financial statements for the year ended December 31, 2005 and related management's discussion and analysis of financial condition and results of operations ("MD&A"), the interim financial statements of the Applicant for periods subsequent to the end of the Applicant's last fiscal year and the related MD&A (collectively, the "Fund Financial Statements"), the Applicant's revised annual information form (the "AIF"), any material change reports since the date of the AIF, and any applicable business acquisition report of the Applicant (collectively, the "Amtelecom Documents") will be incorporated by reference in the Circular.
12. The Circular will contain information sufficient to enable a reasonable Unitholder to form a reasoned judgment concerning the nature and effect of the Reorganization. To that end, prospectus level disclosure for the Applicant as prescribed by National Instrument 44-101 – *Short Form Prospectus Distributions*, including the applicable Amtelecom Documents, will be included or incorporated by reference in the Circular.



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13. Prospectus level disclosure for the Amtelecom Entities as prescribed by OSC Rule 41-501 – *General Prospectus Requirements* (“Rule 41-501”) will also be included in the Circular (or incorporated by reference therein), other than the financial statement disclosure.
14. The Reorganization is being undertaken in order to structure the flow of revenues created by the Business and distributed to the Applicant by its operating subsidiaries on a efficient basis. The Reorganization is not being proposed in contemplation of the acquisition of any additional operating assets or the disposition of any of the Applicant’s existing operating assets. The rights of Unitholders in respect of the Applicant, and their relative indirect interests in and to the revenues of the Business will not be affected by the Reorganization. Following completion of the Reorganization, Unitholders will continue to hold Units of the Applicant and the Applicant will continue to own all of its existing operating assets. While changes to the Applicant’s financial statements will likely be required to reflect the Applicant’s organizational structure following the Reorganization, the Applicant’s financial position will be largely the same as is reflected in the Applicant’s interim financial statements for the financial quarter ended September 30, 2006.
15. AI LP, Cable LP and Amalco MFC will not exist at the time of the mailing of the Circular, and consequently there would not be any existing financial information regarding such entities.
16. The Applicant’s audited financial statements for the year ended December 31, 2005, the interim financial statements of the Applicant for periods subsequent to the end of the Applicant’s last fiscal year, and the related MD&A for the respective periods include the financial results for ACI, AHLF, AI and Cable on a consolidated basis for the same period and provide sufficient disclosure in respect of ACI, AHLF, AI, Cable and the Business.
17. The distribution of the Class A Shares and additional Units are, in each case, done solely to allow the Reorganization to be effected in such a manner as to ensure that Unitholders, the Applicant and the Applicant's subsidiaries will be able to make use of available roll-overs under applicable tax legislation, thus preserving the tax-deferred status of the Reorganization.
18. To the extent that AHLF, AI LP, Cable LP or Amalco MFC’s proposed acquisition of the operating assets of ACI, AI and Cable may be considered to constitute a significant probable acquisition requiring the acquired business financial disclosure prescribed by Rule 41-501, the relevant financial information of ACI, AI and Cable and the Business will be part of the



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information contained in the Fund Financial Statements for the respective periods already incorporated by reference into the Circular.

### **Decision**

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) the Applicant complies with all other requirements of Legislation applicable to the Circular; and
- (b) the Amtelecom Documents are incorporated by reference into the Circular.

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Ontario Securities Commission