

# 2002 BCSECCOM 977

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – reporting issuers granted relief from the requirement to send annual financial statements to shareholders concurrently with filing the statements, subject to certain conditions

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 91

*Securities Rules*, B.C. Reg. 194/97, s. 149

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

**AND**

## **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

## **IN THE MATTER OF ROGERS COMMUNICATIONS INC. and ROGERS WIRELESS COMMUNICATIONS INC.**

## **MRRS DECISION DOCUMENT**

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Rogers Communications Inc. (“RCI”) and Rogers Wireless Communications Inc. (“Wireless”, and collectively with RCI, the “Applicants”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to send comparative audited financial statements and the auditor’s report thereon to securityholders of a reporting issuer concurrently with the filing of those statements as required by the Legislation (the “Concurrent Delivery Requirement”) will not apply to the Applicants for their respective Financial Statements (defined below) for the year ending December 31, 2002 and for subsequent financial years;
- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;

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- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;
- ¶ 4 AND WHEREAS the Applicants have represented to the Decision Makers that:
1. RCI is a company amalgamated under the *Company Act* (British Columbia) with its head office located in Toronto, Ontario;
  2. Wireless is a company continued under the *Canada Business Corporations Act* with its head office located in Montreal, Quebec;
  3. RCI is a diversified national Canadian communications company which is engaged in cable television, high-speed Internet access and video retailing through its wholly-owned subsidiary Rogers Cable Inc.; in wireless voice, data and messaging services through its 56% owned subsidiary Wireless (as at September 30, 2002); and in radio and television broadcasting, home shopping, consumer magazines and trade and professional publications through its wholly-owned subsidiary Rogers Media Inc.;
  4. as of September 30, 2002, the authorized share capital of RCI consists of 2 billion shares divided into 200,000,000 Class A Voting Shares (the “Class A Shares”) without par value, 1.4 billion Class B Non-Voting Shares (the “Class B Shares”) with a par value of \$1.62478 per share and 400,000,000 Preferred Shares without par value, issuable in one or more series; as of September 30, 2002, the publicly traded issued and outstanding share capital of RCI consists of 56,240,494 Class A Shares and 158,393,258 Class B Shares;
  5. as of September 30, 2002, the authorized share capital of Wireless consists of an unlimited number of Class A Multiple Voting Shares (the “Class A Multiple Voting Shares”) without par value, an unlimited number of Class B Restricted Voting Shares (the “Class B Restricted Shares”) without par value, and an unlimited number of First Preferred Shares issuable in series without par value, of which 90,468,259 Class A Multiple Voting Shares and 51,136,358 Class B Restricted Voting Shares were issued and outstanding;
  6. the Class A Shares of RCI are listed on the Toronto Stock Exchange (“TSX”); the Class B Shares of RCI are listed on the TSX and the New York Stock Exchange (“NYSE”); the Class B Restricted Shares of Wireless are listed on TSX and NYSE;
  7. the Applicants are reporting issuers or the equivalent in each of the Jurisdictions;

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8. to its knowledge, RCI is not in default of any requirements of the applicable securities legislation in any of the provinces in which it is a reporting issuer;
  9. to its knowledge, Wireless is not in default of any requirements of the applicable securities legislation in any of the provinces in which it is a reporting issuer;
  10. the Applicants have in the past prepared their respective audited annual comparative financial statements (the "Financial Statements") in advance of the filing requirements and expect to do so for the Financial Statements for the year ending December 31, 2002 (the "2002 Financial Statements");
  11. each of the Applicants proposes to issue, on the day they file their respective 2002 Financial Statements with the Decision Makers on SEDAR, a press release that will:
    - (i) be posted on the Applicant's web site and filed on SEDAR,
    - (ii) include disclosure relating to the Applicants 2002 Financial Statements, and the approximate date on which the 2002 Financial Statements will be mailed to shareholders; and
    - (iii) state that any shareholder entitled to receive 2002 Financial Statements may obtain a copy of the 2002 Financial Statements in advance on request to the Applicant; and
  12. each Applicant proposes to deliver its 2002 Financial Statements to shareholders entitled to receive them with the Notice of Meeting and Management Proxy Circular for the Applicant's 2003 Annual Meeting of Shareholders and, in any event, not later than the last date on which they could have been filed with the Decision Makers in compliance with the Legislation;
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- ¶ 6 AND WHEREAS 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;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that:
1. the Concurrent Delivery Requirement will not apply to RCI provided that:

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- (a) substantially concurrently with the filing of its Financial Statements with the Decision Makers, RCI issues a press release that
    - (i) will be posted on RCI's web site, disseminated via a Canadian newswire service and filed on SEDAR;
    - (ii) includes the approximate date on which the Financial Statements will be mailed to shareholders; and
    - (iii) states that any shareholder entitled to receive the Financial Statements may obtain a copy of the Financial Statements in advance on request to RCI and that securityholders will be able to access the Financial Statements on RCI's website and the website maintained by the Canadian securities regulators ([www.sedar.com](http://www.sedar.com)); and
  - (b) RCI send its Financial Statements to the shareholders of RCI entitled to receive them in accordance with the procedures outlined in National Instrument 54-101 and, in any event, not later than the last date on which they could have been filed in compliance with the Legislation;
2. the Concurrent Delivery Requirement will not apply to Wireless provided that:
- (a) substantially concurrently with the filing of its Financial Statements with the Decision Makers, Wireless issues a press release that
    - (i) will be posted on Wireless's web site, disseminated via a Canadian newswire service and filed on SEDAR;
    - (ii) includes the approximate date on which the Financial Statements will be mailed to shareholders; and
    - (iii) states that any shareholder entitled to receive the Financial Statements may obtain a copy of the Financial Statements in advance on request to Wireless and that securityholders will be able to access the Financial Statements on Wireless's website and the website maintained by the Canadian securities regulators ([www.sedar.com](http://www.sedar.com)); and
  - (b) Wireless send its Financial Statements to the shareholders of Wireless entitled to receive them in accordance with the procedures outlined in National Instrument 54-101 and, in any event, not later than the last date

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on which they could have been filed in compliance with the Legislation;  
and

3. this Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after any legislation or rule of that Decision Maker comes into force dealing with the obligation of a reporting issuer to send annual financial statements to its shareholders.

DATED December 4, 2002

Brenda Leong  
Director