

2005 BCSECCOM 12

December 10, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - Issuer wants relief from the pre-bid integration requirements in s. 103(1) of the Act - The pre-bid transaction was for cash; under the takeover bid, shareholders will receive shares of the offeror - The offer price for the securities subject to the bid is substantially higher than the price paid in the pre-bid transaction and is with the valuation range of prices established by a valuator - The offeror's securities are highly liquid

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 103(1) and 114(2)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUEBEC, NEW BRUNSWICK, NOVA SCOTIA AND NEWFOUNDLAND
AND LABRADOR (the Jurisdictions)**

AND

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

AND

IN THE MATTER OF ROGERS COMMUNICATIONS INC., the Filer

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirement under the Legislation that an offeror making a take-over bid must offer consideration for the securities deposited under the bid that is at least equal to and in the same form as the highest consideration paid in a transaction that took place within the 90-day period preceding the bid and that was not generally offered to all holders (the Pre-Bid Integration Rule) shall not apply to the take-over bid dated November 24, 2004 made by the Filer (the RCI Offer) to purchase all of the issued and outstanding Class B Restricted Voting Shares (the RWCI Class B Shares) in

2005 BCSECCOM 12

the capital of Rogers Wireless Communications Inc. (RWCI) in respect of the Prior Transaction (as defined below) (the Requested Relief).

Under the Mutual Reliance Review System 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 defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a British Columbia corporation and is a reporting issuer (or equivalent) in each of the provinces of Canada and, to the best of its knowledge, is not in default of any requirement of the Legislation. The Filer's head office is located in Ontario.
2. The authorized share capital of the Filer consists of 56,240,494 Class A Voting Shares (the RCI Class A Shares), without par value, 1.4 billion RCI Class B Shares with a par value of \$1.62478 per share and 400,000,000 Preferred Shares (the RCI Preferred Shares), issuable in one or more series. As at November 11, 2004 there were outstanding 56,235,394 RCI Class A Shares and 189,437,217 RCI Class B Shares. The Filer has three authorized series of RCI Preferred Shares and Shares of the Series XXVII Preferred Shares, Series XXX Preferred Shares and Series XXXI Preferred Shares are currently outstanding.
3. The RCI Class A Shares are listed and traded on the Toronto Stock Exchange (the TSX). The RCI Class B Shares are listed and traded on the TSX and the New York Stock Exchange (the NYSE).
4. RWCI is continued under the *Canada Business Corporations Act* and is a reporting issuer (or equivalent) in each of the provinces of Canada and, to the best of its knowledge, is not in default of any requirement of the Legislation.
5. The authorized capital of RWCI consists of an unlimited number of Class A Voting Shares (the RWCI Class A Shares), without par value, an unlimited number of RWCI Class B Shares, without par value, and an unlimited number of First Preferred Shares (the RWCI Preferred Shares), issuable in series,

2005 BCSECCOM 12

without par value. As at November 11, 2004, 62,820,371 RWCI Class A Shares, 80,388,481 RWCI Class B Shares and no RWCI Preferred Shares were issued and outstanding.

6. The RWCI Restricted Voting Shares are listed and traded on the TSX and the NYSE.
7. On October 13, 2004, RWCI Acquisition Inc., a wholly-owned subsidiary of RCI acquired 48,594,172 RWCI Class B Shares in a private transaction from JVII General Partnership (JVII), a partnership owned by AT&T Wireless Services, Inc., at price of \$36.37 per RWCI Class B Share payable in cash (the Prior Transaction.)
8. Under the RCI Offer, the Filer is offering to purchase all of the RWCI Class B Shares not currently owned by the Filer which are tendered to the Offer. As consideration for each RWCI Class B Share to be taken up pursuant to the RCI Offer, the Filer will offer 1.75 RCI Class B Shares.
9. There is a “liquid market”, as that term is defined in Ontario Securities Commission Rule 61-501, for RCI Class B Shares.
10. Based on the November 10, 2004 closing prices of the RWCI Class B Shares and the RCI Class B Shares on the TSX, the Offer represents an implied price per RCI Class B Share of \$50.23 and a premium of 16% over the market price of the RWCI Class B Shares. The Offer also represents a premium of approximately 38% over the consideration paid in the Prior Transaction.
11. As a result of RCI’s ownership of more than 10% of the outstanding RWCI Class B Shares, the RCI Offer is an “insider” bid for the purposes of provincial securities legislation. The RCI Offer will be made in compliance with the take-over bid requirements of the legislation.
12. The Board of Directors of RWCI established an independent committee to supervise preparation of a formal independent valuation of the RWCI Class B Shares. The independent committee retained BMO Nesbitt Burns Inc. (the Valuator) to prepare that valuation and deliver a fairness opinion. The Valuator delivered a valuation and fairness opinion in which it concluded that as of November 22, 2004 the fair market value of the RWCI Class B Shares is in the range of \$46 to \$54 per RWCI Class B Share and that the consideration under the Offer is fair, from a financial point of view, to holders of RWCI Class B Shares other than RCI and its affiliates.

2005 BCSECCOM 12

13. The consideration to be received by holders of RWCI Class B Shares pursuant to the RCI Offer represents a significant premium over the consideration paid by RCI to JVII, which sold its RWCI Class B Shares at \$36.37 per share pursuant to the Prior Transaction.

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.

Paul M. Moore
Commissioner,
Ontario Securities Commission

Robert W. Davis
Commissioner,
Ontario Securities Commission