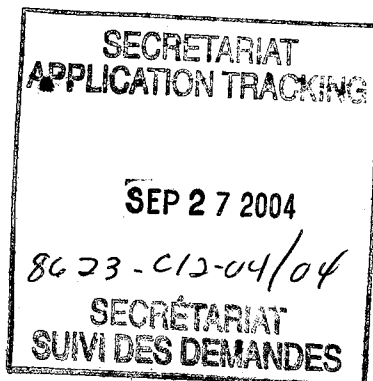




September 27, 2004

Mr. Steve Delaney  
Acting Director  
Industry Analysis and Regulation  
Canadian Radio-television and  
Telecommunications Commission  
Hull, Quebec  
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Sent via fax: (819) 953-0795

Dear Mr. Delaney:

**Re: Comments of Rogers Wireless Inc. on the Show Cause request by the Canadian Radio-television and Telecommunications Commission to Publish Information Filed in Confidence  
CRTC File Number 8623-C12-04/04**

### Introduction

1. Rogers Wireless Inc. ("RWI") is in receipt of the Show Cause request by the Canadian Radio-television and Telecommunications Commission dated September 17<sup>th</sup>, 2004. In it, the CRTC has requested that telecommunications carriers show cause as to why the Commission shouldn't publicly publish certain information, filed with the CRTC in confidence, in its Report to the Governor in Council on the Status of Competition in Canadian Telecommunications Markets/Deployment and Accessibility of Advanced Telecommunications Infrastructure and Services.
2. One of the pieces of information that the Commission wishes to disclose is the wireless marketshare percentages (based upon the number of subscribers provided in Form 273) by province for each major wireless provider, including Rogers.

3. RWI objects to the disclosure of this information. The number of wireless subscribers was filed with the Commission in confidence pursuant to section 39 of the Telecommunications Act. RWI submits that any information it has filed in confidence, if released by the Commission on a company specific basis, would cause specific and direct harm to RWI. RWI has consistently treated information at this level of detail as confidential and has not disclosed this market share information by province in any public proceeding or in public documents. Moreover, in a competitive environment such as wireless, disclosure of such information could reasonably be expected to result in specific direct harm, material financial loss to RWI, and prejudice RWI' competitive position in the market.

#### **Impact of Disclosure**

4. Publicly releasing wireless marketshare on a provincial basis will unduly harm RWI's competitive position. RWI does not ever publicly release performance data on a province by province basis. Disclosure of such information reveals the strengths and weaknesses of our regional positions. Information at that level of detail is considered sensitive and RWI would never willingly supply it to our competitors.
5. Performance data on a provincial basis can then be used by RWI's competitors to more effectively attack RWI's market positions in select provinces. Competitors can re-allocate sales and marketing resources based upon the provincial figures to more effectively counter our regional initiatives. Such information will be used to direct promotional campaigns as our competitors attempt to attract our customers in the most cost-effective manner possible. This would directly result in lost sales to RWI.
6. The damage to RWI will be particularly onerous in those provinces which are serviced primarily by a provincial or regional wireless carrier such as

Sasktel Mobility, MTS Mobility and Aliant Mobility. Publishing provincial figures will permit these carriers, who possess disproportionate market positions in their respective areas, to better gauge RWI's market strength and adjust their marketing strategies accordingly.

#### **The Test for Public Disclosure**

7. Section 39 of the *Telecommunications Act* is intended to provide carriers and service providers with protection from public disclosure of certain categories of information submitted to the Commission on a confidential basis. These limited categories include:
  - (c) information the disclosure of which could reasonably be expected
    - (i) to result in material financial loss or gain to any person,
    - (ii) to prejudice the competitive position of any person, or
    - (iii) to affect contractual or other negotiations of any person.
8. As discussed above, public disclosure of the provincial market share information filed by RWI will result in material financial loss to RWI and will assist RWI's competitors to more effectively market their services or reallocate resources in a manner that will prejudice RWI's competitive position.
9. In accordance with section 39(2), the Commission is precluded from releasing this information to the public unless it makes an express determination that public disclosure is in the public interest. In making this type of determination, the Commission weighs the specific direct harm that is likely to befall the carrier from release of its confidential information against the public interest in disclosure.

10. The Commission has had the opportunity to consider the confidentiality of market share information on many occasions over the years. Among the factors considered by the Commission in these proceedings has been the importance of the regulatory issue in question and the relevance of the market share information to that issue. A second factor considered by the Commission has been the level of disaggregation of the market share information in question. These two factors were stressed by the Commission in its letter of November 2, 1990 concerning release of market share information in connection with its public proceeding on long distance competition:

In determining questions of confidentiality in situations where competition may be introduced into markets which are dominated by the carriers, the Commission considers that it must weigh the specific direct harm that the carriers might suffer in the event further entry is permitted.

At the same time, the Commission considers that, on a matter of such significant public concern, the process of public scrutiny of the issue of competition in long distance service and all of its ramifications, as well as the other related issues identified in CRTC Telecom Public Notice 1990-73 (Public Notice 1990-73), should be based upon the maximum amount of information that may be placed on the public record in accordance with the provisions of the Railway Act and the CRTC Telecommunications Rules of Procedure.

Another factor in determining the extent of harm is the expected usefulness of the information at issue to parties in furthering their competitive position. One of these considerations is the degree to which the information at issue is disaggregated. Generally speaking, the Commission considers that the more aggregated the information, the less harm will flow from its disclosure.

11. In this instance, the market share information filed by RWI is not relevant to an important issue of public policy before the Commission. It is being collected to keep the Governor in Council apprised of the development of competitive markets in Canada and to keep the Commission itself apprised of these developments. In these circumstances, there is no overriding requirement for public disclosure of RWI's disaggregated

market information. The Commission already has this information for its own purposes and can supply it to the Governor in Council in confidence if the Governor in Council desires it. There is, however, no need to distribute this information to the public.

12. Turning to the level of disaggregation of market share information, the information that the Commission is seeking to disclose is at a higher level of disaggregation than RWI ever discloses. As discussed above, RWI competes against regional competitors who stand to benefit from the public disclosure of this information, to RWI's competitive detriment.
13. This result is not only harmful to RWI -- but also to the development of competition in Canadian telecommunications markets. In providing RWI's competitors with an artificial advantage in the form of strategic marketing information, public disclosure would actually work counter to the CRTC's and the Government of Canada's own policies of encouraging the development of competitive markets in Canada. It would be both ironic and against public policy if the Commission's report, which is supposed to assist the Governor in Council in monitoring and encouraging competition, were to inadvertently influence or distort a competitive outcome.
14. For these reasons, RWI respectfully submits that in this instance, the specific direct harm that will result from public disclosure, clearly outweighs any public interest in releasing this information. Indeed, in this instance the public interest also favours non-disclosure.

#### **Conclusion**

15. In conclusion, for the reasons outlined above, RWI objects to the disclosure of any information it filed in confidence with the Commission. Performance data on a provincial basis is sensitive information that RWI would never willingly reveal. It can be used by competitors to provide them

with a competitive advantage in allocating marketing resources. The information will also not provide any further insight into the telecommunications marketplace, especially in light of the financial damages RWI would suffer if such information was publicly published. The wireless marketshare percentages by province should therefore remain confidential.

16. All of which is respectfully submitted by RWI.

Regards,



Dawn Hunt  
DH/csh

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