

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA,
ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK,
PRINCE EDWARD ISLAND, NOVA SCOTIA, NEWFOUNDLAND, YUKON,
NORTHWEST TERRITORIES AND NUNAVUT

AND

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

AND

IN THE MATTER OF IMAGICTV INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland as well as the Yukon Territory, the Northwest Territories and Nunavut (the "Jurisdictions") has received an application from ImagicTV Inc. (the "Company") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") exempting the Company from the eligibility criteria set out in Section 4.1 of National Policy No. 44 ("NP 44") and articles 37.5, 37.6 and 37.7 of the Regulation respecting Securities under the Legislation of Quebec (the "Quebec Regulation"), thereby permitting the use by the Company of the PREP Procedures (as such term is defined in NP 44) and similar procedures under the Legislation of Quebec (the "Quebec Procedures") in connection with the Company's proposed initial public offering of common shares (the "Offering") as more fully described below;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Company has represented to the Decision Makers that:

1. The Company is a developer and provider of an infrastructure software solution that enables telephone companies and other service providers to deliver multi-channel digital television and interactive media services to their subscribers over a broadband network infrastructure.
2. The Company was incorporated under the *Canada Business Corporations Act* and is not a reporting issuer or equivalent under the Legislation.
3. The authorized share capital of the Company consists of an unlimited number of Class A voting common shares, an unlimited number of Class B non-voting common shares and an unlimited number of Class C non-voting common shares, of which as of July 31, 2000,

12,900,962 Class A voting common shares, 1,500,000 Class B non-voting common shares, and 686,883 Class C non-voting common shares are issued and outstanding.

4. Shortly prior to the closing of the Offering, the Company intends to reorganize its share capital such that each outstanding share of each class will be converted into one common share in the capital of the Company (the "Shares").

5. The Offering will consist of concurrent offerings of Shares to the public in Canada and the United States. The Company currently estimates that the gross proceeds of the Offering will be between US\$75 million and US\$100 million.

6. The Company plans to file: (i) a preliminary prospectus with the Decision Maker of each of the Jurisdictions (the "Preliminary Prospectus"); and (ii) a Form F-1 registration statement (the "Registration Statement") with the United States Securities and Exchange Commission (the "SEC"). The Company anticipates the filing of a (final) prospectus with the Decision Makers in November 2000.

7. There is presently no public market for the Shares, however, the Company has applied to The Toronto Stock Exchange to list the Shares for trading and to the National Association of Securities Dealers in the United States to have the Shares quoted on the Nasdaq National Market.

8. In connection with the Offering in the United States, the Company plans to use the procedures permitted by Rule 430A under the *Securities Act of 1933* which will permit the Company to omit certain pricing information in the Registration Statement until after it has been declared effective by the SEC.

9. Use of the PREP Procedures and the Quebec Procedures would permit the Company and its underwriters to better co-ordinate the pricing, prospectus delivery, confirmation of purchase, closing and settlement processes in Canada with those anticipated to be employed in the United States.

10. Neither the Company nor the Shares meet the eligibility criteria set forth in NP 44 and article 37.5 of the Quebec Regulation which would otherwise enable the Company to use PREP Procedures and the Quebec Procedures.

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS the Decision Makers are of the opinion that the test contained in the Legislation that provides each Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION OF THE DECISION MAKERS under the Legislation is that the Company be and is hereby exempted from the prospectus requirements of the Legislation with respect to the distribution of Shares under the Canadian portion of the Offering effected in compliance with the PREP Procedures under NP 44 and the Quebec Procedures insofar as such requirements concern

(i) the form and content of a preliminary prospectus or a prospectus, including the form of prospectus certificates, filed under the Legislation, and (ii) the filing of an amendment or supplement to a preliminary prospectus or prospectus filed under the Legislation, provided that:

- a) the Preliminary Prospectus is supplemented and amended pursuant to and in accordance with the requirements and procedures set forth in NP 44 and the Quebec Regulations, including the filing of amendments complying with the requirements of the Legislation;
- b) a prospectus complying with NP 44 and the Quebec Regulations is filed under the Legislation pursuant to and in accordance with the requirements and procedures set forth in NP 44 and the Quebec Regulations, as if the Company was eligible to use the PREP Procedures and the Quebec Procedures; and
- c) such prospectus is supplemented and amended pursuant to and in accordance with the requirements and procedures set forth in National Policy 44 and the Quebec Regulation, including the filing of amendments complying with the requirements of the Legislation.

DATED at Toronto, Ontario on the 9th day of November 2000.

"Morley P. Carscallen"
Morley P Carscallen

"Robert W. Davis"
Robert W. Davis

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from the prospectus requirements to permit an issuer to use the PREP Procedures under National Policy Statement 44 in connection with an initial public cross-border offering of common shares of the issuer. Neither the issuer nor its common shares meet the eligibility criteria set out in National Policy Statement.

Ontario Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., s. 147

Policies Cited

National Policy Statement 44 – *Rules for Shelf Prospectus Offerings and for Pricing Offerings After the Final Prospectus is Received*