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February 2, 2000

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

FILED²

FEB 2 2000

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. TO-2000-9 - Cable & Wireless USA, Inc.'s Annual Report

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **STAFF RECOMMENDATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Dennis L. Frey
Assistant General Counsel
(573) 751-8700
(573) 751-9285 (Fax)

Enclosure
cc: Counsel of Record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

FEB 2 2000

Missouri Public
Service Commission

In the Matter of Cable & Wireless USA,)
Inc.'s Annual Report to the Commission as)
An Interexchange Telecommunications)
Company and Confidential Treatment of a)
Portion Thereof)

Case No. TO-2000-9

STAFF RECOMMENDATION

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and for its recommendation, respectfully states:

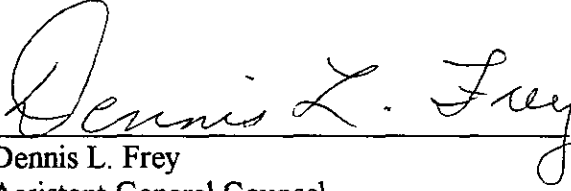
1. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Commission issue an Order granting the Application for Confidential Treatment of Annual Report of Cable & Wireless USA Inc. ("Cable & Wireless" or "Company"), wherein Cable & Wireless requests confidential treatment of the balance sheet and income statement contained in its 1998 annual report.

2. Upon reviewing the Company's Application and supporting information, the Staff concludes that Cable & Wireless has demonstrated good cause for such confidential treatment, as required by 4 CSR 240-10.080(7), in that the balance sheet and income statement contain proprietary information that is vigorously protected by the Company in all markets.

WHEREFORE, the Staff respectfully requests that the Commission issue its Order in accordance with the Staff's Memorandum attached hereto.

Respectfully submitted,


DANA K. JOYCE
General Counsel


Dennis L. Frey
Assistant General Counsel
Missouri Bar No. 44697

Attorney for the
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 2nd day of February, 2000.



**Service List for
Case No. TO-2000-9
February 2, 2000**

**Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102**

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Newman, Comley & Ruth
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Jefferson City, MO 65102**

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. TO-2000-9
Cable & Wireless USA, Inc.
1998 Annual Report

FROM: Roy Boltz, Accounting Department *RB 2/2/2000*
Dennis L. Frey, General Counsel's Office

DATE: February 2, 2000

SUBJECT: Staff's Recommendation Concerning Cable & Wireless USA, Inc.'s
Request for Confidential Treatment of Portions of its 1998 Annual
Report

Reviewed by: *R.E. Schilling* 2-2-00 *Wm K. Hoon* 2/2/00 *D. 2-2-00*
Utility Services Division/Date General Counsel/Date

On March 19, 1999, Cable & Wireless USA, Inc. ("Cable & Wireless" or "Company") submitted to the Commission a copy of its 1998 annual report. Because the Company requested confidential treatment of its balance sheet and income statement, the annual report was returned by the Commission's Records Department on May 3, 1999, with instructions that the report should be accompanied by a request for confidential treatment filed by an attorney. Accordingly, on July 7, 1999, Cable & Wireless, by and through its attorney, filed with the Commission its Application for Confidential Treatment of Annual Report along with a copy of its 1998 annual report. Pages 5 and 6 of the annual report, which present the Company's balance sheet and income statement, were left blank and instead were submitted under seal as Exhibits D and E respectively. In its aforementioned Application, the Company requested that the Commission afford Exhibits D and E confidential treatment because they contain "market-sensitive information that competitors could use to their economic advantage." The Company stated that it "treats this information as confidential and proprietary within the company itself and does not reveal this information in any public forum." Page 7 of the annual report was left blank as well. By way of explanation the Company attached Exhibit F, which consisted of the following statement: "Cash flow data is not maintained for Cable & Wireless USA, Inc., and the company does not prepared (sic) a Statement of Cash Flows. The Company's financial position remains stable."

Section 386.480, RSMo provides, in pertinent part:

"No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, RSMo, shall be open

to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding."

Section 392.210, RSMo requires every telecommunications company to file an annual report with the Commission, and prescribes the form and content of such reports. However the statute does not state the reason why such reports must be filed, what use is to be made of them, whether they are to be made available for public inspection, or whether they must be afforded confidential treatment. Staff has not identified any rule that provides such information, either.

The Commission's Internal Procedure 30, specifies the procedures for "handling annual reports sought to be kept under seal." IP-30 provides that "where the utility has provided adequate information," the General Counsel and the Accounting Department shall make a recommendation as to whether the utility's request should be honored. It does not, however, state what guidelines the General Counsel and the Accounting Department should follow in making this decision, or tell what constitutes "adequate information."

IP-30 further provides that where the utility has provided "insufficient information," the General Counsel must write to the utility requesting specified additional information. Upon receipt of a response, the General Counsel and the Accounting Department are directed to issue a Staff recommendation, but again there is no guidance concerning the standards that are to be used to determine whether to recommend that the annual report be afforded confidential treatment.

Although some annual report information filed with the Commission is not available for public review, the Commission and the Staff would both have access to all information contained in any annual report, regardless of whether the report is afforded confidential treatment. Staff believes that, as long as the Commission and the Staff have such access, the principal statutory purpose for requiring utilities to file annual reports with the Commission is satisfied. Staff has not been able to identify any other legislative purpose that would be thwarted by granting the request for confidential treatment.

Staff has not found any statute or rule that requires the contents of a regulated utility's annual report to be made public. It would appear that, at a minimum, Section 386.480, RSMo creates a presumption that an annual report should not be disclosed over the objection of the utility submitting it, unless a reason for doing so is apparent. One such reason would be that information for which confidential treatment is being requested has already been disclosed elsewhere. Another reason could be that the Commission desires to place all utilities in the same position by following its customary practice of making public basic financial information for all regulated utilities.

Based on its research, including a review of similar cases involving 1997 annual reports, the Staff takes the position that there is no compelling reason to make public the balance sheet and income statement of Cable & Wireless. Accordingly, Staff concludes that these portions of the Company's annual report should not be made public, "except on order of the commission, or by the commission or a commissioner in the course of a hearing or

proceeding." No such order has been issued in this case, although the Commission would surely be free to do so.

RECOMMENDATION

The Staff concludes that the balance sheet and income statement of Cable & Wireless are not in the public domain, and are therefore eligible for treatment as a closed public record. Accordingly, Staff recommends that the Commission issue an Order: granting the Company's request for confidential treatment of the balance sheet and income statement contained in its 1998 annual report, and requiring Cable & Wireless to file within ten days of the effective date, a public version of its annual report: a) that includes notes on the affected pages stating: "CONFIDENTIAL INFORMATION OMITTED," and b) that includes on page 7 thereof, the above-quoted text from Exhibit F, thereby eliminating the need for Exhibit F. Staff further recommends that the Company be instructed to attach a copy of the Order to the public version of its 1998 annual report.

Copies: Director – Utility Operations Division
 Director – Policy and Planning Division
 Director – Utility Services Division
 General Counsel
 Manager – Accounting
 Mark W. Comley, attorney for Cable & Wireless USA, Inc.
 Office of the Public Counsel