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Director General, Telecommunications

Policy Branch
Industry Canada
16th Floor, 300 Slater Street
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**Opening Canada's Doors to Foreign Investment
in Telecommunications: Options for Reform**

These comments are submitted by Barrett Xplore Inc. and Barrett Broadband Networks Inc. (collectively Barrett) in response to the Department's consultation paper entitled: *Opening Canada's Doors to Foreign Investment in Telecommunications: Options for Reform*.

As a provider of fixed wireless and satellite broadband services across all regions of Canada, Barrett welcomes this opportunity to comment on an extremely important policy issue affecting our industry.

At the present time, Canadian capital markets are good at providing seed capital to new ventures in the start-up phase. They are also good at providing capital to larger enterprises that have large positive cash flows in the mature stage of their growth cycle. However, there is a significant unaddressed gap in between for companies like Barrett that are beyond the start-up phase but well below the billion plus dollar level of some of our market rivals. While Canadian capital markets shy away from this middle group, American and other foreign capital markets are more willing to address it. However, they are generally only willing to address it on normal venture capital terms, which inevitably include an equity position. The current foreign ownership restrictions on Canadian carriers seriously inhibit companies like Barrett from meeting these terms and securing necessary investment for further growth. Therefore, Barrett welcomes the Department's public consultation and urges the Government of Canada to take steps to liberalize the rules following completion of its



deliberations.

The *Consultation Paper* proposes three options for reform:

- Option 1 – which increases the direct limit of foreign investment for broadcasting and telecommunications from the current level of 20% to 49% of voting shares;
- Option 2 – which would remove the foreign investment restrictions on telecommunications carriers with less than a 10% share of the total telecommunications market; and
- Option 3 – which would remove the foreign ownership restrictions on all telecommunications carriers.

While each of the three options has merit, Barrett has serious concerns about any regulatory measure that would impose a different ownership structure on broadband platforms depending on the nature of the services provided. Barrett and its competitors have constructed modern broadband networks that are capable of carrying a wide range of services including voice, data, video, Internet and a multitude of other applications. The benefit of broadband technology is that a single network is capable of all this functionality. Any regulatory measure that artificially reduces that capability is building inefficiencies into the network infrastructure and reducing the range of potential revenue streams that help to finance and sustain the network. More importantly, such inefficiencies inevitably lead to fewer choices and higher prices for Canadians.

As a provider of broadband services in rural and remote regions of Canada, Barrett is particularly aware of the need to maximize service revenues from expensive network builds. As discussed in connection with the Digital Economy initiative, Canada faces a significant challenge extending broadband services to Canadians in all regions of our vast country. Successful completion of this task is a prerequisite to the goal of national inclusion of all



Canadian citizens in the new digital economy. Any regulatory measure that limits the ability to attain that goal is counterproductive to Canada's interests.

While Barrett is not currently involved in the provision of broadcasting distribution services, it recognizes that Canadians are choosing to experience content in a wide variety of different ways, thanks to the development of new technologies. As a result, Barrett opposed any regulatory measure that would in any way curtail the implementation of new, potentially more efficient, technologies for delivering content services to Canadians.

For these reasons, Barrett opposes Options 2 and 3, which are focused exclusively on what might be called traditional telecommunications networks and do not include networks that deliver broadcasting distribution services. Traditional telecommunications networks are becoming rarer these days and other developed countries are moving away from regulatory models that regulate networks based on the services they carry rather than services themselves. The European Union has moved away from the old model, as have many other countries. The Chair of the CRTC has also called for similar reforms in this country over the past few years. It makes no sense to Barrett to build into Canada's regulatory regime measures that would seek to give effect to network distinctions which no longer have technological relevance. To do so will result in inefficiencies in the provision of services and in the structures and operations of companies that have to comply with more than one set of rules. Rather than assist in the achievement of Canada's digital economy objectives, such measure would inevitably impede our national goals.

For these reasons, Barrett believes that a common set of ownership rules should apply to broadband network providers regardless of the technology they employ and regardless of the services they deliver over their broadband platforms. These principles of technological neutrality and competitive neutrality are embodied in most modern communications statutes and, in Canada, find expression in the *Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*.

If it is necessary to establish rules or regulations to govern the provision of certain



types of services, such as broadcasting distribution services, that regulation should apply to the provision of those services – not the networks used to distribute them. In the context of the distribution of broadcasting services, those regulations can be applied without affecting the ownership structure of the network that carries them.

For these reasons, Barrett favours implementation of Option 1 as the only option that applies equally to all broadband networks. The increase in direct foreign ownership from 20% from 49% will provide Canadian companies like Barrett with more room to raise capital for development from foreign investors. It also makes more sense than the current level since it allows Canadian companies to maximize the level of foreign investment without losing control. Consistent with this approach, Barrett recommends that the number of foreign directors be permitted to increase in a comparable way so that Canadians hold a simple majority on the board. It does not make sense to give foreign investors 49% of the votes if they cannot use them to elect a proportionate number of directors.

If these reforms were implemented, Barrett believes that they would constitute an important step towards uniform regulatory treatment of broadband network platforms, would be consistent with Canada's vision for a digital economy and would not undermine Canada's cultural agenda.

While Option 2 might have intuitive appeal to Barrett because it is designed to help smaller companies gain more ready access to capital, Barrett believes that the 10% market share threshold (approximately \$4 billion) proposed is of sufficient size to encourage larger companies to reorganize on a different basis in order to comply with the threshold. This essentially would make the market results under Option 2 the same as would exist under Option 3. Further, the implementation of such reorganizations would inevitably lead to further inefficiencies for the Canadian market in a similar manner to the asymmetrical treatment of telecommunications and broadcasting distribution services.

In considering the potential implication of the proposal to let foreign companies enter the market without any ownership restrictions under Options 2 and 3, it becomes unclear what



the overarching policy objective of these proposed reforms may be. Both Options 2 and 3 allow for improved access to capital for Canadian companies but also allow for the entry of much better financed foreign telecommunications giants such as AT&T. This suggests the objective is moving beyond what might be viewed as an interim step of improving access to foreign capital for the expansion of telecommunications services, to a larger goal of more generally increasing competition in telecommunications services. If increasing competition is the primary objective, then the foreign ownership restrictions should not be considered in isolation but rather as part of a more comprehensive policy for encouraging competition. As presented in the context of this review, it is possible to see how Options 2 and 3 might initially undermine the policy objective of giving Canadian companies better access to foreign capital to grow their own networks by creating a financing “chill” as potential investors assess the implications of already well-funded foreign telecommunications giants entering Canada.

For these reasons, Barrett respectfully submits that Option 1 represents the best alternative for reform to foreign investment in telecommunications services. Barrett thanks the Department for considering these comments.

Yours truly,

A handwritten signature in blue ink, appearing to read "Christine J. Prudham".

Christine J. Prudham
Chief Legal Officer, Barrett Xplore Inc. and
Secretary, Barrett Broadband Networks Inc.

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