



29 April 2011

Our Reference: 8646-C12-200815400

BY E-MAIL

Ms. Christine J. Prudham
Vice President, General Counsel
Barrett Xplore Inc.
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Markham, Ontario
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Dear Ms. Prudham:

Re: Follow up to Telecom Regulatory Policy 2009-657

This letter is sent to remind you that the Commission is still awaiting a response regarding Barrett Xplore Inc.'s (Barrett) Internet traffic management practice (ITMP) disclosures for Xplornet. As noted below, repeated attempts have been made to obtain this information.

As outlined to Barrett in previous correspondence, in *Review of the Internet traffic management practices of Internet service providers*, Telecom Regulatory Policy 2009-657, 21 October 2009 (TRP 2009-657), the Commission set out the disclosure requirements that apply to the technical ITMPs of Internet service providers (ISPs). One requirement is that ISPs must disclose to their retail customers information regarding any technical ITMPs that they apply to their retail Internet services. Specifically, ISPs are required to disclose the following details prominently on their websites: the reasons for the ITMP, when the ITMP is applied, what Internet traffic is affected by the ITMP, and the specific impact that the ITMP has on retail Internet speeds.

ISPs are also required to refer to their online disclosures in their marketing material, customer contracts, and terms of service.

Commission staff notes that this matter has been raised with Barrett on numerous occasions, as follows:

- In a letter to Barrett dated 22 January 2010, Commission staff indicated that Barrett's ITMP disclosures were non-compliant with TRP 2009-657. Commission staff requested that Barrett provide a response, within 30 days of the date of that letter, identifying when these issues would be addressed.
- During a spring 2010 meeting in Ottawa with Commission staff, Barrett discussed its Internet services and agreed to address concerns raised by staff regarding the company's ITMP disclosures.

- Barrett's ITMP disclosure issues were discussed again during a conference call with Commission staff on 27 September 2010. At that time, the company indicated that it would provide Commission staff with copies of updated ITMP disclosure pages that would address staff concerns.
- On 8 October 2010, Commission staff received via e-mail copies of Barrett's revised ITMP disclosures, which the company indicated would be posted on its website. In a letter dated 2 November 2010, Commission staff indicated that the company's proposed online disclosure for prospective customers did not meet the requirements of TRP 2009-657. Staff requested that Barrett confirm by 2 December 2010 that it had made the required changes – as specified in the 2 November 2010 letter – to its proposed disclosures.
- In a telephone conversation with you on 7 January 2011, Patrick Owens of the Commission noted that the company had not yet responded to requests set out in the 2 November 2010 staff letter, nor to a request to respond to a complaint from ExaTEL Inc. about Barrett's ITMP. In an e-mail dated 21 January 2011, Barrett indicated that it had amended its ITMP in order to avoid throttling ExaTEL's voice over Internet Protocol services, but did not address the matter of non-compliant ITMP disclosures.

In order to address outstanding concerns, and to render Barrett's public disclosure provided in your e-mail of 8 October 2010 compliant with TRP 2009-657, Barrett is to make the following changes to its website (link below), consistent with the requirements set out in Commission staff's 2 November 2010 letter:

<http://www.xplornet.com/legal/xplornet-traffic-management-policy.aspx>

1. For each access platform referred to in the second paragraph of the public disclosure [e.g. "*Fixed-Wireless [Canopy], Enhanced Fixed Wireless, WiMAX*"], include a hyperlink to the individual disclosure for all services available on each access platform, which currently is only available to current Xplornet customers who are required to use the customer portal to view details of the specific ITMP policies that apply to their platform and package.
2. (e.g. "*Fixed-Wireless (Canopy)*") should be hyperlinked to a webpage containing the information in the document entitled "*Xplornet TM Policy – Canopy – English.docx*";
3. In the first bullet of the third paragraph [*Setting hourly, daily or monthly usage allowances ...*], indicate the time period during which bandwidth allowances are not applied across all platforms, i.e., 2 am to 7 am; and;
4. In the second bullet of the third paragraph [*Subjecting traffic related to applications that are considered non time-sensitive ...*], indicate the peak hours during which Barrett reduces transfer speeds for non-time sensitive applications (e.g. 8 am to 1 am local time).

Barrett is to implement the changes noted above by no later than 16 May 2011, and to notify the Commission by 18 May 2011 that these changes were made. If the company fails to implement these changes within this time frame, the Commission may initiate a public process to examine the matter in more detail.

Should there be any questions regarding this letter, please call Joanne Baldassi at (819) 997-4576.

Yours sincerely,

Original signed by

Lynne Fancy
Director General
Competition, Costing & Tariffs
Telecommunications