

ATTACHMENT

Response to Question 10

Megaport (USA), Inc. (“Megaport USA”) files this foreign carrier affiliation notification pursuant to 47 C.F.R. § 63.11(b)(2)(i). Megaport USA previously certified that Mr. Bevan Slattery owns 47.2 percent of the shares of Megaport USA’s direct parent, Megaport Limited, and controls Megaport USA and Megaport Limited.¹ On July 29, 2016, Megaport Limited issued new shares that diluted Mr. Slattery’s holding to 40.99 percent. On August 22, 2016, Megaport Limited issued additional new shares that diluted Mr. Slattery’s holding to 37.4 percent. Notwithstanding this dilution, Mr. Slattery still retains *de facto* control over Megaport USA and Megaport Limited.

Megaport Limited recently incorporated two subsidiaries and obtained licenses for those subsidiaries to provide carrier services in their respective foreign markets. Megaport (UK) Limited (“Megaport UK”) was incorporated on June 3, 2015. Megaport (Ireland) Limited (“Megaport Ireland”) was incorporated on March 7, 2016. Neither of these entities have commenced providing services, but they are authorized to do so. Two other foreign subsidiaries of Megaport Limited have commenced providing services. Megaport (New Zealand) Limited (“Megaport New Zealand”) commenced carrier services in New Zealand on September 30, 2015, and Megaport (Canada) Inc. (“Megaport Canada”) commenced carrier services in Canada on

¹ *Notification of the Pro Forma Transfer of Control of the International Section 214 Authorization Held by Megaport (USA), Inc.*, File No. ITC-T/C-20160119-00035, at Attachment 1 p. 1 (filed Jan 19, 2016).

Megaport (USA), Inc.
Foreign Carrier Affiliation Notification
16 September 2016
Page 2 of 5

February 12, 2016. Megaport USA regrets that it did not notify the Commission at an earlier date regarding its new affiliations with Megaport New Zealand and Megaport Canada.

Consequently, these four entities have become foreign carriers affiliated with Megaport USA under the Commission's rules.² The notification for these four foreign carriers is not being made "within thirty days after consummation of the acquisition,"³ as the timing requirements of the Commission's rules are unclear when applied to situations, such as the ones described herein, where the affiliations with foreign carriers are not acquired through corporate acquisitions.

Response to Question 12(c)(1)

Megaport USA is eligible for post-consummation notification of foreign affiliations pursuant to 47 C.F.R. § 63.11(b)(2)(i).

Megaport New Zealand, Megaport Canada, Megaport UK, and Megaport Ireland are all authorized to provide international telecommunications services to the public their respective countries of New Zealand, Canada, the United Kingdom, and Ireland. All of these countries are WTO members.⁴ Megaport USA is entitled to retain non-dominant classification the routes in these countries pursuant to 47 C.F.R. § 63.10 because the foreign carriers listed as affiliated with Megaport USA in this notification lack 50 percent market share in both the international transport and local access market their respective countries.⁵ Furthermore, none of these foreign

² See 47 C.F.R. § 63.09(d)-(e).

³ *Id.* § 63.11(c).

⁴ See World Trade Organization, *Understanding the WTO: The Organization, Members and Observers*, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Aug. 24, 2016) ("WTO Member List").

⁵ See 47 C.F.R. § 63.10(a)(3).

carriers appear on the Commission's list of foreign telecommunications carriers presumed to possess market power in foreign telecommunications markets.⁶

Response to Question 16

For the reasons set forth in response to Question 12(c)(1) above, Megaport USA continues to qualify for, and requests continued regulation as, a non-dominant international carrier on all authorized routes. The four affiliated foreign carriers in this notification lack market power their respective countries—all WTO members. This entitles Megaport USA to be classified presumptively as non-dominant in those markets.

Response to Question 17

As required by 47 C.F.R. §§ 63.11(e)(1) and (2), Megaport USA certifies that it is affiliated with four foreign carriers authorized to provide telecommunications services in their respective markets. Megaport New Zealand provides service in New Zealand, a WTO country.⁷ Megaport Canada provides service in Canada, a WTO country.⁸ Megaport UK is authorized to provide service in the United Kingdom, a WTO member.⁹ Megaport Ireland is authorized to

⁶ *See International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, 22 FCC Rcd. 945 (Int'l Bur. 2007).

⁷ *See* WTO Member List.

⁸ *See id.*

⁹ *See id.*

provide service in Ireland, a WTO country.¹⁰ (Note that Megaport UK and Megaport Ireland have not actually begun to offer such services.)

Response to Question 18

As required by 47 C.F.R. § 63.11(e)(3), Megaport USA certifies that it is authorized to provide global facilities-based and global resale services to New Zealand, Canada, the United Kingdom, and Ireland, pursuant to FCC File No. ITC-214-20150416-00090.¹¹

Response to Question 19

As required by 47 C.F.R. § 63.11(e)(4), Megaport USA certifies that it does not serve New Zealand, Canada, the United Kingdom, or Ireland solely through the resale of international switched services of unaffiliated U.S. facilities-based carriers.

Response to Question 20

As required by 47 C.F.R. § 63.11(e)(5), Megaport USA certifies that it has the following 10-percent-or-greater direct or indirect owners:

Megaport Limited

Address: Level 4, 825 Ann Street, Fortitude Valley, Queensland, Australia 4006

Citizenship: Australia

Principal Business: holding company

Relationship: owns 100 percent of Megaport USA.

Bevan Slattery

Address: Level 17, 333 Ann Street, Brisbane, Queensland, Australia 4000

Citizenship: Australia

¹⁰ *See id.*

¹¹ *See* Federal Communications Commission, *International Authorizations Granted*, Public Notice, 2015 WL6108244, DA 15-1178, at 3 (Oct. 15, 2015) (granting Megaport USA's application for international Section 214 authorization, File No. ITC-214-20150416-00090).

Relationship: owns 37.4 percent, and retains *de facto* control, of Megaport Limited.

Response to Question 21

Mr. Bevan Slattery, Megaport Limited's Executive Chairman, is also a Director of Megaport UK, Megaport Ireland, Megaport Canada and Megaport New Zealand, the foreign affiliates identified in this notification.