

ATTACHMENT 1

Pursuant to 47 C.F.R. § 63.24(f), Megaport (USA), Inc. (“Megaport USA,” FRN 0024494494), notifies the Commission of a *pro forma* transfer of control of its international Section 214 authorization. On December 17, 2015, Megaport USA’s direct corporate parent, Megaport Limited, listed its shares on the Australian Securities Exchange (“ASX”). As a result, controlling owner Mr. Bevan Slattery’s equity interest in Megaport Limited decreased from 67 percent to 47.2 percent. Nevertheless, as discussed in further detail in response to Question 13 below, because Mr. Slattery retains *de facto* control of Megaport Limited and Megaport USA, and because no other individual or entity owns a 10-percent-or-greater equity interest in Megaport Limited, the public listing of Megaport Limited constitutes a *pro forma* transaction under the Commission’s rules, appropriately notified to the Commission pursuant to 47 C.F.R. § 63.24(f).

Answer to Question 10

Correspondence concerning this notification should be sent to:

Celia Pheasant
General Counsel
MEGAPORT LIMITED
14-16 Church Street
Fortitude Valley
Queensland 4006
Australia
+61 408 841 185 tel
celia.pheasant@megaport.com

with a copy to:

Kent Bressie
HARRIS, WILTSHIRE & GRANNIS LLP

Megaport (USA), Inc.
Notification of *Pro Forma* Transfer of Control
19 January 2016
Page 2 of 5

1919 M Street, N.W., Suite 800
Washington, D.C. 20036-3537
+1 202 730 1337 tel
+1 202 730 1301 fax
kbressie@hwglaw.com
Counsel to Megaport (USA), Inc.

Megaport USA holds international Section 214 authority for global facilities-based and global resale services pursuant to 47 C.F.R. §§ 63.18(e)(1) and (2). *See* FCC File No. ITC-214-20150416-00090.

Answer to Question 12

Mr. Slattery, Megaport Limited's Executive Chairman, and the transferee, also holds the following interlocking directorates with foreign carriers:

Foreign Carrier	Position
Superloop (Australia) Pty Ltd	Executive Chairman and Director
Superloop (Singapore) Pte. Ltd.	Executive Chairman and Director
Superloop (Hong Kong) Limited	Director
Megaport (Hong Kong) Limited	Executive Chairman and Director
Megaport (Singapore) Pte Limited	Executive Chairman and Director
SubPartners Pty Limited	CEO and Director

Answer to Question 13

On December 17, 2015, Megaport Limited, which owns 100 percent of Megaport USA, listed its shares on the Australian Securities Exchange ("ASX"). As a result of the public offering of Megaport Limited's shares, Mr. Slattery's direct ownership interest in Megaport Limited (and indirect ownership interest in Megaport USA) decreased from 67 percent to 47.2

Megaport (USA), Inc.
Notification of *Pro Forma* Transfer of Control
19 January 2016
Page 3 of 5

percent. No other individual or entity owns a 10-percent-or-greater direct or indirect interest in Megaport Limited, and Mr. Slattery retains *de facto* control over Megaport USA under the FCC's "totality of the circumstances" test.

"*De facto* control is found to exist if an entity that lacks a voting majority is nonetheless in actual control of a company. *De facto* control is determined on a case-by-case basis and, as a result, decisions regarding *de facto* control are fact-specific. Under Commission precedent, a *de facto* control determination is based on the 'totality of the circumstances,' and is governed chiefly by the power to dominate the management of corporate affairs."¹ Despite a decrease in his ownership interest in Megaport Limited, Mr. Slattery clearly retains *de facto* control under the totality of the circumstances. For instance, Mr. Slattery:

- Appointed each of the other directors to the board of Megaport Limited;
- Continues to serve as Executive Chairman of Megaport Limited;
- Serves on the Nominations & Remuneration Committee of Megaport Limited; and
- Provides executive services to Megaport Limited pursuant to an executive services agreement.

Moreover, Mr. Slattery is heavily involved in the day-to-day management of the company. For example, Mr. Slattery:

- Is a primary signatory on all material contracts of Megaport Limited;

¹ *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion Order and Authorization, 15 FCC Rcd. 15,460, 15,482 ¶ 50 (2000); *see also Applications of Alaska Native Wireless L.L.C.*, Order, 17 FCC Rcd. 4231, 4238 ¶ 15 (2002).

Megaport (USA), Inc.
Notification of *Pro Forma* Transfer of Control
19 January 2016
Page 4 of 5

- Discusses management matters with the CEO, executive VPs, General Counsel, CFO and VP—Network on a daily basis;
- Continues to play a pivotal role in setting the strategic direction of the company—all material strategic initiatives are discussed and approved by Mr. Slattery prior to implementation;
- Approves all material matters, including contracts and financial decisions, before implementation so that, as a practical matter, Mr. Slattery retains effective veto power over material decisions made by Megaport Limited’s executive team; and
- Sets the agenda for Megaport Limited’s board and therefore determines what matters will be raised to the board.

Mr. Slattery was also heavily involved in the appointment of all of Megaport Limited’s executive team. Most of these individuals have long-standing relationships with Mr. Slattery. Mr. Slattery’s day-to-day involvement in the company and ability to direct its operations and management are therefore very significant. For these reasons, Megaport USA believes that, under the totality of the circumstances, Mr. Slattery retains *de facto* control of Megaport Limited and Megaport USA.

The Commission treats a decrease in equity ownership that results in the loss of *de jure* control of a company as a *pro forma* transaction provided that the person or entity relinquishing *de jure* control maintains *de facto* control, and less than 50 percent of the company’s voting

Megaport (USA), Inc.
Notification of *Pro Forma* Transfer of Control
19 January 2016
Page 5 of 5

interests change hands.² Consequently, Megaport USA believes that the change in Mr. Slattery's control of Megaport Limited and Megaport USA from *de jure* and *de facto* control to only *de facto* control effected by the listing of Megaport Limited on the ASX constitutes a *pro forma* transfer of control pursuant to 47 C.F.R. § 63.24(d) and note 2 to paragraph d.

² *Amendment of Parts 1 & 63 of the Commission's Rules*, Report and Order, 22 FCC Rcd. 11,398, 11,410-11 ¶ 36 (2007) (stating that "where the owner maintains *de facto* control of the carrier, less than 50 percent of the carrier's voting interests changes hands, and no new party gains negative or *de jure* control as a result of the transaction or series of transactions, the transaction would constitute a *pro forma* transfer of control. Under section 63.24(f), the carrier can notify the Commission of the transaction after the transfer is completed").