

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 1584CV03118BLS2

NORTH AMERICAN CATHOLIC)
EDUCATIONAL PROGRAMMING)
FOUNDATION, INC., CHICAGO)
INSTRUCTIONAL TECHNOLOGY)
FOUNDATION, INC., DENVER AREA)
EDUCATIONAL TELECOMMUNICATIONS)
CONSORTIUM, INC., INSTRUCTIONAL)
TELECOMMUNICATIONS FOUNDATION, INC.,)
PORTLAND REGIONAL EDUCATIONAL)
TELECOMMUNICATIONS CORPORATION AND)
TWIN CITIES SCHOOLS')
TELECOMMUNICATIONS GROUP, INC.,)

Plaintiffs,)

v.)

CLEARWIRE SPECTRUM HOLDINGS II LLC,)
CLEARWIRE LEGACY LLC, f/k/a CLEARWIRE)
CORPORATION and SPRINT SPECTRUM L.P.,)

Defendants.)

STATE OF RHODE ISLAND)
) SS.:
COUNTY OF PROVIDENCE)

JOHN PRIMEAU, being duly sworn deposes and says:

1. I am the President and Chief Executive Officer of plaintiff North American Catholic Educational Programming Foundation, Inc. (“NACEPF”) and submit this Affidavit in support of plaintiffs’ Motion for a Preliminary Injunction to enjoin defendants from terminating the WiMAX network which provides Internet service to plaintiffs’ customers consisting of schools, nonprofit organizations, libraries and other educational institutions that use that service for their own needs as well as provide it to low-income and disadvantaged members of their

communities. Terminating the WiMAX network puts these organizations and vulnerable members of their communities at risk of having no or limited Internet access. I am personally familiar with the facts set forth herein and to the best of my knowledge and belief assert the following:

BACKGROUND

2. Plaintiffs are licensees from the FCC of certain specified Educational Broadband Service channels (“EBS”) in certain geographic markets. EBS and its predecessor, the Instructional Television Fixed Service (“ITFS”), are an over 50-year-old program under which the FCC allocates wireless spectrum licenses to nonprofit entities to serve the public interest in providing educational-based broadband services. EBS licenses are granted to accredited institutions or governmental organizations to further the licensee’s educational mission to enrolled students, faculty and staff in a manner and setting conducive to educational usage. As well, non-profit organizations like the plaintiffs that serve accredited institutional or governmental organizations are eligible to hold EBS licenses. The FCC allows EBS licensees, like plaintiffs, to make available a sizable portion of their licensed EBS spectrum capacity for commercial use by third parties, like Clearwire and Sprint, who use the spectrum capacity to provide commercial broadband services to their customers. Since plaintiffs are not in the business of developing the spectrum for commercial purposes, they entered into a series of agreements with defendants that allowed the defendants to develop part of spectrum for commercial purposes. In consideration for permitting such use, plaintiffs are provided with, amongst other things, cost free broadband accounts, certain technologies, facilities, equipment and functionality to serve their non-commercial customers in the educational, religious and

health sectors, which includes teachers, students, the elderly and disabled, and non-profit institutions.

3. When these agreements were initially entered into, the Internet service to plaintiffs' customers were provided on what is called a WiMAX network which, at the time, was a state of the art network. When Sprint acquired Clearwire, the technology was changing to an LTE network. In order to be competitive and keep pace with changing technology, Sprint moved to transition over to the LTE network.

4. According to the various license agreements, Clearwire and Sprint are required to provide plaintiffs' customers with current mobile devices working on the LTE network with the highest level of service it provides its regular retail customers. While the WiMAX network provided unlimited capacity usage, Sprint has throttled plaintiffs' customers transitioning to the LTE network after reaching a mere 6 gigabytes (GBs) of capacity from their normal need of capacity usage many times greater. In the case of Mobile Beacon, school modems use an average of 32 GB per month, with the top 25% using capacity between 50 and 300+ GB per month. Rather than transition plaintiffs' customers to the LTE networks with new devices and equivalent service and support, Sprint has breached the license agreements and failed to timely do so, allowing a substantial member of plaintiffs' customers to languish on the WiMAX network with older devices. As Sprint has moved its own customers to the newer LTE network, it has begun to shut down its WiMAX service and decommissioned hundreds of the towers which support that service to plaintiffs' customers. Sprint has announced that it intends to shut down most of its WiMAX network and the capacity it afforded plaintiffs' customers by November 6, 2015.

5. When this shut down of the WiMAX network is complete, many of plaintiffs' customers will have no Internet service. The alternative is for them to pay Sprint or another commercial provider the standard, customary rates for devices and service, which they cannot afford to do. So effectively, they are rendered without this vital Internet service.

6. By this application, plaintiffs ask this Court to --

- a) Continue to provide Clearwire WiMAX service to all current customers ("existing customers") located in the geographic areas identified on Exhibit A hereto, that have been receiving the service through the Cost Free Educational Accounts of NACEPF, Voqal or any of their affiliates ("Licensees"), and, to the extent necessary to comply with this Order, cease shutting down base stations and other elements required to keep the Clearwire WiMAX system functioning until such time as the existing customers are receiving service on Sprint's LTE network;
- b) Promptly provide Cost Free Educational Accounts on the Sprint LTE network to all persons who seek to become any Licensee's customer during the pendency of this Action ("new customers"), with such number of new customer accounts available for assignment and re-assignment to Voqal and its affiliates at any time being limited to 26,082 (which is the number of Sprint LTE Network Cost Free Educational Accounts within the Voqal budget as identified by Sprint to Voqal as of July 7, 2015), and with such number of new customer accounts available for assignment and re-assignment to NACEPF and its affiliates at any time being limited to 20,048 (which is the number of Sprint LTE Network Cost Free Educational Accounts within the NACEPF budget as identified by Sprint to NACEPF as of July 8, 2015);
- c) Consistent with the existing Clearwire agreements and the ISA, maintain all Cost Free Educational Accounts held by existing and new customers at the same capacity and with the same characteristics as the highest level of premium mass market retail service provided on the Sprint or Clearwire networks all at no cost to Licensees and, in particular, not throttle any of the Cost Free Educational Accounts provided to existing or new customers under this Order, except to the extent that Sprint (in the case of Sprint

accounts) or Clearwire (in the case of Clearwire accounts) throttles its highest level of retail service and then only on a nondiscriminatory basis that does not disproportionately impact Licensees' customers in relation to all other Sprint or Clearwire customers, and

- d) Promptly provide new customers with the equipment, selected by the ordering Licensee from Sprint's website menu of retail equipment or from the ISA equipment list, for them to use to access the Licensees' Cost Free Educational Accounts. Integrated with customer management software provided to Licensees

TIMELINESS OF APPLICATION

7. Plaintiffs have met and communicated with Sprint continuously since January 2014 to facilitate the transition from WiMAX to the LTE network.

8. From January through April 2014, the parties met several times to build their relationships and develop a plan to transition Plaintiffs' users from WiMAX to LTE.

9. Initially refusing to undertake the obligations under the MRUAs and IUAs, Sprint provided a draft amendment on May 28, 2014. Plaintiffs followed up with two rounds of questions, which Sprint took a month or more time to respond to, and ultimately failed to fully answer several direct inquiries. Sprint's final response to questions came on October 30, 2014 when Sprint management apologized for the prolonged delay in responding.

10. Plaintiffs felt increased urgency to resolve Sprint's acceptance of the MRUAs/IUAs as there was only a year remaining before the planned WiMAX shutdown. To move this process along, the plaintiffs hosted Sprint at the NACEPF office in November 2014.

11. Plaintiffs, seeing no movement from Sprint and worried that time was not on their side, asked Sprint to agree to a bridge agreement to migrate the plaintiffs' existing accounts, called Cost Free Educational Accounts (or CFEAs), to the Sprint LTE network. After requesting this bridge agreement in November of 2014, the parties eventually signed the agreement, called

the Interim Service Agreement (ISA), on March 6, 2015. While the Plaintiffs wanted more of their CFEAs to be transitioned, Sprint was only willing to agree in the ISA to transition approximately 1/3rd of their quota of CFEAs to ease the burden of the ultimate transition. The ISA required the transitioned CFEAs to be “unlimited” and to have the throughput and characteristics of Sprint’s best level of retail Internet access service, thus substantially mirroring the requirements applicable to the CFEAs provided by Clearwire under the IUAs.

12. Honoring the good faith obligation to complete a definitive amendment, plaintiffs sent a term sheet to facilitate the negotiation. The parties met on April 7, 2015, and instead of responding to the plaintiffs’ term sheet, Sprint agreed to take over the MRUAs and IUAs as though Sprint were Clearwire, and without a materially adverse change in the rights under those agreements of Plaintiffs. Defendants also agreed at that meeting that Plaintiffs should create a detailed outline to implement the substitution. This was a sudden, unexpected and welcome breakthrough in negotiations.

13. Again, acting expediently and in good faith, plaintiffs provided defendants with a detailed outline on April 29, 2015, which largely showed where in the agreements we needed to change the word “Clearwire” to “Sprint” to implement Sprint’s agreement. Counsel for plaintiffs discussed the outline with counsel for defendants on May 11, 2015, who said that the sole “legal issue” in the outline was that it provides a consent to the sublicense of the commercial spectrum capacity to Sprint under IUA Section 10(b), but that there is no need for the consent because there would be no sublicense. Counsel for plaintiffs was told that any “business issues” would be raised by Patricia Tikkala of Sprint with the business representatives of plaintiffs.

14. During a May 21, 2015 conference call, plaintiffs asked Sprint Vice President Patricia Tikkala if the outline presented any business issues and she told plaintiffs that the only

business issue with the outline was that it should reflect that certain calculations of CFEAs should be refreshed annually (as per the existing IUAs) rather than quarterly. Plaintiffs agreed with that observation and it was concluded that the outline would be turned into a written amendment which addressed both that business issue and the sole legal issue of whether there is a need for Plaintiffs to consent to sublicense their spectrum capacity from Clearwire to Sprint. Sprint had taken the position that it did not need a consent under Section 10(b) of the IUAs to use the commercial spectrum capacity plaintiffs provide to Clearwire, and plaintiffs maintained the opposite stance. Plaintiffs did not consider this disagreement as being material from Sprint's point of view because, if Sprint obtains the consent (which the outline said would be provided under the terms of the outline) that consent does not impose any obligations on Sprint that Sprint would not be taking by assuming Clearwire's obligations or otherwise impair Sprint. Indeed, Sprint never communicated to plaintiffs any harm the granting of the consent would cause to Sprint.

15. At this point, plaintiffs believed that the issue of moving to a Sprint platform had been resolved and that Sprint would truly step into Clearwire's shoes under the MRUAs and IUAs without impairing plaintiffs' rights and expectations under those agreements. But, thereafter, Sprint took a series of actions without advance notice that ultimately caused plaintiffs to question Sprint's sincerity. After developments arising in late June, 2015, it appeared that Sprint was reneging on its commitment to provide the required level of service under the ISA by throttling the accounts at 6 GBs of monthly use. Recently prior thereto, the FCC fined AT&T \$100 million for throttling its users while failing to be fully transparent about that action. Sprint dropped throttling of its retail customers on June 22, 2015, except for throttling needed when a cell site is congested. Nevertheless, despite Sprint's obligations under the ISA to provide

the CFEAs with the same level of service as the accounts enjoyed by its retail customers, Sprint throttled the CFEAs. As plaintiffs tested Sprint LTE devices, they noticed that the throttling limits were not applied uniformly in practice. Sprint customer service representatives responded unevenly when these problems were brought to their attention. At times Sprint representatives informed plaintiffs' customers that Mobile Citizen and Mobile Beacon were responsible for the throttling. Educational institutions, nonprofits, and non-profit digital divide customers began complaining about the throttling and stating the service was no longer meeting their needs.

16. On July 1, 2015 Katherine Messier of plaintiff NACEPF asked Sprint to define its policy to throttle EBS users and noted the contradiction that Sprint's Acceptable Use Policy, a public document, does not include it. On July 21st, Sprint counsel answered Ms. Messier's inquiry and provided details of the so-called SPCTRM 256 plan that throttles after 6 GB. This signaled that Sprint had no intention of obeying the ISA's requirement for "unlimited service" at speeds like those of the best Sprint offering and indicating that Sprint was backtracking from its commitment.

17. Matters came to a head in a July 28, 2015 conference call with Patricia Tikkala and other Sprint personnel. Plaintiffs brought to her attention that Sprint's website offers a far superior retail plan than SPCTRM 256. Ms. Tikkala turned them down flat when they requested that plan for their users, even though plaintiffs are entitled to it under the ISA. Plaintiffs also raised concerns that Sprint's failure to post the SPCTRM 256 plan publicly hamstrung plaintiffs in complying with the FCC's net neutrality rules. Sprint rejected that complaint too.

18. Still, throughout all these interactions, Sprint never told plaintiffs that it was recanting its agreement to step into Clearwire's shoes in the MRUAs and IUAs, or that it would not honor any part of that agreement.

19. Two weeks later, plaintiffs sent Sprint the draft of the detailed contract amendment for Sprint to take over Clearwire's obligations, as previously agreed and contemplated by Sprint's agreement made at the April 7 meeting and the outline, and specifying CFEAs that are not throttled but based upon the best Sprint retail service offering (as per the existing IUAs and MRUAs).

20. Because Sprint continued to throttle plaintiffs' service in a manner that violated the required terms, and other issues, on August 14, 2015, plaintiffs sent defendants a Notice of Default, which specified those known defaults of the ISA, the MRUAs and the IUAs. It was hoped that this notice would get Sprint's attention and get the relationship back on track, and in fact this notice asked Sprint to review the proposed amendment and provide comments so we could conclude it as per prior agreement. It did not get Sprint's attention. Instead, Ms. Tikkala of Sprint responded with a letter dated September 9, denying all the defaults, offering a new deal which would be significantly worse than the existing deal and not responding to plaintiffs' draft amendment. In essence, Sprint was proposing to re-trade the deal made on April 7, 2015. Plaintiffs responded through their counsel on September 15, 2015, expressing surprise that Sprint just flatly denied default, explaining the defaults, explaining that Clearwire may have to keep the WiMAX network in operation, and asking for a response to the draft amendment. Sprint's outside counsel responded with a lawyer's letter on September 29, 2015, denying all allegations and refusing to respond to the draft amendment, while again promoting another proposal to re-trade the deal. To this day, Sprint has never said that this draft amendment is problematic; Sprint has simply failed to respond. With the WiMAX shutdown looming, plaintiffs' backs were against the wall. Seeing no other alternative, plaintiffs commenced this action on October 15, 2015.

STATEMENT OF FACTS

21. This Court is respectfully referred to the Verified Complaint dated October 14, 2015, incorporated herein by reference, for a full and complete recitation of the facts.

LIKELIHOOD OF SUCCESS OF THE MERITS

22. The various license agreements provide that Clearwire and Sprint provide specified devices as well as service and support levels. As set forth in the Verified Complaint, Clearwire and Sprint have failed: (a) to provide a service plan commensurate with the best plan available to retail customers generally; (b) to provide reliable means to order devices; (c) to provide proper account management and support services; and (d) to provide proper levels of throughput.

23. Given those glaring breaches which go to the heart of the relationship amongst the parties, it is very likely that plaintiffs will succeed on the merits.

IRREPARABLE HARM

24. The irreparable harm will result at multiple levels – directly to plaintiffs, to plaintiffs’ customers, and to the constituents of plaintiffs’ customers.

25. Mobile Citizen’s and Mobile Beacon’s relationships with non-profit organizations that act as resellers of the Internet services received from Clearwire to combat the digital divide are being irreparably harmed. Mobile Citizen and Mobile Beacon rely extensively on these relationships to serve end users such as schools and low income individuals who often have no other access to the Internet. The delay and uncertainty occasioned by Sprint’s failure to transition our customers to LTE network services, with unthrottled devices that replicate what they were receiving from Clearwire have so severely damaged the reputation of Mobile Citizen and Mobile Beacon that we have been told that we are no longer a reliable source of Internet

connectivity or reliable collaborators in general. A reputation critical to our business and built over many years has been severely damaged and will be destroyed if WiMAX is shuttered and service lost.

26. Sprint's LTE service throttles at 6 GB per month---absurdly short of the requirements of educational institutions and low-income individuals. Mobile Citizen and Mobile Beacon have been put in the untenable position of attempting to replace the generally accepted Clearwire service with this unacceptable Sprint service. Sprint's so-called "Enhanced Account Management" system is not reliable and poorly supported. Our struggles with this system, which we use and whose failings are often not transparent to our customers, make us appear dysfunctional, severely weakening our credibility and customer confidence in our product. Our customers have difficulty understanding that our problems actually originate with Sprint's inadequate, troubled systems---systems that Sprint has determined need not receive the internal technical support we know this telecommunications giant is capable of accomplishing.

27. Our inability to guarantee adequate future service has led end users with a choice of Internet providers to leave our service. This uncertainty and diminished customer base has deteriorated the economic viability of our non-profit digital divide customers, as they are deprived of their portion of even the small amounts paid by end-users for the service. Mobile Citizen and Mobile Beacon are bearing the blame.

28. We hope to remain active as suppliers of Internet service to educational institutions and non-profit organizations for decades to come. But a debacle such as the widespread cut-off of service to our user base and the provision of inferior throttled services will so significantly damage our reputation and relationships as to call into question the viability of our efforts to bridge our corner of the digital divide. We do not know if we will be able to

recover from such a disaster. We are faced with a direct assault on our purposes and responsibilities as non-profit organizations devoted to service.

29. It cannot be disputed that plaintiffs' customers rely heavily on the reduced or no cost Internet service which they are provided. Whether it be educational institutions which educate our children in traditional brick and mortar schools, or children who attend cyber schools because they do not have access to brick and mortar schools, or the senior or disabled person whose lifeline to medical care is through the Internet, each will be greatly harmed if Sprint does not continue to maintain the WiMAX network and the attendant services until such time as it can effectuate a smooth transition of these customers to an unthrottled LTE network and with a service that is the same as the highest level of retail service it provides its regular retail customers.

30. Perhaps the best way to demonstrate the needs of our customers and the irreparable harm that will be caused by any reduction of service by turning off the WiMAX network is to provide the very words of our customers who have written to us about these issues. Our constituents consist of schools, libraries, and nonprofit entities with limited budgets, both they — and the low-income, disadvantaged people they serve — rely on our Internet service and often are not financially endowed to afford to pay commercial market rates for Internet service. They serve segments of the marketplace that can often not even afford a computer or mobile device, never mind the usage fees. Below are excerpts from numerous testimonials that support the claim of irreparable harm. It is essential for this Court to fully understand the importance of full, unlimited service to plaintiffs' customers equivalent to Sprint's retail services. That way when Sprint claims that there is no need for an injunction, this Court can weigh Sprint's

credibility against the multitude of customers who have come forward from varying geographies and circumstances to plead their case for continued, uninterrupted Internet service.

31. We have been constantly receiving communications from our customers indicating how important Internet access is to them and how appreciative they are to have such service. Likewise, they often indicate the severe consequences that would result from a reduction or elimination of that service.

32. Michael Liimatta is the Chief Executive Officer of Connecting for Good, a Kansas City nonprofit working to bridge the digital divide through wireless Internet, community computer centers, low cost refurbished PCs, and free digital literacy classes. Mr. Liimatta wrote as follows:

With broad support in the Kansas City metro area, our organization has been serving the area's most vulnerable populations, including children/youth, adults, seniors, and people with disabilities who are predominantly low income, and/or from challenged neighborhoods. In the past five years more than 5,000 people have been involved with Connecting for Good's programs.

For most of the individuals that we have signed up for Mobile Beacon's service, they and their children would have difficulty find other resources for their children to get online to do their schoolwork. And they will experience real hardship to use the Internet for their own career and personal development, including searching for jobs online. The seniors who have used this service will no longer be able to communicate easily with family members.

We need this important service to continue to serve those who can most benefit from Internet connectivity but can least afford it.

33. A copy of Mr. Liimatta's complete letter dated October 6, 2015 is annexed hereto as Exhibit "A."

34. Deborah Ranniger is the Executive Director of Etta Projects, a nonprofit which focuses on addressing the needs of poor families living in the rural areas of the Integrated North of the Department of Santa Cruz. Ms. Ranniger writes:

We work to build the capacity of entire communities, including: local leaders, youth, health promoters, teachers and families. In our 12 years of service, we have supported thousands of families improving water, sanitation, education, nutrition and health projects. Etta Projects staff includes 2 fulltime in the U.S., and 5 fulltime and 3 parttime in Bolivia.

Mobile Beacon's Internet service is our lifeline to communicate with Bolivia, our board, our supporting organizations, our grantors and donors. This service is used in our Tacoma office as well as with one staff member, who works part-time from home, which is necessary due to the time difference between here and Bolivia. We cannot exist without economical Internet. Our budget, as a non-profit is extremely lean and we cannot afford to increase our Internet expenses 10-fold, which would be the case if we lose this service.

We are scrambling to come up with some kind of solution but we have none at this time. Our organization and staff urge you to provide pressure Sprint to provide the equipment necessary in a timely way or figure out a temporary solution so that we continue to have the uninterrupted service anyone would expect from a business when signing up for a year contract.

35. A complete copy of Ms. Ranniger's letter dated October 1, 2015 is annexed hereto as Exhibit "B."

36. Daniel Noyes is the Co-Director of Tech Goes Home (TGH) which provides under-served residents of Boston the opportunity, tools, education, and access required to learn about digital equality. Mr. Noyes wrote:

With the support and backing from the city of Boston, TGH focuses on serving the US's most vulnerable populations, including children/youth, adults, seniors, and people with disabilities who are predominantly low-income, and/or from challenged neighborhoods. In the past five years more than 17,000 people have completed a TGH program.

Many of our families and participants are poor and often transient. Mobile Beacon's \$10/month plan with access via a mobile hotspot is perfect. It allows people to access essential resources, but at a cost that not overwhelming. When a family is struggling to put food on the table, commercial Internet rates are simple not an option. Further, telling families that they too can have quality Internet access for their children often elicits an emotional response. Parents know what they need to provide for their families. Unfortunately, they are often unable to do so. Mobile Beacon helps change that equation. If this service were to disappear, it would be devastating to the families and individuals that rely on it.

37. A complete copy of Mr. Noyes' letter dated October 2, 2015 is annexed hereto as Exhibit "C."

38. Frank Murray, Head of Reference/ Electronic Services of Brookfield Public Library in Brookfield, Illinois, wrote:

Let me start this email by saying how much we appreciate Mobile Beacon and its mission to provide non-profit organizations with affordable high-speed Internet access! Not only does the Brookfield Public Library, as a non-profit institution, appreciate what Mobile Beacon has done for our community, I know all our Library members are truly grateful for the WiFi Hotspot lending program.

* * *

The 6 GB of data per month will not work at all. According to the usage report that covers the last three months of data use, there was only one device (out of twenty-five) that stayed under 6 GB per month. Our monthly average is 44.5 GB per month. As you can see we need unlimited data in order for our hotspot lending program to be useful for our community. As a public library it would be impossible for us allow multiple people to use one hotspot. On average a hotspot gets check out 4-5 times per month and that would mean each user would somehow need to be limited to 0.66 of data. If we did not limit data then the first person to check out the hotspot would use up all the data for the month, thus making the hotspot unusable for the remainder of the month. You can see that being limited to 6GB per month would make things very difficult for both the Library and our users; ultimately it would

make the service not worth offering.

39. A complete copy of Mr. Murray's letter dated October 13, 2015 is annexed hereto as Exhibit "D".

40. Michael Silverman, Executive Director of Transgender Legal, Defense & Education Fund,, wrote:

We've been using Mobile Beacon's Clear/Sprint WiMax service for at least a few years, with great success. The unlimited plans have meant that we can focus on our work without worrying about how much data is left to accomplish that work. In the few weeks that we've had the new LTE devices, we've consistently bumped up against the data limits. For even a small office, limited data plans render the devices virtually unusable. Our workloads simply place our needs above conventional data limits, and we have little use that I can imagine for secondary internet devices that allow only limited data use before being throttled.

41. A complete copy of Mr. Silverman's e-mail dated September 21, 2015 is annexed hereto as Exhibit "E."

42. Currently there very few low-cost programs to help adults, seniors, and disabled persons obtain Internet access. Yet, Internet access is just as vital to these groups as it is for students. They need Internet access to sign up for an affordable health care plan, get their GED, participate in adult education programs, access government benefits, and manage their health care.

43. One example is Jeffery Matthews who wrote to us and stated:

I have medical conditions, that require on-going monitoring and follow-up. Your program assures me of the life-line support i vitally need! It has help me monitor on-going medical conditions with My Dr. & Team Support/Group, with constant encouragement and ways to improve My condition.

I live on a very limited income, and can't afford marker rates for

Internet Service, with constant fear of rate increases, after 1st offering. It will be quite difficult to monitor My condition without Internet Access and Rx. monitoring.

44. A copy of Mr. Jeffrey's feedback dated October 6, 2015 is annexed hereto as Exhibit "F."

45. Lisa Connolley, Housing Coordinator of Operation Nightwatch, a Seattle nonprofit that helps seniors transitioning from homelessness wrote:

Operation Nightwatch is home to 24 seniors who have transitioned to our building from homelessness. Most of them have no credit rating at best, bad credit due to medical bills at worst. For them to secure internet service is highly prohibitive cost-wise. Unfortunately, at this point in time, most social service providers need people to have access to internet for updates to services and for other needs. It is becoming mandatory that all have access to the internet to meet many daily needs.

Our residents utilize internet to access Social Security Information, to respond via e-mail to case managers, medical providers and others requesting information. Because of the inaccessibility of cable service, cost prohibitive dish, and poor antenna reception, it is also a key way to keep residents informed of news and even entertainment options. Our residents utilize internet to access Social Security Information, to respond via e-mail to case managers, medical providers and others requesting information. Because of the inaccessibility of cable service, cost prohibitive dish, and poor antenna reception, it is also a key way to keep residents informed of news and even entertainment options.

It will mean that we will lose access to the internet in our building and our residents who are over 62 or disabled will have to access computer services off-site. Most will probably simply lose this tool, and have a more difficult time accessing services. The income of many in our building is under \$800 a month, Cellular and Century Link charges would signify a high percent of their income in order to access their services.

46. A copy of Ms. Connolley's letter dated October 22, 2015 is annexed hereto as Exhibit "G."

47. NACEPF has up to 59 security systems deployed to schools and libraries. Providing a safe environment for students, staff and library patrons is essential, but with limited budgets, many of these organizations relied on Mobile Beacon's donation program to have a security system. The system uses multiple security cameras which provide live feeds that can be

monitored on-site and remotely over the Internet. For this reason, these security systems use large capacities of throughput. Sprint's action to shut off WiMAX or throttle after 6 GBs can shut down the wireless monitoring ability of these systems, which gives rise to potential grave danger and substantial harm.

BALANCING OF THE HARDSHIPS FAVORS INJUNCTIVE RELIEF

48. The balance of the hardships weighs heavily in favor of plaintiffs. Defendants will not suffer any irreparable harm if the injunction is granted.

49. Sprint is a major player in the marketplace providing wireless broadband and voice services to more than 56 million customers. It has benefited tremendously from having the ability to use portions of plaintiffs' education broadband spectrum to its commercial benefit. Not only is Sprint contracted to provide service to plaintiffs, it has the wherewithal, economic and otherwise, to maintain the WiMAX service until such time as it can transition all of plaintiffs' customers to its LTE network.

50. Sprint professes to want to participate in helping to breach the digital divide. "At Sprint, we believe Internet access is a basic human right. It's critical to a student's success beyond just education; it's critical to their success in life." This is a quote from Jim Spillane, Director, Project ConnectED. [www.youtube.com/watch?v=FxubQ1BhAPY].

51. Mr. Spillane is also quoted as saying –

Digital literacy is more important than ever to produce the future leaders of tomorrow. Students are at a significant disadvantage without access to the Internet, and Sprint is proud to provide the technology these students need to access the most current educational resources and to achieve their highest educational potential.

[<http://investors.sprint.com/news--investor-events/newsroom/press-release-details/2015/Sprint-Provides-More-Than-500000-in-Free-Broadband-Service-to-Help-Bridge-the-Digital-Divide-for-Pomona-Students/default.aspx>]

52. Sprint also professes to support the power of technology to improve education and learning. Sprint's Good Works website states:

Education, coupled with the power of technology, can transform learning, energize communities and inspire innovative thinking. That's why Sprint supports cutting edge programs that combine our technology with quality K-12 educational programming in schools and nonprofit organizations across the country. Through a combination of Sprint Foundation support and technology support, Sprint has provided more than \$17 million toward K-12 educational programming across the country over the past 10 years. By supporting our nation's students and teachers, Sprint demonstrates how good ideas work to impart knowledge in effective new ways to the next generation and beyond.

[\[http://goodworks.sprint.com/people/communities/education/\]](http://goodworks.sprint.com/people/communities/education/)

53. Sprint's Chief Executive Officer Marcelo Claire is also on the education bandwagon claiming that he supports empowering people with education through technology.

The Sprint Good Works website quotes Mr. Claire as follows:

One of the areas I'm personally passionate about is empowering people with education so they may seize greater opportunities. I am deeply honored to serve on the board of directors of My Brother's Keeper Alliance (MBKA), a nonprofit that supports kids from day one until they go to college. Sprint has pledged \$2 million to MBKA, and we will provide about \$3 million more of inkind support to make sure critical broadband Internet connections are available to more students in and out of the classroom. One of the most powerful things you can do for education anywhere is to give young people access to the biggest library of content in the world – the Internet.

[\[http://goodworks.sprint.com/people/communities/education/\]](http://goodworks.sprint.com/people/communities/education/)

54. And to accomplish all of this good work, Sprint apparently has a plan. Mr. Claire has repeatedly announced that plan.

(11:11) Looking ahead, we have a very clear plan ... we plan to be the largest deployment of sites that have been done in the history of the U.S. in the shortest period of time.

(20:02) We expect to build the number one network or number

two network in every major market in the next 24 months.

(20:20) People forget to build a great network ... you need spectrum. We have more spectrum than any other carrier on the planet.

(20:52) Data usage is exploding ... data consumption will double this year, double next year ... and the numbers are huge. If you try to use some of the networks in the U.S. in some cities, there is already congestion, so there is already spectrum crunch and that's an area where we're going to build a network with the most amount of capacity.

(21:59) You need a network that has capacity to provide that [ability to view new video technology] ... We're going to leverage our spectrum.

(22:50) Our main shareholder, SoftBank, has built one of the most advanced networks in the world – we feel very confident in our plan.

(23:23) You can expect to see what happened in Denver to happen in market after market in the U.S. in the next two years. We feel extremely confident we have found a way to basically build an amazing network – that's my job for the next two years.

[\[http://goodworks.sprint.com/our-progress/message-from-sprint-ceo-marcelo-claure/\]](http://goodworks.sprint.com/our-progress/message-from-sprint-ceo-marcelo-claure/)

55. Sprint has generated a lot of publicity about its own efforts in this area. However, when it comes to complying with its contractual obligations with plaintiffs to meet the very same goals and Sprint's name is not directly associated with these efforts, Sprint falls very far short.

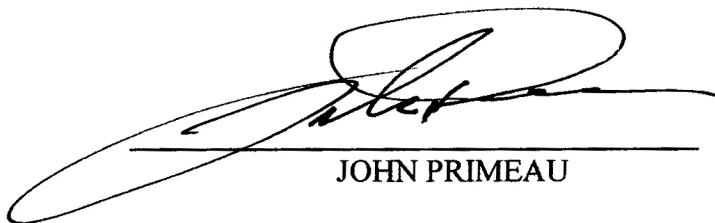
THE PUBLIC INTEREST WILL BE SERVED BY THE INJUNCTION

56. This case is all about the public interest. Plaintiffs are non-profit entities whose constituents include educational institutions and other non-profit organizations that rely upon the plaintiffs for low or no cost Internet service to service students, the elderly, the disabled, and other segments of the population often not able to afford Internet service at the usual and customary fee levels offered by “for profit” providers. As Sprint continues to shut down the

Clearwire's WiMAX network, it leaves most of plaintiffs' customers with old devices on a network that is impaired and being phased out and no path to timely substitute service. As a result, an under-served and underrepresented part of the public will be severely impacted.

57. No prior application has been made for the relief sought herein.

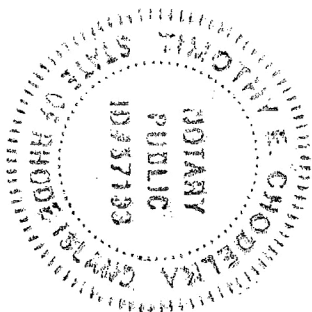
WHEREFORE, it is respectfully requested that the instant application be granted in all respects together with such other and further relief which the Court deems proper.



JOHN PRIMEAU

Sworn to before me this
22 day of October, 2015

Timothy C. Chudelka
Notary Public
57183



EXHIBIT

A



2006 N 3rd Street, Kansas City KS 66101 (913) 730-0677 www.connectingforgood.org

Katherine Messier, Managing Director
Mobile Beacon
2419 Hartford Ave.
Johnston, RI 02919

October 6, 2015

Dear Ms. Messier:

Since 2011, Connecting for Good has been bridging the Digital Divide using wireless Internet, community computer centers, low cost refurbished PCs and free digital life skills classes. With broad support in the Kansas City metro area, our organization has been serving the area's most vulnerable populations, including children/youth, adults, seniors, and people with disabilities who are predominantly low income, and/or from challenged neighborhoods. In the past five years more than 5,000 people have been involved with Connecting for Good's programs.

This year alone, we have conducted 290 basic digital life skills classes. Almost 25% of the nearly 3,000 students involved had never used a computer before. Upon completion, low income students may purchase a high-quality refurbished computer for \$75.00. Connecting for Good helps them find low-cost Internet options. Between November 2014 and March 2015, 150 of these low income individuals took advantage of Mobile Beacon's \$10/month plan. Because of limited incomes – many of them are unbanked – the mobile hotspot offering is the perfect option for them.

For most of the individuals that we have signed up for Mobile Beacon's service, they and their children would have difficulty find other resources for their children to get online to do their schoolwork. And they will experience real hardship to use the Internet for their own career and personal development, including searching for jobs online. The seniors who have used this service will no longer be able to communicate easily with family members.

We need this important service to continue to serve those who can most benefit from Internet connectivity but can least afford it.

Sincerely,

A handwritten signature in black ink that reads "Michael Liimatta". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Liimatta, CEO
michael@connectingforgood.org

EXHIBIT

B



October 1, 2015

Re: Discontinuation of Internet Service

To whom it may concern:

Etta Projects (www.ettaprojects.org) was created in 2003 by Pennye Nixon to honor the life and create a legacy for her daughter, Etta Turner, a Port Orchard teenager whose young life ended tragically in a bus accident, November 2002, when she was in Bolivia as a Rotary International Exchange student. Etta Projects collaborates with communities, creating sustainable solutions to improve health, sanitation and clean water. Through our work over 63,500 people in Bolivia have benefited with improved health & nutrition, water, sanitation and education.

Etta Projects focuses on addressing the needs of poor families living in the rural areas of the Integrated North of the Department of Santa Cruz. We work to build the capacity of entire communities, including: local leaders, youth, health promoters, teachers and families. In our 12 years of service, we have supported thousands of families improving water, sanitation, education, nutrition and health projects. Etta Projects staff includes 2 full-time in the U.S., and 5 full-time and 3 part-time in Bolivia.

Mobile Beacon's Internet service **is our lifeline** to communicate with Bolivia, our board, our supporting organizations, our grantors and donors. This service is used in our Tacoma office as well as with one staff member, who works part-time from home, which is necessary due to the time difference between here and Bolivia. **We cannot exist without economical Internet.** Our budget, as a non-profit is extremely lean and we cannot afford to increase our Internet expenses **10-fold**, which would be the case if we lose this service.

Through the Internet service we communicate daily through Skype and email to our staff in Bolivia as well as our grantors and donors through-out the United States. This service is used by our volunteers, some of whom are university students, who cannot afford their own plan and while interning with us, have Wifi access.

We were stunned and appalled to learn of this sudden discontinuation of service, especially since we just renewed our annual subscription in June. We were just told that service would be available sometime in the future with no date certain. This is unacceptable! We cannot conduct our business in this manner, hoping that sometime in the indefinite future we might regain access. Further, we cannot afford to sign onto a year contact with another Internet provider at ten or more times the cost. We based our annual budget, made months ago, on continued service with Mobile Beacon.

We are scrambling to come up with some kind of solution but we have none at this time. Our organization and staff urge you to provide pressure Sprint to provide the equipment necessary in a timely way or figure out a temporary solution so that we continue to have **the uninterrupted service anyone would expect** from a business when signing up for a year contract.

Regards,

Deborah Ranniger, Ph.D Executive Director

ATTAINABLE. SUSTAINABLE. RESULTS.

13624 Vintage Drive SW Port Orchard, WA 98367 • 360-870-7487 • www.ettaprojects.org

EXHIBIT

C



10/2/2015

Katherine Messier
Managing Director
Mobile Beacon

Dear Ms. Messier:

Tech Goes Home (TGH) is a national award-winning initiative that has successfully provided under-served residents the opportunity, tools, education and access required to bring about digital equality. With the support and backing from the city of Boston, TGH focuses on serving the US's most vulnerable populations, including children/youth, adults, seniors, and people with disabilities who are predominantly low-income, and/or from challenged neighborhoods. In the past five years more than 17,000 people have completed a TGH program.

The program involves 15 hours of group training conducted by a TGH trained staff member from the site in which the course is run. Sites include schools, libraries, community centers, and other community assets. Our tutorials focus on topics such as tracking a child's grades and attendance online, securing a professional email, and finding web-based family resources. Upon completion, families have the option of purchasing a new computer for \$50 and TGH helps them find low-cost Internet options.

It is that search for low-cost access that I wish to discuss. Many of our families and participants are poor and often transient. Mobile Beacon's \$10/month plan with access via a mobile hotspot is perfect. It allows people to access essential resources, but at a cost that not overwhelming. When a family is struggling to put food on the table, commercial Internet rates are simple not an option. Further, telling families that they too can have quality Internet access for their children often elicits an emotional response. Parents know what they need to provide for their families. Unfortunately, they are often unable to do so. Mobile Beacon helps change that equation. If this service were to disappear, it would be devastating to the families and individuals that rely on it.

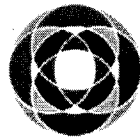
I hope I have conveyed to you the importance of allowing families and individuals to continue using Mobile Beacon's service. Without it, families will not be able to access the digital resources needed for their children's academic success. Individuals will no longer be able to search for jobs online, hoping to climb the economic ladder. Seniors will no longer be able to communicate easily with family members. It is essential that this service continue.

Sincerely,

A handwritten signature in black ink that reads "D. R. Noyes". The signature is written in a cursive, slightly slanted style.

Daniel R. Noyes
Co-Director
Tech Goes Home

EXHIBIT D



brookfield
PUBLIC LIBRARY
INFORM · INSPIRE · INNOVATE

October 13, 2015

Rick Lindholm
Mobile Beacon, Sales Manager
2419 Hartford Avenue
Johnston, RI 02919

Mr. Rick Lindholm,

Let me start this letter by saying how much we appreciate Mobile Beacon and its mission to provide non-profit organizations with affordable high-speed Internet access! Not only does the Brookfield Public Library appreciate what Mobile Beacon has done for our community, I know our Library members are truly grateful for the WiFi Hotspot lending program.

I would like to express my disappointment in Sprint limiting the WiFi hotspot offerings. There are three major issues that will ultimately make the Library's hotspot lending program obsolete:

1. Limiting each device to 6 GB of data per month
2. Indefinite start date for the new plan
3. Purchasing new devices

(1) The 6 GB of data per month will not work for our users. According to the usage report that covers the last three months of data use, there was only one device (out of twenty-five) that stayed under 6 GB per month. Our monthly average is 44.5 GB per month. As you can see we need unlimited data in order for our hotspot lending program to be useful for our community. On average a hotspot gets checked out 4-5 times per month and if hotspot usage was limited to 6 GB/month that would mean each user would somehow need to be limited to 0.66 of data which would be extremely unreasonable and ineffective for the user. If we did not limit data then the first person to check out the hotspot would use up all the data for the month, thus making the hotspot unusable for the remainder of the month as the Library would not be able to afford the expense for going over. You can see that being limited to 6GB per month would make things very difficult for both the Library and especially our users; ultimately it would make the service not worth offering. The Library would need to leave Sprint/Mobile Beacon and seek other options.

(2) The indefinite start date of the new service plan would tremendously affect the Library and our community members just as much as limiting data. From the Library's perspective we would be losing circulation statistics during the indefinite down time at a rate of roughly 100 per month. The Library also



opens itself up to negative customer service perceptions by no longer offering a popular and vital community service. We could even potentially lose users that are upset with the indefinite delay. Besides the Library being affected by the indefinite start date, the Library's members are the ones greatly affected by this delay. These are individuals who rely on the hotspots to access information for homework, job searching, checking email, and any other information needs. The indefinite delay would take away a very important avenue, and in many cases, the only way our members can access the Internet and information.

(3) Purchasing new devices is a very expensive endeavor and seeing as we purchased fifteen devices in the past year it would be considered very redundant and fiscally irresponsible to purchase a whole new set of devices. The devices are expensive and finding the funds to purchase a new fleet of hotspots will be difficult. The upgrade to LTE technology is great and will drastically improve service but how can the Library and its users take advantage of this new technology if the limited data plan and indefinite start date do not allow anyone to use the new devices.

The WiFi Hotspot lending program that we get through Mobile Beacon has not only become one of our most popular programs but it is has also become one of the most important to our members. Library members rely on this service to access information from home or on the go: for school work, continuing education, job searching, or just general, recreational Internet use. The hotspot lending program connects our members to the world around them. We hope to continue to work with Mobile Beacon and Sprint to continue to offer this amazing service. However if Sprint cannot offer unlimited data and provide a definitive start time that benefits our community (November 1, 2015) then the Brookfield Public Library will be forced to find another option so we can continue to keep our community informed.

Sincerely,



Frank Murray
Brookfield Public Library
Head of Reference/Electronic Services
Brookfield, IL 60513

EXHIBIT

E

From: Michael Silverman [<mailto:msilverman@transgenderlegal.org>]
Sent: Monday, September 21, 2015 9:39 AM
To: Rick Lindholm <rick@mobilebeacon.org>
Subject: Sprint LTE service

Hi Rick,

Here are some thoughts on the transition to Sprint LTE service.

We've been using Mobile Beacon's Clear/Sprint WiMax service for at least a few years, with great success. The unlimited plans have meant that we can focus on our work without worrying about how much data is left to accomplish that work. In the few weeks that we've had the new LTE devices, we've consistently bumped up against the data limits. For even a small office, limited data plans render the devices virtually unusable. Our workloads simply place our needs above conventional data limits, and we have little use that I can imagine for secondary internet devices that allow only limited data use before being throttled. Some offices might find them useful for employee travel, I imagine, but we wouldn't.

It was only, of course, after about a month of trial and error and about two dozen or more calls and visits to customer service that we discovered that the plan on the new devices is, in fact, data-limited. No one at any Sprint customer service number or Sprint store was aware of that. Indeed, when I suggested that the account appeared throttled since our download speeds came to a crawl but our "ping" and upload speeds remained fine, every customer service representative insisted that Sprint does not throttle any accounts at any point.

My overall thought is that limited plans are not viable for the original charitable purpose for which these devices were intended. Beyond that, if limited plans are all that is available, that should be made clear and Sprint customer service should be aware of the ways in which the plans are implemented through throttling so that customers like us can at least find out what's going on when we hit a data limit.

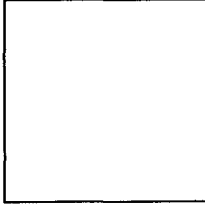
Thanks a million for all that you're doing for the non profit community. I hope that Sprint will consider resuming unlimited data plans for charitable organizations like ours. We've been a big fan of this program in its original form and I imagine that it has been helping many non profits and education institutions fulfill their missions.

Best wishes,

Michael

--

Michael D. Silverman
Executive Director



Transgender Legal Defense
& Education Fund, Inc.

20 West 20th Street
Suite 705
New York, New York 10011

t: 646.862.9396, x101

f: 646.930.5654

e: msilverman@transgenderlegal.org

w: transgenderlegal.org

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EXHIBIT

F



Pardot Form Notification

[View Prospect](#)

Form Submission: Customer Feedback Form

Field	Value
First Name	Jeffrey
Last Name	Matthews
Company	
Job Title	
Address One	308 14th Ave. East #209
Email	jeffmatthews@live.com
Phone	206-678-3818
What brought you here?	Concern
MAC ID	WAN MAC OO.1D.88.4F.OC.BA
Why do you need affordable Internet service	I live on a very limited income, and can't afford market rates for Internet Service, with constant fear of rate increases, after 1st offering.
What ways do you use Mobile Beacon	I have medical conditions, that require on-going monitoring and follow-up, Your program assures me of the life-line support i vitally need!
Share examples of how Mobile Beacon helped you	It has help me monitor on-going medical conditions with My Dr. & Team Support/Group, with constant encouragement and ways to improve My condition.
How will discontinued Internet affect you	It will be quite difficult to monitor My condition without Internet Access and Rx. monitoring.
Viable alternative to Mobile Beacon's \$10	No

Full Prospect Details

Field	Value
Email	jeffmatthews@live.com
First name	Jeffrey
Last name	Matthews
Campaign	Customer Feedback
Score	53
Assigned user	Not assigned
Phone	206-678-3818
Address one	308 14th Ave. East #209
Source	Google Natural Search
Original Referring URL	http://www.google.com/search?client=safari&rls=...
How will discontinued Internet affect you	It will be quite difficult to monitor My condition without Internet Access and Rx. monitoring.
MAC ID	WAN MAC OO.1D.88.4F.OC.BA

Mobile Beacon helped you	Support/Group, with constant encouragement and ways to improve My condition.
Viable alternative to Mobile Beacon's \$10	No
What brought you here?	Concern
What ways do you use Mobile Beacon	I have medical conditions,that require on-going monitoring and follow-up,Your program assures me of the life-line support i vitally need!
Why do you need affordable Internet service	I live on a very limited income,and can't afford marker rates for Internet Service,with constant fear of rate increases,after 1st offering.

Recent Activity

Activity	Type	Date / Time
Landing Page: Customer Feedback	Success	Oct 6, 2015 4:55 PM
Visitor	Visitor	Oct 6, 2015 4:30 PM
Landing Page: Customer Feedback	View	Oct 6, 2015 4:29 PM

Pardot
950 E. Paces Ferry Rd.
Suite 3300
Atlanta, Georgia 30326

EXHIBIT

G



SUPPORT
SHELTER
HOPE

Operation Nightwatch
PO Box 21181
Seattle, WA 98111 Phone
(206) 860-4296
Fax (206) 323-4165

October 22, 2015

To Whom it May Concern,

I am writing this letter in support of Mobile Beacon's dispute regarding of Sprint's decision to eliminate low-income services. This will affect the quality of life for our residents greatly.

Operation Nightwatch is home to 24 seniors who have transitioned to our building from homelessness. Most of them have no credit rating at best, bad credit due to medical bills at worst. For them to secure internet service is highly prohibitive cost-wise. Unfortunately, at this point in time, most social service providers need people to have access to internet for updates to services and for other needs. It is becoming mandatory that all have access to the internet to meet many daily needs

Our residents utilize internet to access Social Security Information, to respond via e-mail to case managers, medical providers and others requesting information. Because of the inaccessibility of cable service, cost prohibitive dish, and poor antenna reception, it is also a key way to keep residents informed of news and even entertainment options.

With the benefit of Microsoft volunteers, over 1/3 of our residents have been given tutorials to learn how to secure basic sites they need to gain services. In addition, 1/4 of our residents did not need the tutorials, but benefit from having access to the internet to obtain goods and services they need.

It will mean that we will lose access to the internet in our building and our residents who are over 62 or disabled will have to access computer services off-site. Most will probably simply lose this tool, and have a more difficult time accessing services. The income of many in our building is under \$800 a month, Cellular and Century Link charges would signify a high percent of their income in order to access their services.

Sincerely,

Lisa Connolley
Housing Coordinator