

NONPROFITS USING WIMAX SUE SPRINT, ALLEGING VIOLATION OF CONTRACTS AHEAD OF NETWORK SHUTDOWN, FIERCEWIRELESS

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Sprint ([NYSE: S](#)) is facing a lawsuit from two nonprofit groups that have been providing mobile WiMAX Internet service to low-income students and families. The groups allege that they had been offering unlimited WiMAX service to more than 300,000 customers, and with Sprint's impending shutdown of the legacy Clearwire WiMAX network next month, are being pushed to accept LTE data service that will throttle the speeds of customers after they hit a cap of 6 GB of data, in violation of their contract with Sprint.

The two groups, Mobile Beacon and Mobile Citizen, filed the lawsuit yesterday in Suffolk Superior Court in Boston and claim they serve 429 schools, 61 libraries and 1,820 nonprofits who are dependent on the WiMAX service for Internet access.

"However, our customers tell us that the benefits of one modem have a multiplier effect," Kristen Perry, a spokeswoman for Voqal, the parent organization of Mobile Citizen, told FIERCEWIRELESS. "One modem given to a student in need benefits a family of five. One modem used at a library may be checked out to dozens of users without Internet access at home. And one nonprofit modem may be used by an entire neighborhood accessing it via a computer lab at a community center. So you can see, our 300,000 users may even be conservative." As the lawsuit notes, some end users receive wireless broadband service at no cost and the remainder pay very low rates.

Mobile Beacon and Mobile Citizen are entities that hold Educational Broadband Service (EBS) spectrum licenses. Under FCC rules, the firms leased a portion of their spectrum to Clearwire for 30 years in 2006 in exchange for the ability to provide unlimited, high-speed broadband service to schools, libraries and nonprofit organizations across the United States.

"In consideration for permitting such use, plaintiffs are paid royalties in cash and in-kind," the lawsuit notes. "The in-kind royalties include access to the commercial user's wireless broadband network, technologies, facilities and functionality, as well as the right to acquire user equipment required to access and use the network, all of which are used by the plaintiffs to serve their non-commercial customers in various non-profit sectors (including education, religion and health), who, in turn, provide service to low-income households who could not otherwise afford Internet connectivity."

Sprint plans to shut off service on its mobile WiMAX network on or around Nov. 6, 2015, which Sprint publicly announced in October 2014. The lawsuit claims that, faced with the impending shutdown and "Sprint's refusal to enable Clearwire to provide Cost-Free Educational Accounts through Sprint's wireless

network under the Existing Agreements," the parties entered into an interim agreement with Sprint in March 2015, which was "intended to lessen the disruption to services" while the parties negotiated a new deal.

At the heart of the dispute is the changing nature of the service Mobile Beacon and Mobile Citizen will get from Sprint. The lawsuit alleges that its agreements with Clearwire and then with Sprint mean that Sprint needs to provide them with "the best level of service it provides its retail customers," and that Sprint is failing to offer that.

"The Sprint broadband service plan that Clearwire and Sprint are imposing on Licensees deliberately slows speeds down drastically from an average download speed of 6-8 Mbps to 256 Kbps after just 6 GB of capacity is used in a month," the lawsuit claims. "Sprint calls this plan 'SPCTRM256,' and it cannot, unlike Sprint's other plans, be found on the Sprint website. SPCTRM256 is not mentioned in the [interim agreement] and it is both far from 'the best unlimited plan' and one that is not 'available to retail customers.'"

The lawsuit notes that in the case of Mobile Beacon, school modems it offers use an average of 32 GB of data per month, with the top 25 percent using capacity between 50 and 300 or more GB per month.

Katherine Messier, managing director of Mobile Beacon, noted that Sprint offers shared data plans that offer 30 GB or 40 GB of data and do not arbitrarily throttle the speeds of customers when they hit a data cap. "The fact they would throttle schools but not even their own customers feels like a big disconnect," she said.

"This is a contract dispute. Simply put, the reality of this situation is that Sprint is trying to keep this service on, not turn it off," Sprint spokeswoman Stephanie Vinge Walsh told FIERCEWIRELESS. "The fact is, Sprint has gone to great effort to work with all WiMAX users to transition WiMAX accounts to LTE, for the express purpose of improving the consumer broadband experience, not shutting it off. And we have been very successful at transitioning the majority of these accounts. But the transition cannot take place without the cooperation of each licensee."

Walsh said that since April 2014, Mobile Citizen and Mobile Beacon have known that Sprint would be shutting down the WiMAX network and investing heavily in LTE to improve the broadband experience for all of its customers. "To this end, Sprint has worked very proactively and diligently to transition all affected partners and customers," she said. "Sprint gave notice to these licensees in the summer of 2014 regarding the November 2015 decommissioning date -- well over a year ago. And we have continuously publicized this date throughout 2015. In fact, we have already transitioned the vast majority of our other EBS licensee community to the new LTE network, and their users are already enjoying the benefits of the higher quality broadband service."

"Mobile Beacon and Mobile Citizen could have transitioned their end users to the new LTE network months ago," Walsh added. "We have repeatedly made attempts to discuss with them how we can best meet their end users' needs and resolve this matter. But instead of working it out like reasonable partners, they chose to file a complaint."

John Schwartz, president of Voqal, the entity that operates Mobile Citizen, said his group and Mobile Beacon have invested heavily in their customers and partners, more often than not at a financial loss, "and the idea we wouldn't bother to transition is transparent nonsense."

"You can't take a very low-income service, charge people money and then give them something that's much worse than they had before," Schwartz added. "It's not ethical to do that."

Schwartz said the goal of the lawsuit is to "take this user base and get them on a reliable service. It cannot be throttled LTE, and we need the back-end functionality to really be able to run what is in essence an MVNO. So many people who are so dependent are going to lose service. We have to protect those users."

"We want to make sure that all of these hundreds of thousands of folks are not without Internet access," Messier said, adding that Mobile Beacon has asked Sprint to maintain their service until the dispute can be resolved. "We haven't closed the door with Sprint either," she said.