IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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

Plaintiffs,

v.

CLEARWIRE SPECTRUM HOLDINGS II LLC, CLEARWIRE LEGACY LLC f/k/a CLEARWIRE CORPORATION, T-MOBILE US, INC.,

Defendants.

Case No. _____

JURY TRIAL REQUESTED

COMPLAINT

Plaintiffs Chicago Instructional Technology Foundation, Inc., Denver Area Educational Telecommunications Consortium, Inc., Instructional Telecommunications Foundation, Inc., North American Catholic Educational Programming Foundation, Inc., Portland Regional Educational Telecommunications Corporation, and Twin Cities Schools' Telecommunications Group, Ind. by and through their undersigned attorneys, allege upon personal knowledge and belief as follows:

NATURE OF THE ACTION

1. Plaintiffs seek injunctive relief to stop Defendants from unlawfully pirating their spectrum and damages from Defendant T-Mobile US, Inc. ("T-Mobile") for its wrongful taking of

that spectrum. Plaintiffs are six nonprofit organizations that have been granted more than 60 licenses by the Federal Communications Commission ("FCC") to operate Educational Broadband Service ("EBS") channels in the 2.5 GHz spectrum band for educational purposes in markets across the country. In furtherance of their educational purposes, Plaintiffs agreed in July 2006 to lease their excess EBS spectrum capacity ("Spectrum") to Defendants Clearwire Spectrum Holdings II LLC and Clearwire Legacy LLC (together, "Clearwire") for commercial use over a thirty-year term. In exchange for obtaining use of Plaintiffs' most valuable assets for 30 years, Clearwire promised, among other things, to provide Plaintiffs with premium wireless broadband accounts,[1] access to end user devices, and associated features and support services in furtherance of their educational mission. This consideration is part of what is contractually defined as "Access Right Royalties." Plaintiffs use these Access Right Royalties to supply thousands of schools, libraries, community-based organizations, and other nonprofits with unlimited high-speed internet for their needs and the needs of their constituents and program beneficiaries. Plaintiffs' efforts are directed at equipping underserved communities with the wireless technology necessary to have the same digital interconnectivity and educational opportunities that our nation largely enjoys.

2. Importantly, in the agreements between Plaintiffs and Clearwire, Clearwire agreed that any sublicense of Plaintiffs' Spectrum would require Plaintiffs' "advance written consent." Ex. 2, § 10(b).[2] Plaintiffs' right to approve a sublicense of their Spectrum provides them with critical means to protect, among other things, their Access Right Royalties, as any new wireless network would raise a host of issues regarding the quality of those access rights (e.g., service plans,

[1] These accounts "shall have the same capacity and characteristics as the highest level of premium mass market retail service provided on Clearwire's network in a given Market Area." Ex. 1, § 3.02(b).

[2] Plaintiffs have requested impoundment of Exhibits 1 and 2 due to confidentiality provisions in those agreements, but the terms of the agreements quoted herein have all been publicly disclosed either by Clearwire in an SEC filing or in public filings in litigation to which Clearwire was a party.

devices, and support), the quantity of those rights, and the impact that transition to a new network would have on Plaintiffs and their end users. This consent right gives Plaintiffs the means to ensure that neither they nor their end users would be prejudiced by any decision by Clearwire to convey their Spectrum to another network.

3. In clear violation of its contractual obligations, Clearwire sublicensed Plaintiffs' Spectrum to T-Mobile without Plaintiffs' "advance written consent." On March 31, 2020, Clearwire informed Plaintiffs that "[e]ffective April 1, 2020 T-Mobile US, Inc. and/or its affiliates will be sublicensing [their] spectrum" and that Plaintiffs' consent is "deemed granted." Ex. 7, at 2. Plaintiffs did not consent to a sublicense to T-Mobile in any form or manner, and it was improper and directly contrary to the terms of the agreements for Clearwire to permit T-Mobile to make unauthorized use of Plaintiffs' spectrum. Rather than ask for Plaintiffs' consent, Clearwire and T-Mobile simply arrogated Plaintiffs' Spectrum for their own purposes, because, as T-Mobile's Chief Technology Officer explained: "2.5 GHz brings an incredible capability" for T-Mobile's 5G wireless broadband network.[3]

4. While improperly using Plaintiffs' Spectrum for its new 5G network, which it touts as the transformative "Magenta" network, T-Mobile at the same time plans to dismantle the network on which Plaintiffs' Access Right Royalties are based—which since Sprint Corporation acquired Clearwire in 2013 has been Sprint's network. T-Mobile's unauthorized sublicense raises many important questions concerning the quality of Plaintiffs' bargained-for access rights, including whether and when Plaintiffs' end users will be given access to the new network making use of Plaintiffs' Spectrum, what steps will be taken to avoid an interruption or degradation in those end users' service during the network transition, the services and features that those end

[3] SEC Form 425, Joint Consent Solicitation Statement/Prospectus of T-Mobile and Sprint Corp., filed May 1, 2018, at 18.

users will be offered and how those compare to the "premium" retail offerings that Plaintiffs were promised, Plaintiffs' access to wireless user devices and the timing of any change in devices and support, and the means by which Plaintiffs' wireless accounts will be managed. T-Mobile's unauthorized sublicense also raises issues concerning the number of wireless accounts to which Plaintiffs are entitled, since the agreements tie those calculations to network characteristics such as cell sites, sectors, subscribers, and data capacity. These are the kinds of issues Plaintiffs have the right to consider ***before*** deciding whether to consent to a sublicense. Yet, Clearwire and T-Mobile have provided Plaintiffs with virtually no information about any of them, proceeding full steam ahead in complete derogation of Plaintiffs' consent rights and failing to ensure adequate service (and continuity of service) to the tens of thousands of nonprofit organizations, students, and low-income families who rely on Plaintiffs for their essential internet lifeline.

5. This is not the first time that Clearwire has violated Plaintiffs' consent rights. When it was acquired by Sprint in 2013, Clearwire claimed that it did not need Plaintiffs' consent for Sprint to use Plaintiffs' Spectrum on Sprint's network and that Sprint had no obligation to allow Plaintiffs access to its network (notwithstanding the plain language of the agreements). The Massachusetts Superior Court rejected Clearwire's imperious view and entered partial summary judgment for Plaintiffs, finding that the relevant agreements required Clearwire to obtain Plaintiffs' advance written consent for Sprint to use their spectrum. Ex. 5, at 4-6. It also entered a preliminary injunction requiring Clearwire and Sprint to provide Plaintiffs and their end users wireless broadband access "with the same characteristics as the highest level of premium mass market retail service provided on the Sprint or Clearwire networks at no cost to [Plaintiffs]." Ex. 3, at 2. Having been ordered to recognize Plaintiffs' consent rights in connection with a sublicense to Sprint, it is astonishing that Clearwire would once again ignore those rights and sublicense

Plaintiffs' Spectrum to its latest suitor, T-Mobile, without Plaintiffs' consent.

6. Clearwire says that Plaintiffs' consent is "deemed granted" because an arbitration panel later determined that Plaintiffs unreasonably withheld consent to Clearwire's sublicense to Sprint, but that is nonsense—the panel did not address or even mention T-Mobile, and it made no ruling that eliminates Plaintiffs' consent rights over third-party uses of their spectrum. T-Mobile's unauthorized use of Plaintiffs' Spectrum raises new and important issues on which Plaintiffs need information, and Plaintiffs' contractual rights to approve such a consequential change in the use of their Spectrum cannot be brushed away by reference to another proceeding involving another sublicense on another wireless network.

7. The current global pandemic underscores the importance of Plaintiffs' role in protecting their contractual rights from being diminished in a sublicense of their Spectrum for use in a new network. Thousands of institutions and tens of thousands of low-income families and students depend on Plaintiffs for their internet access, and COVID-19 has made the internet an absolute necessity for their education, health, basic needs, and social contact. Yet, Defendants seek to deny Plaintiffs the very means by which they are able to protect these end users from having their internet access degraded (or "throttled" as Clearwire tried in 2015), from being left on an inferior dead-end network, or from being accommodated only after retail customers (which the contracts prevent). Plaintiffs have the right to approve any sublicense of their Spectrum ***before*** it happens; yet Defendants claim they are entitled to nothing at all—refusing to produce the supposed sublicense or notify Plaintiffs of changes in system capabilities as they are required to do. Plaintiffs therefore ask the Court to enforce their consent rights, enjoin Clearwire from sublicensing and T-Mobile from using Plaintiffs' Spectrum without Plaintiffs' consent, and award damages against T-Mobile for its misappropriation of Plaintiffs' valuable Spectrum.

THE PARTIES

8. Plaintiffs are six nonprofit corporations whose purposes are educational. Among other things, Plaintiffs provide substantial educational benefits to schools, libraries, community-based organizations and other nonprofits throughout the United States by supplying premium wireless broadband service and devices at minimal or no cost. These efforts are largely targeted at providing internet connectivity to underserved communities and low-income people.

9. Plaintiff Chicago Instructional Technology Foundation, Inc. ("CITF") is a nonprofit nonstock corporation organized under the laws of Illinois with its principal place of business in Longmont, Colorado.

10. Plaintiff Denver Area Educational Telecommunications Consortium, Inc. ("DAETC") is a nonprofit nonstock corporation organized under the laws of Colorado with its principal place of business in Longmont, Colorado.

11. Plaintiff Instructional Telecommunications Foundation, Inc. ("ITF") is a nonprofit nonstock corporation organized under the laws of Colorado with its principal place of business in Longmont, Colorado.

12. Plaintiff North American Catholic Educational Programming Foundation, Inc. ("NACEPF") is a nonprofit nonstock corporation organized under the laws of Rhode Island with its principal place of business in Johnston, Rhode Island.

13. Plaintiff Portland Regional Educational Telecommunications Corporation ("PRETC") is a nonprofit nonstock corporation organized under the laws of Oregon with its principal place of business in Longmont, Colorado.

14. Plaintiff Twin Cities Schools' Telecommunications Group, Inc. ("TCSTG") is a nonprofit nonstock corporation organized under the laws of Minnesota with its principal place of

business in Longmont, Colorado.

15. Defendant Clearwire Legacy LLC (formerly known as Clearwire Corporation) is a limited liability company organized under the laws of Delaware with its principal place of business in Overland Park, Kansas.

16. Defendant Clearwire Spectrum Holdings II LLC is a limited liability company organized under the laws of Nevada with its principal place of business in Overland Park, Kansas. Clearwire Spectrum Holdings II LLC's sole member is Clearwire Legacy LLC.

17. Clearwire Legacy LLC's sole member is Clearwire Communications LLC. Clearwire Communications LLC is a limited liability company organized under the laws of Delaware with its principal place of business in Kirkland, Washington. Clearwire Communications LLC has the following members: Clearwire Corporation, SN UHC 1, Inc., and Sprint HoldCo, LLC. Clearwire Corporation is a company organized under the laws of Delaware with its principal place of business in Kirkland, Washington. SN UHC 1, Inc. is a company organized under the laws of Delaware with its principal place of business in Overland Park, Kansas. Sprint HoldCo, LLC is a limited liability company organized under the laws of Delaware with its principal place of business in Kansas. Its members include SN UHC 1, Inc., SN UHC 2, Inc., SN UHC 3, Inc., SN UHC 4, Inc., and SN UHC 5, Inc., none of which is incorporated or has its principal place of business in any State in which any Plaintiff is a citizen.

18. Defendant T-Mobile US, Inc. is a company organized under the laws of Delaware with its principal place of business in Kirkland, Washington.

JURISDICTION & VENUE

19. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the parties are "citizens of different States" as defined by 28 U.S.C.

§ 1332(c)(1). Plaintiffs are corporations with citizenship in Colorado, Rhode Island, Oregon, Minnesota, and Illinois. Defendants are limited liability companies and corporations with citizenship in Washington, Delaware, Kansas, and Nevada. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.

20. This Court has personal jurisdiction over the Clearwire Defendants pursuant to § 11.12(c)(viii) of the Master Royalty and Use Agreements dated July 31, 2006 and § 21(d)(xi) of the Individual Use Agreements. Under these agreements, the Clearwire Defendants and Plaintiffs "irrevocably submit[ted] to the jurisdiction" of any "state or federal courts sitting in Boston, Massachusetts" to adjudicate claims for "injunctive relief, specific performance," "other equitable relief," or "for the use or unauthorized disclosure of confidential information." MRUA § 11.12(c)(viii); *see* IUA § 21(d)(xi) ("[E]ither Party shall be entitled to seek and obtain relief from a court of competent jurisdiction" on the same claims).

21. The Court has personal jurisdiction over T-Mobile, as T-Mobile purports to be a sublicensee of Plaintiffs' Spectrum based on EBS spectrum rights granted in contracts that identify Boston, Massachusetts, as the only relevant judicial forum.

22. Venue is proper in this District based on 28 U.S.C. § 1391(b)(3) because Defendants are "subject to the court's personal jurisdiction with respect to [this] action." Declaratory relief is appropriate under 28 U.S.C. §§ 2201 and 2202.

FACTUAL ALLEGATIONS

A. Plaintiffs Hold FCC Licenses to Operate Educational Broadband Service Channels

23. Spectrum is used to deliver radio, television, cellular and wireless broadband services. The FCC, which is responsible for regulating spectrum used by all entities except the federal government, has allocated frequencies ranging from 9 kHz to 275 GHz for the transmission of signals. These frequencies are divided by the FCC into "bands," and further subdivided into a

series of "channels" per band. Bands are not uniform in their characteristics; low-band spectrum (below 1 GHz) travels long distances but is incapable of delivering truly high-speed data, whereas high-band spectrum (above 6 GHz) provides high speeds of transmission but only over short distances and often only to users who are outdoors. Mid-band spectrum (in the range of 1-6 GHz) is the workhorse that is paired with low bands for greater capacity and high bands for greater reach. Given that wireless operators are expected to provide both coverage and capacity throughout their entire networks, mid-band spectrum (including Plaintiffs' Spectrum) is considered an essential component of a wireless network.

24. Within the 2.5 GHz spectrum band, the FCC designated a large portion as Educational Broadband Service ("EBS") and reserved it for nonprofit organizations with an educational purpose and accredited educational institutions to "offer instructional services utilizing low-power broadband systems and high-speed internet access."[4] EBS licenses authorize licensees to operate channels over the 2.5 GHz band within a defined service area, typically a 35-mile radius from a specified geographic center. As of October 2019, the FCC had granted 2,193 EBS licenses to 1,300 licensees for use of the 2.5 GHz spectrum.[5]

25. Plaintiffs were awarded 63 EBS licenses between the early 1980s and early 1990s. Plaintiffs CITF, DAETC, ITF, PRETC, and TCSTG—five licensees who operate under the "Voqal" name and also are referred to as the "ITF Cluster"—were granted EBS licenses in 11 markets: Chicago, IL, Denver, CO, Indianapolis, IN, Kansas City, MO, Las Vegas, NV, Minneapolis, MN, Philadelphia, PA, Phoenix, AZ, Portland, OR, Sacramento, CA, and Salt Lake

[4] FCC, Broadband Radio Service & Education Broadband Service, http://tiny.cc/fccebs.
[5] 84 Fed. Reg. 57343, 57344 (Oct. 25, 2019).

City, UT. Plaintiff NACEPF was granted 52 EBS licenses in 51 markets.[6]

B. Plaintiffs Make Their Spectrum Available to Clearwire for Commercial Purposes in Return for Financial and In-Kind Royalties

26. In recognition of EBS licensees' traditional lack of technical expertise and financial means to operate their own broadband networks, the FCC since 1983 has permitted EBS licensees to make available (or lease) up to 95% of their spectrum capacity ("excess capacity") to third parties for commercial purposes.[7] The commercial lessee uses this excess capacity to provide commercial broadband wireless services, and the EBS licensee obtains access to advanced broadband services to support its educational purpose. Only a decade after EBS licensees were permitted commercially to lease their spectrum, 90% of applications leased excess capacity and "lessee[s] almost always pa[id] for the construction of the [service's] facilities." FCC Order and Further Notice of Proposed Rulemaking, MM Docket No. 93024 ¶ 2 n.5 (July 6, 1994).

27. In furtherance of their educational purposes, Plaintiffs agreed to lease their Spectrum to Clearwire for use in a commercial wireless broadband network over a thirty-year term. In return, Plaintiffs received, among other things, cost-free wireless broadband accounts, access to end user devices, and associated features and support services, all of which are deployed in furtherance of Plaintiffs' educational purposes. The agreement was memorialized on July 31,

[6] NACEPF's markets are Albuquerque, NM (where it holds two licenses), Anchorage, AK, Atlantic City, NJ, Austin, TX, Boise, ID, Bullhead City, AZ, Cape Coral, FL, Chico, CA, Colorado Springs, CO, Columbus, OH, Denver, CO, Des Moines, IA, Emporia, KS, Enid, OK, Fort Wayne, IN, Fresno, CA, Great Bend, KS, Lancaster, PA, Hays, KS, Hilo, HI, Hot Springs, AR, Indio, CA, Kailua, HI, Kennewick, WA, La Junta, CO, Lake Havasu City, AZ, Lansing, MI, Lawton, OK, Little Rock, AR, Memphis, TN, Mobile, AL, Ocala, FL, Palm Bay, FL, Phoenix, AZ, Port Saint Lucie, FL, Providence, RI, Salina, KS, Salt Lake City, UT, Santa Rosa, CA, Sarasota, FL, Seattle, WA, Sherman, TX, South Bend, IN, Spokane, WA, Temple-Killeen, TX, Toledo, OH, Waco, TX, Yakima, WA, York, PA, Youngstown, OH, and Yuba City, CA.

[7] While the FCC eliminated the requirement for EBS licensees to reserve 5% of their spectrum for educational uses effective April 27, 2020, 47 C.F.R. § 27.1214, that change was not "intended to affect or change the terms of any private contractual arrangement or any provisions in existing leases." Transforming the 2.5 GHz Band, FCC Report & Order, WT Docket No. 18-120, FCC-19-62, ¶14 (July 11, 2019).

2006, when Plaintiffs and Clearwire entered into two master agreements—the Master Royalty and Use Agreements ("MRUAs")—to establish the framework of their relationship with Clearwire for a period of thirty years. MRUA-1 was entered into by the ITF Cluster and NACEPF, whereas MRUA-2 was entered into solely by NACEPF. The terms of the two MRUAs are materially identical. MRUA-1 (without exhibits) is attached as Exhibit 1.

28. In accordance with the MRUAs, Plaintiffs and Clearwire also entered into Individual Use Agreements ("IUAs"), which are the actual leases that provide Clearwire with access to the Spectrum associated with a specific FCC license issued to a Plaintiff (referred to as a "Licensee" in the agreements). The IUAs are long term *de facto* transfer leases that were subject to and received FCC approval. The terms of the IUAs are materially identical but for the name of the executing Licensee, the channels and geographic area covered, and the economic royalties to be paid. The form of IUA associated with Plaintiffs' EBS licenses is attached as Exhibit 2.

29. Together, the MRUAs and IUAs ("Spectrum-Use Agreements" or "Agreements") establish the terms of the agreements between Clearwire and Plaintiffs. In exchange for Clearwire's use of Plaintiffs' Spectrum, which Plaintiffs hold free and clear of any encumbrances, the Agreements provide for Plaintiffs to receive two primary types of consideration: (a) Economic Royalties (*see* MRUA Art. II); and (b) Access Right Royalties (*see* MRUA Art. III). Collectively, these rights are referred to as the "Total Consideration." MRUA, at 2. The MRUAs make clear they "would not have been executed but for all of the elements of the Total Consideration." *Id.*

30. Access Right Royalties entitle Plaintiffs to receive, among other things, Cost-Free Educational Accounts ("CFEAs"), which are "wireless broadband connection[s] that Clearwire provides to a Licensee without charge or expense to such Licensee" with "the same capacity and characteristics as the highest level of premium mass market retail service provided on Clearwire's

network in a given Market Area." MRUA § 3.02(b); IUA § 7(k)(iv). CFEAs guaranteed Plaintiffs, among other things, the means by which to reserve a minimum of 5% of their own spectrum for educational uses; the Agreements provide that this "Educational Reservation" permits Plaintiffs to use Clearwire's network in the form of CFEAs on a full-time basis and that Clearwire may not use the Educational Reservation. MRUA § 3.03(a); IUA §§ 5(a), 5(b)(iii), 7(a)(i)(a). CFEAs are "fully portable anywhere within the Clearwire National Platform to the extent that Clearwire offers such portability to any customer." *Id*. Plaintiffs use these broadband accounts to provide premium wireless broadband service at minimal or no cost to educational institutions, nonprofit entities seeking to reduce the "digital divide" between affluent and low-income people, public libraries, religious institutions, and other nonprofit, social welfare and governmental entities (all under the contractual definition of "Educational End Users").

31. The Spectrum-Use Agreements calculate the number of CFEAs to which Plaintiffs are entitled as contract compensation based on certain network characteristics. The basic building block of a wireless system is the cell site. Cell sites contain sectors, supply data capacity, and transmit back and forth with subscribers. Plaintiffs are entitled to "Basic" CFEAs in the amount of one "per ***Cell Site*** per Market Area," which number is periodically adjusted upward "proportionate to the growth of the ***overall data capacity*** of Clearwire's network in the Market Area." MRUA § 3.03(b) (emphasis added); IUA § 7(a)(i)(b). Licensees are further entitled to "Additional" CFEAs in the amount of two "per ***Sector*** in the Market Area," unless a greater amount is prescribed by the "Formula Quantity" calculation—which is based on, among other things, "the ***number of subscribers*** served by Clearwire in the Market Area." MRUA § 3.04(a)(i) (emphasis added); IUA §§ 7(b)(i), (k)(vi).

32. The Spectrum-Use Agreements require Clearwire to make "end-user equipment

used in the Clearwire National Platform" available for purchase by Plaintiffs at 10% above cost, which equipment is to be supplied for Plaintiffs' Educational End Users to make use of CFEAs. MRUA § 3.06; IUA § 7(d).

33. The Spectrum-Use Agreements require Clearwire to provide Plaintiffs with "access to, and full use of, system capabilities, services and feature sets that are generally provided to Clearwire's retail customers or wholesalers to mass market customers." MRUA § 3.07; IUA § 7(e). To support this right, Clearwire is required to disclose to Plaintiffs the "system capabilities, services and feature sets that are generally provided to [its] retail customers and wholesalers to mass market customers"—denominated "System Service Capabilities"—and is further required "[a]t such time as System Service Capabilities are changed for any Market Area . . . to notify [Plaintiffs] in writing within 30 days" of any change. MRUA § 8.03; IUA § 20(c).

34. The Spectrum-Use Agreements require Clearwire to provide Plaintiffs with "access to reasonably necessary support made available to Clearwire's commercial customers generally, and that is reasonably necessary for the Licensees to offer services to their Educational End Users." MRUA § 3.07; IUA § 7(e). Examples of support include, among other things, ordering devices, establishing customer accounts, activating and deactivating service lines as needed, and tracking the status of devices.

35. Plaintiffs and Clearwire understood that the inevitability of "many changes" in technology, federal regulation and other areas over the thirty-year contractual term would require the parties to work together to preserve the mutual benefits conferred by the Spectrum-Use Agreements. To memorialize this understanding, the Agreements contain "best efforts" clauses in which "[t]he Parties acknowledge that there will be many changes in the course of the term of the IUAs in technology, capabilities, and regulatory environment and other relevant areas," and the

parties "agree to act in a cooperative manner to preserve the intent of the relationships reflected in th[e] Agreement[s] to their mutual advantage and to use their commercially reasonable best efforts to maintain that mutual advantage." MRUA § 7.09; *see* IUA § 21(h). The Agreements further impose an obligation on the parties to "act in a cooperative manner to preserve the intentions of the relationships reflected in [the Agreements] to their mutual advantage," notwithstanding the anticipated "many changes" that will occur. MRUA § 1.01(c); *see* IUA § 21(h).

36. The Spectrum-Use Agreements grant Plaintiffs the rights to "consultation, governance and information" in many areas, including the ongoing calculation of Access Rights Royalties. These rights are "intended to preserve the benefits to Licensees set forth in Article III . . . in light of changes in the wireless broadband environment over a Term of approximately 30 years." MRUA § 8.01(a); IUA § 20(a)(i).

C. The Agreements Grant Plaintiffs the Right of "Advance Written Consent" Before Any Sublicense of their Spectrum

37. The Spectrum-Use Agreements restrict the ability of third parties to use Plaintiffs' Spectrum without Plaintiffs' advance written consent. Under § 8 of the IUAs, "[t]hird-party rights" to use Plaintiffs' Spectrum "are to be handled in accordance with the assignment or sublicensing provisions of this Agreement." Sublicensing is addressed in § 10(b), and that section permits Clearwire to sublicense the use of Plaintiffs' Spectrum "with the advance written consent of Licensee and any required FCC consent or authorization, which consent of Licensee shall not be unreasonably withheld, conditioned or delayed."

38. Clearwire and Plaintiffs also covenanted to "comply at all times with applicable laws" including the "rules and policies of the FCC." MRUA § 7.06. The FCC Rules provide that any sublicense of a de facto long-term leasing agreement must be "approved by the [FCC]" and "[t]he application filed by parties . . . must include written consent from the licensee to the

proposed arrangement." 47 C.F.R. § 1.9030(k).

39. The requirement of Plaintiffs' "advance written consent" before a third-party can be provided access to Plaintiffs' Spectrum protects Plaintiffs' rights under the Agreements, including their Access Right Royalties. For example, Plaintiffs' "consent may be withheld if, among other things, Clearwire does not covenant in writing in form and substance reasonably acceptable to Licensee to provide the same level of services, features and access to Licensee including without limitation all of the Access Right Royalties in the Market Area of the Channels under this Agreement, that it would have provided or been obligated to provide had [Plaintiffs' spectrum capacity] not been sublicensed." IUA § 10(b). Furthermore, Clearwire "may not allow a sublicensee to sublicense the use of [Plaintiffs' Spectrum] to another third party." *Id.* Notably, "advance written consent" includes the right to impose reasonable conditions on consent.

40. A proposed sublicense of Plaintiffs' Spectrum for use in a new wireless broadband network presents numerous issues that implicate the agreed-upon consideration that Plaintiffs receive under the Spectrum-Use Agreements, and Plaintiffs are entitled to be presented with information on those issues before accepting or rejecting any request for consent. Many of these issues concern the quality of Plaintiffs' Access Right Royalties, including for example:

a. How will Clearwire continue to provide "wireless broadband connection[s]" to Plaintiffs and with what "capacity and characteristics"? MRUA § 3.02(b); IUA §§ 7(a), (k)(iv).

b. How will Plaintiffs' wireless connections compare with "the highest level of premium mass market retail service" offered? *Id.*

c. What "system capabilities, services and feature sets" will Plaintiffs be provided, and how will those compare to what is being provided to "retail customers or wholesalers"? MRUA § 3.07; IUA § 7(e).

d. If Clearwire intends to migrate Plaintiffs' end users to a new wireless network, what steps will be taken to ensure a smooth transition with uninterrupted service?

e. Will new end-user equipment be provided? MRUA § 3.06; IUA § 7(d).

f. What are the plans for customer support, particularly if the new network requires training or new software for Plaintiffs to provide users with end user devices and CFEAs to access it? MRUA § 3.07, IUA § 7(e).

41. A proposed sublicense of Plaintiffs' Spectrum also gives rise to issues concerning the quantity of CFEAs to which Plaintiffs are entitled. This includes, among other things, information on how the proposed sublicense will affect (i) the number of Cell Sites and Sectors per Market Area; (ii) the data capacity of the network in the Market Area; and (iii) the number of subscribers in the Market Area. *See* MRUA §§ 3.03(b), 3.04(a); IUA §§ 7(a)(i)(b), 7(k).

42. Plaintiffs are also entitled to inspect the terms of any proposed sublicense, including its scope and duration and the identity of the parties to it. For example, does the scope exceed the rights conveyed by the Spectrum-Use Agreements? Does the sublicense grant sublicensee rights that should remain with Clearwire or are prohibited by the terms of the Spectrum-Use Agreements, such as the prohibition on a sublicensee sublicensing Plaintiffs' Spectrum? *See* IUA § 10(b).

D. Clearwire's Prior Attempt to Circumvent Plaintiffs' Consent Rights

43. For years, Plaintiffs' Access Right Royalties provided them with premium wireless broadband accounts on Clearwire's network (which used the WiMAX technology). During this period, Clearwire's network grew to over 11 million subscribers in 88 markets across the United States, making it the fifth largest wireless network in the United States.[8]

44. In July 2013, Sprint acquired control of Clearwire by stock purchase. Clearwire thereafter advised Plaintiffs that Sprint planned to use Plaintiffs' Spectrum on Sprint's network (which used the LTE technology) without any sublicense as referenced in IUA §10(b) and, consequently, without Plaintiffs' advance written consent. Sprint also announced its plan to shut

[8] *See* Kit Eaton, Fast Company, Sprint Is Buying Clearwire for $2.2 Billion (Dec. 17, 2012), http://tiny.cc/sprintpurchase.

down Clearwire's network but maintained that Plaintiffs had no rights under the Spectrum-Use Agreements to access Sprint's network, thereby threatening to deprive Plaintiffs of the very consideration for which they bargained and deprive thousands of low-income individuals, schools, and nonprofit entities from access to the internet.

45. Sprint's unauthorized use of Plaintiffs' Spectrum raised numerous issues for Plaintiffs, including whether they would receive access to the Sprint network and the effect that any migration from the Clearwire to the Sprint network would have on Plaintiffs' end users. Sprint also throttled Plaintiffs' service plans on the Sprint network so that Plaintiffs' end users' service was significantly slowed after using six gigabytes of data in one month—a limitation wholly inconsistent with the CFEAs promised in the Agreements. From September 2013 through October 2015, the parties met to discuss these issues in person on at least six occasions, including in Rhode Island, Chicago, and New York City. Despite two years of negotiations, Clearwire and Sprint refused to agree to terms protecting Plaintiffs' Access Right Royalties. The parties agreed only on an Interim Service Agreement, which established temporary measures for the transition of about 30% of Plaintiffs' end users from Clearwire's soon-to-be-shuttered network to Sprint's network pending entry of a more definitive agreement, which the parties never reached.

46. On October 14, 2015, without assurance that their Access Right Royalties would be protected, and with the Clearwire network's shutdown scheduled for November 6, Plaintiffs filed an action for specific performance and injunctive relief in Massachusetts Superior Court, Suffolk County.

47. On November 4, 2015, the Superior Court entered a preliminary injunction ordering Sprint and Clearwire to "maintain all [CFEAs] 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 at no cost to Licensees," and to "[p]romptly provide customers with the equipment . . . for use to access the Licensees' [CFEAs]." Ex. 3, at 2. In a November 9, 2015 Memorandum explaining its reasons for the injunction, the court rejected Clearwire's position that Sprint did not need Plaintiffs' consent: "if Sprint wants to exercise the rights that license confers, Clearwire must enter into a sublicense with it—and plaintiffs must give their written consent." Ex. 4, at 5. The court concluded: "Sprint benefits tremendously from having the ability to use portions of plaintiffs' EBS licenses for its own commercial use. That use came with a price tag that plaintiffs are contractually entitled to insist that Sprint pays." *Id.* at 6.

48. After the preliminary injunction was entered, the parties established a working group to ensure that the contractually required levels of service and devices were provided during the transition to the Sprint network. The parties jointly moved to modify and extend the preliminary injunction as they worked through these important issues.

49. Six months after issuing the preliminary injunction, the Superior Court in June 2016 entered partial summary judgment in Plaintiffs' favor on their consent rights, explaining that the restriction on Clearwire's ability to sublicense Plaintiffs' Spectrum "protect[s] plaintiffs' right to continue receiving [access-right] royalties." Ex. 5, at 2-3. At an earlier scheduling conference, the court recognized consent was "a key issue" with "lots of ramifications for Sprint"—according to the Court, "[i]f consent is required, all kinds of consequences that flow from that." Dec. 14, 2015 Transcript, at 12-13.

50. While other claims remained pending in the Superior Court, ITF and NACEPF filed an arbitration against Clearwire and Sprint for damages related to certain "build out" requirements. Respondents filed three arbitral counterclaims, one of which asserted that the Claimants had unreasonably withheld, delayed, or conditioned their consent for Sprint's use of their spectrum,

which began in 2013. On June 24, 2019, after discovery and an evidentiary hearing, the panel issued its Final Award, determining inter alia that Claimants had "unreasonably withheld consent to Clearwire's sublicense of the 2.5 GHz spectrum to Sprint insofar as they conditioned such consent on Sprint's being added as a party to the MRUAs" and on CFEAS "being calculated on the basis of Sprint's 800 MHz and 1.9 GHz spectrum." Ex. 6, at 46. The Superior Court then entered judgment in the court action on grounds that the panel's award precluded certain remaining claims involving Sprint, which judgment is now on appeal.

E. T-Mobile Sublicenses Plaintiffs' Spectrum without Plaintiffs' Consent

51. T-Mobile acquired Sprint on April 1, 2020, in a $26.5 billion merger transaction whereby Sprint shareholders received shares of T-Mobile stock and Sprint survived as a wholly owned indirect subsidiary of T-Mobile. Although the proposed merger was announced in April 2018, it required approval of the FCC and the U.S. Department of Justice ("DOJ"), and the deal that the merging parties reached with the DOJ was not approved by the U.S. District Court for the District of Columbia until April 1, 2020. The merger was also challenged by a coalition of 14 state attorneys general, led by the attorneys general of California and New York; that challenge was rejected in February 2020, and the states announced on March 11, 2020, they would not appeal the decision.

52. Before the merger, T-Mobile did not lease or control any 2.5 GHz spectrum. FCC Opinion and Order, WT Docket No. 18-197, FCC 19-103, ¶ 110 (Nov. 5, 2019). Sprint, on the other hand, had assembled a portfolio of 2.5 GHz spectrum rights, including Clearwire's leases of Plaintiffs' Spectrum, worth many billions of dollars. Before the merger, Sprint (principally through its ownership of Clearwire) controlled more than 80% of the 2.5 GHz spectrum in the top

100 markets in the U.S.[9]

53. Neville Ray, T-Mobile's President of Technology ("POT"), explained that obtaining Sprint's 2.5 GHz spectrum—"a good slug of mid-band spectrum"—would allow T-Mobile to "free up a lot of that spectrum for 5G services quicker than . . . any company could do on their own."[10] In its Form 10-Q filed May 6, 2020, T-Mobile described Sprint's 2.5 GHz spectrum as "spectrum . . . we need in order to continue our customer growth, expand and deepen our coverage, [and] maintain our quality of service." Form 10-Q (First Quarter 2020), at 58.

54. To gain approval for the merger, T-Mobile touted the advantages that consumers would receive from the inclusion of Clearwire's 2.5 GHz spectrum in T-Mobile's network, which would include use of Plaintiffs' Spectrum. The FCC agreed that the merger would "significantly increase the quality and geographic reach of [T-Mobile's] wireless network[] for the foreseeable future," and that these gains "depend to a significant extent on the extensive deployment of 2.5 GHz spectrum." FCC Opinion and Order, WT Docket No. 18-197, FCC 19-103, ¶¶ 5, 98 (Nov. 5, 2019).

55. Following the merger, T-Mobile's new network is referred to as the Magenta network. The Magenta network will replace Sprint's "Yellow" network over the course of the next three years and possibly sooner. T-Mobile plans to retain 11,000 cell sites from the Yellow network for the Magenta network—a small fraction of its planned 85,000 cell sites and roughly 20% of the Yellow network's cell sites premerger. The other 80% of the Yellow network's cell sites will be shut down. Upon information and belief, the Yellow network will become unusable or substantially degraded in some areas long before the transition is fully complete.

[9] Sprint 10-Q for Q2 2018, at 42 (filed Aug. 7, 2018), http://tiny.cc/sprint10Qq22018 (noting Sprint controlled more than 160 MHz of 2.6 GHz spectrum, or more than 82%).
[10] T-Mobile Q3 2019 Earnings Call Transcript, Oct. 30, 2019, http://tiny.cc/tmobileq32019earningscall.

56. On March 31, 2020, Clearwire informed Plaintiffs that "[e]ffective April 1, 2020, T-Mobile US, Inc. and/or its affiliates ***will be sublicensing*** the spectrum leased by [Plaintiffs]." Ex. 7, at 2 (emphasis added).[11] Recognizing that a sublicense to T-Mobile requires Plaintiffs' consent pursuant to IUA §10(b), Clearwire tried to invent it—claiming that the June 24, 2019 arbitration award gave it the basis to deem Plaintiffs' consent "granted." *Id*. That position is absurd. The panel did not address T-Mobile's sublicense and did not determine what Plaintiffs may consider in exercising their contractual rights to approve third-party uses of their Spectrum. The panel most certainly did not write Plaintiffs' consent rights out of the Spectrum-Use Agreements; indeed, the Spectrum-Use Agreements expressly remove from the arbitrators any "power or authority . . . to amend or disregard any provision of this Agreement." MRUA 11.12(c)(ii).

57. "Advance written consent" is not something Clearwire can "deem." It requires an affirmative act on the part of the Plaintiffs, in writing, and in advance of the sublicense. Clearwire and T-Mobile both knew before April 1, 2020 that any sublicense of Plaintiffs' Spectrum to T-Mobile and/or its affiliates required Plaintiffs' "advance written consent." Clearwire and T-Mobile also both knew before April 1, 2020 that Plaintiffs had not given advance written consent to any sublicense of their Spectrum to T-Mobile and/or its affiliates.

58. Clearwire's March 31, 2020 letter further claims that the "only condition" Plaintiffs may place on consent is Clearwire's written covenant "to provide the same level of services, features and access to Licensee . . . that it would have provided or been obligated to provide had [Plaintiffs' spectrum capacity] not been sublicensed." Ex. 7, at 2 (citing IUA § 10(b)). But this claim ignores and is directly refuted by (1) the language in § 10(b) showing that the covenant is

[11] Clearwire sent two identical letters, one to NACEPF and one to the remaining five Plaintiffs, which is attached hereto as Ex. 7.

just one "among other" reasonable conditions that Plaintiffs may place on consent; and (2) the term requiring such covenant to be "in form and substance reasonably acceptable to Licensee[s]." Neither term is mentioned in Clearwire's March 31, 2020 letter.

59. The FCC has not approved this sublicensing. The application seeking the FCC's approval of the Sprint/T-Mobile transaction requested approval of the transfer of control of Clearwire Spectrum Holdings II LLC, including spectrum it has under lease, "from Sprint to T-Mobile." FCC Opinion and Order, WT Docket No. 18-197, FCC 19-103, App. A, pp. 172, 174 (Nov. 5, 2019). The FCC was not informed of or asked to approve any sublicense of Plaintiffs' Spectrum to T-Mobile. On April 17, 2020, the FCC authorized transfer of control of Clearwire from Sprint to T-Mobile.

60. Sprint could not lawfully sublicense Plaintiffs' Spectrum to T-Mobile. IUA § 10(b) prohibits Clearwire from allowing "a sublicensee to sublicense the use of [Plaintiffs' Spectrum] to another third party."

61. Despite knowing that Plaintiffs' advance written consent was required to sublicense their Spectrum, T-Mobile deliberately induced Clearwire to enter into an unauthorized sublicensing agreement and provide it with unauthorized access to Plaintiffs' Spectrum for T-Mobile's own financial benefit, including so that it could avoid discussions with Plaintiffs regarding their consent rights and reasonable conditions of consent to T-Mobile's use of Plaintiffs' Spectrum on its network; provide Plaintiffs and their end users with inferior service, features and devices; and obtain for its own purposes and commercial gain the 2.5 GHz spectrum necessary to build out its Magenta network without providing the required consideration, including premium broadband access to Plaintiffs' end users.

62. Upon information and belief, T-Mobile not only was granted access to and full use

of all of Plaintiffs' Spectrum without Plaintiffs' advance written consent, but also had been using or preparing to use Plaintiffs' Spectrum before Clearwire's letter of March 31 purporting to deem Plaintiffs' consent to already be granted. T-Mobile's POT stated that T-Mobile was "building 2.5 in Philly," a market where a Plaintiff holds spectrum rights and Plaintiffs' end users have CFEAs, "before the [merger] deal closed."[12]

63. On or about April 21, 2020, T-Mobile began offering 5G service commercially to customers in Philadelphia and New York, markets that include Plaintiffs' end users. On an earnings call with investors on May 6, 2020, T-Mobile's POT acknowledged that T-Mobile has "already started deploying our 2.5-gigahertz spectrum on the T-Mobile network" and that Philadelphia and New York were "live" networks.

64. T-Mobile's POT further acknowledged that T-Mobile plans to "light up" "many more other cities . . . in 2020"[13] with the new 5G network and roll out "thousands of sites this year"[14] using Sprint's 2.5 GHz spectrum, which spectrum includes Plaintiffs' Spectrum. Upon information and belief, those other cities include markets where Plaintiffs hold EBS licenses and have end users who access the network through Plaintiffs' CFEAs.

65. T-Mobile's use of Plaintiffs' Spectrum on its Magenta network and its associated plans to dismantle Sprint's existing Yellow network present many complex issues related to the quality of Plaintiffs' Access Right Royalties, including the issues addressed in Paragraph 40 above. Plaintiffs' consent rights allow them to ensure that T-Mobile's plans for this transition will not result in a degradation or interruption in service to Plaintiffs' end users, that appropriate end user devices will be provided, and that the wireless broadband access they receive is as specified in the

[12] T-Mobile Q1 2020 Earnings Call Transcript, May 6, 2020, https://perma.cc/2JMX-URER.
[13] *Id*.
[14] Alex Wagner, TmoNews, T-Mobile will deploy 2.5GHz 5G on thousands of cell sites in 2020 (May 11, 2020), http://tiny.cc/thousandsofsites.

Spectrum-Use Agreements. Plaintiffs' ability to continue to provide essential broadband service to end users like school-age children and low-income families—especially during the COVID-19 crisis—hinges on a smooth transition to a stable wireless network. Plaintiffs' consent rights entitle them to be presented with information on these issues *before* giving their consent, and yet virtually no information on these issues has been provided to them.

66. Without such information, Plaintiffs are in the untenable position of having no access to the Magenta network, no timeline for access, and no information on what service plans or devices will be made available to Plaintiffs to access the Magenta network or when Plaintiffs may order them, all while being limited to the Yellow network, which is in the process of being dismantled in piecemeal fashion, without any knowledge of when or where the next cell site will be decommissioned. Plaintiffs are being forced to deal with a kaleidoscope of practical problems arising from the transition from Yellow to Magenta on a near-daily basis, leaving them to play catch-up and taking them away from other important and time-sensitive work. Such disinformation and disarray are the opposite of what the Spectrum-Use Agreements prescribe must happen ***before any sublicense of Plaintiffs' Spectrum to a third-party takes effect.***

67. T-Mobile's access to Plaintiffs' Spectrum on the Magenta network also raises issues regarding the number of CFEAs to which Plaintiffs are entitled, as the Spectrum-Use Agreements prescribe the number of Basic and Additional CFEAs based on specific network characteristics such as Cell Sites, Sectors, subscribers, and data capacity within Plaintiffs' Market Areas. Clearwire currently calculates Plaintiffs' CFEAs based on characteristics of Sprint's Yellow network, and Clearwire's and Sprint's counsel told the panel in the 2018 arbitration hearing that "[Plaintiffs'] CFEAs are now calculated based on Sprint's much broader 2.5 network, which has caused the Claimants' CFEAs to increase 300 percent." Oct. 1, 2018 Transcript, at 67. Yet,

Clearwire has provided Plaintiffs with no information on how the relevant network characteristics will be affected by using Plaintiffs' Spectrum on the Magenta network and dismantling the Yellow network.

68. From April 1, 2020 to date, Defendants have not notified Plaintiffs of any change in System Service Capabilities, despite the fact T-Mobile's Magenta network has different "system capabilities, services, and feature sets" than the ones Clearwire previously disclosed to Plaintiffs.

69. Several announcements T-Mobile has made since gaining access to Plaintiffs' Spectrum raise further concerns about which Plaintiffs seek information. T-Mobile has expanded roaming—the ability of a device that previously accessed only the Yellow network to access both the Yellow and Magenta networks—for millions of Sprint customers, but none of Plaintiffs' end users. Plaintiffs do not know if T-Mobile will make expanded roaming available to Plaintiffs' end users or how their plans compare to "the highest level of premium mass market retail service" and provide "full portability" of network access that any Sprint or T-Mobile customer receives. MRUA § 3.02(a), (b); IUA §§ 7(a), (k)(iv). Plaintiffs are likewise entitled to know if Clearwire will make available other features and service sets, such as activation for end user devices to access T-Mobile's network and roaming. MRUA § 3.07; IUA § 7(e).

70. Plaintiffs' current devices operating on the Yellow network are not operable on T-Mobile's Magenta network and will need to be replaced as T-Mobile phases out the Yellow network if Plaintiffs' end users are to maintain broadband access beyond isolated islands of signal coverage. Indeed, Plaintiffs were informed on May 13, 2020, that the only device they have been provided capable of receiving 5G access on the Yellow network will no longer receive even Sprint 5G access as of May 27, 2020. And on May 18, 2020, Plaintiffs were informed that the only USB device available on the Yellow network will be discontinued in June 2020 and there is no

equivalent replacement device available. Plaintiffs have the right to understand the impact that Defendants' actions are having on their end users' existing service and end user devices and the plans Defendants have for the transition, including the features, devices and support services that will be made available. MRUA §§ 3.06, 3.07; IUA §§ 7(d), (e).

71. T-Mobile has a promotional offering whereby it provides subscribers with access to Netflix, and Plaintiffs are entitled to information regarding that and other offerings of "third party content to customers," which may trigger Plaintiffs' right to become a "Preferred Content Provider" with "the same degree of access to, and use of, any system capability, service or feature set that is provided to premium third party content providers." MRUA § 3.08(a); IUA § 7(j).

72. Given the significant issues raised by a sublicense of Plaintiffs' Spectrum to T-Mobile (and in light of Plaintiffs' prior negative experience that required Court-ordered relief to effect a transition of Plaintiffs' end users from Clearwire's network to Sprint's network), on April 16, 2020, Plaintiffs wrote Clearwire (by then a T-Mobile subsidiary) with two requests (in addition to a clear but already known statement that they had not consented to Clearwire sublicensing their spectrum to T-Mobile and/or affiliates): 1) that Clearwire provide "a copy of the sublicense (or sublease) agreement that provides T-Mobile USA and/or its affiliates access to our spectrum"; and 2) that the parties' business representatives (denominated "Party Representatives" in the Spectrum-Use Agreements) meet under the framework established by Article VIII of the MRUAs to discuss "changes in technology and Clearwire's business structure" that would be occasioned by a T-Mobile sublicense. Ex. 8, at 2; Ex. 9, at 2. Clearwire refused both requests, electing instead to have its litigation counsel claim that any further correspondence on these issues should occur only between litigation counsel.

CLAIMS

I. BREACH OF CONSENT AND OTHER CONTRACTUAL PROVISIONS
(Against Clearwire Defendants)

73. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

74. Section 10(b) of each IUA requires Clearwire to obtain Plaintiffs' "advance written consent" before sublicensing Plaintiffs' Spectrum.

75. Section 7.06 of the MRUAs requires Clearwire to "comply at all times" with the "rules and policies of the FCC." FCC Rules provide that any sublicense of a de facto long-term leasing agreement must be "approved by the [FCC]" and "[t]he application filed by parties . . . must include written consent from the licensee to the proposed arrangement." 47 C.F.R. § 1.9030(k).

76. Section 8.03 of the MRUAs and § 20(c) of the IUAs require Clearwire to "notify [Plaintiffs] in writing within 30 days" of any change to System Service Capabilities in any Market Area.

77. On March 31, 2020, Clearwire informed Plaintiffs that it was sublicensing use of Plaintiffs' Spectrum to T-Mobile without Plaintiffs' advance written consent, in breach of § 10(b) of the IUAs and § 7.06 of the MRUAs. Clearwire's March 31 letter acknowledged that IUA § 10(b) controlled its alleged sublicense to T-Mobile.

78. Since April 1, 2020, Clearwire has improperly sublicensed the use of Plaintiffs' Spectrum to T-Mobile without Plaintiffs' advance written consent and without the required FCC approval for the sublicense in breach of § 10(b) of the IUAs and § 7.06 of the MRUAs.

79. Clearwire's improper sublicense of Plaintiffs' Spectrum to T-Mobile has caused changes to System Service Capabilities that have not been disclosed to Plaintiffs in breach of § 8.03 of the MRUAs and § 20(c) of the IUAs.

80. As a result of Clearwire's breach of the MRUAs and IUAs, Plaintiffs have suffered harm for which "monetary damages alone will not be adequate," as the parties have expressly agreed, MRUA § 11.11, IUA § 11(k), including but not limited to Plaintiffs' inability to guarantee continued receipt of the Access Right Royalties to which they are entitled and uninterrupted premium internet access for their end users.

81. Plaintiffs respectfully ask this Court to (i) find Clearwire in breach of the MRUAs and IUAs for sublicensing Plaintiffs' Spectrum to T-Mobile without Plaintiffs' advance written consent; (ii) find Clearwire in breach of the MRUAs and IUAs for failing to notify Plaintiffs of changes in System Service Capabilities; (iii) hold Clearwire's sublicense of Plaintiffs' Spectrum to T-Mobile to be null and void *ab initio*; (iv) permanently enjoin Clearwire from sublicensing Plaintiffs' Spectrum and T-Mobile from using Plaintiffs' Spectrum without Plaintiffs' written consent; and (v) require Clearwire and T-Mobile to provide Plaintiffs with information concerning any proposed sublicense and all information reasonably necessary for them to determine whether to consent to it, including all changes in System Service Capabilities.

II. DECLARATORY JUDGMENT CONCERNING PLAINTIFFS' RIGHTS
(Against Clearwire Defendants)

82. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

83. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court is authorized to issue a declaratory judgment.

84. Under § 10(b) of each IUA, Clearwire must obtain Plaintiffs' "advance written consent" before entering any sublicense of Plaintiffs' Spectrum.

85. Clearwire is obligated under § 7.06 of the MRUAs to "comply at all times" with the "rules and policies of the FCC." MRUA § 7.06. The FCC Rules provide that any sublicense of a de facto long-term leasing agreement must be "approved by the [FCC]" and "[t]he application

filed by parties . . . must include written consent from the licensee to the proposed arrangement." 47 C.F.R. § 1.9030(k).

86. Section 8.03 of the MRUAs and § 20(c) of the IUAs require Clearwire to "notify [Plaintiffs] in writing within 30 days" of any change to System Service Capabilities in any Market Area.

87. Since April 1, 2020, Clearwire has sublicensed the use of Plaintiffs' Spectrum to T-Mobile and has done so with neither Plaintiffs' advance written consent nor required FCC approval for the sublicense.

88. Clearwire's improper sublicense to T-Mobile has caused changes to System Service Capabilities in Market Areas that have not been disclosed to Plaintiffs within 30 days of the changes in breach of § 8.03 of the MRUAs and § 20(c) of the IUAs.

89. Section 10(b) of the IUAs further provides that "Clearwire may not allow a sublicensee to sublicense the use of [Plaintiffs' Spectrum] to another third party." Any sublicense of Plaintiffs' Spectrum by Sprint to T-Mobile is in direct contravention of the IUAs.

90. Accordingly, there is a justiciable, present, and actual controversy between the parties regarding whether Clearwire's sublicense of Plaintiffs' Spectrum to T-Mobile violates §§ 10(b) and 20(c) of the IUAs and §§ 7.06 and 8.03 of the MRUAs.

91. Plaintiffs respectfully request that this Court enter a declaratory judgment that Clearwire is precluded by § 10(b) of the IUAs from sublicensing Plaintiffs' Spectrum to third parties, including T-Mobile, without obtaining Plaintiffs' advance written consent; that Clearwire and T-Mobile do not have Plaintiffs' advance written consent; that Clearwire's putative sublicense to T-Mobile is null and void *ab initio*; and that Clearwire must notify Plaintiffs of any changes in System Service Capabilities that have occurred in any Market Area within thirty days of any such

change and provide all appropriate supporting information of the change that is reasonably requested by Plaintiffs.

III. CONVERSION
(Against T-Mobile)

92. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

93. At all relevant times, Plaintiffs have held 63 EBS licenses granting them rights to operate certain 2.5 GHz channels in 62 markets nationwide. Plaintiffs are the sole owners of these licenses and the rights thereunder to authorize other commercial entities to make use of Plaintiffs' licenses and operate on their 2.5 GHz channels.

94. Since April 1, 2020 and continuing to date, T-Mobile has exercised dominion and control over, held full and complete access to, and had unfettered use of Plaintiffs' Spectrum and Plaintiffs' rights under their EBS licenses for the purpose of transmitting over their 2.5 GHz channels for its commercial purposes and gain without Plaintiffs' consent. Upon information and belief, and subject to Plaintiffs having a reasonable opportunity for further investigation and discovery, T-Mobile has transmitted and plans further to transmit signal over Plaintiffs' channels for its commercial purposes and gain.

95. T-Mobile has no ownership interest in, or any other right to, any of Plaintiffs' EBS licenses or the channels under which Plaintiffs are authorized to operate. T-Mobile has exercised unauthorized dominion over Plaintiffs' licenses and has claimed unfettered rights to use Plaintiffs' Spectrum and transmit over Plaintiffs' channels to the exclusion of Plaintiffs' legal rights, interests, and title, including their superior rights of possession.

96. By letter of April 16, 2020, Plaintiffs informed Clearwire and T-Mobile that T-Mobile did not have their authorization to use their Spectrum.

97. T-Mobile has refused to return or stop using Plaintiffs' Spectrum and to stop using

Plaintiffs' rights under their FCC licenses to operate channels in the 2.5 GHz spectrum band.

98. T-Mobile's conversion has directly and proximately caused Plaintiffs to suffer loss of their Spectrum, of exclusionary rights granted by their EBS licenses, including the rights to operate certain channels and determine which entities can access and use their Spectrum, and of their exclusive "Educational Reservation" of their Spectrum for educational purposes.

99. T-Mobile's conversion of Plaintiffs' spectrum has caused and continues to cause Plaintiffs damages.

100. Plaintiffs respectfully request that the Court award Plaintiffs money damages in the amount reasonably required to make Plaintiffs whole as a result of T-Mobile's unlawful conversion of Plaintiffs' Spectrum, spectrum rights, and licenses for spectrum and enjoin T-Mobile from any further such conversion.

IV. UNJUST ENRICHMENT
(Against T-Mobile)

101. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

102. Beginning April 1, 2020 and continuing to date, T-Mobile has used and has had access to—and was thereby enriched at Plaintiffs' expense by—Plaintiffs' Spectrum without Plaintiffs' authorization or consent.

103. This Spectrum use and access was taken at Plaintiffs' expense. Plaintiffs were deprived of the opportunity to determine which third-parties may have access and use of their Spectrum and to ensure that any such access and use comports with the terms of the Spectrum-Use Agreements and does not prejudice their contractual rights or interests.

104. It is unjust and inequitable to permit T-Mobile to retain what is sought to be recovered. T-Mobile has no right to transmit over the Spectrum covered by Plaintiffs' EBS licenses, and control by T-Mobile therefore constitutes ill-gotten gains.

105. Plaintiffs respectfully request that this Court award Plaintiffs money damages for all loss and damage that Plaintiffs have suffered as a result of T-Mobile's unjust enrichment, including the reasonable value of the Spectrum that T-Mobile has wrongfully obtained.

V. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
(Against T-Mobile)

106. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

107. At all relevant times, Plaintiffs had enforceable contracts with Clearwire that required Clearwire to obtain Plaintiffs' advance written consent for any sublicense of Plaintiffs' Spectrum to a third party.

108. On or about March 31, 2020, or shortly before, T-Mobile intentionally interfered with Plaintiffs' contractual relationship with Clearwire by causing Clearwire to sublicense Plaintiffs' Spectrum to T-Mobile without Plaintiffs' advance written consent and for T-Mobile's gain in violation of Clearwire's duties to Plaintiffs under the MRUAs and IUAs.

109. T-Mobile had knowledge of Plaintiffs' contractual relationship with Clearwire at the time that T-Mobile intentionally interfered with the contractual relationship.

110. T-Mobile engaged in such interference with improper motives—to wit, to obtain for its financial benefit the valuable 2.5 GHz spectrum necessary to build its Magenta network without providing Plaintiffs required consideration, including premium broadband access for Plaintiffs' end users, to avoid discussions with Plaintiffs regarding their consent rights and reasonable conditions of consent, to provide Plaintiffs and their end users with inferior service, features and devices, and to withhold from Plaintiffs information regarding how its use of Plaintiffs' Spectrum would affect Plaintiffs and their end users; and with improper means—by inducing Clearwire to breach known contractual obligations to Plaintiffs for T-Mobile's own financial benefit before and in necessary connection with T-Mobile's $26.5 billion purchase of

Sprint from which Sprint and Clearwire would substantially benefit, and to make a spurious claim that Plaintiffs' required consent to T-Mobile's use of Plaintiffs' Spectrum had been obtained when T-Mobile knew that it had not.

111. T-Mobile's acts of tortious interference have directly and proximately caused and continue to directly and proximately cause Plaintiffs harm.

112. Plaintiffs respectfully request that this Court award Plaintiffs monetary damages for all damages suffered and all damages that Plaintiffs will suffer as a result of T-Mobile's tortious interference with Plaintiffs' contracts with Clearwire and enjoin T-Mobile from any further interference with Plaintiffs' contractual rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court to:

(a) On the First Cause of Action, find Clearwire to be in breach of the MRUAs and IUAs for sublicensing Plaintiffs' Spectrum to T-Mobile without Plaintiffs' advance written consent; find Clearwire to be in breach of the MRUAs and IUAs for failing to notify Plaintiffs of changes in System Service Capabilities; hold Clearwire's sublicense of Plaintiffs' Spectrum to T-Mobile to be null and void *ab initio*; permanently enjoin Clearwire from sublicensing Plaintiffs' Spectrum and T-Mobile from using Plaintiffs' Spectrum unless and until Clearwire receives Plaintiffs' express written consent; and require Clearwire and T-Mobile to provide Plaintiffs with information concerning the proposed sublicense and all other information reasonably necessary to determine whether to consent to the proposed sublicense, including all changes in any System Service Capabilities.

(b) On the Second Cause of Action, declare that Clearwire cannot sublicense Plaintiffs' Spectrum to any third party, including T-Mobile, without Plaintiffs' advance written consent under

IUA § 10(b); that Clearwire and T-Mobile do not have Plaintiffs' advance written consent; that Clearwire's putative sublicense to T-Mobile is null and void *ab initio*; and that Clearwire must notify Plaintiffs of all change in any System Service Capabilities in any Market Area within 30 days of any such change.

(c) On the Third Cause of Action, award Plaintiffs money damages in the amount reasonably required to make them whole as a result of T-Mobile's unlawful conversion of Plaintiffs' Spectrum, spectrum rights, and licenses for spectrum and enjoin T-Mobile from any further such conversion;

(d) On the Fourth Cause of Action, award Plaintiffs money damages for all loss and damage that Plaintiffs have suffered as a result of T-Mobile's unjust enrichment;

(e) On the Fifth Cause of Action, award Plaintiffs money damages for all loss and damage that Plaintiffs have suffered as a result of T-Mobile's tortious interference with Plaintiffs' contracts with Clearwire and enjoin T-Mobile from any further interference with Plaintiffs' contractual rights; and

(f) Grant such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs request a trial by jury for all claims and issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: May 22, 2020

Respectfully submitted,

CHICAGO INSTRUCTIONAL TECHNOLOGY FOUNDATION, INC. et al.,

By their attorneys,

Jonathan I. Handler (BBO #561475)
jihandler@daypitney.com
Keith H. Bensten (BBO #568780)
kbensten@daypitney.com
DAY PITNEY LLP
One International Place
Boston, MA 02110
T: (617) 345-4600

--and --

Philip A. Sechler (*pro hac vice* pending)
psechler@robbinsrussell.com
ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP
2000 K Street NW, 4th Floor
Washington DC 2006
T: (202) 775-4492

EXHIBIT 1

Subject to Pending Motion to Impound

EXHIBIT 2

Subject to Pending Motion to Impound