

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 1584CV03118-BLS2

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. )

**PLAINTIFFS' EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION**

Pursuant to Mass. R. Civ. P. 65(b), Plaintiffs North American Catholic Educational Programming Foundation, Inc. ("NACEPF"), Instructional Telecommunications Foundation, Inc. ("ITF"), Portland Regional Educational Telecommunications Corporation ("PRETC"), Denver Area Educational Telecommunications Consortium, Inc. ("DAETC"), Chicago Instructional Technology Foundation, Inc. ("CITF"), and Twin Cities Schools' Telecommunications Group, Inc. ("TCSTG") (together, the "Plaintiffs") move for a preliminary relief against Defendants Clearwire Spectrum Holdings II LLC, Clearwire Legacy LLC, f/k/a Clearwire Corporation, and Sprint Spectrum L.P. (together, the "Defendants"), their agents, servants, employees and attorneys, directing Defendants to maintain (and not terminate) the Internet service, modem deliveries, and

support services they provide to Plaintiffs and Plaintiffs' customers, as more specifically set forth in Exhibit A attached hereto. In support thereof, Plaintiffs state as follows:

1. This is an action for specific performance and injunctive relief resulting from Defendants' failure to comply with their contractual obligations to supply broadband Internet service and user devices to Plaintiffs.

2. Plaintiffs are nonprofit entities that hold licenses from the Federal Communications Commission to operate certain Educational Broadband Service channels within certain geographic markets. Plaintiffs do not offer commercial services with their wireless spectrum but, like other Educational Broadband Service licensees, grant access to a portion of their wireless communications spectrum capacity to commercial wireless broadband providers like Clearwire so that these commercial entities will construct stations that can use the spectrum to offer wireless broadband services commercially. In consideration for permitting such use, Plaintiffs are paid royalties in cash and in-kind. 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 nonprofit sectors (including education, religion and health), some of whom, in turn, provide service to low-income households who could not otherwise afford Internet connectivity. Some of Plaintiffs' end users receive wireless broadband service at no cost and the remainder pay very low rates.

3. Pursuant to various spectrum access agreements, Clearwire is required to provide Plaintiffs with devices that work on, and Internet access services provided on, the Clearwire broadband wireless network at the best level of service it provides its retail customers. Seven years after the Plaintiffs entered into their spectrum access agreements with Clearwire, Sprint acquired control of Clearwire. After assuming control, Sprint decided to shut down Clearwire's

broadband wireless platform, thus taking away Clearwire's ability to provide these services to Plaintiffs and their users. At the same time, Sprint is appropriating the commercial spectrum capacity provided by Plaintiffs under contract with Clearwire for use in Sprint's own broadband wireless network without Plaintiffs' consent, which is required under Plaintiffs' agreements with Clearwire. Also, Sprint is denying Plaintiffs the quality and quantity of in-kind access royalties in the form of Internet access accounts (called "Cost-Free Educational Accounts"), user devices and related support on Sprint's own broadband wireless network required to be delivered under those agreements.

4. Clearwire and Sprint have breached the Plaintiffs' spectrum access agreements, which has prevented Plaintiffs from being able to change their customers and users to the Sprint wireless broadband network, and provide them with new devices, equivalent capacity, and necessary support. Defendants are curtailing the current level of capacity on the Sprint network to a mere 6 GB monthly, before they slow it to a crawl, which is a near lethal blow to Plaintiffs' nonprofit users.

5. Plaintiffs are likely to succeed on the merits of their contract claims. Plaintiffs have a multitude of contracts with Defendants pursuant to which Defendants are to provide amongst other things certain specified devices, certain levels of Internet service, and certain levels of support and administration. Defendants have failed to provide each of these.

6. The irreparable harm is clear and indisputable. After the shutdown of the Clearwire WiMAX service — expected to begin on November 1, 2015 and to be completed on November 6, 2015 — many of Plaintiffs' end users will have no Internet service at all. So abandoned, these vulnerable individuals will have no alternative but to pay Sprint or another provider the standard customary rates for devices and service, which many of them cannot afford to do. Plaintiffs estimate that Sprint's action will effectively terminate Internet access for 300,000 individuals.

The loss of service to Plaintiffs' customers will irreparably damage Plaintiffs' reputation as reliable sources of Internet connectivity and reliable collaborators in general and threatens the viability of their purposes and responsibilities as nonprofit organizations devoted to service.

7. In comparison, harm to Defendants from this injunction will be modest. Sprint is a major player in the marketplace providing wireless broadband and voice services to more than 57 million customers. It benefits tremendously from having the ability to use portions of Plaintiffs' education broadband spectrum capacity to its commercial benefit. Not only is Sprint contractually obligated to provide service to Plaintiffs, it has the wherewithal, economic and otherwise, to provide equivalent service on its own broadband wireless network and to maintain the WiMAX service until such time as it can transition all of Plaintiffs' customers to its own network.

8. Public interest weighs heavily in favor of granting this injunction. Plaintiffs are nonprofit entities whose constituents 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. If no action is taken, after the Sprint WiMAX network is shut down, an under-served and under-represented part of the public will be effectively rendered without Internet access.

9. Accordingly, based on the Verified Complaint and the Affidavits of John Primeau, and John Schwartz, and the attached Memorandum of Law in Support of this motion, Plaintiffs respectfully move that this Court enter the requested preliminary relief, attached hereto as Exhibit A.

Respectfully submitted,

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.,

By their attorneys,



Jonathan Handler (BBO #561475)

jhandler@daypitney.com

David W.S. Lieberman (BBO #673803)

dliberman@daypitney.com

DAY PITNEY LLP

One International Place

Boston, MA 02110

(617) 345-4600

*Of Counsel:*

David B. Newman

dnewman@daypitney.com

DAY PITNEY LLP

Times Square Tower

7 Times Square

New York, NY 10036

(212) 297-5832

Dated: October 23, 2015

CERTIFICATE OF SERVICE

I, David W.S. Lieberman, hereby certify that on this 23rd day of October 2015, I caused a copy of the foregoing to be served by e-mail and overnight delivery upon the following attorney of record:

Marc S. Martin  
Perkins Coie LLP  
700 Thirteenth Street, N.W.  
Suite 600  
Washington, D.C. 20005

  
David W.S. Lieberman

# Exhibit A

COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT DEPARTMENT  
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CIVIL ACTION NO. 1584CV03118-BLS2

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

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

After hearing and review of the parties' respective written submissions, the Court hereby GRANTS Plaintiffs' Emergency Motion for Preliminary Injunction and ORDERS Defendants Clearwire Spectrum Holdings II LLC, Clearwire Legacy LLC, f/k/a Clearwire Corporation, and Sprint Spectrum L.P. (together, the "Defendants") and their agents, servants, employees, and attorneys to:

A. Continue to provide Clearwire WiMAX service to all customers located in the metropolitan areas, identified on the Schedule annexed hereto, that have been receiving the service through the Cost Free Educational Accounts of Plaintiffs NACEPF, Voqal, or any of their affiliates (“Licensees”) for 90 days from the date of this Order so as to permit a migration of Licensees’ WiMAX end users to Sprint’s LTE wireless broadband network;

B. Consistent with the existing Clearwire agreements and the ISA, maintain all Cost Free Educational Accounts 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, in particular, without throttling any of the Cost Free Educational Accounts governed by 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

C. Promptly provide customers with the equipment selected by the ordering Licensee from Sprint’s website menu of retail equipment or from the ISA equipment list for use to access the Licensees’ Cost Free Educational Accounts integrated with customer management software provided to Licensees.

So Ordered.

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Hon. Janet L. Sanders  
Associate Justice of the Superior Court

Dated: \_\_\_\_\_, 2015

## SCHEDULE

Minneapolis-Saint Paul	Raleigh
Philadelphia	Stockton
Los Angeles	Bridgeport
Seattle	Yakima
Chicago	York
San Francisco	Tri-Cities
Cleveland	Harrisburg
Sacramento	Richmond
New York	Lubbock
Columbus	Lewiston
Portland	Merced
Kansas City	New Haven
Salt Lake City	Lancaster
Phoenix	Wilmington
Indianapolis	Greensboro
Denver-Boulder-Fort Collins	Hartford
Las Vegas	Anchorage
San Antonio	Eugene
Houston	Grand Rapids
Miami	Maui
Providence	Killeen-Temple
Washington, DC	Corpus Christi
Boise	Daytona Beach

Boston

St. Louis

Dallas-Fort Worth

Atlanta

Honolulu

Orlando

Baltimore

Visalia

Tampa

Jacksonville

Pittsburgh

Austin

Modesto

Abilene

Nashville

Tacoma

Charlotte

Cincinnati

Reading

Amarillo

Rochester

Wichita Falls

Bellingham

Everett

Duluth

Syracuse

Kitsap County

Midland-Odessa

New Brunswick

Waco

Dayton

Memphis

Salem

Trenton