**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NETWORK CONGESTION SOLUTIONS, LLC,	Case No. 1:14-CV-00901 (SLR)
Plaintiff,	PATENT CASE
v.	JURY TRIAL DEMANDED
SPRINT CORPORATION,	
Defendant.	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Network Congestion Solutions, LLC ("NCS" or "Plaintiff") files this Amended

Complaint against Sprint Corporation ("Sprint" or "Defendant") for infringement of U.S. Patent

No. 6,826,620 ("the '620 patent").

THE PARTIES

1.   NCS is a Delaware limited liability company with its principal place of business

located at 604 East 4th Street, Suite 201, Fort Worth, Texas 76102.

2.   Sprint is a Delaware corporation with its principal place of business at 6200 Sprint

Parkway, Overland Park, Kansas 66251.

3.   Defendant maintains a registered agent for service of process in Delaware at

Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

JURISDICTION AND VENUE

4.   NCS brings this action for patent infringement under the patent laws of the United

States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter

jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

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5.   Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant is deemed to reside in this judicial district, has committed acts of infringement in this judicial district, has purposely transacted business involving the accused products in this judicial district, and/or has regular and established places of business in this district.

6.   Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process, due at least to its substantial business in this State and judicial district, including: (A) committing acts of infringement in this judicial district as described herein; (B) having a corporate headquarters in this judicial district; and/or (C) regularly conducting or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods and products sold and services provided to Delaware residents. Further, this Court has personal jurisdiction over Defendant because it is incorporated in Delaware and has purposely availed itself of the privileges and benefits of the laws of the State of Delaware.

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COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 6,826,620)

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7.   NCS incorporates paragraph 1 through 6 herein by reference.

8.   This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

9.   NCS is the owner of the '620 patent, entitled "Network Congestion Control System and Method," with all substantial rights to the '620 patent, including the exclusive right to enforce, sue, and recover damages for past and future infringement. A copy of the '620 patent is attached as Exhibit 1.

10.   The '620 patent is valid, enforceable, and was duly issued in full compliance with

Title 35 of the United States Code.

11.   Defendant has, and continues to, directly infringe one or more claims of the '620

patent in this judicial district and elsewhere in the United States.

12.   In particular, Defendant has, and continues to, infringe at least claim 1 of the '620

patent by, among other things practicing infringing methods including, but not limited to,

Defendant's practices in conjunction with network congestion management.

13.   As an example, Sprint's Open Internet Information page states:

> How does congestion management work? Network bandwidth isn't infinite. In times of network congestion, the network segment or sector impacted doesn't have enough bandwidth to fully serve all customers requesting it. The network is designed to dynamically allocate available bandwidth in a way that is fair to all users. The fairness algorithms below describe the approach. The resulting impact to the end-user experience is that the user may temporarily experience slower-than-normal data speeds until the congestion has passed.
>
> - On the Sprint 3G (CDMA) and 4G LTE networks, Sprint uses a proportional fairness scheduler algorithm that allocates network resources based on radio frequency signal quality and other metrics. During times of congestion, the proportional fairness scheduler algorithm ensures no one user is deprived of network resources.
>
> - On Sprint's 4G WIMAX network, Sprint may periodically measure a user's bandwidth usage on a specific network segment or sector, as compared to the overall bandwidth usage for all users on that segment or sector. At times when an individual user is consuming high amounts of bandwidth and at the same time the overall bandwidth is being used by all users on that network segment or sector at high levels, Sprint 4G customers may experience a temporary adjustment in available network resources until the conditions for network congestion have passed.
>
> In addition to employing fairness algorithms, Sprint may also use prioritization to prevent network congestion. Customers on devices or plans subject to prioritization management may experience throughput limitation or other prioritization policies as needed to make additional network resources available to users on higher priority devices or plans.

What type of prioritization occurs on the Sprint network today?

Sprint currently employs prioritization to improve data experience for the vast majority of users on Sprint's CDMA and LTE networks. The heaviest data users consume a disproportionate share of network resources and cause a negative user experience for the rest. To more fairly allocate network resources in times of congestion, customers falling within the top 5% of data users may be prioritized below other customers attempting to access network resources, resulting in a reduction of throughput or speed as compared to performance on non-congested sites.

How does congestion management impact me and my use data services?

The goal of congestion management is to enable the majority of users to have access to a fair share of the network at peak times, when congestion occasionally occurs. Most customers will notice an improved wireless data experience due to Sprint's congestion management. Customers subject to prioritization may experience reduced throughput or speed compared to their normal experience on non-congested sites.

How often does Sprint expect to use congestion management?

Because of the peaked nature of wireless data traffic, congestion management software is actively looking for network congestion at all times. When it detects congestion, the fairness algorithms described above and network prioritization are triggered to ensure that more Sprint customers enjoy the best possible network experience.

Sprint monitors how user traffic is affected by congestion management and makes adjustments as reasonably necessary to ensure that our wireless data users have a high-quality wireless broadband Internet access experience. Sprint also evaluates its overall network performance and enhances its network by adding capacity or making other network adjustments to address congestion and performance issues.

How does congestion management relate to the various monthly data usage thresholds?

They are two separate issues. Congestion management works to optimize the experience of all users in the congested area. It works independent of any caps or overage charges that may apply based on the user's price plan and monthly usage.

Does Sprint give priority to any customers, devices, or plans?

Yes. In addition to the heavy user treatment outlined above, Sprint also reserves the right to alter the priority of other customers on specific devices or plans on the Sprint network. Customers on devices or plans subject to prioritization

management may experience a reduction in throughput or speed. This ensures additional network resources are available to users on higher priority devices or plans. Sprint reserves the right to initiate additional prioritization management policies on plans and devices subject to prioritization at its sole discretion as needed to allocate network resources to higher priority devices or plans.

See Ex. 2

14.   To the extent not already pleaded herein, other evidence of Defendant's activities is set forth in the Network Congestion Solutions LLC's Answering Brief in Response to Motion to Dismiss (D.I. 13), attached as Exhibit 3, the entirety of which is incorporated by reference in this First Amended Complaint.

15.   NCS has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to NCS in an amount that adequately compensates NCS for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

<u>JURY DEMAND</u>

NCS requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff asks that the Court find in its favor and against Defendant and that the Court grant

Plaintiff the following relief:

a. Judgment that one or more claims of the '620 patent have been infringed, either literally and/or under the doctrine of equivalents by Defendant;

b. Judgment that Defendant account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;

c. Judgment that Defendant account for and pay to Plaintiff a reasonable, ongoing, post judgment royalty because of Defendant's infringing activities and other conduct complained of herein;

d. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;

e. Find this case exceptional under the provisions of 35 U.S.C. § 285 and award enhanced damages; and

f. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: June 30, 2015   NETWORK CONGESTION SOLUTIONS, LLC

                                By: /s/ *Timothy Devlin*
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