

KATHERINE GRILLO and CHRISTIAN  
REID, on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

RCN TELECOM SERVICES, LLC, et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
MERCER COUNTY  
LAW DIVISION

DOCKET NO. MER-L-1319-22

**CLASS ACTION**

**ORDER GRANTING FINAL APPROVAL TO  
CLASS ACTION SETTLEMENT AND RELATED RELIEF**

THIS MATTER having been brought before the Court upon the motion of DeNittis Osefchen Prince, P.C., and Hattis & Lukacs, counsel for Plaintiffs Katherine Grillo (“Grillo”) and Christian Reid (“Reid”), and together with Grillo, “Plaintiffs”) and the settlement class (“Class Counsel”), for an order pursuant to *Rule 4:32-2(e)(1)*, seeking final approval of a class action settlement, and entry of final judgment dismissing the Complaint, and pursuant to *Rule 4:32-2(h)* awarding attorneys’ fees to Class Counsel and incentive awards to Grillo and Reid (the “Motion”); and

WHEREAS Defendants RCN Telecom Services, LLC, RCN Telecom Services (Lehigh), LLC, RCN Telecom Services of New York, L.P., RCN Telecom Services of Philadelphia, LLC, RCN Telecom Services of Illinois, LLC, RCN Telecom Services of Massachusetts, LLC, Starpower Communications, LLC, and Patriot Media Consulting, LLC (collectively, “Defendants”) having agreed to this class action settlement;

WHEREAS the Court reviewed the submissions of the parties, and held a Fairness Hearing, pursuant to *Rule* 4:32-2(e)(1)(C), on January 26, 2023 (the "Fairness Hearing"), and found that the parties are entitled to the relief they seek; and

The Court having considered the pleadings and other papers on file, the argument of counsel, and for good cause shown;

IT IS on this 26<sup>th</sup> day of January, 2023, ORDERED that:

1. This action is appropriately treated for settlement purposes as a class action under R. 4:32-1 and R. 4:32-2. The settlement class as defined in the Court's prior Order of September 13, 2022 is hereby permanently certified because:

- a. the settlement class is so numerous that joinder of all members is impracticable;
- b. there are questions of law or fact common to the settlement class;
- c. the claims or defenses of the representative parties are typical of the claims or defenses of the settlement class;
- d. the representative party will fairly and adequately assert and protect the interests of the settlement class;
- e. the questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and
- f. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The Court therefore determines that this action satisfies the prerequisites for class certification set forth in *Rule* 4:32-1(b).

2. The settlement class has been given notice of the proposed class action settlement consistent with the New Jersey Court Rules, in accordance with the Court's Preliminary Approval Order dated September 13, 2022. Such notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies



the requirements of due process. The notice apprised the members of the settlement class of the pendency of the litigation, of all material elements of the proposed settlement, of the *res judicata* effect on the members of the settlement class, and of their opportunity to opt out of the settlement, to comment on and object to the settlement, and to appear at the Fairness Hearing. Full opportunity has been afforded to the members of the settlement class to participate in the Fairness Hearing.

3. The Settlement Agreement was arrived at as a result of arm's-length negotiations conducted in good faith by counsel for the parties, and is supported by the class representatives and by the majority of the members of the settlement class.

4. The settlement as set forth in the Settlement Agreement is fair, reasonable, and adequate to the members of the Class in light of the complexity, expense, and likely duration of litigation, as to which there are substantial grounds for differences of opinion and the risks involved in establishing liability, damages, and in maintaining the class action as to liability issues through trial and appeal.

5. The promises and commitments of the Parties and the relief provided under the Settlement Agreement constitutes fair value given in exchange for the releases of the Settled Claims against the Released Parties (both as defined in the Settlement Agreement). The following claims are therefore released against Defendants and the other Released Parties:

All claims that were made or could have been made based on the facts alleged in this action arising out of, concerning or related to Defendants' charging of Network Access Maintenance Fee ("NAM fee") and arising prior to the Settlement Effective Date (as defined in the Settlement Agreement), whether known or unknown, and including, but not limited to, any and all manner of legal, equitable, federal, state, administrative, statutory or common law action or causes of action, suits, claims, debts, liabilities, charges, losses, demands, obligations, guarantees, torts, contracts, agreements, promises, liens, damages of any kind (including liquidated damages and punitive damages), restitution, interest,

penalties, attorneys' fees, costs and/or expenses of any kind or nature whatsoever, asserted or unasserted, willful or not willful, intentional or not intentional, fixed or contingent, liquidated or unliquidated, which Plaintiffs, the members of the settlement class and the other Releasing Parties (as defined in the Settlement Agreement) now have or ever had against the Defendants and the other Released Parties, arising out of, concerning or related to Defendants' charging of NAM fees, or any conduct alleged or that could have been alleged in this action arising out of, concerning or related to Defendants' charging of NAM fees.

6. The parties and each settlement class member have irrevocably submitted to the jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of the Settlement Agreement.

7. It is in the best interests of the Parties and the settlement class members, and consistent with principles of judicial economy, that any dispute between any settlement class member (including any dispute as to whether any person is a settlement class member) and any of the Released Parties (as defined in the Settlement Agreement) which in any way relates to the applicability or scope of the Settlement Agreement or this Order should be presented exclusively to this Court for resolution by this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

A. Plaintiff's motion for final approval of the class settlement and related relief is GRANTED.

B. This action is finally certified for settlement purposes as a class action on behalf of a Settlement Class defined as follows:

**All current and former RCN customers in the United States who were charged and paid a "Network Access and Maintenance Fee" between November 1, 2017 and September 13, 2022**

C. The Court grants final approval to the proposed class action Settlement as set forth in the Settlement Agreement, as agreed to by all parties and counsel and approved by the



Court, which is fair, reasonable, adequate, just, and in the best interests of the settlement class, and the Parties are directed to consummate the Settlement Agreement in accordance with its terms.

D. Pursuant to the settlement, the Complaint and all claims asserted in this action are DISMISSED WITH PREJUDICE. All claims of Plaintiffs and Settlement Class Members who did not request exclusion, which arise from the claims and facts pleaded in the Complaint, are DISMISSED WITH PREJUDICE and deemed released to the extent specified in the Settlement Agreement. This Order does not bind persons who filed timely and valid requests for exclusion. Attached as **Exhibit A** is a list of persons who properly requested to be – and hereby are – excluded from the class Settlement. All members of the settlement class, except those listed on **Exhibit A**, are bound by this Order and by the final judgment to be entered pursuant to this Order.

E. Class counsel's Petition for Fees and Costs is GRANTED. An award of \$3,834,401.72 in attorney's fees and costs to Class counsel is approved and is to be paid in accordance with the terms of the Settlement Agreement.

F. The request for an incentive award of \$15,000.00 to each of the named Plaintiffs, Katherine Grillo and Christian Reid, is approved and is to be paid in accordance with the terms of the Settlement Agreement.

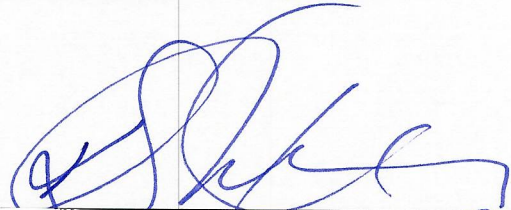
G. This Order, the Settlement Agreement, the Settlement that it reflects, and any and all acts, statements, documents, or proceedings relating to the Settlement are not, and shall not be construed or used as an admission by or against any of the Released Parties of any fault, wrongdoing, or liability on their part, of the validity of any Released Claims, or of the existence or amount of any alleged damages.

H. Without affecting the finality of this Final Approval Order or any judgment issued pursuant to this Final Approval Order in any way, the Court retains jurisdiction over (1) implementation and enforcement of the Settlement Agreement until the parties have performed the required actions thereunder; (2) any other action necessary to conclude this Settlement or to implement the Settlement Agreement; and (3) the enforcement, construction and interpretation of the Agreement.

I. The Court finds that there is no reason for delay and directs the Clerk to enter judgment in accordance with the terms of this Order.

J. This Court hereby enters a Permanent Injunction barring and enjoining Grillo, Reid and all settlement class members, to the extent permissible by existing law, from bringing, filing, commencing, prosecuting (or further prosecuting), maintaining, intervening in, participating in, or receiving any benefits from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding in law or equity that asserts, arises from, concerns, or is in any way related to the Released Claims identified in paragraph five of this Order.

SO ORDERED.



Kay Walcott-Henderson, P.J. Ch



# Exhibit A

***Grillo v. RCN Telecom Servs., LLC***  
**OPTOUT LIST (AS OF 1/23/23)**

1. Herbert Alleman, Silver Spring, Maryland
2. Philip Barden, West Roxbury, Massachusetts
3. Kathleen Beusterien, Washington, DC
4. Emily Buenaventura, Sackville, New Brunswick, Canada
5. Pamela Cielinski, Emmaus, Pennsylvania
6. Gaetano Di Tommaso, Breda, The Netherlands
7. Jean-Marie Grande, Newtown Square, Pennsylvania
8. Joan Hernandez, New York, New York
9. Ilna Hristova, New York, New York
10. Rita Kimmel, Macungie, Pennsylvania
11. Degnan Lawrence, Anchorage, Alaska
12. Janet Lawrence, Cambridge, Massachusetts
13. Estefania Perez Pria Martinez, New York, New York
14. Arthur Masyuk, Chicago, Illinois
15. Max Mazorra, New York, New York
16. Zsuzsa Munkacs, Falls Church, Virginia
17. Gabor Nagy, Woodside, New York
18. Ryan Nassar, Washington, DC
19. Linda Ozolina, New York, New York
20. Cheryl Phillips, Evanston, Illinois
21. Bernard Reed, Chicago, Illinois
22. Ramona Rodriguez, Flushing, New York
23. RU Marketing Inc. d/b/a AlphaGraphics Framingham, Framingham, Massachusetts
24. Kevin Scherrer, Fountain Hill, Pennsylvania
25. David Sutcliffe, Needham, Massachusetts
26. Dean Trumbauer, Coopersburg, Pennsylvania
27. Diane Waggoner, Whitehall, Pennsylvania
28. Gerald Wood, Wind Gap, Pennsylvania



**PURSUANT TO R. 1:6-2(f), THE COURT OFFERS THE FOLLOWING  
SUPPLEMENTAL STATEMENT OF REASONS IN SUPPORT OF ITS DECISION TO  
APPROVE CLASS COUNSEL FEES.**

Class Counsel seeks approval of the overall settlement, which includes an award of \$3,834,401.72 in attorneys' fees and costs related to this suit. Specifically, Class Counsel seeks an amount not to exceed 33.33% of the maximum total value of the Settlement Fund of \$11,500.00. This application is also unopposed.

In support of this application, counsel submitted Certifications of Services from Stephen P. DeNittis, Esquire; Shane T. Prince, Esquire; Daniel M. Hattis, Esquire; and Joseph A. Osefchen, Esquire, all members of the firms of DeNittis Osefchen Prince, P.C. and Hattis & Lukacs (admitted pro hac vice). Lead Counsel maintains that the proposed award of attorneys' fees and costs was negotiated at arm's length, after substantive relief for the class had already been agreed upon. Lead Counsel also certifies that this is in fact their internal practice: to guarantee that the interest of the class is at the forefront of negotiations and that the issue of attorneys' fees is a secondary consideration. (Class Counsel's Petition, pg. 5).

Moreover, Class Counsel avers that the negotiated fee amount is well within the range routinely awarded in class action matters under state and federal case law. See, Reinhart v. Lucent Techs., Inc. Sec. Litig. 327 F. Supp. 2d 426, 439 (D.N.J. 2004); Camden I Condominium Ass'n v. Dunkle, 946 F.2d 768 (11<sup>th</sup> Cir. 1991). Additionally, Class Counsel asks that this court consider that the negotiated settlement with RCN includes, "additional value of injunctive relief under which Defendants have agreed to revise RCN's disclosures to better describe the RCN operation companies' billing practices with regard to the NAM fee in conformance with their actual policies and practices going forward, thus mitigating the alleged problem which gave rise to the lawsuit in the first place." Class Counsel argues that consistent with case law, in

particular, Henderson v. Camden Cty. Mun. Util. Auth., this court can and should consider the import of such additional injunctive relief in deciding whether and to what extent a fee application should be granted. 176 N.J. 554, 565-566, 826 A.2d 615 (2003). In relying upon Henderson, counsel avers that courts may award attorneys' fees based upon the total benefit conferred upon the class, including the value of equitable relief.

In applying the relevant case law and equitable principles set forth herein, this court is satisfied that Class Counsel's application for fees and costs must be granted. Counsel's application for 33.33% percent strikes the court as fair and reasonable as it is commensurate with the range of percentages awarded in other similar class action matters. In reaching this conclusion, the court considered that Class Counsel bore all costs of suit, and negotiated the overall Settlement Fund amount of \$11,500,000, which provides that each member would likely recover between 20% to 80% of the "alleged unlawful" fees paid for the relevant period; approximately \$20 to \$159 each, including the incentive award of \$15,000 to each named Plaintiff. Moreover, the court considered the extensive experience of the attorneys who negotiated the settlement, as detailed in their respective Certifications (undisputed). Additionally, as previously stated, this counsel fee award is also part of the negotiated settlement and the application remains essentially unopposed (the court not having received any written opposition even from the lone objector referred to in the record).

Accordingly, the application is granted and the court shall enter the Order Granting Final Approval of the Class Action Settlement and Related Relief on this date for the reasons set forth on the record and herein.