

## **SETTLEMENT AGREEMENT AND RELEASE**

**THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”)** is entered into by and between plaintiffs Katherine Grillo and Christian Reid, individually and in their representative capacities on behalf of all others similarly situated (collectively “Plaintiffs”), by and through their counsel, and Defendants RCN Telecom Services, LLC (“RCN Telecom”); RCN Telecom Services (Lehigh), LLC (“RCN Lehigh”); RCN Telecom Services of New York, LP; RCN Telecom Services of Philadelphia, LLC; RCN Telecom Services of Illinois, LLC; RCN Telecom Services of Massachusetts, LLC (“RCN Massachusetts”); Starpower Communications, LLC, and Patriot Media Consulting, LLC (“Patriot”) (collectively “Defendants” or “RCN”), by and through their counsel, (collectively referred to as the “Parties” or singularly “Party”) to effect the settlement of the above-captioned class action as set forth herein, subject to Court approval.

### **RECITALS:**

WHEREAS, on July 10, 2020, Plaintiffs filed a lawsuit captioned *Grillo, et al. v. RCN Telecom Services, LLC, et al.*, Civil Case No. 3:20-cv-8609, in the United States District Court for the District of New Jersey (“Federal Action”), on behalf of a proposed class of all current and former customers of RCN broadband internet service who, between November 1, 2017 and the present, were charged a Network Access and Maintenance Fee (“NAM Fee”);

WHEREAS, Plaintiffs have alleged, *inter alia*, that Defendants’ advertising and sign-up practices constituted a “bait and switch” scheme perpetrated by Defendants against RCN broadband internet customers, including Plaintiffs herein. Specifically, Plaintiffs alleged that RCN advertised and promised a particular flat monthly rate for its internet service but then

charged a higher rate by padding customers' bills with the "NAM Fee,- which Plaintiffs alleged was deceptive and bogus;

Plaintiffs further alleged that the NAM Fee was not disclosed to RCN customers until after they signed up for internet service and, once disclosed, was erroneously described as a "tax" rather than as a for-profit charge. Plaintiffs alleged that Defendants' actions violate New Jersey law, including the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. § 56:8-1, *et seq.*; the New Jersey Truth in Consumer Contract, Warranty and Notice Act ("TCCWNA"), N.J.S.A. § 56:12-14, *et seq.*; and the New Jersey Uniform Declaratory Judgment Act, N.J.S.A. § 2A:16-51, *et seq.*; and additionally constitute a breach of the implied covenant of good faith and fair dealing in certain Defendants' respective customer service agreements;

WHEREAS, Plaintiffs seek a refund under New Jersey law, on behalf of themselves and the proposed class, of all NAM Fees collected by Defendants, as well as statutory and punitive damages, attorneys' fees and costs, and injunctive and declaratory relief prohibiting Defendants' complained-of conduct in the future;

WHEREAS, Plaintiffs' First Amended Complaint named the following entities as defendants: RCN Telecom ; RCN Massachusetts; RCN Lehigh; and Patriot;

WHEREAS, on September 22, 2020, all of the above Defendants except Patriot, filed an Answer;

WHEREAS, on September 22, 2020 Patriot filed a motion to dismiss;

WHEREAS, on October 27, 2020, Plaintiffs filed a First Amended Complaint;

WHEREAS, on November 16, 2020, Patriot filed a second motion to dismiss which was later withdrawn;

WHEREAS all of the above-named Defendants had Answered Plaintiffs' First Amended Complaint by December 18, 2020;

WHEREAS, on December 21, 2020 Plaintiffs filed a motion for class certification, which the District of New Jersey Court subsequently adjourned without date following the completion of discovery;

WHEREAS, between January 2021 and September 2021 the parties engaged in written discovery by Plaintiffs' serving and Defendants' answering voluminous discovery requests, including responses to interrogatories, requests for admissions, and requests for production of documents, the latter of which constituted thousands of pages of discovery, and Defendants produced a large volume of responsive documents;

WHEREAS, the Parties also agreed to a protocol for the production of electronically-stored information ("ESI"), engaged in significant and time-consuming efforts to compile and preserve potentially responsive ESI, and negotiated key custodians and search terms;

WHEREAS, the Parties thereafter agreed to an informal stay of all further discovery and litigation activity to permit them to engage in settlement discussions, and, over the following eight months, engaged in extensive and hotly-contested arms-length settlement negotiations. In conjunction with those negotiations, Defendants produced, at the specific request of Plaintiffs' counsel, substantial and substantive informal discovery regarding class size and damages, which was sufficient to identify the total amount of NAM Fees charged to RCN customers during the class period;

WHEREAS, the theory pleaded in Plaintiffs' First Amended Complaint was that Defendants allegedly had a uniform policy of charging all RCN internet customers a uniform NAM Fee on a monthly basis, which fee equaled \$1.97 per month per customer starting in

November 2017 and which was systematically increased each year, up to the current fee of \$6.97 per month per customer;

WHEREAS, on or about May 6, 2022, the Parties were able to reach an amicable resolution of the lawsuit on a class-wide basis, the terms of which are set forth in this Agreement;

WHEREAS, within 30 days of execution of this Agreement, the Parties will request that the Court enter a stay of the federal lawsuit, and Plaintiffs will file a new lawsuit in the Superior Court of the State of New Jersey, Mercer County, captioned *Grillo, et al. v. RCN Telecom Services, LLC, et al.*, which will name all of the RCN entities that are parties to this Agreement as Defendants;

WHEREAS, Defendants continue to deny the claims of Plaintiffs, continue to deny any wrongdoing or liability of any kind whatsoever to Plaintiffs or the Settlement Class, and continue to assert that they fully complied with New Jersey law in all conduct with respect to the Class;

WHEREAS, Plaintiffs have concluded that settlement is desirable due to the substantial risks in pursuing their claims against Defendants, and those of the Class, and in order to avoid the time, expense, and inherent uncertainties of protracted litigation and to resolve finally and completely all pending claims of Plaintiffs and all members of the Settlement Class which were or could have been asserted based on the facts alleged in the Federal Action (as defined below), relating to Defendants' charging of NAM Fees;

WHEREAS, Defendants have concluded, without admitting liability, that settlement is desirable in order to avoid the time, further expense, and burdens of protracted litigation and to resolve finally and completely all pending claims of Plaintiffs and all members of the Settlement

Class which were or could have been asserted based on the facts alleged in the Federal Action, relating to certain Defendants' charging of NAM Fees;

WHEREAS, Plaintiffs recognize the costs and risks of prosecuting the Federal Action through class certification and trial, and believe that their interest, and the interests of all Class Members, to resolve the Federal Action and the claims against Defendants set forth herein are best served by and through the terms contained within this Settlement Agreement;

WHEREAS, Defendants believe this Settlement is a fair means of resolving the Federal Action;

WHEREAS, Defendants enter the Settlement with no admission of liability and expressly do not waive any argument, defense, or position asserted in the Federal Action;

WHEREAS, the Parties desire to compromise and settle all issues and claims relating to the facts alleged by Plaintiffs in the Litigation (as defined below) or that could have been asserted under the facts alleged in the Litigation concerning the charging, manner and sufficiency of disclosure or description of the NAM Fee, and the related sign-up practices, by any Defendant, by or on behalf of all persons included in the Settlement Class;

WHEREAS, solely for purposes of the Settlement, the Parties agree to the certification 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 the date of Preliminary Approval of the settlement.**

WHEREAS, Plaintiffs and Class Counsel believe that this Settlement Agreement offers significant benefits to Class Members and is fair, reasonable, adequate, and in the best interest of all Class Members; and

WHEREAS, the Parties desire and intend to seek Court approval of the settlement as set forth in this Agreement;

NOW, THEREFORE, it is stipulated and agreed that, in consideration of the promises and mutual covenants set forth in this Agreement and the entry by the Court of a Final Order and Judgment (as defined below), the Litigation shall be settled and compromised on the terms and conditions set forth below. It is further agreed that each of the Recitals stated above is true and accurate, and is made a part of this Agreement.

## **I. DEFINITIONS**

As used in this Settlement Agreement, the following terms shall have the meanings set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

1.1. Applicable Allocated Percentage. The term “Applicable Allocated Percentage” shall have the meaning set forth in Paragraph 3.6 of this Settlement Agreement below.

1.2 Claim. The term “Claim” means submission of a Claim Form for a cash payment in the form of a bill credit, check, or electronic payment as described below in Paragraphs 3.3 and 3.4.

1.3. Claim Form. The term “Claim Form” means the form Class Members must complete and submit in order to make a Claim for a cash payment under this Agreement. The Claim Form shall be substantially similar to the form attached as **Exhibit B**.

1.4. Claimant. The term “Claimant” means any Class Member who submits a valid Claim Form (as determined by the Claims Administrator pursuant to Paragraph 3.8 of this Settlement Agreement) for a cash payment as described in Paragraphs 3.4 and 3.5 of this Settlement Agreement.

1.5. Claims Period. The term “Claims Period” means the time period during which Claim Forms may be submitted by Class Members and shall conclude 120 days after the entry of the Preliminary Approval Order (defined below) with respect to this Settlement.

1.6. Class Counsel. The term “Class Counsel” means DeNittis Osefchen Prince, P.C. and Hattis Law PLLC d/b/a Hattis & Lukacs.

1.7. Class Counsel Fees and Expense Award. The term “Class Counsel Fees and Expense Award” means the amount awarded to Class Counsel by the Court for attorneys’ fees, costs and expenses.

1.8. Class Email Notice. The term “Class Email Notice” or “Email Notice” shall mean the Court-approved form of email notice sent by the Settlement Administrator to Class Members informing them of (i) the preliminary approval of the Settlement; (ii) the scheduling of the Final Approval Hearing; and (iii) the opportunity to submit a Claim Form or to exclude themselves from or object to the Settlement. The Class Email Notice shall be substantially similar to the form attached hereto as **Exhibit C** and shall be approved by the Court prior to dissemination.

1.9. Class Long Form Notice. The term “Class Long Form Notice” or “Long Form Notice” means the notice document that will be disseminated or made available to the Class and will contain full and complete information about the Litigation and the claims made therein, the Class Settlement memorialized in this Agreement, and the procedures for Class Members to participate in the Settlement by submitting a Claim Form, to exclude themselves from the Settlement, or to object to the Settlement or to some aspect thereof, such as Class Counsel’s application for attorneys’ fees, costs and expenses or to the application for Incentive Awards.

The Class Long Form Notice shall be substantially similar to the form attached as **Exhibit D** and shall be approved by the Court prior to dissemination.

1.10. Class Members. The term “Class Members” means the members of the Settlement Class.

1.11. Class Period. The term “Class Period” means the time period November 1, 2017 through the date of Preliminary Approval.

1.12. Class Postcard Notice. The term “Class Postcard Notice” or “Postcard Notice” shall mean the Court-approved form of postcard notice to Class Members informing them of (i) the preliminary approval of the Settlement; (ii) the scheduling of the Final Approval Hearing; and (iii) the opportunity to submit a Claim Form or to exclude themselves from or object to the Settlement. The Class Postcard Notice shall be substantially similar to the form attached as **Exhibit E** and shall be approved by the Court prior to dissemination.

1.13. Class Representatives. The term “Class Representatives” or “Named Plaintiffs” means Plaintiffs Katherine Grillo and Christian Reid. “Class Representatives,” “Named Plaintiffs,” and “Plaintiffs” are used interchangeably throughout this Settlement Agreement and have the same meaning.

1.14. Court. The term “Court” means the Superior Court of New Jersey, Mercer County, where the Litigation will be pending.



1.15 Defendants. The term “Defendants” means the named Defendants in the Litigation: 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.

1.16. Defendants’ Counsel. The term “Defendants’ Counsel” means the law firm of Greenberg Traurig, LLP.

1.17 Disclosures. The term “Disclosures” means relevant information about RCN broadband Internet service and the cost of such service that is conveyed in both marketing and advertising materials for such service prepared by certain Defendants and on RCN Telecom’s website, as more fully set forth in Paragraph 3.2 below.

1.18 Effective Date. The term “Effective Date” or “Settlement Effective Date” is the date on which this Settlement becomes Final within the meaning of Paragraph 1.19.

1.19 Federal Action. The term “Federal Action” refers to the lawsuit, currently captioned *Katherine Grillo and Christian Reid, on behalf of themselves and all others similarly situated v. RCN Telecom Services, LLC; RCN Telecom Services (Lehigh), LLC; and Patriot Media Consulting, LLC*, and filed in the United States District Court for the District of New Jersey as Case No. 3:20-cv-08609-GC-TJB.

1.20. Final. With respect to the Judgment, this Settlement, any Claims, the Incentive Awards, or the Class Counsel Fees and Expense Award, “Final” means that the time for appeal or petition for review or writ of certiorari has expired or, if an appeal or petition for review is taken and dismissed or the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Judgment is set aside,

materially modified, or overturned by the Court or on appeal, and is not fully reinstated on further appeal, the Judgment shall not become Final. Any proceeding or order or any appeal or petition for review or writ of certiorari pertaining solely to the Class Counsel Fees and Expense Award or the Incentive Awards will not in any way delay or preclude the Judgment or this Settlement from becoming Final, provided, however, that Defendants shall have no obligation to pay any Class Counsel Fees and Expenses or Incentive Awards until a Final determination on the appropriate amounts of such Class Counsel Fees and Expenses and Incentive Awards has been made.

1.21. Final Approval Hearing and Order. The term “Final Approval Hearing” means the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order, and the term “Final Approval Order” means the Court order that finally certifies the Settlement Class, approves the Settlement as set forth in this Agreement, approves payment of the Incentive Awards and Class Counsel Fees and Expense Award, and makes such other final rulings as are contemplated by this Agreement.

1.22. Incentive Awards. The term “Incentive Awards” means the \$15,000 payment that Defendants have agreed to pay from the Settlement Fund to each Class Representative, Katherine Grillo and Christian Reid, for their contributions to the Litigation, subject to Court approval.

1.23. Judgment. The term “Judgment” means the order of the Court to be issued following the Final Approval Order.

1.24. Litigation. The term “Litigation” means and refers, collectively, to the Federal Action and the State Court Action, as appropriate.

1.25. NJ State Court. The term “NJ State Court” means the Superior Court of New Jersey for Mercer County.

1.26. Notice and Other Administrative Costs. The term “Notice and Other Administrative Costs” means all costs actually incurred by the Settlement Administrator in administering the Settlement, including but not limited to the Settlement Administrator’s administrative fee, setting up and operating the Settlement Website, disseminating the Class Email and Class Postcard Notice, disseminating the payments to Claimants, and tracking Claims, Objections, and Requests for Exclusion.

1.27. Objection and Objection Date. The term “Objection Date” means the date agreed upon by the Parties or otherwise ordered by the Court for Class Members to file an “Objection” to the Settlement or to any terms or provisions set forth in this Agreement, and to submit any required supporting statements, proof, or other materials and/or argument, pursuant to Section VII of this Agreement.

1.28. Parties. The term “Parties” collectively means Plaintiffs Katherine Grillo and Christian Reid, on behalf of themselves and all others similarly situated (the Settlement Class), by and through their counsel, and 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, by and through their counsel.

1.29. Plaintiffs. The term “Plaintiffs” means Plaintiffs Katherine Grillo and Christian Reid, individually and in their representative capacity on behalf of all others similarly situated (the Settlement Class).

1.30. Preliminary Approval. The term “Preliminary Approval” means that the Court has entered an order preliminarily certifying the Settlement Class and preliminarily approving the Settlement and the terms and conditions of this Settlement Agreement, including the content and manner of providing notice to Class Members.

1.31. Preliminary Approval Order. The term “Preliminary Approval Order” means the order of the Court preliminarily certifying the Settlement Class and preliminarily approving the class Settlement memorialized in this Agreement. The Preliminary Approval Order shall be substantially similar to the form attached as **Exhibit F**, subject to Court approval.

1.32. RCN Operating Company. The term “RCN Operating Company” shall refer individually or collectively, as appropriate, to the following Defendants: 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; and Starpower Communications, LLC.

1.33. RCN Terms and Conditions. The term “RCN Terms and Conditions” means, collectively, the RCN Terms and Conditions, the RCN High Speed Internet Service Addendum, and any other agreements incorporated by reference into either of those agreements.

1.34. Request for Exclusion. The term “Request for Exclusion” means any request by any Class Member to be excluded from, or to “opt out” of, the Settlement pursuant to the provisions of Section VI of this Agreement.

1.35. Settlement. The term “Settlement” means the agreement by the Parties to resolve, on a class-wide basis, the Litigation and all Released Claims as set forth in Paragraph 9.1, the terms of which have been memorialized and provided for in this Agreement.

1.36. Settlement Administrator. The term “Settlement Administrator” means Kroll Settlement Administration, 1515 Market Street, Suite 1700, Philadelphia, Pennsylvania 19102.

1.37. Settlement Agreement. The term “Settlement Agreement” or simply “Agreement” means this Settlement Agreement and all of its attached exhibits attached .

1.38. Settlement Class. The term “Settlement Class” means:

**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 the date of Preliminary Approval of the settlement.**

1.39. Settlement Fund. The term “Settlement Fund” means the total cash commitment by Defendants for purposes of effecting the class Settlement of the Litigation, as described in Sections III and IV of this Agreement, with a value capped at \$11,500,000.00. The payment and disposition of the Settlement Fund is subject to the provisions of this Agreement.

1.40. Settlement Website. The term “Settlement Website” means a website created, operated, and maintained by the Settlement Administrator solely for the purpose of making available to the Class Members the documents and information related to the Litigation and this Settlement, and to effect the Claims submission process referenced in Paragraphs 3.4, 3.5, and 5.2 below. The content of the Settlement Website must be approved by Class Counsel and

Defendants' Counsel prior to posting or otherwise making it available to Class Members, which approval shall not be unreasonably withheld.

1.41. State Court Action. The term "State Court Action" refers to a similar action to the Federal Action to be filed within 30 days in the Superior Court of New Jersey, Mercer County attached here as **Exhibit A**.

## **II. REQUIRED EVENTS**

2.1 Class Counsel shall take all reasonable and necessary steps, subject to the Court's availability, to obtain entry of the Preliminary Approval Order and to move for the Final Approval Order as soon as practicable. Defendants' Counsel shall cooperate as set forth in this Agreement.

2.2. The Parties shall jointly move for, or Class Counsel shall move for and Defendants' Counsel shall not oppose, entry of a Preliminary Approval Order in the same or substantially identical form as that attached as **Exhibit F**. In moving for preliminary approval of this Settlement, Plaintiffs shall seek only certification of a settlement class that is expressly conditional on the Settlement obtaining final approval from the NJ State Court.

2.3. Class Counsel will use their best reasonable efforts, consistent with the terms of this Agreement, to promptly obtain a Final Approval Order. Defendants' Counsel shall cooperate as set forth in this Agreement.

2.4. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Agreement is essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other

materials and/or information reasonably necessary or appropriate to carry out the terms of this Agreement and the transactions contemplated hereby.

### **III. SETTLEMENT TERMS**

3.1 Benefit to Settlement Class Members from the Settlement Fund. Defendants will pay up to, and no more than, \$11,500,000.00 in cash, in the form of bill credits, checks, or electronic payments, to fund the following: (i) valid Claims (as determined by the Settlement Administrator pursuant to Paragraph 3.8 below) timely submitted by Settlement Class Members via completed Claim Forms (as described in Paragraphs 3.3 through 3.7 below); (ii) Notice and Other Administrative Costs actually incurred by the Settlement Administrator (including check distribution costs and costs relating to the Settlement Website, as described in Section V below); (iii) the Class Counsel Fees and Expense Award, as described in Paragraph 4.1 below, and (iv) the Incentive Awards to the Class Representatives, as described in Paragraph 4.2 below (collectively, “Settlement Costs”). Other than funding the Settlement Fund with a monetary obligation no greater than and capped at \$11,500,000.00 as set forth in Paragraph 3.3 below, Defendants shall have no further payment obligations to Plaintiffs or Class Members, including those who do not timely submit a valid Request for Exclusion, the Settlement Administrator, or Class Counsel under the Settlement or this Agreement. Therefore, to the extent the Settlement Costs are less than \$11,500,000.00, such Settlement Costs will represent Defendants’ maximum financial obligation under this Agreement.

3.2 Injunctive Relief. As further relief to Class Members, Defendants have revised language in the Disclosures to better describe the NAM Fee and to enhance the prominence of the Disclosures. Without admitting Plaintiffs’ allegations, Defendants submit that they have undertaken good faith efforts to address the allegations and concerns expressed by Plaintiffs in

the Litigation regarding the prior manner of disclosure of the NAM Fee and the related sign-up practices, while continuing to charge the NAM Fee as a separate charge billed to customers of broadband Internet service. Specifically, as a result of this settlement, Defendants have made the following changes:

a) Advertising for broadband Internet service on Defendants' website and in various print media presently includes the following language regarding monthly billing plans for such service:

Price does not include Network Access and Maintenance Fee of \$6.97/month, which is subject to change. Network Access and Maintenance Fee helps defray costs associated with building and maintaining our fiber rich broadband network, as well as the costs of expanding network capacity to support the continued increase in customers' average broadband consumption. This fee is neither government-mandated nor a tax, fee or surcharge imposed by the government; it is a fee that [RCN] assesses and retains. Additional fees apply for taxes, surcharges, equipment, activation and installation that are not included as part of the package and are subject to change.

b) The description of the NAM Fee on RCN Telecom's website presently states as follows:

**Network Access and Maintenance Fee** helps defray costs associated with building and maintaining Astound Broadband's fiber rich broadband network, as well as the costs of expanding network capacity to support the continued increase in customers' average broadband consumption.

This description presently appears on a webpage entitled, "Understanding Taxes and Fees"; on an FAQ webpage, under a sub-heading entitled, "What are the taxes, surcharges and fees"; and may also appear on one or more similarly worded webpages elsewhere on the website.

c) Defendants' billing statements continue to include a separate line item for a "Network Access and Maintenance Fee," which appears in the same font and type size, and in the same location as other fees, surcharges and taxes, on the monthly billing statements.



It is understood and agreed that revisions or any subsequent changes to the Disclosures and billing statements are within Defendants' sole discretion. No provision of this Agreement shall preclude Defendants from continuing to charge NAM Fees, adjusting the amount thereof, or making further changes to the language in the Disclosures and billing statements regarding the NAM Fee or the manner in which such Disclosures and billing statements are provided.

3.3 Total Financial Commitment. Defendants' total financial commitment and obligation under this Agreement, including but not limited to paragraph 3.1, shall not exceed \$11,500,000.00.

3.4 Schedule of Payments into the Settlement Fund. Defendants shall not be required to make payments into a separate, physical Settlement Fund or account; however, Defendants do acknowledge they shall be required to make payment of monies, not to exceed a total of \$11,500,000.00, at various times as set forth in more detail herein for payment of the following items from the Settlement Fund:

a. *Notice and Other Administrative Costs.* Amounts associated with the administration of the Settlement, including the Settlement Administrator's Administrative Fee, costs of disseminating the Class Notice and Class Awards, costs of creating the Settlement Website, and other administrative costs.

b. *Class Counsel Fees and Expense Award.* An amount equal to the Class Counsel Fee and Expense Award, to be paid as described at Paragraph 4.1, below.

c. *Incentive Awards.* An amount equal to the Incentive Awards as ordered by the Court, to be paid as described at Paragraph 4.2, below.

d. *Payment of Valid Claims.* An amount up to, but no greater than, \$11,500,000.00, less the sum of (i) the total Notice and Other Administrative Costs, (ii) the Class

Counsel Fees and Expense Award, and (iii) the Incentive Awards, which represents the maximum value of the net settlement fund from which valid Claims (as determined by the Settlement Administrator pursuant to paragraph 3.8 below) are to be paid within 60 days of when this Settlement becomes Final.

3.5 Bill Credit Versus Check or Electronic Payment.

a. Class Members who are current customers of any RCN Operating Company who file a valid Claim (as determined by the Settlement Administrator pursuant to Paragraph 3.8 below) may choose to receive either: (a) 100% of the Applicable Allocated Percentage of all of their NAM Fees paid as set forth in Paragraph 3.6 (subject to Pro-Rata Reduction as specified in Paragraph 3.9), in the form of a bill credit to a future bill; or (b) 50% of the Applicable Allocated Percentage of all of their NAM Fees paid as set forth in Paragraph 3.6 (subject to Pro-Rata Reduction as specified in Paragraph 3.9), in the form of a check or electronic payment.

b. Class Members who are former customers of any RCN Operating Company who file a valid Claim (as determined by the Settlement Administrator pursuant to Paragraph 3.8 below) will receive 50% of the Applicable Allocated Percentage of all of their NAM Fees paid as set forth in Paragraph 3.6 (subject to Pro-Rata Reduction as specified in Paragraph 3.9), in the form of a check or electronic payment.

3.6 Applicable Allocated Percentages For Class Members.

a. The Applicable Allocated Percentage for each Class Member who is either a current or former customer and who signed up for service after February 17, 2019 shall be 80% of the NAM Fees paid by that Class Member.

b. The Applicable Allocated Percentage for each Class Member who is either a current or former customer and who signed up for service before February 17, 2019 and who was a customer anytime on or after that date, shall be 40% of the NAM Fees paid by that Class Member.

c. The Applicable Allocated Percentage for each Class Member who is a former customer and who signed up for service before February 17, 2019 and who was not a customer anytime on or after that date, shall be 20% of the NAM Fees paid by that Class Member.

3.7 Proof of Claim. In order to submit a Claim for a cash payment under the Settlement, a Claimant must complete and submit a Claim Form that includes certain information specified in the Claim Form, sufficient to permit the Settlement Administrator to identify the Class Member and confirm the Claimant's account status with an RCN Operating Company and the amount of NAM Fees the Claimant paid. Each Claimant shall complete the Claim Form either in online or in hard copy form, and shall either submit the Claim Form to the Settlement Administrator electronically via the Settlement Website or mail the original signed Claim Form to the Settlement Administrator.

3.8 Review of Claims. The Settlement Administrator shall be responsible for reviewing all Claims to determine their validity, including, but not limited to, rejecting any Claim that does not comply in any respect with the instructions on the Claim Form, that is submitted after the close of the Claims Period, or that is submitted by an individual who has not been identified or otherwise verified by Defendants as a Class Member. The Settlement Administrator is authorized to require such additional information as it deems necessary to verify

the validity of any Claims, in accordance with customary and reasonable fraud prevention practices.

3.9 Pro-Rata Reduction of the Settlement Fund. If the dollar value of valid Class Member Claims, determined in accordance with Paragraphs 3.4 through 3.8 above, exceeds the amount in the Settlement Fund available to satisfy those Claims after payment of the Notice and Other Administrative Costs, the Class Counsel Fees and Expense Award, and the Incentive Awards, then payments to Class Members from the Settlement Fund shall be reduced on a pro-rata basis, such that the total available cash will satisfy all Claims.

3.10 Unclaimed Settlement Class Benefits of Valid Claims or Uncleared Checks. Those Settlement Class Members whose checks are not cashed within 180 days after issuance shall be ineligible to receive a cash settlement benefit, and Defendants shall have no further obligation to make any payment pursuant to this Agreement, or otherwise, to such Settlement Class Members, and such monies will revert back to the Defendants. In addition, after payment of all timely Claims of Class Members, the Notice and Other Administrative Costs, the Class Counsel Fees and Expense Award, and the Incentive Awards, as approved by the Court, Defendants shall have no further obligation to make any payment under the Settlement Fund or pursuant to this Agreement, and any remaining monies in the Settlement Fund will revert back to the Defendants.

#### **IV. ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARDS**

4.1. Within 20 days of the Final Approval Hearing, Class Counsel shall petition the Court for (and Defendants have agreed not to oppose) an award of attorneys' fees in an amount not to exceed 33.33% of the maximum total value of the Settlement Fund (*i.e.*, \$3,832,950.00),

plus reimbursement of Class Counsel's out-of-pocket costs and expenses in the amount of \$1,451.72. Class Counsel's attorneys' fees and costs, if approved by the Court, shall be paid from the Settlement Fund no later than 20 days after the Settlement becomes Final. Plaintiffs and Class Counsel agree that they will not seek recovery of any greater amounts of attorneys' fees and expenses than that set forth in this Paragraph. The Parties understand and acknowledge that the award of attorneys' fees and expenses is within the Court's discretion.

4.2. Given the efforts of Plaintiffs on behalf of the Class Members, the Parties have agreed that Plaintiffs Katherine Grillo and Christian Reid shall each receive a one-time Incentive Award in the amount of \$15,000 to be paid from the Settlement Fund, if approved by the Court, upon petition to be submitted within 20 days of the Final Approval Hearing. Such Incentive Awards, if approved by the Court, shall be paid by checks made payable to each Plaintiff and shall be delivered to Class Counsel no later than 20 days after the Settlement becomes Final.

4.3 The Parties' negotiation of and agreement to the foregoing attorneys' fees and expenses did not occur until after the substantive terms of this Agreement had been negotiated and agreed upon.

4.4 If and to the extent that counsel other than DeNittis Osefchen Prince, P.C. or Hattis & Lukacs apply for an award of attorneys' fees and expenses, Defendants reserve the right to oppose all such applications on any grounds, including, but not limited to, that Defendants have not agreed to pay such fees and expenses and that they are unreasonable or duplicative. Class Counsel shall cooperate with Defendants to the extent reasonably necessary to effectuate the intent of this Paragraph, and hereby warrant and represent that, as of the date of this Agreement, they are unaware of any other counsel who intend to apply for an award of attorneys' fees and expenses in addition to that by the undersigned.

4.5 If this Agreement is terminated pursuant to any of its provisions, Defendants' obligations under this Section, including the obligation to pay any amount of attorneys' fees, expenses or incentive awards, shall likewise be terminated.

4.6 Any application for an award of attorneys' fees and expenses or incentive awards is to be considered separate from the approval of this Settlement, and any challenges to any such awards shall not terminate or delay the Settlement, provided, however, that Defendants shall have no obligation to pay any Class Counsel Fees and Expenses or Incentive Awards until a Final determination on the appropriate amounts of such Class Counsel Fees and Expenses and Incentive Awards has been made.

**V. CLAIMS ADMINISTRATION AND NOTICE TO CLASS MEMBERS**

5.1 The Settlement Administrator, subject to Court approval, shall help implement the terms of the proposed Settlement as set forth in this Agreement. The Settlement Administrator shall be responsible for administering the Settlement and related tasks, including, without limitation, (a) establishing the Settlement Website at which Claims can be filed online, and which posts the Class Email and Postcard Notices, Class Long Form Notice, Claim Form, and other related documents as directed by Class Counsel, (b) distributing and publishing the Class Email and Postcard Notices to Class Members, (c) answering inquiries from Class Members and/or forwarding such inquiries to Class Counsel, (d) receiving and maintaining on behalf of the Court and the Parties any Class Member correspondence regarding Requests for Exclusion to the Settlement, (e) receiving, reviewing and processing Claims and distributing payments to Class Members with valid Claims, and (f) otherwise assisting with the implementation and administration of the Settlement terms.

5.2 Performance Standards of Settlement Administrator. The contract with the Settlement Administrator shall obligate the Settlement Administrator to abide by the following performance standards:

- a. The Settlement Administrator shall provide prompt, accurate, and objective responses to inquiries from Class Counsel and Defendants' Counsel, and shall periodically report on Claims, Requests for Exclusion, objectors, etc.; and
- b. The Settlement Administrator shall keep no confidences from counsel for either of the Parties in connection with its administration of this Settlement Agreement.

5.3 Class Member Information Provided by Defendants to the Settlement Administrator.

a. On or before 15 calendar days after entry of the Preliminary Approval Order, Defendants shall provide the following Class Member information to the Settlement Administrator:

- (a) A list of any and all persons whom Defendants' records indicate are Class Members and their last known email and postal addresses;
- (b) The RCN Account Number(s) for each Class Member (if possible);
- (c) The total amount of NAM Fees paid by each Class Member; and
- (d) The Applicable Allocated Percentage for each Class Member based on Defendants' records, as calculated according to paragraph 3.6 above. Alternatively, Defendants shall provide information sufficient for the Settlement Administrator to calculate the Applicable Allocated Percentage for each Class Member (i.e., the dates the Class Member subscribed to service from RCN such that the Settlement Administrator can determine which of the three groups specified in Paragraph 3.6 to which each Class Member belongs).

b. Because the information about Class Members that will be provided to the Settlement Administrator by Defendants will consist of confidential information, non-public personal information, and other information protected by privacy laws, the Settlement Administrator will execute a non-disclosure agreement and will take all reasonable steps to ensure that any information provided to it by Defendants will be used solely for the purpose of effectuating this Settlement. Any such information provided to the Settlement Administrator will not be provided to Plaintiffs or Class Counsel. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Agreement.

#### 5.4 Notice Requirements to Class Members.

a. The Settlement Administrator will send via electronic mail two Class Email Notices to Class Members who are identified by Defendants and for whom Defendants provided or the Settlement Administrator can find an email address. The Settlement Administrator will send the first Email Notice on or before 60 calendar days after entry of the Preliminary Approval Order, and will send the Second Email Notice 75 calendar days after the entry of Preliminary Approval. The form of the Class Email Notice shall be substantially similar to the form attached hereto as **Exhibit C**, and shall be approved by the Court prior to dissemination.

b. The Settlement Administrator will also send via U.S. Mail a Class Postcard Notice to Class Members for whom Defendants do not have valid email addresses, at the Class Members' last known mailing addresses as set forth in Defendants' records. The Settlement Administrator will mail the Class Postcard Notice on or before 60 calendar days after entry of the Preliminary Approval Order. Should the Settlement Administrator receive any undelivered Class Postcard Notices, it will conduct one skip trace or postal look-up to search for



a new address for such Class Member and resend the Class Postcard Notice to any newly found Class Member address. The form of the Class Postcard Notice shall be substantially similar to the form attached as **Exhibit E** to this Agreement, and shall be approved by the Court prior to dissemination.

c. The Class Email Notice and Class Postcard Notice will each contain information informing Class Members of (i) the preliminary approval of the Settlement; (ii) the scheduling of the Final Approval Hearing; (iii) information for Class Members to obtain a Claim Form in order to submit a Claim; and (iv) their opportunity to exclude themselves from or object to the Settlement. The costs for processing and disseminating the Class Email Notice and Class Postcard Notice will be paid from the Notice and Other Administrative Costs paid to the Settlement Administrator from the Settlement Fund.

d. The Settlement Administrator shall create a Settlement Website [www.rcnNAMfeesettlement.com](http://www.rcnNAMfeesettlement.com) or substantially similar thereto, which will contain information describing the settlement and will contain the Class Long Form Notice (**Exhibit D** hereto), the Class Email Notice (**Exhibit C**), the Class Postcard Notice (**Exhibit E**), the Claim Form (**Exhibit B**), Class Counsel's contact information, a copy of this Settlement Agreement, and a copy of Plaintiffs' operative Complaint in the Litigation, as filed in the Superior Court of New Jersey, Mercer County (**Exhibit A**). The Settlement Administrator will create the Settlement Website on or before 25 calendar days after entry of the Preliminary Approval Order. The cost of the Settlement Website will be paid for from the Notice and Other Administrative Costs paid to the Settlement Administrator from the Settlement Fund. The Class Long Form Notice, Class Email Notice, Class Postcard Notice, and Claim Form will also be posted by Class Counsel in a prominent location on Class Counsel's website [www.denittislaw.com](http://www.denittislaw.com).

e. Claimants who are current internet customers of any RCN Operating Company shall provide on the Claim Form their name, address, e-mail, RCN Account Number, and unique Claim ID generated by the Settlement Administrator which is on the top of the Email Notice or Postcard Notice. Class members who are former customers of an RCN Operating Company shall provide on the Claim Form their name, address, e-mail, account number (if known), and unique Claim ID.

f. The Claims Period shall run for a period of 120 days, commencing on the date the Preliminary Approval Order is entered.

g. Proof of Notice. No later than ten days prior to the Final Approval Hearing, the Settlement Administrator shall provide an affidavit to the Court, with a copy to Class Counsel, attesting that notice was published online and distributed, and claims were received and processed, in a manner consistent with the terms of this Settlement Agreement.

h. All valid Claim Forms must be postmarked or received by the Settlement Administrator no later than 150 days from the date of the Preliminary Order. The Claim Forms must be submitted to the Settlement Administrator either electronically via the Settlement Website or via U.S. Mail.

i. Within 90 days of the Settlement becoming Final, the Settlement Administrator shall, consistent with Paragraphs 3.5 and 3.6 and the information provided by Defendants, distribute payments from the Settlement Fund to eligible Class Members who have, in a timely manner, completed valid Claim Forms and submitted such forms to the Settlement Administrator, as follows:

(a) The Settlement Administrator shall transfer all Claimant bill credit information to Defendants so that Defendants can credit the relevant accounts of eligible current

subscriber Claimants who chose to receive payment in the form of a bill credit. Defendants shall apply any such bill credits to Claimant accounts within 90 days of the Settlement becoming Final.

(b) The Settlement Administrator shall send payment to eligible former subscriber Claimants and to eligible current subscriber Claimants who chose to receive cash, in the form of either checks sent via U.S. Mail or in the form of the electronic payment method previously chosen by the Claimant. Should a check be returned as undeliverable, the Settlement Administrator will use its reasonable best efforts to conduct a postal look-up to locate the proper address of the Class Member in order to re-mail the check to the proper address. The costs for processing and mailing out checks to Class Members will be paid from the Notice and Other Administrative Costs paid to the Settlement Administrator from the Settlement Fund.

5.5 The Parties agree that the methods of notice set forth in this Section constitute the best form of notice to the Class Members that is practicable under the circumstances.

## **VI. REQUESTS FOR EXCLUSION BY CLASS MEMBERS**

6.1 Any Class Member may make a Request for Exclusion by mailing such request in writing to the Settlement Administrator, at the address set forth on the Settlement Website and in the Class Long Form Notice. Any Request for Exclusion must be mailed and postmarked no later than 20 days prior to the date of the Final Approval Hearing. Any Request for Exclusion shall state the name, address, telephone number and email address of the person requesting exclusion, shall include a statement that they are a Class Member, shall contain a clear statement communicating that such person elects to be excluded from the Settlement Class and from any

Judgment entered pursuant to this Settlement, and shall contain the person's signature or the signature of an individual authorized to act on the person's behalf.

6.2. Any Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under the Settlement and/or this Agreement.

6.3. The Settlement Administrator shall report the names of all individuals who have submitted a Request for Exclusion to the Court no less than 10 days prior to the Final Approval Hearing.

6.4 Any Class Member who wishes to be excluded from the Settlement Class can only opt out for himself or herself and, except for minors, cannot opt out for any other person. Nor can any person within the Settlement Class authorize any other person to opt out on his or her behalf.

## **VII. OBJECTIONS BY CLASS MEMBERS**

7.1. The Parties will request that the Court enter an order requiring any Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, to file a written notice of objection with the Court no later than 20 days prior to the Final Approval Hearing, and to mail a copy of such objection to the Settlement Administrator, Class Counsel and Defendants' Counsel. Such objections shall: (i) state the name, address and telephone number of the person, (ii) state whether the person is represented by counsel, and if so the identity of such counsel, (iii) provide proof of membership in the Settlement Class, (iv) contain a detailed statement of each objection asserted, including the grounds for objection and reasons for appearing and being heard, together with any evidence and

documents in support of the objection, and (v) contain the person's signature or the signature of an individual authorized to act on the person's behalf.

7.2. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objections to the Settlement, in accordance with such Class Member's due process rights. The Preliminary Approval Order and Class Long Form Notice will require all Class Members who have any objections to file with the Court such notice of objection or request to be heard, and to serve by mail or hand delivery such notice of objection or request to be heard upon the Settlement Administrator at the address set forth in the Class Long Form Notice and posted on the Settlement Website, by no later than the Objection Date. The Preliminary Approval Order will further provide that objectors who fail to properly or timely file their objections with the Court, along with the required information and documentation set forth above, or who fail to serve them as provided above, shall not be heard during the Final Approval Hearing, nor shall their objections be considered by the Court.

7.3 Class Members may object either on their own or through an attorney hired at their own expense. If an objecting Class Member hires an attorney to represent him or her, that attorney must file with the Court and serve upon the Parties' respective counsel, a notice of appearance no later than 20 days before the Final Approval Hearing.

7.4 Any objection that fails to satisfy the requirements of this Section, or that is not properly and timely submitted, shall be deemed ineffective, and deemed by the Parties to have been waived, and the Parties will argue that the Class Member asserting such objection may not have his or her objection heard or otherwise considered by the Court.

## **VIII. COURT ADMINISTRATION OF THE SETTLEMENT**

8.1 The Parties agree that, within five days of the full execution of this Settlement Agreement, they will contact the United States District Court for the District of New Jersey to request a stay of the Federal Action. Within 20 days of the New Jersey District Court entering a stay, Plaintiffs will file a complaint in NJ State Court in the form attached as **Exhibit A**. The Parties further agree that, within 30 days of the full execution of this Agreement, they will execute a Stipulation of Dismissal without prejudice of the Litigation in the NJ State Court, in the form attached as **Exhibit G**, to be held in escrow until the event described in Paragraph 8.5 below occurs, if ever.

8.2. The Parties agree that Plaintiffs will stipulate to as many extensions of time of the deadline for Defendants to answer or otherwise respond to the complaint in NJ State Court as are necessary, and that Plaintiffs may move for preliminary and final approval of this settlement before Defendants have filed an answer or motion to dismiss any complaint submitted by Plaintiffs to NJ State Court. Plaintiffs agree that, in moving for preliminary approval of this Settlement, they shall seek certification of only a Settlement Class that is expressly conditional on the Settlement obtaining final approval from the NJ State Court.

8.3. If the NJ State Court makes any order whose terms are inconsistent with the terms of this Agreement (except for an order reducing the amount of legal fees or expenses awarded to Class Counsel or the Plaintiffs' individual incentive awards), then either party has the right to terminate and withdraw from this Agreement.

8.4. This Agreement was entered into only for the purpose of settlement of the Litigation. In the event that (a) this Agreement is terminated by any Party as permitted by the preceding Paragraph; (b) the NJ State Court conditions either the Preliminary Approval Order or the Final Approval Order and Judgment on any modifications of this Agreement that are not

acceptable to all Parties; (c) the NJ State Court does not finally approve this Agreement or enter a Final Approval Order and Judgment; or (d) a final settlement does not occur for any reason, then this Agreement shall be deemed null and void *ab initio* and the Parties shall be deemed restored to their respective positions as of the date of the filing of a complaint in NJ State Court. In that event: (a) any Settlement Class shall be immediately de-certified, and any order granting preliminary approval of the Settlement shall immediately be deemed null, void and vacated, and shall have no further force and effect, all without the need for any further action by the Court or the Parties; (b) the Action brought by Plaintiffs in NJ State Court will revert to the status on its filing date; (c) no term or draft of this Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Litigation or any other proceeding, except as expressly provided in Paragraphs 8.5 and 8.6 below; and (d) the Parties will contact the court to lift the stay in the Federal Action, and pursue settlement at that time in the Federal Action, all as more fully described below. If the NJ State Court does not approve this Agreement or enter a Final Approval Order and Judgment for any reason, Defendants shall retain all of their rights to object to the maintenance of either the Federal Action, the State Court Action or any other lawsuit as a class action, and nothing in this Agreement or other papers or proceedings related to this Agreement shall be used as evidence or argument by any Party concerning whether any such action may properly be maintained as a class action.

8.5. If, for any reason, any of the events described in clauses (a) through (d) of the second sentence in the preceding Paragraph 8.4 occurs, any Party may, upon 20 days' notice to the adverse Party or Parties, file a Stipulation of Dismissal without prejudice in the form attached as **Exhibit G** with the NJ State Court.

8.6. In the event that the circumstances described in the preceding Paragraph 8.5 take place, then this Agreement may be used solely for the purpose of effectuating Plaintiffs' right to lift the stay of the Federal Action and to refile a settlement agreement in a form substantially identical to this Agreement (other than the above provisions in Paragraphs 8.1 through 8.5 relating to the stay of the Federal Action and the refiling of the State Court Action and related language), and in that event, the Parties shall then stand in the same position as currently existed at the time that they filed the stay in the Federal Action. To the extent feasible, the Parties shall be returned to their respective positions in the Federal Action. In such circumstances, it is the intention and agreement of the Parties to enter into a new settlement agreement with all of the above terms (other than the above provisions in Paragraphs 8.1 through 8.5 above relating to stay of the Federal Action and the State Court Action).

#### **XI. RELEASE, DISMISSAL OF LITIGATION, AND JURISDICTION OF COURT**

9.1. Release. Upon the Settlement Effective Date, the Class Representatives, for themselves and on behalf of all Class Members, and each of the Class Representatives' and Settlement Class Members' respective heirs, spouses, parents, family members, trustees, executors, administrators, successors, assigns, employees, agents, representatives, any and all other persons or entities acting under the supervision, direction, control or on behalf of any of the foregoing, and any and all other persons or entities that could claim by or through them (collectively, the "Class Representative and Settlement Class Releasers"), hereby fully, finally, and forever settle and compromise with, and release and discharge, Defendants and their respective present and former parent companies and any and all other companies in the parent companies' chain of ownership, subsidiaries, divisions, related or affiliated companies, wholly owned companies, owners, shareholders, partners, members, officers, directors, managers,



employees, consultants, agents, attorneys, insurers, representatives, accountants, beneficiaries, heirs, successors, predecessors, assigns, vendors, business partners, and any individual or entity which could be jointly liable with any of the foregoing, and all other persons acting under the supervision, direction, control or on behalf of any of the foregoing (collectively, the “Defendant Releasees”) of and from all claims that were made or could have been made based on the facts alleged in the Litigation arising out of, concerning or related to Defendants’ charging, manner and sufficiency of disclosure or description of the NAM Fee, and the related sign-up practices, and arising prior to the Settlement Effective Date, 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 the Class Representative and Settlement Class Releasors now have or ever had against the Defendant Releasees, arising out of, concerning or related to Defendants’ charging, manner and sufficiency of disclosure or description of the NAM Fee, and the related sign-up practices, or any conduct alleged or that could have been alleged in Federal Action or the State Court Action, arising out of, concerning or related to Defendants’ charging, manner and sufficiency of disclosure or description of the NAM Fee, and the related sign-up practices (collectively, the “Released Claims”). This paragraph is referred to in this Settlement Agreement as the “Release.”

9.2. This Settlement Agreement and Release do not affect the rights of Class Members who timely and properly opt out of the Settlement.

9.3. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement as memorialized in this Agreement, including, but not limited to, the Release. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Class Members from prosecuting Released Claims.

9.4. Upon the Settlement Effective Date: (i) the Settlement Agreement shall be the final and exclusive remedy for any and all Class Members for the Released Claims, except those who have opted out in accordance with the terms and provisions hereof; (ii) Defendants shall not be subject to any liability or expense to any Class Members with respect to Released Claims except as set forth herein; and (iii) Class Members shall be permanently barred from initiating, asserting, or prosecuting any and all Released Claims against Defendants in any manner, including in any local, state, or federal agency or court in the United States or any other tribunal.

9.5 Dismissal of the Federal Action and No Other Lawsuit Pending. Upon the Settlement Effective Date, Plaintiffs will cause the stayed Federal Action to be dismissed with prejudice. Plaintiffs agree not to refile the Federal Action or otherwise pursue their claims based on the facts alleged in the Federal Action or the State Court Action against Defendants. Other than the Federal Action, Plaintiffs represent that they have not filed any lawsuit, claim, charge, or complaint against Defendants concerning the subject matter of the Litigation—*i.e.*, Defendants' charging of NAM Fees, the manner and sufficiency of disclosure or description of

the NAM Fee, and the related sign-up practices, —with any local, state, or federal agency or court. In the event that any agency or court assumes jurisdiction of any lawsuit, claim, charge or complaint, or purports to bring any legal proceedings on Plaintiffs’ behalf against Defendants concerning the subject matter of the Litigation, then Plaintiffs shall promptly request that the agency or court withdraw from and dismiss the lawsuit, claim, charge, or complaint with prejudice.

9.6 Plaintiffs and Class Counsel expressly understand and acknowledge that certain state statutes and principles of common law provide that a “general” release does not extend to claims that a creditor does not know or suspect to exist in his, her or its favor at the time of executing the release and which, if known, must have materially affected the settlement with the debtor. To the extent that any Class Member may argue that such statutes or principles of common law are applicable here, Plaintiffs, on behalf of themselves and the Class Members, agree that any such statutes, principles of common law or other sources of legal authority of any and all jurisdictions that may be applicable are hereby knowingly and voluntarily waived and relinquished as they relate to released Claims by the Class Members, and further agree and acknowledge that this is a material term of this Agreement.

9.7 This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for a temporary restraining order or preliminary or permanent injunction against, any action, suit or other proceeding, which has been or may be instituted, prosecuted, continued to be prosecuted, or attempted, asserting any released Claims.

9.8 No person shall have any claim against Defendants based on the administration of this Agreement, including without limitation, to any distribution made or not

made pursuant to this Agreement, except as to obligations imposed on Defendants by this Agreement.

**X. REPRESENTATIONS, WARRANTIES AND COVENANTS**

10.1. Class Counsel and Plaintiffs, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiffs and the Settlement Class, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiffs and constitutes their legal, valid and binding obligation.

10.2. Defendants' Counsel and Defendants, who are signatories hereof, represent and warrant that they have the authority to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Defendants' Counsel and Defendants and constitutes their legal, valid, and binding obligation.

10.3 The Parties each represent and warrant that they have not assigned, transferred or purported to assign or transfer, in whole or in part, any interest in any of the rights and claims that are the subject of this Agreement.

**XI. MISCELLANEOUS PROVISIONS**

11.1. This Settlement Agreement, and the Exhibits and related documents hereto, are not to be used in evidence and shall not at any time be construed or deemed to be any admission or concession by Defendants with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Defendants specifically deny all of the allegations

made in connection with the Litigation. This provision shall survive the expiration or voiding of the Settlement Agreement.

11.2. The names, addresses, email addresses, customer numbers, and other information that may be compiled by Defendants pursuant to this Agreement, and the data processing and other record keeping procedures and materials to be utilized by the Settlement Administrator in identifying the Class Members and effectuating the other obligations hereunder are represented by Defendants to constitute highly confidential and proprietary business information. To the extent necessary, the confidentiality of all such information shall be protected by entry by the Court of an agreed protective order which, at the option of the Defendants, may be included as part of the Approval Order.

11.3. This Settlement Agreement is entered into only for purposes of Settlement. In the event that this Agreement is not finally approved in all material ways as written, then this Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Litigation, and all Parties shall be restored to their prior positions as if the Agreement had not been entered into.

11.4. The headings of the sections and Paragraphs of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

11.5. This Agreement, including all Exhibits attached hereto, may not be modified or amended except in writing signed by all counsel for the Parties.

11.6. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The Parties further agree that this Agreement shall be binding upon the transmission by each Party of a signed signature page thereof to the adverse Parties via electronic means (*e.g.*, via facsimile or scan of a .pdf document), and such signatures shall have the same force and effect as original signatures.

11.7. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Jersey without giving effect to any choice or conflict of law provision, or rule that would cause the application of the laws of any other jurisdiction.

11.8. Except as otherwise provided in this Agreement, each Party to this Agreement shall bear his, her, or its own costs of the Litigation.

11.9. The Parties to this Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

11.10. The determination of the terms of, and the drafting of, this Agreement, including its Exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and

execution of this Agreement, and there was no disparity in bargaining power among the Parties to this Agreement.

11.11. Integrated Agreement. All of the Exhibits of this Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Agreement and the Exhibits hereto constitute the entire, fully integrated agreement between the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the Settlement of the Litigation.

11.12. Dispute Resolution. The Parties agree that any disputes regarding the terms and conditions of this Agreement, the Parties' rights and obligations under this Agreement, or as to any disagreement regarding the manner in which any issue or dispute arising under this Agreement should be resolved, shall be submitted to the Court administering this Settlement Agreement. That Court shall retain continuing and exclusive jurisdiction over the Parties, including all Class Members, over the administration and enforcement of the Settlement and this Agreement, and over the distribution of benefits to the Class Members. Any disputes or controversies arising with respect to the interpretation, enforcement or implementation of the settlement or this Agreement must be submitted by formal and proper motion to that Court.

11.13. Notices. All notices to the Parties' attorneys under this Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses:

If to Plaintiffs or Class Counsel:

Stephen P. DeNittis, Esquire  
Joseph Osefchen, Esquire  
Shane Prince, Esquire  
DeNittis Osefchen Prince, P.C.  
5 Greentree Centre  
525 Route 73 North, Suite 410  
Marlton, New Jersey 08053

856-797-9951 (phone)  
856-797-9978 (fax)  
sdenittis@denittislaw.com

and

Daniel M. Hattis, Esquire  
Paul Karl Lukacs, Esquire  
Hattis & Lukacs  
400 108<sup>th</sup> Ave NE, Suite 500  
Bellevue, WA 98004  
(425) 233-8650  
dan@hattislaw.com

If to Defendants or Defendants' Counsel:

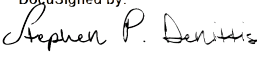
David E. Sellinger, Esquire  
Todd L. Schleifstein, Esquire  
Greenberg Traurig, LLP  
500 Campus Drive, Suite 400  
Florham Park, NJ 07932  
Phone: 973-360-7900  
Fax: 973-301-8410

11.14. If the date for performance of any act required by or under this Agreement to be performed on a particular day or within a specified period of time falls on a Saturday, Sunday or legal or Court holiday, such act may be performed upon the next business day, with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.




**IN WITNESS WHEREOF**, Plaintiffs and Defendants and their respective counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: 7/25/2022, 2022

DocuSigned by:  
  
DC4A4BAE85DC490  
Stephen P. DeNittis  
DeNittis Osefchen Prince, P.C.  
Counsel for Plaintiffs and the Settlement Class

Dated: 7/25/2022, 2022

DocuSigned by:  
  
A2F82C8ADE7E44E...  
Daniel Hattis  
Hattis & Lukacs  
Counsel for Plaintiffs and the Settlement Class

Dated: 7/25/2022, 2022

DocuSigned by:  
  
9E7FE4F44C2046E...  
Christian Reid  
Plaintiff

Dated: 7/25/2022, 2022

DocuSigned by:  
  
9ACC4E9A2AB44C3...  
Katherine Grillo  
Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
David E. Sellinger  
Greenberg Traurig, LLP  
Counsel for Defendants

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
By:  
  
Defendants

**IN WITNESS WHEREOF**, Plaintiffs and Defendants and their respective counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Stephen P. DeNittis  
DeNittis Osefchen Prince, P.C.  
Counsel for Plaintiffs and the Settlement Class

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Daniel Hattis  
Hattis & Lukacs  
Counsel for Plaintiffs and the Settlement Class


Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Christian Reid  
Plaintiff

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Katherine Grillo  
Plaintiff

Dated: \_\_\_\_\_, 2022

  
\_\_\_\_\_  
David E. Sellinger  
Greenberg Traurig, LLP  
Counsel for Defendants

Dated: \_\_\_\_\_, 2022

  
\_\_\_\_\_  
By: JEFFREY B. KRAMP  
42 EVP, Secretary & General Counsel

# Exhibit A

**DeNITTIS OSEFCHEN PRINCE, P.C.**

Stephen P. DeNittis, Esq.  
Joseph A. Osefchen, Esq.  
Shane T. Prince, Esq.  
525 Route 73 North, Suite 410  
Marlton, New Jersey 08053  
(856) 797-9951  
[sdenittis@denittislaw.com](mailto:sdenittis@denittislaw.com)  
[josefchen@denittislaw.com](mailto:josefchen@denittislaw.com)  
[sprince@denittislaw.com](mailto:sprince@denittislaw.com)

Attorneys for Plaintiffs and the Proposed Classes

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

Plaintiffs,

v.

RCN TELECOM SERVICES, LLC; RCN  
TELECOM SERVICES OF  
MASSACHUSETTS, 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;  
STARPOWER COMMUNICATIONS, LLC;  
and PATRIOT MEDIA CONSULTING, LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
MERCER COUNTY  
LAW DIVISION

DOCKET NO. MER-L-**XXX**-22

**CLASS ACTION**

**INTRODUCTION**

1. This is a proposed class action, brought under New Jersey law, challenging a bait-and-switch scheme perpetrated by Defendants against RCN broadband internet customers through the use of deceptive and uniform policies, practices and advertising.

2. Specifically, RCN's advertising and its sign-up policies and practices deceive consumers by promising a particular flat monthly rate for its internet service. Then, after customers sign up, RCN actually charges higher monthly rates than the customers were promised by padding customers' bills each month with a fictitious "Network Access and Maintenance Fee" (currently \$4.37) on top of the advertised price.

3. The Network Access and Maintenance Fee (the "Fee") is not disclosed to customers before or when they agree to receive internet services from RCN, and in fact the Fee is never adequately or honestly disclosed to them.

4. The first time RCN even mentions the existence of the Fee is on customers' monthly billing statements, which customers begin receiving only after they sign up for the service and are committed to their purchase. In furtherance of its unlawful scheme, RCN deliberately hides and misrepresents the Fee in its billing statements by burying the Fee in the "Taxes, Surcharges & Fees" section of the bill where RCN lumps it together with purported taxes and government mandated fees. Further, fine print on the bill directs consumers who seek an "explanation" of the Fee to go to a webpage where RCN affirmatively misrepresents and falsely states that the Network Access and Maintenance Fee is a "tax." If customers inquire or complain about the Fee, RCN's uniform policy and practice is to lie to the customers and tell them it is a tax or government-related fee over which RCN has no control.

5. In actuality, the Network Access and Maintenance Fee is not a tax or government mandated fee. Rather, the Fee is a completely fictitious and fabricated charge invented by Defendants as a way to covertly charge more per month for their service without having to advertise or notify customers of the higher prices RCN is charging.

6. Plaintiffs bring this proposed class action under New Jersey law because Defendants' own terms and conditions contain a choice of law clause which provides that New Jersey law applies to the broadband internet service agreement between Defendants and Plaintiffs and the Class.

7. Plaintiffs seek injunctive, declaratory, monetary and statutory relief for themselves and the proposed Class to obtain redress and to end Defendants' policy of charging this deceptive additional Fee, bringing:

- a. A claim under the New Jersey Consumer Fraud Act ("CFA"), in that Defendants' uniform policies as described herein constitute an unconscionable commercial practice, Defendants' written statements to the class as described herein include false statements of affirmative fact, and Defendants' failure to adequately disclose the existence and true basis of the so-called "Network Access and Maintenance Fee" are material omissions, all of which violate N.J.S.A. § 56:8-2;
- b. A claim under the New Jersey Truth in Consumer Contract Warranty and Notice Act ("TCCWNA"), in that Defendants have presented, shown, offered, and submitted consumer notices and signs to Plaintiffs and the Class that violated their clearly established rights arising under state law, as prohibited by N.J.S.A. § 56:12-15;
- c. A claim under New Jersey common law for breach of the implied covenant of good faith and fair dealing based on Defendants' uniform policies as alleged herein; and
- d. A claim under the New Jersey Declaratory Judgment Act, N.J.S.A. § 2A:16-51, et seq., for an order for injunctive and declaratory relief: (1) declaring that Defendants' policy of charging a deceptive and inaccurately disclosed Network Access and Maintenance Fee is a violation of New Jersey law; (2) enjoining Defendants from continuing to charge the Network Access and Maintenance Fee; (3) ordering RCN to hold in constructive trust all Network Access and Maintenance Fee payments received from the Class; and (4) ordering RCN to perform an accounting of all such Network Access and Maintenance Fee payments.

## **PARTIES**

8. Katherine Grillo is a citizen and resident of Middlesex County, Massachusetts. Like other class members, Grillo was a customer of RCN's broadband internet services during the proposed class period and was charged and paid the unlawful Network Access and Maintenance Fee complained of herein.

9. Christian Reid is a citizen and resident of Northampton County, Pennsylvania (in the Lehigh Valley region). Like other class members, Reid was a customer of RCN's broadband internet services during the proposed class period and was charged and paid the unlawful Network Access and Maintenance Fee complained of herein.

10. Defendant RCN Telecom Services, LLC ("RCN Telecom") is a limited liability corporation headquartered in Princeton, New Jersey which provides broadband internet services to customers throughout six major metropolitan regions in the U.S., including New York, New York; Chicago, Illinois; Boston, Massachusetts; Washington, D.C.; Philadelphia, Pennsylvania; and Allentown, Pennsylvania. RCN Telecom Services, LLC is named as a Defendant herein as to Plaintiff Grillo and Plaintiff Reid and the proposed "Main-Class" as described in greater detail herein.

11. Defendant RCN Telecom Services of Massachusetts, LLC ("RCN Massachusetts") is a wholly owned subsidiary of RCN Telecom Services, LLC and is headquartered in Princeton, New Jersey. RCN Massachusetts is named as a Defendant herein solely as to Plaintiff Grillo and the proposed "Massachusetts Sub-Class" as described in greater detail herein.

12. Defendant RCN Telecom Services (Lehigh), LLC ("RCN Lehigh") is a wholly owned subsidiary of RCN Telecom Services, LLC and is headquartered in Princeton, New

Jersey. RCN Lehigh is named as Defendant herein solely as to Plaintiff Reid and the proposed “Lehigh Sub-Class” as described in greater detail herein.

13. Defendant RCN Telecom Services of New York, L.P. is a wholly owned subsidiary of RCN Telecom Services, LLC and is headquartered in Princeton, New Jersey.

14. Defendant RCN Telecom Services of Philadelphia, LLC is a wholly owned subsidiary of RCN Telecom Services, LLC and is headquartered in Princeton, New Jersey.

15. Defendant RCN Telecom Services of Illinois, LLC is a wholly owned subsidiary of RCN Telecom Services, LLC and is headquartered in Princeton, New Jersey.

16. Defendant Starpower Communications, LLC is a wholly owned subsidiary of RRCN Telecom Services, LLC and is headquartered in Princeton, New Jersey.

17. RCN Telecom and each RCN subsidiary hold themselves out to the Class—and to the world at large—as simply “RCN.” For example, RCN’s marketing, its website, and its customer contractual documents including the Customer Terms and Conditions<sup>1</sup>, Internet Access Agreement<sup>2</sup>, High Speed Cable Modem Service Addendum<sup>3</sup>, and the Online Shopping Terms and Conditions<sup>4</sup> described herein repeatedly refer to “RCN” as the service provider, without specifying which of the many subsidiaries with “RCN” in the name this is intended to signify.

18. Meanwhile, the few instances in which RCN does identify a particular entity are inconsistent and contradictory. For example, several representations indicate that RCN Telecom

---

<sup>1</sup> The RCN **Customer Terms and Conditions** is available at <https://www.rcn.com/hub/about-rcn/policies-and-disclaimers/customer-terms-and-conditions/> (last accessed October 18, 2020).

<sup>2</sup> The RCN **Internet Access Agreement** is available at <https://www.rcn.com/hub/about-rcn/policies-and-disclaimers/internet-access-agreement/> (last accessed October 18, 2020).

<sup>3</sup> The RCN **High Speed Cable Modem Service Addendum** is available at <https://www.rcn.com/hub/about-rcn/policies-and-disclaimers/high-speed-internet-service-addendum/> (last accessed October 18, 2020).

<sup>4</sup> The RCN **Online Terms and Conditions** is available at <https://www.rcn.com/hub/about-rcn/policies-and-disclaimers/online-shopping-terms/> (last accessed October 18, 2020).



Services, LLC is the relevant or contracting entity. The RCN website instructs all RCN customers, regardless of location or region, that: “you can mail your payment to the following location: RCN Telecom Services, LLC PO Box 11816 Newark, NJ 07101-8116.” Billing statements to customers in all RCN regions and locations display that same P.O. Box (“PO Box 11816, Newark, NJ 07101-8116”) as the location to where payments are to be mailed. The footer of the RCN website states: “©2020 RCN Telecom Services, LLC. All Rights Reserved.” Yet in contrast, Plaintiff Grillo’s RCN bills stated that “All services, including telecommunications services, are provided by RCN Telecom Services of Massachusetts, LLC” and Plaintiff Reid’s RCN bills state that “All services, including telecommunications services, are provided by RCN Telecom Services (Lehigh) LLC.”

19. Further, it appears that numerous “RCN” entities, including Defendant RCN Telecom and each RCN subsidiary, operate as a single, integrated company under the RCN brand with common management, a common corporate headquarters located at 650 College Road East, Princeton, New Jersey, and common policies and practices including with respect to the alleged bait-and-switch scheme at issue in this Complaint.

20. Defendant Patriot Media Consulting, LLC (“Patriot”) likewise has its principal place of business in Princeton, New Jersey at the same address as the RCN entities. Patriot is named as a defendant herein as to Plaintiffs and the proposed “Main-Class” as described in greater detail herein. According to a company press release on the RCN website, Patriot has managed RCN since 2010.<sup>5</sup> That same press release states that when TPG Capital purchased a majority stake of RCN in 2016, it tapped Patriot to continue managing RCN. *Ibid.* In the “Company History” section of the RCN website, RCN confirms that as of 2018, Patriot

---

<sup>5</sup> See RCN’s August 15, 2016, press release posted on the RCN website at <https://www.rcn.com/hub/about-rcn/our-history/> (last accessed October 18, 2020).

continued to assume management of RCN.<sup>6</sup> Patriot's own website currently states that "in August 2010, Patriot Media Consulting assumed day-to-day management of RCN's properties."<sup>7</sup> Jim Holanda continues to be the CEO of both the Patriot and the RCN entities. Various Patriot officers and managers list their job titles on LinkedIn as being simultaneously employed by both "RCN Telecom Services" and "Patriot." Further, opposing counsel in this case has admitted to Plaintiffs' counsel that Patriot is involved in the management of RCN.

21. This evidence provides a plausible basis to conclude that Patriot dominated and was responsible for the day-to-day management of RCN Telecom and each RCN subsidiary during the class period. This evidence further indicates that Patriot had a direct financial interest in the amount of revenue RCN Telecom and each RCN subsidiary collected from their customers, and also that Patriot may be an owner of RCN Telecom and each RCN subsidiary.

22. Based on this evidence, Plaintiffs allege that Patriot, along with the RCN Defendants, jointly created, implemented, participated in the collection of, and shared in the proceeds from, the unlawful bait-and-switch scheme at issue in this Complaint.

23. Except where otherwise indicated, RCN Telecom, the RCN subsidiaries, and Patriot are collectively referred to herein as "RCN" or "Defendants."

### **JURISDICTION AND VENUE**

24. This Court has personal jurisdiction over Defendants because, inter alia, Defendants: (a) are headquartered in this state; (b) transacted business in this state; (c) maintained continuous and systematic contacts in this state prior to and during the class period; and (d) purposefully availed themselves of the benefits of doing business in this state.

---

<sup>6</sup> See "History of RCN" on the RCN website at <https://www.rcn.com/hub/about-rcn/our-history/> (last accessed October 18, 2020).

<sup>7</sup> See Patriot's website at <http://www.patriotmediaconsulting.com/properties-rcn.html> (last accessed October 18, 2020).

Accordingly, Defendants maintain minimum contacts with this state which are more than sufficient to subject it to service of process and to comply with due process of law.

25. Each and every one of the Defendants, including Patriot Media Consulting, LLC, is headquartered in Princeton, New Jersey within this county, at the same address: 650 College Road East, Suite 3100, Princeton, New Jersey 08540. Each Defendant is thus a citizen of Mercer County, New Jersey.

26. Defendants created and implemented the unlawful scheme and associated policies and false advertising practices described herein at their corporate headquarters in Princeton, New Jersey.

27. Venue is proper in Mercer County because Defendants are headquartered in Mercer County, regularly transacted and continue to transact business in Mercer County, and created and implemented the unlawful policy challenged herein in and from their principal place of business in Mercer County.

28. Moreover, the Internet Access Agreement set forth on Defendants' website<sup>8</sup>, which is explicitly incorporated into the RCN Customer Terms and Conditions<sup>9</sup> and purports to give rise to a binding agreement between RCN and its customers (including Plaintiffs and the Class), states that New Jersey law applies to the agreement to provide services and that any claim brought against RCN must be brought in New Jersey.

---

<sup>8</sup> See <https://www.rcn.com/hub/about-rcn/policies-and-disclaimers/internet-access-agreement/> (last accessed October 18, 2020).

<sup>9</sup> See <https://www.rcn.com/hub/about-rcn/policies-and-disclaimers/customer-terms-and-conditions/> (last accessed October 18, 2020).

### **APPLICABILITY OF NEW JERSEY LAW**

29. The Internet Access Agreement set forth on Defendants' website<sup>10</sup>, which is incorporated into the RCN Customer Terms and Conditions<sup>11</sup> and purports to give rise to a binding agreement between RCN and its customers (including Plaintiffs and the Class), requires any dispute between RCN and its customers to be governed by the laws of the State of New Jersey, excluding its conflicts of law rules. Thus, all claims made herein against Defendants by Plaintiffs and the Class are properly brought under New Jersey law.

### **THE UNIFORM POLICIES WHICH GIVE RISE TO THE CLASS CLAIMS**

30. RCN is a provider of broadband internet, television, and telephone services to approximately 400,000 customers in and around six metropolitan areas in the United States: New York, New York; Chicago, Illinois; Boston, Massachusetts; Washington, D.C.; Philadelphia, Pennsylvania; and Allentown, Pennsylvania. Virtually all of RCN's customers subscribe to broadband internet; many also subscribe to television and/or telephone service as part of a "bundled" service plan.

31. RCN has a policy of falsely advertising and offering its services at lower monthly rates than it actually charges customers, by not disclosing and not including in the advertised price a bogus and invented "Network Access and Maintenance Fee" (the "Fee") that RCN charges to its broadband internet customers each month.

32. RCN first snuck the Fee onto customer bills in January 2018 at a rate of \$1.97 per month. Since then, RCN has systematically increased the bogus monthly Fee by \$1.20 each year—to \$3.17 in January 2019, and then to \$4.37 in January 2020. RCN has used the Fee as a

---

<sup>10</sup> See <https://www.rcn.com/hub/about-rcn/policies-and-disclaimers/internet-access-agreement/> (last accessed on October 18, 2020).

<sup>11</sup> See <https://www.rcn.com/hub/about-rcn/policies-and-disclaimers/customer-terms-and-conditions/> (last accessed October 18, 2020).

lever to covertly, improperly, and unilaterally jack up the monthly rates for its broadband internet services without having to publicly disclose to consumers the higher actual monthly prices. RCN has deliberately rolled out the Fee and the increases thereto in a manner that is designed by RCN to further ensure that they go unnoticed by customers.

33. Through the scheme alleged herein, RCN has, in effect, created a “bait-and-switch” scheme that enables it to advertise and promise a lower monthly price for its internet services than it actually charges, and to surreptitiously increase its monthly price for existing customers at its whim, via this below-the-line hidden and deceptive Fee.

34. Moreover, RCN charged, and continues to charge, the Network Access and Maintenance Fee to its customers, including Plaintiffs and the Class, without ever having adequately disclosed or explained the Fee. RCN did not disclose the Fee to its customers until after they signed up for RCN’s services. And RCN still has never provided a proper explanation for the Fee, instead falsely or deceptively describing it alternatively as a tax or a pass-through fee.

35. Based on Plaintiffs’ calculations, from January 2018 through the present RCN has collected approximately \$42 million in unlawful Network Access and Maintenance Fees from its approximately 400,000 broadband internet customers in the United States. And RCN is continuing to collect approximately \$1.75 million every month in these bogus Fees from its customers.

36. Contrary to RCN’s assertions in its fine print disclosures and on its bills, the Network Access and Maintenance Fee is not a tax or government assessment. Nor is the Fee any sort of “pass-through” charge that was imposed by or paid to any third party. Instead, the Fee is a

fabricated charge invented by RCN as part of a scheme to covertly raise the monthly broadband internet price without having to publicly and accurately disclose the actual higher price.

**A. RCN Fails To Disclose The Fee To Its Customers.**

37. At all relevant times, RCN has aggressively advertised its broadband internet service plans (and plans that “bundle” TV and/or phone service with broadband internet) through pervasive marketing directed at the consuming public in New Jersey, Pennsylvania, New York, Massachusetts, Illinois and Washington, D.C. This marketing includes video advertisements via YouTube, Facebook and Twitter; television, radio, and internet advertisements; and advertisements on its website and through materials at its retail stores where customers can sign up for RCN services.

38. Through all of these channels, RCN prominently advertises particular flat monthly prices for its broadband internet service plans, without disclosing or including the Fee in the advertised price. Neither the existence nor the amount of the Fee is disclosed or adequately disclosed to customers prior to or at the time they sign up for the services, even though RCN knows that it plans to charge the Fee to its customers and knows with certainty the exact amount of the charge.

39. Likewise, RCN’s sales and customer service agents quote the same flat monthly prices as in RCN’s public advertising, and as a matter of policy do not disclose the Network Access and Maintenance Fee. If a potential customer calls RCN’s sales or customer service agents, or reaches out via web chat, and asks what if any other fees will be charged for internet service, the agents as a matter of company policy say that the only additions to the advertised price (besides subscriptions to extra services or features) are taxes or government-related fees passed on by RCN to the customer.

40. For example, RCN ran a video advertising campaign on YouTube, Facebook and Twitter in May 2020 that promoted the price for its 250 Mbps broadband internet service as \$34.99 per month.<sup>12</sup> The advertisement emphasized the importance of broadband internet during the COVID-19 pandemic with the statement “Fast Internet is a Necessity Especially Now” and then prominently featured the **\$34.99** flat monthly rate in giant text. There was no asterisk next to the advertised \$34.99 price or other qualifier disclosing the Network Access and Maintenance Fee (which in fact added \$4.37, or 12.5% more, to the advertised monthly price). For a couple of seconds toward the end of the advertisement, there was some *very* tiny print that appeared on the bottom of the screen, eighteen sentences long and so tiny as to render it unreadable by any reasonable consumer. The eleventh of these eighteen tiny-print sentences said that “Additional fees apply for franchise fees, government imposed charges and fees, taxes, surcharges, equipment, activation and installation that are not included as part of the package and are subject to increases.” There was no voice reading this tiny print.

41. The unreadable, tiny print reference in this video advertisement to “taxes,” “government imposed charges and fees” and “surcharges” does not remotely constitute an adequate disclosure of the Network Access and Maintenance Fee by RCN, particularly in light of the prominence given to the dollar amount of the supposed flat monthly service charge in RCN’s marketing. Nowhere—even in the purported tiny print disclosure—is the Network Access and Maintenance Fee specifically mentioned or disclosed to consumers. Moreover, in any event, as alleged herein, the Network Access and Maintenance Fee is not, in fact, a bona fide tax or surcharge, but rather is a made-up fee RCN utilizes to charge more for the internet service itself than RCN advertises.

---

<sup>12</sup> The 2020 video ad can be viewed here: <https://www.ispot.tv/ad/nIEt/rcn-telecom-necessity-3499#> (last accessed on October 21, 2020).

42. Likewise, at all relevant times, RCN's website has advertised its broadband internet service plans and bundles prominently featuring a supposed flat monthly price for the service, and not adequately disclosing the Fee.

43. For example, RCN's website currently advertises the same (purported) \$34.99 250 Mbps broadband internet plan for the New York region that was the subject of the previously described video advertisement. RCN prominently features the \$34.99 price on its website without an asterisk or any other suggestion that the monthly cost for the service will actually be higher than \$34.99 per month.

44. After the consumer selects the \$34.99 plan on the RCN website, the consumer is brought to the "Customize" webpage where the consumer can customize the services and add-ons. On the right side of the "Customize" webpage RCN prominently states "Estimated Monthly Total \$34.99/mo" (the amount may increase to reflect the consumer choosing additional options on the left such as a modem rental or additional services). Again, there is no asterisk next to the \$34.99 price or any suggestion that the monthly cost for the service will be higher than the "\$34.99/mo" advertised price. Likewise, on the next webpages, where the customer is required to submit to a credit check and to then enter his or her personal payment information, the right side of the webpage continues to state "Estimated Monthly Total \$34.99/mo" with no asterisk or qualifier. On none of these webpages is any mention made of the additional Network Access and Maintenance Fee or of any additional monthly service charges.

45. At the very end of the online order process, on the "Submit Order" final webpage, RCN lists a heading called "Estimated Taxes." For this 250 Mbps broadband internet "\$34.99/mo" plan in the New York region, RCN lists the amount of "Estimated Taxes" as \$8.36.



46. Only if the customer clicks a small “See Details” hyperlink underneath the “Estimated Taxes” heading, does RCN then display tiny print that “Estimated monthly surcharges may include: ... Network Access and Maintenance Fee and, in some cities, a Municipal surcharge. For more information on surcharges, visit rcn.com/rateFAQs.” At the designated rcn.com/rateFAQs webpage, RCN quantifies the “Network Access and Maintenance Fee” as \$4.37, and a Municipal Construction Surcharge as \$3.99 (together these two charges total \$8.36). On this designated webpage, RCN falsely states the Network Access and Maintenance Fee is part of pass-through “Broadcast TV, Sports & Entertainment Network Surcharges” that are “paid to networks and sports channels” or “demanded by local broadcasters.”<sup>13</sup>

47. Each of these—conflicting—representations about the nature of the Network Access and Maintenance Fee is false. The Network Access and Maintenance Fee is not a tax. It is also not a pass-through surcharge imposed by or paid to a third party network, sports channel, or local broadcaster. In fact, the Fee is fabricated and made-up by RCN as a way to deceptively charge more for RCN’s broadband internet service than advertised or promised.

**B. RCN Continues To Deceive Customers After They Sign Up**

48. RCN continues to deceive its customers about the Network Access and Maintenance Fee and the true monthly price of its broadband internet services after customers have signed up and are paying for the services.

49. RCN doubles down on its deceptive scheme by committing billing fraud to further trick its customers into believing the Fee is a government tax. RCN intentionally buries the Network Access and Maintenance Fee in the “Taxes, Surcharges & Fees” section of the bill,

---

<sup>13</sup> See <https://rcn.com/rateFAQs>, which forwards to <https://www.rcn.com/hub/truth-about-channel-negotiations/network-costs/network-surcharges/> (last accessed October 21, 2020).

lumped together with purported taxes and government and third-party pass-through charges. This misleadingly tells RCN's customers that the Fee is an actual tax or other standard government or third-party pass-through fee, when in fact it is a completely made-up "fee" which RCN uses to surreptitiously charge higher rates than it advertised and promised.

50. RCN does not define the Fee anywhere on its billing statements. Instead, in small print in the "Taxes, Surcharges & Fees" section of the bill, RCN tells customers they can get an "explanation" of the various taxes and charges in that section by visiting the RCN webpage [www.rcn.com/help](http://www.rcn.com/help). On that webpage, RCN features a headline titled "Understanding Taxes and Fees" which states "Find detailed tax definitions outlined by charge type" followed by a "Read more" hyperlink. When the customer clicks on "Read more," the customer arrives on a webpage titled "Understanding Taxes" (url: [www.rcn.com/hub/help/understanding-taxes](http://www.rcn.com/hub/help/understanding-taxes)), where RCN falsely states that the Network Access and Maintenance Fee is a "tax." (Meanwhile, RCN's "Billing FAQs" webpage, which also is promoted on the [www.rcn.com/help](http://www.rcn.com/help) webpage, likewise directs customers who want to learn "What taxes and fees does RCN add to my bill?" to go to the same "Understanding Taxes" webpage.)

51. On this "Understanding Taxes" webpage, customers are repeatedly told that the "Network Access and Maintenance Fee" a tax. The Fee is listed at the very bottom of a chart displaying twenty "TAX TYPES," almost all of which (unlike the Fee) are actual taxes and government-related fees. For example, the "Tax Types" listed (one per row in the chart) include the Federal Excise Tax, Federal Universal Service Fund, State Sales Tax, State Gross Receipts Tax, State Excise Tax, City Sales Tax, 911 Tax, Franchise Fee, and the Regulatory Fee. The very last (i.e., the twentieth) "Tax Type" listed on the chart is the "Network Access and Maintenance

Fee,” which RCN describes as a “Tax for Data (Internet)” that is “Imposed on” the “Customer.”<sup>14</sup>

52. However, the Network Access and Maintenance Fee is not a tax. In fact, RCN fabricated and invented the Network Access and Maintenance Fee as a way to deceptively charge more for RCN’s broadband service than RCN advertises or promises.

53. RCN falsely describes the Fee as a tax on its bill and on its website in furtherance of its bait-and-switch scheme. RCN’s intention is to trick its customers into believing the Fee is a pass-through government charge over which RCN has no control. RCN’s fraudulent scheme is so elaborate that even a customer who notices the Fee buried in the “Taxes, Surcharges & Fees” section of the bill, and who then takes it upon himself or herself to read the “explanation” of the charge by following the url breadcrumb trail provided by RCN on the bill, is then explicitly lied to and told the Fee is a “tax.”

54. RCN’s billing fraud which indicates and even outright states that the Network Access and Maintenance Fee is a tax, is further reinforced by RCN’s policy of instructing sales and customer service agents to lie to the customer about the nature of the Fee. If a customer who notices the Fee on the bill calls or live-chats with RCN to ask or complain about the Fee, RCN’s policy and practice is to falsely tell the customer that the Fee is a tax or government-related fee.

---

<sup>14</sup> In the “Tax” “Definition” column of this “Tax Type” chart (at [www.rcn.com/hub/help/understanding-taxes](http://www.rcn.com/hub/help/understanding-taxes)), RCN additionally describes the “Network Access and Maintenance Fee” as “A fee defray [sic] costs associated with building and maintaining RCN’s fiber rich broadband network, as well as the costs of expanding network capacity to support the continued increase in customers’ average bandwidth consumption.” This description is false and misleading for several reasons. First, the Fee is not a “Tax” as RCN states on this webpage and in the chart. Further, based on information and belief, the Fee is not tied directly to any “costs associated with building and maintaining” RCN’s network or “expanding network capacity.” Finally, any costs of building, maintaining, or expanding RCN’s network should be included in the advertised monthly price for RCN’s services because RCN’s network is a necessary and indispensable element in providing the internet service for which its customers are paying. A reasonable consumer would expect such costs to be included in the advertised price for RCN’s broadband internet service.

55. RCN first began sneaking the Fee into all of its customers' bills in January 2018, initially at a rate of \$1.97 per month. For customers like Plaintiffs Katherine Grillo and Christian Reid, who signed up prior to that time, the first these customers could have possibly learned about the existence of the Fee was on their bill after Fee was introduced, which they would have received months or even years after they signed up with RCN. Meanwhile, even then, a reasonable consumer would not have noticed the Fee buried in the "Taxes, Surcharges & Fees" section of the bill grouped with actual taxes, government charges and pass-through fees. And even if the consumer had noticed the Fee, the fine print on RCN's bill directed consumers to an "explanation" of the Fee on RCN's website that falsely and explicitly stated the Fee was a "tax."

56. For customers who signed up after RCN began imposing the Fee, the billing statements were likewise the first possible chance they could have learned about the Fee, and by the time they received their first statement they were already committed to their purchase. Meanwhile, RCN's billing fraud (stating the Fee was a "tax") and RCN's policy of customer service agents falsely stating the Fee was a tax or government charge, furthered RCN's scheme and deception and prevented customers from learning the truth.

57. If customers realized that their actual total monthly bill was higher than promised, they could not simply back out of the deal without penalty, even if they noticed the Fee and were not fooled by RCN's billing fraud on their very first bill. For example, most customers are required to pay a one-time "Account Activation Fee" of \$9.99, which RCN claims is used to offset the costs associated with setting up the customer's account, activating the customer's equipment, and connecting the customer's home to RCN's network. Many customers are also required to pay an "Installation Fee" of \$49.99, which RCN claims is used to cover its costs associated with sending a technician to the customer's home to set up RCN's services.

Customers may also purchase new devices to use exclusively with RCN's services, such as internet and telephone modems, wireless routers, and/or digital cable converter boxes.

58. The Account Activation Fee and the Installation Fee function as ways to penalize and deter customers from cancelling after signing up, and RCN's policies are deliberately and knowingly designed by RCN to lock customers in if and when they deduce that they are being charged more per month than advertised for RCN's service.

59. Because the initial amount of the Network Access and Maintenance Fee (\$1.97 in January 2018) and each of the two yearly increases of \$1.20 per year (to \$3.17 in January 2019 and to \$4.37 in January 2020) were relatively small in proportion to RCN's total monthly charges, RCN knew that its customers were unlikely to notice the new and increased charges on their monthly bills. And given that taxes and other government-related charges can already vary by amounts of approximately one dollar from month to month—and often will increase from year to year—RCN knows that its customers reasonably expect small changes in the total amount billed each month. RCN knows that its customers would not be readily able to tell that RCN increased the service price via the Fee by merely comparing the total amount billed in a particular month to the total amount billed in the prior month or months.

60. Each time RCN increased the Network Access and Maintenance Fee, RCN hid the increase by providing no disclosure or explanation whatsoever anywhere on the first billing statement containing that increase, other than listing the increased Fee itself (buried in the "Taxes, Surcharges & Fees" section). Even a customer who read the entire invoice would have zero notice that RCN had increased the Fee, or why the customer's new monthly bill was higher than the prior month's total, without comparing the bill line-by-line with prior bills.

## **PLAINTIFFS' FACTUAL ALLEGATIONS**

### **Plaintiff Katherine Grillo**

61. Plaintiff Katherine Grillo is, and at all relevant times has been, a citizen and resident of Middlesex County, Massachusetts.

62. Grillo was a subscriber of RCN's broadband internet service from September 2017 through January 2020.

63. On or around August 10, 2017, Grillo went to the RCN website to learn about RCN's service offerings including broadband internet. After browsing the website, she signed up for service by purchasing a 12-month service plan which included broadband internet and cable television service. Grillo's RCN service was installed at her home on September 1, 2017.

64. When Grillo purchased her service plan, RCN prominently advertised, to Grillo and to the public, that the plan would cost a particular monthly price for a 12-month period. RCN did not disclose to Grillo, at any time before or when she signed up, that RCN would or might later add a "Network Access and Maintenance Fee" on top of the advertised and promised monthly price.

65. When Grillo purchased her service plan, she also paid RCN a one-time account activation fee and a one-time installation fee.

66. RCN first began charging the Network Access and Maintenance Fee to Grillo in January 2018, at a rate of \$1.97 per month. Grillo did not receive full, accurate, or non-misleading notice from RCN that the Fee would be charged or regarding the nature or basis of the Fee. Grillo did not then know, nor could she then know, that the Fee was invented by RCN as part of a scheme to covertly raise the monthly rate of its broadband internet service.

67. On or around January 2019, Grillo's bill increased when RCN raised the Fee by \$1.20, to \$3.17. Grillo did not receive adequate or accurate notice that the Fee would be increased or regarding the nature or basis of the Fee. Grillo did not then know, nor could she then know, that the Fee was invented by RCN as part of a scheme to covertly raise the monthly rate of its broadband internet service.

68. On or around January 2020, Grillo's bill increased when RCN again raised the Fee by \$1.20, to \$4.37. Grillo did not receive adequate or accurate notice that the Fee would be increased or regarding the nature or basis of the Fee. Grillo did not then know, nor could she then know, that the Fee was invented by RCN as part of a scheme to covertly raise the monthly rate of its broadband internet service.

69. At the time she purchased her original RCN service plan, Grillo signed up for paperless billing, as RCN encouraged her to do. Grillo was signed up for paperless billing for all relevant times, and did not receive paper bills. As part of paperless billing, each month Grillo would receive an email from RCN with the subject line "Your RCN bill statement is available in MyRCN." The emails stated only the total amount due and the due date, and did not list or break out the charges. Each month, Grillo would login to her RCN account and pay the bill.

70. During the time Grillo subscribed to RCN, she had not specifically noticed the "Network Access and Maintenance Fee." RCN had hidden the Fee in the final "Taxes, Surcharges & Fees" section of the full version of the bill (a pdf copy of the full bill was downloadable from the MyRCN website). The Fee was grouped in the "Taxes, Surcharges & Fees" section with eight other purported taxes or government-related fees or pass-throughs. On those occasions where Grillo downloaded and viewed the full version of the bill, Grillo

reasonably assumed and understood the charges in the Taxes, Surcharges & Fees section, including the Fee, to be taxes or government-related charges.

71. RCN's "bill statement" emails, and RCN's downloadable full bills, did not inform or adequately disclose to Grillo that RCN was adding a self-created "Network Access and Maintenance Fee" each month, and did not adequately or accurately disclose the true nature of the Fee. Grillo did not know, nor could she know, that the Fee was invented by RCN as part of a scheme to covertly raise the monthly rate of its broadband internet service.

72. Soon after RCN increased Grillo's cable bill by approximately \$26 in January 2020, Grillo terminated her service with RCN.

73. Grillo paid RCN a total of approximately \$61.68 in Network Access and Maintenance Fees while she was a subscriber. Through the imposition and increase of the Network Access and Maintenance Fee, RCN charged Grillo a higher price for her broadband internet service each month than RCN promised her and she expected to pay, causing her damages.

74. When Grillo agreed to purchase her RCN service plan, she was relying on RCN's representations regarding the monthly price of the services. While she understood that taxes might be added to the price, she did not expect that RCN would charge a bogus, self-created Network Access and Maintenance Fee on top of the advertised or promised price or that the true price of the service would include the additional Fee. That information would have been material to her. Had she known that information she would not have been willing to pay as much for her service plan.



**Plaintiff Christian Reid**

75. Plaintiff Christian Reid is, and at all relevant times has been, a citizen and resident of Northampton County, Pennsylvania, which is located in the Lehigh Valley region.

76. Reid moved into his current home in Northampton County, Pennsylvania in the summer of 2016. Soon after moving into the home, Reid called RCN to learn about its broadband service offerings. The agent he spoke to offered him a broadband internet plan with modem rental for a flat-rate price “plus taxes,” and told him the price would not change for at least twelve months. Based on RCN’s representations to him, Reid signed up for the broadband service plan, which was installed at his home on or about June 4, 2016.

77. When Reid purchased his service plan, RCN prominently advertised, to Reid and to the public, that the plan would cost a particular monthly price for a 12-month period. RCN did not disclose to Reid, at any time before or when he signed up, that RCN would or might later add a “Network Access and Maintenance Fee” on top of the advertised and promised monthly price.

78. When Reid purchased his service plan, he also paid RCN a one-time account activation fee and a one-time installation fee.

79. RCN first began charging the Network Access and Maintenance Fee to Reid in January 2018, at a rate of \$1.97 per month. Reid did not receive full, accurate, or non-misleading notice from RCN that the Fee would be charged or regarding the nature or basis of the Fee. Reid did not then know, nor could he then know, that the Fee was invented by RCN as part of a scheme to covertly raise the monthly rate of its broadband internet service.

80. On or around January 2019, Reid’s bill increased when RCN raised the Fee by \$1.20, to \$3.17. Reid did not receive adequate or accurate notice that the Fee would be increased or regarding the nature or basis of the Fee. Reid did not then know, nor could he then know, that

the Fee was invented by RCN as part of a scheme to covertly raise the monthly rate of its broadband internet service.

81. On or around January 2020, Reid's bill increased when RCN again raised the Fee by \$1.20, to \$4.37. Reid did not receive adequate or accurate notice that the Fee would be increased or regarding the nature or basis of the Fee. Reid did not then know, nor could he then know, that the Fee was invented by RCN as part of a scheme to covertly raise the monthly rate of its broadband internet service.

82. In the bills RCN mailed Reid each month, RCN buried the Fee in the last section of the bill called "Taxes, Surcharges & Fees," listing the Fee together with the sales tax. On those occasions where Reid reviewed the bill, Reid reasonably assumed and understood the charges in the Taxes, Surcharges & Fees section, including the Fee, to be taxes or government-related charges.

83. RCN's bills did not inform or adequately disclose to Reid that RCN was adding a self-created "Network Access and Maintenance Fee" each month, and did not adequately or accurately disclose the true nature of the Fee. Reid did not know, nor could he know, that the Fee was invented by RCN as part of a scheme to covertly raise the monthly rate of its broadband internet service.

84. As of the filing of this Complaint, Reid has paid RCN a total of approximately \$105.38 in Network Access and Maintenance Fees. Through the imposition and increase of the Network Access and Maintenance Fee, RCN charged Reid a higher price for his broadband internet service each month than RCN promised him and he expected to pay, causing him damages.

85. When Reid agreed to purchase his RCN broadband internet service plan, he was relying on RCN's representations regarding the monthly price of the services. While he understood that taxes might be added to the price, he did not expect that RCN would charge a bogus, self-created Network Access and Maintenance Fee on top of the advertised or promised price or that the true price of the service would include the additional Fee. That information would have been material to him. Had he known that information he would not have been willing to pay as much for his service plan.

### **CLASS ACTION ALLEGATIONS**

86. Plaintiffs bring this action as a class action pursuant to N.J. Ct. R. 4:32, seeking damages, statutory penalties, and injunctive relief under New Jersey state law on behalf of themselves and all members of the following proposed Class (the "**Main Class**"):

**All current and former RCN customers in the United States who were charged and paid a "Network Access and Maintenance Fee."**

87. In addition, Plaintiff Grillo brings this action as a class action pursuant to N.J. Ct. R. 4:32, seeking damages, statutory penalties, and injunctive relief under New Jersey state law on behalf of herself and the following proposed Sub-Class (the "**Massachusetts Sub-Class**"):

**All current and former RCN customers who received a bill which stated "All services, including telecommunications services, are provided by RCN Telecom Services of Massachusetts LLC" and who were charged and paid a "Network Access and Maintenance Fee."**

88. In addition, Plaintiff Reid brings this action as a class action pursuant to N.J. Ct. R. 4:32, seeking damages, statutory penalties, and injunctive relief under New Jersey state law on behalf of himself and the following proposed Sub-Class (the "**Lehigh Sub-Class**"):

**All current and former RCN customers who received a bill which stated “All services, including telecommunications services, are provided by RCN Telecom Services (Lehigh) LLC” and who were charged and paid a “Network Access and Maintenance Fee.”**

89. Excluded from the above Class are Defendants and any entities in which any Defendant has a controlling interest, their officers, directors, employees, and agents, the judge to whom this case is assigned, members of the judge’s staff, and the judge’s immediate family.

90. **Numerosity.** The members of the Class are so numerous that joinder of all members would be impracticable. While Plaintiffs do not know the exact number of Class members prior to discovery, upon information and belief, there are at least 200,000 Class members and over 10,000 members of each Sub-Class. The exact number and identities of Class members are contained in RCN’s records and can be easily ascertained from those records.

91. **Commonality and Predominance.** All claims in this action arise exclusively from the uniform policies and procedures of Defendants as outlined herein. This action involves multiple common questions which are capable of generating class-wide answers that will drive the resolution of this case. These common questions include, but are not limited to, the following:

- a. Whether New Jersey law applies to the claims of Plaintiffs and the Class;
- b. Whether Defendants employ a uniform policy of charging a Network Access and Maintenance Fee to RCN’s customers;
- c. Whether Defendants adequately or accurately disclosed the Network Access and Maintenance Fee to RCN’s customers;
- d. Whether Defendants’ charging of the Network Access and Maintenance Fee to RCN customers is a false, deceptive, or misleading policy;

- e. Whether Defendants' descriptions of the Network Access and Maintenance Fee are false, deceptive, or misleading;
- f. Whether it was deceptive or unfair for Defendants not to disclose, or to inadequately or inaccurately disclose, the Network Access and Maintenance Fee, its dollar amount, or the fact that RCN could choose to raise its amount at any time, as part of the advertised and promised price of its broadband internet services;
- g. Whether the Network Access and Maintenance Fee, the fact that RCN could choose to raise it at any time, and the true price of RCN's broadband internet services are material information, such that a reasonable consumer would find that information important to the consumer's purchase decision;
- h. Whether Defendants' misrepresentations and omissions alleged herein constitute fraudulent concealment under the law of New Jersey;
- i. Whether Defendants have violated the implied covenant of good faith and fair dealing, implied in its contracts with Plaintiffs and the Class, by imposing and increasing the Network Access and Maintenance Fee;
- j. Whether Defendants' misrepresentations and omissions alleged herein violate the New Jersey Consumer Fraud Act;
- k. Whether Defendants' misrepresentations and omissions alleged herein violate the New Jersey Truth in Consumer Contract, Warranty and Notice Act; and
- l. Whether Plaintiffs and the Class are entitled to an order enjoining RCN from engaging in the misconduct alleged herein and prohibiting RCN from continuing to charge the Network Access and Maintenance Fee.

92. **Typicality.** Plaintiffs, like all Class members, are current or former subscribers of RCN's broadband internet service plans who have been charged higher monthly rates than quoted at the time of subscription and/or whose rates have been surreptitiously increased by the imposition and raising of the Network Access and Maintenance Fee. Their claims all arise from the same course of conduct by RCN and are based on the same legal theories. Plaintiffs' claims are typical of all Class members' claims. Plaintiffs are each a member of the Class they seek to represent. All claims of Plaintiffs and the Class arise from the same course of conduct, policy and procedures as outlined herein. All claims of Plaintiffs and the Class are based on the exact same legal theories.

93. **Adequacy.** Plaintiffs and their counsel will thoroughly and adequately protect the interests of the Class. Plaintiffs seek the same relief for themselves as for every other Class member. Plaintiffs have no interests antagonistic to Class members' interests and are committed to representing the best interests of the Class. Moreover, Plaintiffs have retained counsel who are highly experienced in prosecuting complex class action and consumer protection cases.

94. **Superiority.** A class action is superior to all other available methods for fairly and efficiently adjudicating this controversy. Each Class member's interests are small compared to the burden and expense required to litigate each of his or her claims individually, so it would be impractical and would not make economic sense for Class members to seek individual redress for RCN's conduct. Individual litigation would add administrative burden on the courts, increasing the delay and expense to all parties and to the judicial system. Individual litigation would also create the potential for inconsistent or contradictory judgments regarding the same uniform conduct. A single adjudication would create economies of scale and comprehensive

supervision by a single judge. Moreover, Plaintiffs do not anticipate any difficulties in managing a class action trial in this case.

95. By its conduct and omissions alleged in this Complaint, RCN has acted and refused to act on grounds that apply generally to the Class, such that final injunctive relief and/or declaratory relief is appropriate respecting the Class as a whole.

96. Without the proposed class action, Defendants will likely retain the benefits of RCN's wrongdoing and will continue the complained-of practices, which will result in further damages to Plaintiffs and Class members.

97. Defendants fraudulently concealed the facts underlying the causes of action pled here, intentionally failing to disclose the true cost of RCN's services in order to deceive Plaintiffs and the proposed Class, despite Defendants' duty to make such disclosure. The nature of Defendants' misconduct was non-obvious and/or was obscured from public view, and neither Plaintiffs nor the members of the Class could have, through the use of reasonable diligence, learned of the accrual of their claims against Defendants at an earlier time.

### **COUNT I**

#### **VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT N.J.S.A. § 56:8-1, et seq.**

98. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein.

99. Defendants' representations with regard to the pricing and nature of RCN's service plans with broadband internet on RCN's website, in media including internet, television, radio and print, and by RCN's sales and customer service agents, are "advertisements" within the meaning of N.J.S.A. § 56:8-1(a).

100. RCN's broadband internet service is "merchandise" within the meaning of N.J.S.A. § 56:8-1(c).

101. Defendants are "persons" within the meaning of N.J.S.A. § 56:8-1(d).

102. The New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq. (the "CFA"), was enacted to protect consumers against sharp and unconscionable commercial practices by persons engaged in the sale of goods or services. See Marascio v. Campanella, 689 A.2d 852, 857 (N.J. Ct. App. 1997).

103. The CFA is a remedial statute which the New Jersey Supreme Court has repeatedly held must be construed liberally in favor of the consumer to accomplish its deterrent and protective purposes. See Furst v. Einstein Moomjy, Inc., 860 A.2d 435, 441 (N.J. 2004) ("The [CFA] is remedial legislation that we construe liberally to accomplish its broad purpose of safeguarding the public.").

104. Indeed, "[t]he available legislative history demonstrates that the [CFA] was intended to be one of the strongest consumer protection laws in the nation." New Mea Const. Corp. v. Harper, 497 A.2d 534, 543 (N.J. Ct. App. 1985).

105. For this reason, the "history of the [CFA] is one of constant expansion of consumer protection." Kavky v. Herbalife Int'l of Am., 820 A.2d 677, 681-82 (N.J. Ct. App. 2003).

106. The CFA was intended to protect consumers "by eliminating sharp practices and dealings in the marketing of merchandise and real estate." Lemelledo v. Beneficial Mgmt. Corp., 696 A.2d 546, 550 (N.J. 1997).

107. Specifically, N.J.S.A. § 56:8-2 prohibits "unlawful practices" which are defined as:



**“The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission ... whether or not any person has in fact been misled, deceived or damaged thereby ...”**

108. The catch-all term “unconscionable commercial practice” was added to the CFA by amendment in 1971 to ensure that the CFA covered, inter alia, “incomplete disclosures.” Skeer v. EMK Motors, Inc., 455 A.2d 508, 512 (N.J. Ct. App. 1982).

109. In describing what constitutes an “unconscionable commercial practice,” the New Jersey Supreme Court has noted that it is an amorphous concept designed to establish a broad business ethic. See Cox v. Sears Roebuck & Co., 647 A.2d 454, 462 (N.J. 1994).

110. In order to state a cause of action under the CFA, a plaintiff does not need to show reliance by the consumer. See Varacallo v. Massachusetts Mut. Life Ins. Co., 752 A.2d 807 (N.J. App. Div. 2000); Gennari v. Weichert Co. Realtors, 691 A.2d 350 (N.J. 1997) (holding that reliance is not required in suits under the NJCFA because liability results from “misrepresentations whether ‘any person has in fact been misled, deceived or damaged thereby”).

111. As stated by the New Jersey Supreme Court in Lee v. Carter-Reed Co., L.L.C., 4 A.3d 561, 580 (N.J. 2010): “It bears repeating that the [NJCFA] does not require proof of reliance, but only a causal connection between the unlawful practice and ascertainable loss.”

112. It is also not required that an affirmative statement be literally false in order to be considered deceptive and misleading under the CFA. Even a statement which is literally true can be misleading and deceptive in violation of the CFA. See Smajlaj v. Campbell Soup Co., 782 F. Supp. 2d 84, 98 (D.N.J. 2011) (upholding a NJCFA claim where the defendant argued its written

statement was literally true, holding “the fact that the labels were literally true does not mean they cannot be misleading to the average consumer.”).

113. A CFA violation also does not require that the merchant be aware of the falsity of the statement or that the merchant act with an intent to deceive. See Gennari v. Weichert Co. Realtors, 691 A.2d 350, 365 (N.J. 1997):

**“One who makes an affirmative misrepresentation is liable even in the absence of knowledge of the falsity of the misrepresentation, negligence, or the intent to deceive... An intent to deceive is not a prerequisite to the imposition of liability.”**

114. Nor is it a defense to a CFA claim that the merchant acted in good faith. See Cox v. Sears Roebuck & Co., 647 A.2d 454, 461 (N.J. 1994) (“the Act [CFA] is designed to protect the public even when a merchant acts in good faith.”).

115. In the case at bar, Defendant’s policy of promising low monthly rates for its broadband internet services but later charging an inadequately disclosed and/or inaccurately described Network Access and Maintenance Fee to its customers, as described herein, is a deceptive, misleading, and/or unconscionable commercial practice in the sale of goods in violation of N.J.S.A. § 56:8-2 for the reasons set forth herein.

116. This policy involves, inter alia, both misleading affirmative statements and the knowing omission of material facts.

117. First, Defendants’ practice of advertising RCN’s broadband internet services for a low, flat monthly rate—which price does not reflect the actual monthly rate that RCN ultimately charges its customers because it does not include the Network Access and Maintenance Fee—is an affirmative misleading and deceptive statement in the sale of goods or services in violation of N.J.S.A. § 56:8-2. Defendants’ practice of categorizing and describing the Network Access and

Maintenance Fee as a tax imposed by the government or as a pass-through fee imposed by networks and broadcasters are also affirmative misleading and deceptive statements in violation of N.J.S.A. § 56:8-2.

118. Second, Defendants failed to adequately disclose the Network Access and Maintenance Fee to RCN's customers before they agreed to purchase RCN's broadband internet services, and Defendants continued to fail to adequately disclose the Fee, inter alia, by intentionally falsely describing the Fee as a tax on its website, by lumping the Fee with taxes and government-related fees on its bills, by referring on the bill to the false description of the Fee on the RCN website, by obscuring and failing to disclose the true nature of the Fee, and by having a policy of customer service and sales agents falsely telling customers that the Fee was a tax or government-related charge. Defendants have never explained to RCN's customers that the true reason RCN charges the Fee is that it is a surreptitious way to charge more for RCN's services than the advertised and promised price for those services. Thus, Defendants' policy also involves knowing omissions of material fact in the sale of goods in violation of N.J.S.A. § 56:8-2.

119. Defendants' deceptive policies described herein also violate N.J.S.A. § 56:8-2.2, as RCN advertised its broadband internet services as part of a plan or scheme not to sell the services at the advertised price.

120. Plaintiffs and Class members reasonably and justifiably expected Defendants to comply with applicable law, but Defendants failed to do so.

121. As a direct and proximate result of these unlawful actions by Defendants, Plaintiffs and the Class have been injured and have suffered an ascertainable loss of money.

122. Specifically, Plaintiffs and each Class member have been charged the bogus Network Access and Maintenance Fees on a monthly basis by RCN since January 2018, and

have paid those Fees to Defendants. These payments constitute an ascertainable loss by Plaintiffs and the Class.

123. Pursuant to N.J.S.A. § 56:8-19, Plaintiffs seek, inter alia, actual damages, treble damages, and injunctive relief for themselves and the Class.

## **COUNT II**

### **VIOLATION OF THE NEW JERSEY TRUTH IN CONSUMER CONTRACT, WARRANTY AND NOTICE ACT, N.J.S.A. § 56:12-14, et seq.**

124. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein.

125. Plaintiffs and Class members are “consumers” within the meaning of N.J.S.A. § 56:12-15.

126. Defendants are each a “seller” within the meaning of N.J.S.A. § 56:12-15.

127. RCN’s broadband internet service is a “service which is primarily for personal, family or household purposes” within the meaning of N.J.S.A. § 56:12-15.

128. The advertisements and representations on RCN’s website and monthly bills are consumer “notices,” “signs” and/or “warranties” within the meaning of N.J.S.A. § 56:12-15.

129. By the acts alleged herein, Defendants have violated N.J.S.A. § 56:12-15 because, in the course of Defendants’ business, Defendants have offered, displayed and presented written consumer notices, signs and warranties to Plaintiffs and the Class which contained provisions that violated their clearly established legal rights under state law, within the meaning of N.J.S.A. § 56:12-15.

130. The clearly established rights of Plaintiffs and the Class under state law include the right not to be subjected to unconscionable commercial practices and false written

affirmative statements of fact in the sale of goods or services, as described herein, which acts are prohibited by the CFA, N.J.S.A. § 56:8-2.

131. Plaintiffs and each Class member are aggrieved consumers for the reasons set forth herein, and specifically because, inter alia, each was charged the monthly Network Access and Maintenance Fee by Defendants and paid those Fees to Defendants, and each Plaintiff and Class member suffered an ascertainable loss under the CFA as described above.

132. Pursuant to N.J.S.A. § 56:12-17, Plaintiffs seeks a statutory penalty of \$100 for each Class member, as well as actual damages and attorneys' fees and costs. See N.J.S.A. § 56:12-17, providing that a seller who violates the TCCWNA: "shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs." See also United Consumer Fin. Servs. Co. v. Carbo, 410 N.J. Super. 280, 310 (App. Div. 2009), affirming the trial judge's decision to award the \$100 statutory penalty to each class member under N.J.S.A. § 56:12-17 of TCCWNA, stating:

**"[T]he \$100 civil penalty is not unreasonably disproportionate when viewed in that context, whether it is considered with respect to an individual consumer or the 16,845 consumers whose contracts included the prohibited fee. We note that when assessing the constitutional reasonableness of punitive damage awards, courts are directed to consider and give "substantial deference" to judgments made by the Legislature in fixing civil penalties. Nothing about the facts of this case or the numerosity of this class warrants a more searching evaluation of the reasonableness of awarding the civil penalty selected by the Legislature to each member of this class."**  
(citation omitted).

### **COUNT III**

#### **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

133. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth herein.

134. To the extent any applicable contract could be read as granting Defendants discretion to impose and/or increase the monthly price charged to RCN customers above the price promised and quoted for RCN's broadband internet service—which Plaintiffs do not concede—that discretion is not unlimited, but rather is limited by the covenant of good faith and fair dealing implied in every contract by New Jersey law.

135. Defendants have violated the covenant of good faith and fair dealing by their conduct alleged herein.

136. Defendants have abused any discretion they purportedly had under any applicable contract to raise the monthly price for RCN's broadband internet services higher than that quoted. Based on counsel's investigation, RCN uses the Network Access and Maintenance Fee as a covert way to increase customers' monthly rates without having to advertise or accurately disclose such higher rates.

137. Defendants' bait-and-switch scheme defied customers' reasonable expectations, was objectively unreasonable, and frustrated the basic terms of the parties' agreement. Defendants' conduct alleged herein was arbitrary and in bad faith.

138. Defendants' conduct described herein has had the effect, and the purpose, of denying Plaintiffs and Class members the full benefit of their bargains with RCN.

139. Plaintiffs and the Class members have performed all, or substantially all, of the obligations imposed on them under any applicable agreements with Defendants. There is no legitimate excuse or defense for Defendants' conduct.

140. Any attempts by RCN to defend its overcharging through reliance on contractual provisions will be without merit. Any such provisions are either inapplicable or are unenforceable because they are void, illusory, lacking in mutuality, are invalid exculpatory clauses, violate public policy, are procedurally and substantively unconscionable, and/or are unenforceable in light of the hidden and deceptive nature of RCN's misconduct, among other reasons. Any such provisions, if any, would not excuse RCN's abuses of discretion or otherwise preclude Plaintiffs and the Class from recovering for breaches of the covenant of good faith and fair dealing.

141. Plaintiffs and members of the Class sustained damages as a result of Defendants' breaches of the covenant of good faith and fair dealing. Plaintiffs seek damages in an amount to be proven at trial.

#### **COUNT IV**

#### **NEW JERSEY UNIFORM DECLARATORY JUDGMENTS ACT N.J.S.A. § 2A:16-51, et seq.**

142. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if set forth fully herein.

143. Pursuant to the New Jersey Declaratory Judgments Act (N.J.S.A. § 2A:16-51, et seq.), Plaintiffs and the Class need, and are entitled to, an order for injunctive and declaratory relief:

- a. Declaring that Defendants' policy of charging a deceptive and inaccurately disclosed Network Access and Maintenance Fee is a violation of New Jersey law;
- b. Enjoining Defendants from continuing to charge the Network Access and Maintenance Fee;

c. Ordering Defendants to hold in constructive trust all Network Access and Maintenance Fee payments received from the Class; and

d. Ordering Defendants to perform an accounting of all such Network Access and Maintenance Fee payments.

144. Plaintiffs and the Class members have a significant interest in this matter in that each has been or will be subjected to the unlawful policies alleged herein.

145. Defendants are continuing to engage in the policies alleged herein.

146. Plaintiff Christian Reid is a current customer and subscriber to Defendants' services, and is currently being charged the unlawful Network Access and Maintenance Fee on a monthly basis.

147. Based on the foregoing, a justifiable controversy is presented in this case, rendering declaratory judgment and injunctive relief appropriate.

#### **PRAYER FOR RELIEF**

WHEREFORE, on behalf of themselves and the proposed Class, Plaintiffs request that the Court order relief and enter judgment against Defendants as follows:

A. Declare this action to be a proper class action, certify the proposed Class and Sub-Classes, and appoint Plaintiffs and their counsel to represent the Class and Sub-Classes;

B. Declare that Defendants are financially responsible for notifying all Class members of Defendants' deceptive and unconscionable business practices alleged herein;

C. Find that Defendants' conduct alleged herein be adjudged and decreed in violation of the New Jersey laws cited above;

D. Declare that RCN's policy of charging a deceptive and inaccurately disclosed Network Access and Maintenance Fee to be a violation of New Jersey law;



- E. Permanently enjoin Defendants from engaging in the misconduct alleged herein;
- F. Permanently enjoin Defendants from charging the Network Access and Maintenance Fee;
- G. Retain jurisdiction to monitor Defendants' compliance with the permanent injunctive relief;
- H. Order Defendants to hold in constructive trust all Network Access and Maintenance Fee payments received from the Class;
- I. Order Defendants to perform an accounting of all such Network Access and Maintenance Fee payments;
- J. Grant economic, compensatory, and statutory damages on behalf of Plaintiffs and all members of the Class, to the maximum extent permitted by applicable law;
- K. Grant reasonable attorneys' fees and reimbursement all costs incurred in the prosecution of this action; and
- L. Grant such other relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury as to all issues so triable.

**DeNITTIS OSEFCHEN PRINCE, P.C.**



BY: \_\_\_\_\_  
Stephen P. DeNittis (SD-0016)  
Shane T. Prince, Esq. (SP-0947)  
525 Route 73 North, Suite 410  
Marlton, New Jersey 08053  
(856) 797-9951  
sdenittis@denittislaw.com  
sprince@denittislaw.com

and

HATTIS & LUKACS  
Daniel M. Hattis\*  
400 108<sup>th</sup> Ave NE, Suite 500  
Bellevue, WA 98004  
(425) 233-8650  
dan@hattislaw.com  
pkl@hattislaw.com

\* Admitted Pro Hac Vice

Attorneys for Plaintiffs and the Proposed Classes

# **Exhibit B**

## EXHIBIT B

### RCN NAM Fee Settlement Claim Form

If you were an RCN Internet customer who was charged a Network Access Maintenance Fee (“NAM Fee”) you may be eligible to receive a cash refund or a bill credit in a class action settlement.

To file a claim for a payment, you must complete and file this Claim Form. You can either:

- (1) File Online. File online at [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com); or
- (2) File by Mail: Fill out, sign, and return this form to: [ADDRESS]

**IMPORTANT: THE DEADLINE TO FILE A CLAIM IS [DATE].**

[WEBSITE] [Toll-Free Number]

## Step 1: Provide Your Contact Information

Your Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Email Address: \_\_\_\_\_

## Step 2: Provide Your Claim ID and RCN Account Number

Claim ID #

(You can find this number on the front or top of the settlement notice you received.)

RCN Account Number #     -       -

(You can find this number on the top right of the first page of your RCN bill. If you are no longer an RCN customer and do not know your account number, you can leave this blank)

## Step 3: Choose Form of Payment

☐ **Bill Credit (Get 100% of your Allocated Loss).**

I am a current customer and want to receive 100% of my Allocated Loss (see below) in the form of a bill credit.

☐ **Payment by Check or Electronic Payment (Get 50% of your Allocated Loss).**

I am a current customer or a former customer and want to receive 50% of my Allocated Loss (see below) in the form of a check ☐ or Electronic Payment ☐ [Choose one].

If you checked the box marked "Electronic Payment" above, please provide the type of electronic account to which you would like payment made (e.g., Venmo, credit card, etc.), and the account number:

Account Type: \_\_\_\_\_

Account Number: \_\_\_\_\_

**Your Allocated Loss** is calculated as follows: If you signed up for service after February 17, 2019 you have an allocated loss of 80% of your NAM Fees paid. If you signed up for service before February 17, 2019 and you were a customer anytime on or after that date, you have an allocated loss of 40% of the NAM Fees paid. If you signed up for service before February 17, 2019 and you were not a customer anytime on or after that date, you have an allocated loss of 20% of the NAM Fees paid. In the event that the Settlement Fund, net of the cost of settlement administration, attorneys' fees and

costs, and incentive award to the class representative, is not sufficient to enable the above payments, the payments made to claimants will be decreased on a pro-rata basis.

## Step 4: Sign the Form

☐ The information I gave on this Claim Form is correct to the best of my knowledge.

---

**Your Signature**

---

**Date**

[www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com)

[Toll-Free Number]

# Exhibit C

## **EXHIBIT C**

To: \_\_\_\_\_

From: \_\_\_\_\_@\_\_\_\_\_

Subject Line: Notice of RCN Settlement and Cash Refund or Bill Credit

---

### **CLASS ACTION SETTLEMENT NOTICE**

**IF YOU WERE AN RCN INTERNET CUSTOMER WHO WAS CHARGED A NETWORK ACCESS AND MAINTENANCE FEE, YOU MAY BE ELIGIBLE TO RECEIVE A CASH REFUND OR BILL CREDIT.**

<b>Your Claim ID is: [###]</b>
--------------------------------

**You must file a [claim form](#) [hyperlink] to receive a cash refund or bill credit.**

**For more information, visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com)**

**WHAT IS THIS CASE ABOUT?** Consumers filed a class action lawsuit saying that RCN violated New Jersey law by charging monthly Network Access and Maintenance Fees (“NAM Fees”) in connection with broadband Internet service. . The defendants in the case, RCN Telecom Services LLC and its affiliated companies (collectively, “RCN”), and Patriot Media Consulting LLC, deny all liability.

**WHO IS INCLUDED?** If you received this notice, RCN’s records indicate you are eligible for a cash refund or (if you’re a current customer) a bill credit at your option, for a portion of your NAM Fees paid to RCN in connection with broadband Internet service. You are eligible for a refund (meaning that you’re a “Class Member”) if you subscribed to RCN broadband Internet service between November 1, 2017 and [DATE] and were charged and paid a NAM Fee in connection with that service.

**WHAT DOES THE SETTLEMENT PROVIDE?** The Settlement provides that Defendants will establish a Settlement Fund valued in the amount of up to \$11,500,000. Class Members who file valid claims will receive their choice of a bill credit (if you’re a current customer) or a check or electronic payment. Refund amounts will depend on three things: (1) whether you choose to receive a bill credit versus a check or electronic payment; (2) when you were a subscriber; and (3) the number of other claimants. Class Members who are current customers and who choose to receive a bill credit will receive 100% of the allocated loss (as further described below) of their NAM Fees paid in connection with Internet service during the Class Period. Class Members who are current customers and who choose to receive a check or electronic payment and Class Members who are former customers will receive 50% of the allocated loss (as further described below) of their NAM Fees paid in connection with Internet service during the Class Period. The Allocated Loss is calculated as follows: Each current or former Class Member who signed up for service after February 17, 2019 has an allocated loss of 80% of his or her NAM Fees paid in connection with Internet service. Each current or former Class Member who signed up for service before February 17, 2019 and who was a customer anytime on or after that date has an allocated loss of 40% of his or her NAM Fees paid in connection with Internet service. Each former Class Member who signed up for service before February 17, 2019 and who was not a customer anytime on or after that date has an allocated loss of 20% of his or her NAM Fees paid in connection with Internet service. Based on the foregoing, the range a Class Member may receive is between \$0.20 and \$159.82 depending on: 1) how long the person received internet service from RCN; 2) over what period of time



the person received such service; and 3) whether the person chooses to receive cash or a bill credit when making the claim.

In the event that the Settlement Fund, net of the cost of settlement administration, attorneys' fees and costs, and incentive awards to the class representatives, is not sufficient to enable the above payments, the per-claim payments will be decreased on a pro-rata basis.

**YOUR OTHER OPTIONS.** If you don't want to make a claim, and don't want to be bound by the settlement and any judgment in this case, you must send a written request to exclude yourself from the settlement, postmarked no later than [DATE]. If you exclude yourself, you won't get a refund through this settlement. If you don't exclude yourself, you may object to the settlement or to the request for fees by the attorneys representing the Class. The detailed Long Form Notice, available at [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com), explains how to exclude yourself or object. The Court will hold a hearing in the case—Katherine Grillo, et al. v. RCN Telecom Services, LLC, et al., Case No. MER-L-\_\_\_\_-22, in the Superior Court of the State of New Jersey, Mercer County in Trenton, New Jersey—on [DATE] at [TIME], to consider whether to approve: (1) the settlement; (2) attorneys' fees not to exceed 33.33% plus reimbursement of out-of-pocket litigation costs of \$1,451.72; and (3) service awards totaling \$30,000 for the two class representatives who represented the Class in this case (*i.e.*, \$15,000 each). You may appear at the hearing, but you don't have to. The Court has appointed attorneys (called "Class Counsel") to represent the Class. These attorneys are listed in the detailed Long Form Notice. You may hire your own attorney to appear for you, but you will have to pay that attorney.

**WHERE CAN I GET MORE INFORMATION?** For more information, visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call 1-XXX-XXXX.

*Legal Notice: A Court authorized this Notice. This is not solicitation from a lawyer.*

[www.RCNNAMFeeSettlement.c](http://www.RCNNAMFeeSettlement.c)

1-XXX-XXX-XXXX

# Exhibit D

## **EXHIBIT D**

### **CLASS ACTION SETTLEMENT NOTICE**

**IF YOU WERE AN RCN INTERNET CUSTOMER WHO WAS CHARGED A NETWORK ACCESS AND MAINTENANCE FEE, YOU MAY BE ELIGIBLE TO RECEIVE A CASH REFUND OR BILL CREDIT.**

**You must file a [claim form](#) [hyperlink] to receive a cash refund or bill credit.**

**For more information, visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com)**

*A court authorized this notice.*

*Your legal rights are affected whether you act or don't act.*

*Read this notice carefully.*

This notice informs you of a proposed settlement ("Settlement") of a class action claim against RCN Telecom Services, LLC ("RCN Telecom"); 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 (collectively the "RCN Operating Companies," and with RCN Telecom,, "RCN"); and Patriot Media Consulting, LLC (collectively, with RCN, "Defendants"). Defendants have agreed, under the terms of the Settlement, to provide you with an opportunity to submit a valid and timely Claim Form through which you may be eligible to receive a cash refund of Network Access and Maintenance Fees ("NAM Fees") paid by you to RCN in connection with broadband Internet service, or (if you're a current customer) a bill credit at your option, as further discussed below.

#### **SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

##### **Submit a Claim Form**

If you are an eligible Settlement Class Member who received broadband Internet service from any RCN operating company and were charged and paid a NAM Fee in connection with that service between November 1, 2017 and the date of preliminary approval (the "Class Period"), you are entitled to submit a Claim for a bill credit (if you're a current customer) or a check or electronic payment.

If you received a notice about this settlement by email or mail, you are part of the settlement according to RCN's records, and you are eligible for a cash payment or (if you are a current RCN broadband Internet subscriber) a bill credit from the Settlement.

To receive payment, you need to complete and submit a Claim Form in a timely manner. The Claim Form is necessary to ensure

	that only eligible Settlement Class Members receive a benefit. A Claim Form is available on the Settlement Website at <a href="http://www.RCNNAMFeeSettlement.com">www.RCNNAMFeeSettlement.com</a> or by calling the Settlement Administrator toll free at [REDACTED], or by writing the Settlement Administrator at _____..
<b>Do Nothing</b>	By doing nothing, you forfeit the opportunity to receive any compensation and you give up any rights to sue Defendants, and certain parties related to them, about the claims that have been or could have been asserted based on the facts alleged in this lawsuit.
<b>Ask to be Excluded</b>	By asking to be excluded, you will not share in this Settlement. This is the only option that allows you to keep any rights to sue Defendants about the same legal claims in this lawsuit.
<b>Object</b>	You may write to the Court about why you do not like the Settlement.
<b>Go To A Hearing</b>	You may ask to speak in Court about the fairness of the Settlement.

Your rights and options – and the deadlines to exercise them – are explained in detail below.

The Court in charge of this case still has to decide whether to give final approval to the Settlement. Payments and bill credits will be made only if the Court approves the Settlement and after all appeals (if any) are resolved. Please be patient.

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free [REDACTED]

## WHAT THIS NOTICE CONTAINS

<b>BASIC INFORMATION.....</b>	<b>PAGE ____</b>
1. Why did I receive notice of this lawsuit?	
2. What is this lawsuit about?	
3. Why is this lawsuit a class action and who is involved?	
4. Why is there a settlement?	
<b>WHO IS COVERED BY THE SETTLEMENT .....</b>	<b>PAGE ____</b>
5. Am I a Settlement Class Member?	
<b>THE SETTLEMENT BENEFITS - WHAT YOU GET .....</b>	<b>PAGE ____</b>
6. What does the Settlement provide?	
7. What can I get from the Settlement?	
<b>HOW YOU GET COVERAGE - SUBMITTING A CLAIM .....</b>	<b>PAGE ____</b>
8. How can I make a claim?	
9. When would I get my payment?	
10. What am I giving up to get a payment or stay in the Settlement Class?	
<b>EXCLUDING YOURSELF FROM THE SETTLEMENT .....</b>	<b>PAGE ____</b>
11. How do I get out of the Settlement?	
12. If I do not exclude myself, can I sue Defendants for the same thing later?	
<b>THE LAWYERS REPRESENTING YOU .....</b>	<b>PAGE ____</b>
13. Do I have a lawyer in the case?	
14. How will the lawyers be paid?	
<b>OBJECTING TO THE SETTLEMENT .....</b>	<b>PAGE ____</b>
15. How do I tell the Court that I do not like the Settlement?	
16. What is the difference between objecting and excluding?	
<b>THE COURT'S FINAL APPROVAL HEARING .....</b>	<b>PAGE ____</b>
17. When and where will the Court decide whether to approve the Settlement?	
18. Do I have to come to the hearing?	
19. May I speak at the hearing?	
<b>IF YOU DO NOTHING .....</b>	<b>PAGE ____</b>
20. What happens if I do nothing at all?	
<b>GETTING MORE INFORMATION .....</b>	<b>PAGE ____</b>
21. Are there more details available?	

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free [phone number]

## BASIC INFORMATION

### 1. Why did I receive notice of this lawsuit?

If you received a notice about this settlement by email or mail, RCN's records indicate you are eligible for a cash payment or (if you're a current customer) a bill credit at your option, from the Settlement because you were a subscriber to RCN broadband Internet service who was charged and paid a NAM Fee in connection with that service.

You received an email or postcard notice because you have a right to know about the proposed Settlement of this class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. If the Court approves it and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

This package (this "Long Form Notice") explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the Superior Court of New Jersey, Mercer County, and the case is pending in front of the Honorable [REDACTED], J.S.C. The lawsuit is known as *Katherine Grillo, et al. v. RCN Telecom Services, LLC, et al.*, Docket No. MER-L-[REDACTED]-22. The people who sued are called the Plaintiffs, and the parties sued are called the Defendants.

### 2. What is this lawsuit about?

This is a proposed class action on behalf of RCN broadband Internet customers in the United States who were charged and paid a NAM Fee in connection with that service between November 1, 2017 and the date of Preliminary Approval (the "Class Period"). Specifically, Plaintiffs allege that Defendants charged RCN broadband Internet customers a monthly NAM Fee in connection with that service in a manner inconsistent with and in violation of New Jersey law, including the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*; the New Jersey Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. § 56:12-14, *et seq.*; and the New Jersey Uniform Declaratory Judgment Act, N.J.S.A. § 2A:16-51, *et seq.*; and additionally breached the implied covenant of good faith and fair dealing in the RCN Operating Companies' customer agreements. Defendants deny the allegations.

### 3. Why is this lawsuit a class action and who is involved?

In a class action lawsuit, one or more people called the "Class Representative" or "Lead Plaintiff" sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members," and in this case are the "Settlement Class." The individuals or companies they sued—in this case the companies listed above—are called the Defendants. One Court resolves the issues for everyone in the Settlement Class, except for those people who choose to exclude themselves from the Settlement Class. Judge [REDACTED] is in charge of this case and has certified the lawsuit as a class action for settlement purposes only.

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free [phone number]

#### 4. Why is there a settlement?

The Court did not issue a final ruling in favor of Plaintiffs or Defendants. Instead, the Class Representative and Defendants agreed to enter into the Settlement after an extensive exchange of information and vigorous arms-length negotiations. That way, they avoid litigation costs and burdens, and the people allegedly affected by Defendants' alleged actions will get compensation as soon as possible. The Class Representatives, and the attorneys for the Class Representatives and the Settlement Class Members ("Class Counsel"), think the Settlement is best for the Settlement Class Members.

#### WHO IS COVERED BY THE SETTLEMENT?

#### 5. Am I a Settlement Class Member?

The "Settlement Class" in this case is defined as:

**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 [DATE].**

Your receipt of an email or postcard notice indicates that you have been identified as a potential Settlement Class Member because, according to RCN's records, you received broadband Internet services from an RCN operating company and were charged and paid a NAM Fee in connection with that service between November 1, 2017 and [DATE].

If you are not sure whether you are included in the Settlement Class, you may visit [Settlement Website] \_\_\_\_\_, for more information. You can contact the Settlement Administrator at \_\_\_\_\_.

#### THE SETTLEMENT BENEFITS - WHAT YOU GET

#### 6. What does the Settlement provide?

The complete terms of the proposed settlement are set forth in the Settlement Agreement, which is available at [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com). This notice provides only a summary of the terms of the settlement. The capitalized terms as used in this notice have the same meaning as the terms set forth in the Settlement Agreement.

The Settlement provides that Defendants will establish a Settlement Fund valued in the amount of up to \$11,500,000. Class Members who were charged and paid NAM Fees in connection with broadband Internet service by an RCN operating company and who file valid claims will receive their choice of a bill credit (if you're a current customer) or a check or electronic payment. Refund

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free [phone number]

amounts will depend on three things: (1) whether you choose to receive a bill credit versus a check or electronic payment; (2) when you were a subscriber; and (3) the number of other claimants.

In addition, the Settlement provides that Defendants are revising their marketing and advertising materials and RCN's website to better describe the NAM Fees and to enhance the prominence of the disclosures about the NAM Fees.

If approved by the Court, the Settlement will result in dismissal of this case and final resolution of all claims raised against Defendants. Such dismissal will release Defendants from liability for the claims in this lawsuit.

## **7. What can I get from the Settlement?**

The Settlement provides that Defendants will establish a Settlement Fund valued in the amount of up to \$11,500,000. Class Members who file valid claims will receive their choice of a check or electronic payment or (if you're a current customer) a bill credit .

Refund amounts will depend on three things: (1) whether you choose to receive a check or electronic payment versus (if you're a current customer) a bill credit ; (2) when you were a subscriber; and (3) the number of other claimants. Class Members who are current customers and who choose to receive a bill credit will receive 100% of the allocated loss (as further described below) of his or her NAM Fees paid in connection with Internet service during the Class Period. Class Members who are current customers and who choose to receive a check or electronic payment and Class Members who are former customers will receive 50% of the allocated loss (as further described below) of NAM Fees paid in connection with Internet service during the Class Period.

The allocated loss is calculated as follows: Each current or former Class Member who signed up for service after February 17, 2019 has an allocated loss of 80% of his or her NAM Fees paid in connection with Internet service. Each current or former Class Member who signed up for service before February 17, 2019 and who was a customer anytime on or after that date has an allocated loss of 40% of his or her NAM Fees paid in connection with Internet service. Each former Class Member who signed up for service before February 17, 2019 and who was not a customer anytime on or after that date has an allocated loss of 20% of his or her NAM Fees paid in connection with Internet service. Based on the foregoing, the range a Class Member may receive is between \$0.20 and \$159.82 depending on: 1) how long the person received internet service from RCN; 2) over what period of time the person received such service; and 3) whether the person chooses to receive cash or a bill credit when making the claim.

In the event that the Settlement Fund, net of the cost of settlement administration, attorneys' fees and costs, and incentive awards to the class representatives, is not sufficient to enable the above payments, the per-claim payment will be decreased on a pro-rata basis.

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free [phone number]



## HOW YOU RECEIVE PAYMENT - SUBMITTING A CLAIM

### 8. How can I make a claim?

If you are an eligible Settlement Class Member and you wish to receive a one-time refund, you need to complete and submit a Claim Form in a timely manner. The Claim Form is available on the Settlement Website at [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com), by calling the Settlement Administrator toll free at [REDACTED], or by writing the Settlement Administrator at \_\_\_\_\_.

The fully completed Claim Form must be submitted online, or via U.S. Mail to the Settlement Administrator at \_\_\_\_\_. The deadline for submission of the Claim Form online or by mail is [DATE]. Accordingly, mailed Claim Forms must be postmarked or delivered no later than [DATE], and accurately addressed to the Settlement Administrator. If you do not participate in the claims process by [DATE], you will not receive any settlement benefits. You may attend the Court hearing described below if you wish, but your attendance or non-attendance will not affect your eligibility to submit the Claim Form or receive a cash payment or bill credit. You do not need to appear in Court, and you do not need to hire an attorney in this case.

### 9. When would I get my payment or bill credit?

The Court will hold a hearing on [DATE], to decide whether to approve the Settlement. If Judge [REDACTED] approves the Settlement, and after that, no appeal is taken, then you will be receiving your payment promptly. If an appeal is taken, then resolving it may take some time, perhaps up to, or more than, a year. Please be patient.

If you change your e-mail or postal address before settlement benefits are issued, you should update your information online at [www.\[REDACTED\]](http://www.[REDACTED]) or by sending a letter to the Settlement Administrator to ensure that you receive your cash payment or bill credit. Remember, cash payments and bill credits will be sent to the e-mail or postal addresses that the Settlement Administrator has on file, so it is important that you update these addresses if they change before the settlement benefits are distributed.

### 10. What am I giving up to get a refund or stay in the Settlement Class?

If you are in the Settlement Class definition and do not exclude yourself from the Settlement Class, and the settlement is approved and becomes final, the settlement will be legally binding on you and you will be bound by all judgments entered in the case. In exchange for the settlement benefits, you will release all claims against Defendants about the NAM Fee issues in this lawsuit. The Settlement Agreement, available at [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com), describes the claims you are releasing (giving up) by staying in the Settlement Class (called “Released Claims”).

## EXCLUDING YOURSELF FROM THE SETTLEMENT

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free [phone number]

If you do not want a payment or bill credit from the Settlement, but you want to keep the right to sue or continue to sue Defendants, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself or “opting out” of the Settlement Class.

#### **11. How do I get out of the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail to the Settlement Administrator. Your request must include the following:

- a. Your full name, mailing address, telephone number, and email address;
- b. A statement that you are a class member and want to be excluded from the RCN NAM Fee Settlement; and
- c. Your signature or the signature of an individual authorized to act on your behalf.

You must mail your exclusion request, **postmarked by [DATE]**, to: \_\_\_\_\_

#### **12. If I do not exclude myself, can I sue Defendants for the same thing later?**

No. Unless you exclude yourself, you give up the right to sue Defendants for the NAM Fee claims that the Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **[DATE]**. Any exclusion request postmarked after that date will not be valid, and the sender will be a Settlement Class Member and bound by the Settlement, the Settlement Agreement, the Release, and any and all Court orders entered in this Action.

### **THE LAWYERS REPRESENTING YOU**

#### **13. Do I have a lawyer in this case?**

The Court decided that the law firms of DeNittis Osefchen Prince, P.C. of Marlton, New Jersey and Hattis Law PLLC d/b/a Hattis & Lukacs, of Bellevue, Washington are qualified to represent you and all Settlement Class Members. These law firms are called “Class Counsel.” Both firms are experienced in handling similar cases. More information can be obtained about these law firms, their practices, and their lawyers’ experience by contacting the following Class Counsel:

Stephen P. DeNittis, Esq.  
Joseph A. Osefchen, Esq.  
Shane T. Prince, Esq.  
DENITTIS OSEFCHEN PRINCE, P.C.  
5 Greentree Centre, Suite 410, Marlton, NJ 08053  
(856) 797-9951  
Email: [sdenittis@denittislaw.com](mailto:sdenittis@denittislaw.com)  
Website: [www.denittislaw.com](http://www.denittislaw.com)

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free **[phone number]**

Daniel M. Hattis, Esquire  
Paul Karl Lukacs, Esquire  
HATTIS & LUKACS  
400 108<sup>th</sup> Ave NE, Suite 500  
Bellevue, WA 98004  
(425) 233-8650  
Email: [dan@hattislaw.com](mailto:dan@hattislaw.com)  
Website: [www.hattislaw.com](http://www.hattislaw.com)

#### **14. How will the lawyers be paid?**

Class Counsel have pursued this lawsuit on a contingency basis and have paid all costs of the lawsuit. These attorneys have not yet been paid or recovered any of their costs associated with the lawsuit. As part of the Settlement, Class Counsel will request a payment of 33.33% (\$3,832,950.00) of the Settlement Fund for their reasonable attorneys' fees plus reimbursement of out-of-pocket litigation costs of \$1,451.72. Class Counsel's petition for fees and costs will be filed with the Court no later than [REDACTED], and may be reviewed by any interested party. The Court will make a determination of reasonable attorneys' fees and costs at the Final Approval Hearing based on Class Counsel's Application and responses thereto, if any. Defendants are paying the costs of this and other notice to the Settlement Class; they are also paying to administer this settlement. These notice and administrative amounts will come out of the settlement fund. Finally, no Settlement Class Member will pay anything.

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free [REDACTED]

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not like or agree with the Settlement or some part of it.

### 15. How do I tell the Court that I do not like the Settlement?

If you are a Settlement Class Member, and have not excluded yourself from the Settlement Class, you can object to the settlement, Settlement Class Counsel's request for attorneys' fees and costs, and/or the request for incentive awards for the Plaintiffs who brought this lawsuit. To object, you must file with the Court and send to the Settlement Administrator, Class Counsel, and Defendants' Counsel a written objection which includes the following:

- a. The name of this lawsuit: "Katherine Grillo, et al. v. RCN Telecom Services, LLC, et al.";
- b. Your full name, mailing address, telephone number, and email address;
- c. State whether you are represented by counsel, and if so the identity of such counsel;
- d. Provide proof of membership in the Settlement Class;
- e. Contain a detailed statement of each objection asserted, including the grounds for objection and reasons for appearing and being heard, together with any evidence and documents in support of the objection; and
- f. Your signature or the signature of an individual authorized to act on your behalf.

To be considered by the Court, your objection must be filed with the Clerk of the Court by [DATE], and also must be mailed to the Settlement Administrator postmarked no later than [DATE], with copies to Class Counsel and Defendants' Counsel at the following addresses:

THE COURT	SETTLEMENT ADMINISTRATOR
Clerk of the Court Superior Court of New Jersey, Mercer County 175 South Broad Street Trenton, New Jersey 08608	Kroll Settlement Administration [ADDRESS]
CLASS COUNSEL	DEFENDANTS' COUNSEL
Stephen P. DeNittis, Esquire DeNittis Osefchen Prince, P.C. 5 Greentree Centre 525 Route 73 North, Suite 410 Marlton, New Jersey 08053 856-797-9951 (phone) 856-797-9978 (fax) sdenittis@denittislaw.com	David E. Sellinger, Esquire Greenberg Traurig, LLP 500 Campus Drive, Suite 400 Florham Park, NJ 07932 Phone: 973-360-7900 Fax: 973-301-8410 sellingerd@gtlaw.com

Class Members may object either on their own or through an attorney hired at their own expense. If an objecting Class Member hires an attorney to represent him or her, that attorney must file with

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free [phone number]

the Court and serve upon Class Counsel and Defendants' Counsel, a notice of appearance no later than 20 days before the Final Approval Hearing.

Note that you can ask the Court to deny approval of the settlement by filing an objection, but you can't ask the Court to order a different settlement; the Court can only approve or reject the settlement that is now before it. If the Court denies approval, no settlement payments or bill credits will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. You have the right to consult with your own attorney, at your own expense, before deciding how best to proceed.

#### **16. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class or the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

### **THE COURT'S FINAL APPROVAL HEARING**

#### **17. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing on [DATE], at [TIME], at the Superior Court of New Jersey, Mercer County, 175 South Broad Street, Trenton, New Jersey 08608. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge [REDACTED] will listen to people who have asked to speak at the hearing within the time to do so set by the Court. At or after the hearing, the Court will also decide whether to approve the Settlement and how much to pay Class Counsel. We do not know how long these decisions will take.

#### **18. Do I have to come to the hearing?**

No. Class Counsel will answer any questions Judge [REDACTED] may have. But, you are welcome to come at your own expense. If you send an objection, you may come in person to the Court for the Final Approval Hearing, retain your own attorney to appear for you at the Final Approval Hearing, or not attend at all, and the Court will consider your objection.

#### **19. May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Katherine Grillo, et al. v. RCN Telecom Services, LLC, et al.*, Docket No. MER-L-[REDACTED]-22." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than [DATE] and be sent to: (1) the Court at the Superior Court of New Jersey, Mercer County, 175 South Broad Street, Trenton, New Jersey 08608, (2) Kroll Settlement Administration, [ADDRESS]; (3) Stephen P. DeNittis, Esq., DENITTIS OSEFCHEN

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free [phone number]

PRINCE, P.C., 5 Greentree Centre, Suite 410, Marlton, NJ 08053; and (4) David E. Sellinger, Esq., GREENBERG TRAURIG, LLP, 500 Campus Drive, Suite 400, Florham Park, NJ 07932.

You cannot speak at the hearing if you excluded yourself from the Settlement Class.

### **IF YOU DO NOTHING**

#### **20. What happens if I do nothing at all?**

If you do nothing – including not completing a claim form – you will be a member of the Settlement Class and will forfeit the opportunity to receive any monetary compensation or bill credit. You will also give up any rights to sue Defendants separately about the claims that have been or could have been asserted in this lawsuit.

### **GETTING MORE INFORMATION**

#### **21. Are there more details available?**

The Pleadings, the Settlement Agreement, and other papers filed in this lawsuit are available for your inspection in the Superior Court of New Jersey, Mercer County, 175 South Broad Street, Trenton, New Jersey 08608.

Additional information may be obtained on the Settlement Website at [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com). You may also contact the Settlement Administrator toll free at [redacted] or in writing at \_\_\_\_\_. Additionally, you may contact Class Counsel, whose contact information is listed above, or visit Class Counsel's website at [www.denittislaw.com](http://www.denittislaw.com).

PLEASE DO NOT TELEPHONE THE COURT OR THE CLERK OF THE COURT.

DATE: MONTH XX, 2022.

Questions? Visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call toll free [phone number]

# **Exhibit E**

## **EXHIBIT E**

POSTCARD FRONT:

---

Katherine Grillo, et al. v. RCN Telecom Services, LLC, et al.  
Superior Court of New Jersey, Mercer County, Law Division MER-L- -22

RCN NAM Fee Settlement Administrator  
P.O. Box xxxxx  
City, State Zip

Presorted First-Class Mail  
U.S. Postage Paid  
City, State • Permit No. XXX

**Your Claim ID #:**  
**XXXXXX**

### **CLASS ACTION SETTLEMENT NOTICE**

#### **YOU MAY HAVE A RIGHT TO A CASH REFUND OR BILL CREDIT FROM RCN**

RCN Telecom's records indicate that you are eligible to receive a cash refund or a bill credit under a Class Action Settlement because you are a Class Member who subscribed to RCN broadband Internet service between November 1, 2017 and [DATE] and were charged and paid a Network Access Maintenance Fee ("NAM Fee") for that service.

To receive a cash refund or (if you're a current customer) a bill credit at your option, you must submit a valid Claim Form online at [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or by mail to XXXXXX on or before [DATE]. See back for further details.

[name and address of claimant]

POSTCARD BACK:

---

ACTIVE 64924039v1

ACTIVE 65634244v3

ACTIVE 66291485v1



## **CLASS ACTION SETTLEMENT NOTICE**

**IF YOU WERE AN RCN BROADBAND INTERNET CUSTOMER WHO WAS CHARGED A NETWORK ACCESS AND MAINTENANCE FEE , YOU MAY BE ELIGIBLE TO RECEIVE A CASH REFUND OR BILL CREDIT.**

**You must file a claim form to receive a cash refund or a bill credit.**

**You can submit a claim form online at: [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com)**

**The Claim ID# on the front of this postcard will assist you in making your claim.**

**WHAT IS THIS CASE ABOUT?** Consumers filed a class action lawsuit saying that RCN violated New Jersey law by charging monthly Network Access and Maintenance Fees to its broadband internet customers. The defendants in the case, RCN Telecom Services LLC and its affiliated companies (collectively, “RCN”), and Patriot Media Consulting LLC, deny all liability.

**WHO IS INCLUDED?** If you received this notice, RCN Telecom’s records indicate you are eligible for a cash refund or (if you’re a current customer) a bill credit at your option, for a portion of your NAM Fees paid to RCN in connection with broadband Internet service. You are eligible for a refund (meaning that you’re a “Class Member”) if you subscribed to RCN broadband Internet service between November 1, 2017 and [DATE] and were charged and paid a NAM Fee in connection with that service.

**WHAT DOES THE SETTLEMENT PROVIDE?** The Settlement provides that Defendants will establish a Settlement Fund valued in the amount of up to \$11,500,000. Class Members who file valid claims will receive their choice of a check or electronic payment or (if you’re a current customer) a bill credit. Refund amounts will depend on three things: (1) whether you choose to receive a check or electronic payment versus a bill credit; (2) when you were a subscriber; and (3) the number of other claimants. Class Members who are current customers and who choose to receive a bill credit will receive 100% of the allocated loss of their NAM Fees paid during the Class Period. Class Members who are current customers and who choose to receive a check or electronic payment and Class Members who are former customers will receive 50% of the allocated loss (for more detail [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com)). The loss allocation formula is set forth on the settlement website. Based on the foregoing, Class members may receive between 20 cents and \$159.82. In the event that the Settlement Fund, net of the cost of settlement administration, attorneys’ fees and costs, and incentive awards to the class representatives, is not sufficient to enable the above payments, the per-claim payments will be decreased on a pro-rata basis. **As discussed above, the amounts of Class Members’ actual recoveries will depend on the form in which they receive payment, when they were subscribers, whether or not they remain subscribers, the total amounts of NAM Fees they have paid, and the number of other claimants.** This notice is not an assurance as to the actual amount that any particular Class Member may receive.

**YOUR OTHER OPTIONS.** If you don’t want to make a claim, and don’t want to be bound by the settlement and any judgment in this case, you must send a written request to exclude yourself from the settlement, postmarked no later than [DATE]. If you exclude yourself, you won’t get a refund through this settlement. If you don’t exclude yourself, you may object to the settlement or to the request for fees by the attorneys representing the Class. The detailed Long Form Notice, available at [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com), explains how to exclude yourself or object. The Court will hold a hearing in the case—Katherine Grillo, et al. v. RCN Telecom Services, LLC, et al., **Case No. MER-L-\_\_\_\_\_**

22, in the Superior Court of the State of New Jersey, Mercer County in Trenton, New Jersey—on [DATE] at [TIME], to consider whether to approve: (1) the settlement; (2) attorneys’ fees not to exceed 33.33% plus reimbursement of out-of-pocket litigation costs of \$1,451.72; and (3) service awards totaling \$30,000 for each of the two class representatives (*i.e.*, \$15,000 each) who represented the Class in this case. You may appear at the hearing, but you don’t have to. The Court has appointed attorneys (called “Class Counsel”) to represent the Class. These attorneys are listed in the detailed Long Form Notice. You may hire your own attorney to appear for you, but you will have to pay that attorney.

**WHERE CAN I GET MORE INFORMATION?** For more information, visit [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com) or call 1-XXX-XXXX.

*Legal Notice: A Court authorized this Notice. This is not solicitation from a lawyer.*

[www.RCNNAMFeeSettlement.c](http://www.RCNNAMFeeSettlement.c)

1-XXX-XXX-XXXX

# **Exhibit F**

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-XXX-22

**CLASS ACTION**

**ORDER GRANTING PRELIMINARY APPROVAL  
TO PROPOSED CLASS ACTION SETTLEMENT**

This matter having come before the Court on an unopposed motion by Plaintiffs under N.J. Court Rule 4:32-1, et seq. for preliminary approval of a proposed class action settlement, approval of a proposed form of class settlement notice and notice plan, and setting a hearing date for the formal public hearing on whether to grant final approval to the proposed class settlement, and the Court having considered the motion papers and presentation, and for good cause shown;

IT IS HEREBY ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022 as follows:

1. The Court grants preliminary approval of the proposed class action Settlement as being within the range of potential final approval. All capitalized terms set forth in this Order have the same meaning as in the parties' Settlement Agreement dated [REDACTED], 2022 (the "Agreement"), filed with Plaintiffs' motion.

2. This matter shall preliminarily proceed as a class action, for settlement purposes only, with 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 the date of Preliminary Approval of the Settlement.**

3. For settlement purposes only, the Court preliminarily appoints Plaintiffs Katherine Grillo and Christian Reid as the named Class Representatives and Stephen DeNittis, Esq. of DeNittis Osefchen Prince, P.C. and Daniel Hattis, Esq. of Hattis Law PLLC d/b/a Hattis & Lukacs as Class Counsel.

4. It is apparent from the file and presentation of counsel that the proposed Settlement Class meets the requirements of N.J. Court Rule 4:32-1, et seq., such that class notice should be provided. The Court specifically makes the following findings:

a. The members of the Settlement Class are so numerous as to make joinder impracticable.

b. There are questions of law and fact common to the Settlement Class, and such questions predominate over any questions affecting only individual Settlement Class Members for purposes of the Settlement.

c. Plaintiffs' claims and the defenses to such claims are typical of the claims of the Settlement Class Members and the defenses to such claims for purposes of the Settlement.

d. Plaintiffs and their counsel can fairly and adequately protect, and have fairly and adequately protected, the interests of the Settlement Class Members in this action with respect to the Settlement.

e. The proposed class action Settlement is superior to all other available methods for fairly and efficiently resolving this action.

5. The Court appoints Kroll Settlement Administration, 1515 Market Street, Suite 1700, Philadelphia, Pennsylvania 19102 as the Settlement Administrator. All costs incurred by the Settlement Administrator shall be paid by Defendants via the Settlement Fund.

6. The Court approves the content of the proposed Class Long Form Notice, the Class Email Notice, the Class Postcard Notice, and the Claim Form submitted by Counsel and the proposed manner of notice distribution and claim process set forth in the Settlement Agreement. The Court finds that the manner and content of each of these documents will provide the best notice practicable to the Settlement Class under the circumstances. All costs incurred in connection with the preparation and dissemination of any notices to the Settlement Class shall be borne by Defendants and paid via the Settlement Fund.

7. The Court directs Defendants to provide to the Settlement Administrator within 15 days of this Order: (a) a list of any and all persons whom Defendants' records indicate may be Class Members and their last known postal and/or email addresses; (b) the RCN account numbers for each Class Member (if possible); (c) the total amount of NAM Fees paid by each Class Member; and (d) information by which the applicable allocated percentage of the Settlement Fund for each Class Member can be calculated.

8. The Court further directs that the Settlement Administrator shall disseminate the Class Email Notice and the Class Postcard Notice pursuant to paragraph 5.4 of the Settlement Agreement to all persons whom Defendants' records indicate may be Class Members, at their last known email or mailing address, within 60 days of this Order, and that the Settlement Administrator send a Second Email Notice 75 days after this Order..

9. Within 25 days of the entry of this Order, the Settlement Administrator shall create a Settlement Website [www.RCNNAMFeeSettlement.com](http://www.RCNNAMFeeSettlement.com), which will contain information describing the Settlement and will contain the Settlement Agreement, the Claim Form (Exhibit B to Settlement Agreement), the Class Email Notice (Exhibit C to Settlement Agreement), Class Long Form Notice (Exhibit D to Settlement Agreement), Class Postcard Notice (Exhibit E to

Settlement Agreement), Class Counsel's contact information, and a copy of Plaintiffs' operative Complaint. The Class Long Form Notice, Class Email Notice, Class Postcard Notice, and Claim Form shall also be posted by Class Counsel in a prominent location on Class Counsel's website [www.denittislaw.com](http://www.denittislaw.com).

10. Any person included within the Settlement Class who wishes to be excluded, or to "opt out," from membership in the Settlement Class must do so in writing by mailing a Request for Exclusion from the Settlement to the Settlement Administrator. Any such Request for Exclusion must be post-marked no later than 20 days prior to the Final Approval Hearing scheduled in this matter. Any Settlement Class Member who has filed an Objection to the fairness, reasonableness, or adequacy of the Settlement pursuant to paragraph 11 of this Order shall be deemed not to have opted out of the Settlement Class pursuant to this paragraph. In the event and to the extent that the Parties advise the Court that a Settlement Class Member has made a submission to the Court and the Parties which appears to assert both an Objection to the proposed Settlement and a Request for Exclusion from the Settlement Class, such Settlement Class Member shall be deemed to have objected to the Settlement. Any Request for Exclusion that fails to satisfy the requirements of the Settlement Agreement, or is not properly or timely submitted, shall not be effective, and the person making such a Request shall be deemed to have waived all rights to opt out of the Settlement.

11. Any Settlement Class Member who has not timely filed a written Request for Exclusion from the Settlement Class pursuant to paragraph 10 of this Order may file an Objection to the fairness, reasonableness, or adequacy of the Settlement. Any member of the Settlement Class who so objects may appear at the Final Approval Hearing, in person or through counsel, to show cause why the Settlement should not be approved as fair, adequate, and

reasonable. Any such Objections to the proposed Class Settlement must be submitted to the Clerk, post-marked no later than 20 days prior to the Final Approval Hearing scheduled in this matter, with a copy also mailed to the Settlement Administrator and to the parties' counsel. Any Objection that fails to satisfy the requirements set forth in the Settlement Agreement, or that is not properly and timely submitted, shall not be effective, will not be considered by this Court, and will be deemed waived, and those Settlement Class Members shall be bound by the final determination of this Court.

12. Except for good cause shown, no person (other than the parties and their respective representatives and counsel) may appear or be heard at the Final Approval Hearing, or file papers, briefs, or other submissions regarding the Final Approval Hearing, unless by 20 days prior to the Final Approval Hearing such person or his or her counsel files with the Clerk of this Court and simultaneously serves on counsel for all Parties at the addresses set forth in the Settlement Agreement a timely, written notice of request to appear at the Final Approval Hearing.

13. Pursuant to N.J. Court Rule 4:32-1, et seq., a formal, public hearing on whether to grant final, binding approval to the proposed class action Settlement shall be held on [REDACTED], 2022, at the Superior Court of New Jersey, Mercer County, 175 South Broad Street, Trenton, New Jersey 08608 at \_\_\_\_\_ and. Any person wanting to be heard on that date by phone or virtually shall contact Mercer County Civil Case Management for directions on how to appear. During this Final Approval Hearing, the Court shall determine whether:

a. This action meets each of the prerequisites for class certification set forth in N.J. Court Rule 4:32-1(b), and may properly be maintained as a class action under N.J. Court Rule 4:32-2;



b. The Settlement should receive final approval as fair, reasonable, adequate, and in the best interests of the Settlement Class, in light of any Objections presented by Settlement Class Members and the parties' responses to any such Objections;

c. A Final Approval Order granting final approval of the Settlement, entering final judgment, and dismissing Plaintiffs' Complaint with prejudice, as provided in the Settlement Agreement, should be entered; and

d. The applications of Plaintiffs' counsel for the payment of attorneys' fees and expenses and for incentive awards to the Class Representative Plaintiffs are reasonable and should be approved.

The Final Approval Hearing may be postponed, adjourned or continued, and the format of the hearing may likewise be altered, by further order of this Court, without further notice to the parties or the members of the Settlement Class.

14. Any memoranda of law or other documents in support of final approval of the proposed class Settlement, copies of any Objections or Requests for Exclusion that have been submitted to Class Counsel or Defendants' Counsel, and an affidavit attesting that class notice has been distributed in a manner consistent with this Order, must be submitted to the Court twelve days prior to the Final Approval Hearing.

15. If the Settlement is finally approved, the Court shall enter a separate Final Approval Order finally approving the Settlement, entering judgment, and dismissing the Complaint. Such order and judgment shall be fully binding with respect to all members of the Settlement Class.

16. In the event that the proposed Settlement set forth in the Agreement is not granted final approval by the Court, or in the event that the Agreement becomes null and void pursuant to

any of its other terms or is otherwise not consummated, then the provisions of paragraphs 8.3 through 8.6 of the Settlement Agreement shall be given full effect, any and all orders entered by the Court in connection with the proposed Settlement shall become null and void, and the Settlement Class defined in paragraph 2 of this Order shall be immediately de-certified without further order of this Court. In such event, all proceedings in this Court related to the proposed Settlement shall be withdrawn without prejudice to the rights of any and all parties thereto, who shall be restored to their respective positions as of the date of the filing of the Complaint, and this action will revert to its status as of that date.

17. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the related negotiations or proceedings connected therewith shall be construed as an admission or concession by Defendants of the truth of any of the allegations made by Plaintiffs, or of any liability, fault, or wrongdoing of any kind. Neither the Settlement Agreement nor any submission by any Party in connection with Plaintiffs' motions for preliminary or final approval of the Settlement or Plaintiffs' application for an award of attorneys' fees, expenses, and incentive awards, any appeal from such motions or application, or any related motions or proceedings may be used in this action or in any other proceeding for any purpose other than as specified in the Settlement Agreement.

18. This Court hereby enters a Preliminary Injunction barring and enjoining Plaintiffs 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 the Settlement Agreement, until such time as this Court has ruled on the fairness of the Settlement terms following the Final Approval Hearing.

SO ORDERED:

Hon. \_\_\_\_\_

# Exhibit G

**EXHIBIT G**

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-XXX-22  <b>CLASS ACTION</b>
---	---

**VOLUNTARY DISMISSAL WITHOUT PREJUDICE  
AS TO ALL DEFENDANTS PURSUANT TO RULE 4:37-1(a)**

The plaintiffs, Katherine Grillo and Christian Reid, hereby file this voluntary Notice of Dismissal of the Complaint without prejudice and without costs filed against all defendants. As of the date of this filing, the defendants have not filed or served an Answer responsive to Plaintiffs' Complaint.

DeNITTIS OSEFCHEN PRINCE, P.C.  
Attorneys for Plaintiffs



\_\_\_\_\_  
STEPHEN P. DeNITTIS, ESQUIRE

Dated: