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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

)	
IN RE: CENTURLINK SALES)	File No. 17-md-2795
PRACTICES AND SECURITIES)	(MJD/KMM)
LITIGATION)	
)	
)	Zoom Video Conference
)	Minneapolis, Minnesota
)	Thursday, November 19, 2020
)	10:35 a.m.
)	

BEFORE THE HONORABLE MICHAEL J. DAVIS
UNITED STATES DISTRICT COURT SENIOR JUDGE

MOTIONS HEARING ON DOCKET NOS. 731 AND 832

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24 * * *

25

1 Peter Nickitas on behalf of objector Troy Scheffler.

2 THE COURT: Good morning. How are you?

3 MR. NICKITAS: Fine. Thank you, Your Honor.

4 THE COURT: Good. All right.

5 Anyone else? One more?

6 MR. POETZ: Good morning, Your Honor. My name is
7 Troy Poetz. I'm an attorney, but I'm an objector, so I'm
8 basically representing myself this morning.

9 THE COURT: Good morning. And how are you?

10 MR. POETZ: Good. Thank you.

11 THE COURT: All right. All right. Let's proceed.

12 MR. POSTMAN: Good morning, Your Honor. I'm
13 sorry. Warren Postman from Keller Lenkner for the
14 intervenors and arbitration claimants.

15 THE COURT: All right. Good morning. And how are
16 you?

17 All right. Anyone else that needs -- all right.
18 Okay. Let's proceed.

19 MR. GUDMUNDSON: Your Honor, Brian Gudmundson
20 here. I'll be arguing the motions for the plaintiffs.

21 We have two motions pending before Your Honor.
22 The first is a motion for final approval of the class action
23 settlement between the consumer plaintiffs and CenturyLink,
24 and the other is plaintiffs' motion for attorneys fees and
25 expenses and for class representative service awards. I'll

1 be, sort of, arguing them both in tandem as we go through
2 this.

3 And if Your Honor, of course, has anything you'd
4 like advanced in the argument, I am sure you will let me
5 know. It would be appreciated.

6 At a high level, these two motions that are
7 imminently approvable. The settlement itself is quite
8 reasonable. The notice plan was executed according to the
9 plan. Almost 100 percent of class members, 17.2 million
10 class members, received direct notice either through email
11 or U.S. mail. There were only 8 objectors out of
12 17.2 million class members. And as far as opt-out requests,
13 we only received 12,325 such requests, of which 11,929 are
14 represented by Mr. Postman, leaving only 396 other class
15 members who requested to be excluded. All of the valid
16 claims will be fully paid, and they will be ratcheted
17 upward. More will be awarded to them than was anticipated.
18 The settlement class is certifiable. There are no
19 impediments. And we believe both the class representative
20 service awards and the attorney fees are reasonable.

21 I'm going to turn to the settlement for a moment
22 and just do a little bit of an overview about what it was
23 all about and the structure of it for a moment.

24 The monetary relief provided by the settlement is
25 \$19 million. It was 18.5 at preliminary approval. An

1 additional 500,000 came in. When the administrative costs
2 went over \$3 million, CenturyLink provided an additional
3 500,000, bringing the total monetary relief up to 19
4 million.

5 The bulk of this monetary relief is the 15.5
6 million primary fund. That primary fund is used to pay for
7 all of the valid claims, up to 500,000 of administrative
8 costs that were kicked in when the notice and administration
9 went up -- and that will happen here -- the class
10 representative service awards of approximately 85,000, if
11 granted in full, and the attorneys fees and expenses, which
12 are 6,492,276, if granted in full.

13 So turning to the claims for a moment from which
14 this -- will be paid from this primary fund. The claims can
15 take one of two forms. In general, the claims were designed
16 to do two -- well, one of two things. They were for
17 overcharges paid to CenturyLink and that hadn't already been
18 reimbursed. Those are really the two main criteria. For
19 those types of claims, a claimant could submit either a flat
20 payment claim, which was a presumptive \$30, subject to a
21 pro-rata multiplier, up or down, depending on how much
22 participation there was. Such a claimant would only have to
23 submit a claim form, essentially just averring to the facts.

24 The second type of claim was a supported document
25 claim. The claimant could submit the claim form, plus a

1 narrative and documents showing that they were entitled to
2 more than \$30, the presumptive \$30. They would receive
3 40 percent of their demonstrated overcharges and also
4 subject to that pro-rata multiplier, which could increase it
5 or decrease it. In this case it will be increased. The
6 limits on these supported document claims are minimal. They
7 are simply that if someone is claiming a monthly overcharge,
8 that is capped at six months of that overcharge and there
9 are no consequential or special types of damages
10 recoverable. It's payments to CenturyLink, overcharges paid
11 to CenturyLink.

12 The second component of the financial relief in
13 this case is the notice of administration fund of which was
14 \$3 million fully funded by CenturyLink. They will be
15 funding another 500,000 based on the fact that the
16 administration notice costs are going to be closer to 4
17 million, just about at 4 million. The status of the fund so
18 far, about 3.8 has been spent. We have been told that it
19 will not exceed approximately a little over 3.9. And a lot
20 of that has to do with just the incredible amount of notice
21 that had to be done, including direct notice via U.S. mail,
22 postage and other costs like that.

23 The settlement also provides non-monetary relief
24 focused squarely on the allegations of the case.
25 CenturyLink cannot misrepresent or omit key information

1 about the price of services, must disclose all material
2 terms and not charge more than was promised. So if you're
3 subject to a -- things you have to do to get the price, that
4 has to be disclosed; and if there are things that you do
5 that disqualify you for the price, that also has to be
6 disclosed. This implements specific policies and training
7 to make sure that this is followed, and they have to supply
8 a written certification report once a year for three years
9 to class counsel.

10 There's a couple other important non-monetary
11 aspects that are -- that are important. One is credit
12 report issues. If a claimant in this case submits a claim
13 that's valid and receives compensation for it and that
14 claim, that overcharge was subject to credit reporting or
15 collections, CenturyLink has to help clear that up, has to
16 help get that off the credit report. And also the
17 arbitration clauses. This was a big, a big sore -- sore
18 subject for all concerned about what was the conspicuousness
19 of that. Your Honor is well aware. Those have to be made
20 more conspicuous.

21 Turning a moment to the motion for the class
22 representative service awards and the attorneys fees and
23 expenses, just to talk about the reasonableness of those.
24 Those are a separate motion fully briefed before Your Honor.
25 I won't go through the law and the facts of a lot of this

1 stuff. Your Honor is well aware of the law, certainly.

2 The class rep services award we seek are \$2500 for
3 33 class representatives and one additional of the Florida
4 class representatives who was not named in the consolidated
5 complaint, but who provided material support to the case.
6 These class representatives are a big reason we believe this
7 case came to the result it did. To a person, they worked
8 incredibly hard, were incredibly devoted, gave up whatever
9 time was needed to provide the documents and information to
10 help us and to remain a very solid front to help us
11 prosecute this case against a very large company, frankly.
12 They put their names on these lawsuits, put their names out
13 there in public, various responses, sat for depositions and
14 answered a lot of personal questions, and we think that
15 those awards are fully merited.

16 With respect to the attorneys fees, we have
17 requested one-third of the -- of 18.5 million, which was the
18 former total financial compensation. We're not increasing
19 that request based on the additional 500,000 that was added
20 after our petition was submitted. We're seeking
21 32.5 million. In other words, of the 19 million, we think
22 that the case law imminently supports that percentage of the
23 fund request.

24 We also believe it is supported by the lodestar
25 cross-check. At the time of our June 2020 submission, we

1 were looking at about a one-third negative multiplier on our
2 lodestar, which we think obviously supports the
3 reasonableness of it. Since that time there's been more
4 work that has been done by class counsel and others to
5 address Mr. Postman and Keller Lenkner's filings before the
6 court, before the Eighth Circuit and also for administration
7 and approval purposes. That work will continue, but our fee
8 request will not increase.

9 The work that we believe all of the plaintiffs'
10 counsel did to support that fee is set forth in the
11 briefing. Obviously, it's a lot. Your Honor is aware of
12 all of the motions that were involved, the extensive
13 discovery, including of 38 plaintiffs, five of whom
14 subsequently dismissed, both briefing multiple motions and
15 arguments on discovery disputes and a lot of other things,
16 including meeting -- mediating and resolving the case.

17 Turning just for a moment to the notice program,
18 which we think is important. It was executed according to
19 plan. We believe that 100 percent of the current customers
20 received direct notice according to how they received their
21 bill, either through email or through the U.S. mail, however
22 they received their mail. Rust Administrators handled the
23 former customers. Their declaration was submitted to the
24 court and shows that they believe they reached approximately
25 94.99 or 95 percent of the class through direct notice.

1 There was also some indirect notice done, 4.9 million Google
2 ads, keyword searches and a press release that was picked up
3 by 140 news outlets.

4 There were a couple of hiccups along the way. As
5 Your Honor may be aware, we had to extend this brief -- or
6 this motion because there was some additional notice that
7 had to go out. We wouldn't have preferred for it to be that
8 way; however, we also think that that's proof that it worked
9 a little bit. Some of this was caught, I understand, as
10 I've been informed by CenturyLink, when certain people filed
11 claims that weren't on the class notice lists and who
12 clearly picked up the notice through other means, through
13 indirect means. A lottery search was done, a lot of work
14 was done to make sure that everybody received notice. We
15 wanted to make sure that that happened. We did. And those
16 numbers go into the 100 percent and the 95 percent of former
17 and current customers, so we're actually quite pleased that
18 we were able to get that done.

19 Turning now to sort of the heart of the matter,
20 perhaps, which is the volume of claims and the claims that
21 were made in this case. According to the latest numbers --
22 and a lot of this is still subject to review by the claims
23 administrator, especially with respect to supported document
24 claims, but as of the filing of our motion, for flat payment
25 claims, 115,240 timely claims; supported document claims,

1 2,213 supported document claims. There were a number of
2 claims that selected both or neither. Those have to be
3 resolved. But, all in all, we think it was about 120,000
4 total claims submitted.

5 Taken at its value, the flat payment claims comes
6 out to about 3,457,200. Supported document claims are a
7 little hard to value because we don't quite know. There's a
8 lot of error in there, and there's a deficiency process --
9 full deficiency process that we go through; however, about
10 80 percent of them are \$500 or under. In our papers we very
11 conservatively overestimated the average value of all claims
12 as, number one, being valid, but, number two, at \$1,000
13 apiece and they will be somewhere south of that. But just
14 for trying to inform Your Honor or guesstimate how much
15 money is going to be available to pay claims here, we
16 estimated that those supported document claims at about
17 \$2.2 million.

18 So the total claims that we're looking at, we
19 believe, are in the neighborhood of \$5,670,000 --
20 \$5,670,000. The total available for payment from the
21 primary fund is approximately 8.4 million. And so we're
22 approximating at this time a ratchet up of all the claims
23 perhaps as much as 45 to 50 percent, which we think is a
24 great result.

25 There is another matter that we wanted to speak

1 about with Your Honor today, and that is the settlement
2 agreement allows us, with Your Honor's permission, to accept
3 certain claims that are received late. We would like Your
4 Honor's permission -- and we can certainly add this to the
5 proposed order that was submitted -- we would like Your
6 Honor's permission to accept claims up to two weeks late,
7 14 days after the date they were due. As we all know, there
8 were some issues with the mail throughout the summer,
9 whether right or wrong. There were a lot of good faith
10 efforts we believe that were made to get things in on time,
11 and we think that by accepting claims up to 14 days later
12 won't materially impact the rights of others and that
13 there's plenty of money to pay those claims. And, again, we
14 would be happy to add that to the proposed order that was
15 submitted to Your Honor.

16 THE COURT: Unless I hear an objection to that, I
17 agree to that. It's clear that we've had problems with the
18 United States Postal Service and even more important matters
19 in this country, and so I don't think 14 days is
20 unreasonable. Unless I hear otherwise, other than just an
21 objection, I need -- there has to be some basis for that
22 objection.

23 MR. GUDMUNDSON: Thank you, Your Honor. That's
24 appreciated.

25 Moving now to the claims rate. Your Honor and I

1 had a discussion about this at the preliminary approval
2 hearing, how many claims are out there, how many valid
3 claims will participate. The claims rate as it stands, if
4 you were to assume that 100 percent of the 17.2 million
5 class members were injured, is less than 1 percent. So
6 that's seven-tenths of 1 percent. But what does this mean?
7 What does this mean? We believe that it's a reflection of
8 the confirmatory discovery which we discussed at the
9 preliminary approval hearing. I know Your Honor was
10 concerned with the number of class members and the amount of
11 money available and asked, How many folks do you think are
12 out there?

13 THE COURT: Right.

14 MR. GUDMUNDSON: We had to do our best
15 guesstimate, which was the confirmatory discovery showing us
16 that CenturyLink's customer service, its multi-layered
17 customer service, had caught a lot of overcharges and
18 refunded tens of millions of dollars throughout the class
19 period, that a very small percentage escaped that net and
20 made its way to the highest levels of CenturyLink's customer
21 advocacy group. And we think that these numbers sort of
22 reflect that.

23 We certainly don't believe that the claims that it
24 reflects, that notice was deficient. We have between 95 and
25 100 percent direct notice. We also caught some people who

1 didn't get direct notice, but who participated anyway. We
2 don't think it's a bad deal. We certainly think it's a
3 meaningful cash payment that people were interested in.
4 Over 100,000 people participated and virtually no
5 objections, virtually no exclusions when compared to the
6 overall class. We've got supported document claims
7 available for people to tie their higher losses to their
8 specific circumstances. And, again, we just -- we just
9 think that it's likely that confirmatory discovery was
10 likely correct.

11 And, again, even if -- we put this in our papers,
12 of course, but even if 100 percent of the class were
13 injured, which -- which had unresolved, uncompensated
14 injuries, which isn't the case, even the case law says that
15 a claims rate under 1 percent is approvable, and we think
16 that that's appropriate.

17 Moving more quickly, we've already talked about
18 the opt-outs. We think it's a measure of the reasonableness
19 of the settlement. There's only 396 class members out of
20 17.2 million who opted out, who are not represented by
21 Keller Lenkner. Keller Lenkner's clients number 11,929 who
22 sought to opt out of the class. We think that this --

23 THE COURT: While we're talking about the Keller
24 Lenkner clients, before I forget it, has Keisha Covington,
25 Daniel Sokey, Tiffany Van Riper, James Watkins, Jaclyn

1 Finafrock and Kelly Johnson opted out of the class? Because
2 those are the six -- I need to know the status of those six
3 class members, so I can rule on their motion to intervene
4 and compel arbitration and stay proceedings. And that's
5 Docket No. 596.

6 MR. GUDMUNDSON: My understanding is that they
7 have. If Mr. Postman is on the line, perhaps he can
8 confirm.

9 MR. POSTMAN: Yes, with one exception. So all of
10 them have submitted opt-outs in the format Your Honor --
11 Your Honor required under the settlement. Tiffany Van Riper
12 had told us that she wanted to opt out, and we included her
13 in the letter that we submitted that Your Honor held was not
14 adequate. She has been nonresponsive since that time. You
15 know, we regularly spoke to her before. She was very
16 engaged over a period of time and for whatever reason has
17 been nonresponsive. So she did not submit the formal
18 opt-out. That's the lay of the land. I'll stop there and
19 don't need to argue anything else.

20 THE COURT: All right. Thank you. I appreciate
21 that. I'm sorry to interject that, but I didn't want to
22 forget about that issue.

23 You may continue.

24 MR. GUDMUNDSON: Thank you, Your Honor.

25 The next topic for discussion are the objections.

1 Again, only eight objections in a case of this size we think
2 speaks volumes about the reasonableness of the settlement
3 and the acceptance by the class.

4 I'm going to go through the objections a little
5 bit for Your Honor. I'm sure you've had a chance to do that
6 already with the papers. However, seven of the eight
7 objections are -- you know, they fail for not providing the
8 required information. Six did not require -- did not supply
9 the required declaration, that is, the objectors Poetz,
10 Sparks, Koehler, Pumphrey, McDonald and Suppes. One did not
11 provide a valid claim number, account number. That's
12 Mr. Scheffler. And, in fact, the eighth objector is not an
13 objection at all, but a letter of support for the company
14 CenturyLink, which objector Romano objects to any litigation
15 being brought against it.

16 But putting aside the technical infirmities of the
17 objections, I'd like to speak just a little bit on the
18 merits and why these objections should be overruled. It's
19 probably a bit more important discussion.

20 Three of the objections really are not objections
21 to settlement. They are more expressing anger with
22 CenturyLink itself. These are the objectors Sparks, Koehler
23 and Pumphrey, who really stated the way that they were --
24 they felt that they were mistreated and that they didn't
25 feel that they were being made whole or compensated properly

1 by the settlement.

2 Objector Poetz expressed a similar frustration. I
3 spoke to Mr. Poetz in person. I got a good sense of where
4 he was coming from. He had purchased internet that he
5 thought was fast enough to support him at his -- at his new
6 hobby farm. When the pandemic hit, he tried to work there.
7 It didn't work out. The internet wasn't fast enough. And
8 he submitted an objection that he doesn't feel that the
9 settlement properly addresses these types of issues.

10 In fairness, I understand the frustration that
11 Mr. Poetz has. I don't understand how the settlement is
12 insufficient. If the internet wasn't what he paid for, he
13 can submit a claim or he can perhaps opt out and join
14 Mr. Postman or, since he's a lawyer, pursue it on his own
15 and pursue something greater, but we don't think that what
16 Mr. Poetz puts forth undermines the reasonableness of the
17 settlement at all.

18 Another objector, Mr. McDonald, objected and said
19 he could not technically participate in the settlement. He
20 couldn't figure out how to log in. It would reject him. I
21 reached out to him immediately to try to offer my
22 assistance. The administrator did as well. We did not hear
23 back from Mr. McDonald. We remain open and willing to help
24 him participate, if he's a class member, which by all
25 accounts he is.

1 Objector Suppes really just takes issues with the
2 attorneys being made whole, as he sees it, as opposed to
3 him, who he says is only entitled to up to \$30. Without
4 belaboring the arguments made about, you know, plaintiffs'
5 counsel's fee submission, the attorneys are not being made
6 whole. They are getting a negative multiplier of a little
7 more than 33 percent. And certainly we believe the class
8 members may seek more than \$30. If they feel that they are
9 entitled to more, they can supply a submitted -- a supported
10 document claim or even the flat payment claims here will be
11 higher than \$30. But in any event Mr. Suppes does not
12 direct any specific criticism at the structure of the
13 settlement or how it's unfair, which brings us to the
14 objector Scheffler.

15 Mr. Scheffler is a serial objector, as found by
16 Judge Thrash in Atlanta. He supplies four somewhat vague
17 objections. I did have a chance to speak to Mr. Scheffler
18 and his counsel and try to get some sense of where they were
19 coming from.

20 According to his submitted objection, the first is
21 that he believes the settlement provides inconsistent and
22 arbitrary remedies and no objective means to verify those
23 remedies. I'm not entirely clear what this means. We do
24 not believe that the remedies available are arbitrary. The
25 confirmatory discovery again showed that the average refund

1 made to settle claims by CenturyLink's highest customer
2 service level was \$68 per resolution. 40 percent of that is
3 a little under \$30. We pinned it pretty close to that with
4 30. People are going to be getting a lot more than that, we
5 think, under the settlement. If they think their 40 percent
6 litigation risk factor applied there or to the supported
7 document claims and reasonable certainly, there's opt-out
8 rates that they can -- that they can seek, but we don't
9 think that that means that anything is arbitrary here or
10 inconsistent.

11 Judge Magnuson in fact approved a very similar
12 settlement in the Target data breach case, where we were
13 counsel. On the financial institution side people could --
14 banks and credit unions could select a flat payment per card
15 issued or supply supported documentation to get more. That
16 was deemed reasonable.

17 There's no inconsistent treatment of the class
18 members here. Everybody is treated the same. If people
19 want to submit just a claim form, they can get the flat
20 payment; but if they have varying levels of injury here,
21 they can submit that supported document claim and get
22 something that's tied more closely to their circumstances.
23 And certainly folks did. While 80 percent or more submitted
24 claims for less than \$500 for supported document claims,
25 there are some for quite a bit more and some people will get

1 more.

2 The objection that there's no objective means to
3 confirm the fairness, that I'm not sure is true, although
4 I'm not sure I understand completely what it means either.
5 We think that a settlement, when it provides monetary
6 compensation of this type, certainly is objectively fair on
7 its face; and if somebody doesn't like what's being offered
8 in a claim that they think has a certain value, they can
9 certainly opt out and seek more. That's the same whether
10 they participate in a class action or bring a case in small
11 claims court or anywhere else. If they think a claim is
12 worth something and they are offered something they don't
13 like, they can either pursue it or accept it.

14 And I think that it bears mentioning that in terms
15 of objection -- I'm sorry -- objectively reasonable
16 remedies, as the court may have seen in our submission,
17 Mr. Scheffler is seeking a \$20,000 payment for his
18 objection. He doesn't mention how that's objectively
19 reasonable or how we could objectively measure the
20 reasonableness of that request.

21 Mr. Scheffler's second objection is that he claims
22 that there's no objective way for a class member to
23 determine if they were overbilled or in what amount. Again,
24 we're not exactly clear what this means. He seems to be
25 saying that class members don't know if they've been

1 overcharged or not and there's no way for them to know that.
2 Well, the law is pretty clear here, Your Honor; if somebody
3 is fine with a bill, generally they haven't been
4 overcharged. It's kind of the law of contract and
5 acceptance.

6 This is a class -- this is a group of plaintiffs
7 and a class of people who are quite upset about the way they
8 were treated by CenturyLink. They are aware they were
9 overcharged. They pursued their rights, and they're
10 receiving compensation for it. We don't have a single other
11 class member out of 17.2 million who is stepping forward to
12 claim they don't know if they were overcharged or not and
13 therefore it's unfair. Certainly, Mr. Scheffler is capable
14 of determining if he was overcharged. In 2014 he claims he
15 was overcharged. He sued CenturyLink, and he settled with
16 them. I asked him in our discussion if he was aware of any
17 other overcharge he suffered. He could identify none. So
18 I'm not sure what is quite being said here, but we don't
19 think it's a basis for overturning this settlement.

20 Mr. Scheffler's third objection is that he asserts
21 that CenturyLink only maintains one year of customer
22 records. That's not true. You can see in the Beckman
23 declaration in support of final approval here that records
24 could be obtained for longer. I'm aware that people did
25 obtain those records. Mr. Scheffler never contacted us or

1 contacted the administrator to try to obtain those records.
2 We don't know who he talked to at CenturyLink, but he can
3 get at least two years and more if he seeks it. I mean,
4 again, we have no record of any objection from any other
5 class member of the 17.2 million claiming that they couldn't
6 get the documentation they needed to support a supported
7 document claim or otherwise or to support any -- any
8 objective measure of overcharge.

9 Mr. Scheffler's fourth and final objection is to
10 the attorneys fees. He asserts they are not objectively
11 reasonable; there's no way to measure them. This is false.
12 As we set forth at some length in our submission, we set
13 forth the reasonableness of the attorneys fees and expense
14 requests under both the percentage of the fund and the
15 lodestar methods. We think that that checks out squarely.
16 And, you know, all those things -- all other things
17 considered, we believe that Mr. Scheffler's objection should
18 be overruled in its entirety.

19 Moving on to some brief, final topics. Class
20 certification here we think is imminently appropriate. It's
21 all set forth in our brief. We don't need to have a class
22 certification motion. Your Honor is well aware of the law
23 in this area. We don't think that anything has been said
24 that undermines any areas of this. I'm happy to answer any
25 questions that Your Honor sees fit on that topic.

1 And just to sort of sum things up, as Your Honor
2 is aware and a lot of the others on the phone are aware,
3 this was an incredibly hard-fought litigation and
4 settlement. It was not without its trials and tribulations.
5 We did get there.

6 I think that the first people who should be
7 commended for the result were the plaintiff class
8 representatives. As I said earlier, they really pitched in
9 to a person, were there 24 hours a day to help us, and they
10 were simply outstanding. They matched a very large
11 corporate defendant wit for wit. They didn't give up. They
12 helped us, and we relied on them, and it was -- it was a big
13 reason for this result.

14 The plaintiffs' counsel team, I'm not sure I've
15 ever been part of a more cohesive group of people that were
16 all heavy lifters. Nobody sat around waiting to be paid.
17 It was heavy lifting by all firms all the way. That
18 cohesiveness certainly allowed us to match wit for wit a
19 very large company and its very sophisticated counsel.

20 And, you know, obviously, finally, defendant and
21 its counsel put up an incredible defense of this case. We
22 litigated that vigorously. When it came time to talk about
23 settlement, we were able to get a deal done. And after that
24 time, they have put a lot of resources and a lot of effort
25 into seeing this through and approved on behalf of obviously

1 the company and on behalf of its customers.

2 So we'd just simply wrap up by asking the court to
3 grant plaintiffs' motion for final approval of the class
4 action settlement in its entirety and also to grant
5 plaintiffs' motion for attorneys fees and expenses and for
6 class representative service awards. And I'd be happy to
7 answer any questions you may have.

8 THE COURT: All right. Thank you very much.

9 Mr. Lobel.

10 MR. LOBEL: Yes. Good morning again, Your Honor.
11 Douglas Lobel for CenturyLink. I'll be addressing
12 CenturyLink's response. My partner Jeff Gutkin may jump in
13 as well.

14 Your Honor, CenturyLink fully supports plaintiffs'
15 motion for final approval. We think this is a very good
16 result for the class and a reasonable compromise that's in
17 the best interests of the class.

18 And just to touch on a few things that
19 Mr. Gudmundson said, and then I'm going to try to provide
20 some additional color for some of the topics that he
21 addressed.

22 We do think the settlement process was very fair.
23 There was effective notice in the claims process that
24 involved multiple forms of notice, as you heard, direct
25 notice by email and mail, website, web ads, publication,

1 many, many different types of notice, millions of direct
2 mail and emails sent out for this very, very large
3 nationwide class.

4 And the results of the notice I think are very
5 significant. Notice went to 100 percent of existing
6 customers and 94.99 percent of former customers. And as a
7 result of that notice program, 115,000 or so class members
8 made claims and will receive compensation, but it's not just
9 the compensation that we all anticipated back at the
10 preliminary approval stage. Because of the pro-rata
11 multiplier, this class likely will receive multiples of what
12 the parties expected, close to 50 percent greater for both
13 flat claims and documented claims. So we think that's quite
14 significant in terms of the monetary compensation to the
15 class.

16 But the monetary compensation is not the only
17 benefit that the class received here. There are significant
18 non-monetary provisions in the settlement agreement that
19 will certainly benefit the class and the public. In
20 paragraph 2 of the settlement agreement CenturyLink agreed
21 to numerous consumer business practices.

22 Now, I will say that this is a company that I've
23 represented for over two decades. They are constantly in
24 the process of improving their processes and working to
25 improve their business practices. And so it's not to say

1 that these improvements just started when the settlement was
2 inked. These improvements were ongoing from a business
3 perspective. And as Your Honor knows, some of these
4 improvements were as a result of some of the other
5 litigation that was ongoing, including with the Minnesota
6 Attorney General.

7 So many of these process improvements were
8 underway, but many of them also were accelerated as a result
9 of the settlement in this case. And so let me just
10 highlight a few and give you some -- some sense of those.
11 And as I say, there are many practices to be improved, but I
12 think these are perhaps the most significant and I'll just
13 give you a sense.

14 So in order to ensure accurate disclosure and
15 billing, which, of course, was one of the main issues in the
16 case, the company rolled out an electronic acceptance of
17 orders process during sales calls, and that is for currently
18 existing customers, but it's being rolled out to eventually
19 and shortly, I believe, to new customers as well.

20 So what that means, Your Honor -- perhaps we've
21 all experienced this with other companies -- at the time you
22 are on the phone with the representative changing your
23 package or ordering a new service, you have -- you receive a
24 text message or an email during the phone call in which you
25 see your order pop up and the prices that are part of that

1 order, and then you scroll down and you are asked to review
2 and accept that order, as well as disclosures that are part
3 of that order.

4 And so that is -- as I said, that's a relatively
5 new change in the company's procedures, which are intended
6 to prevent misunderstandings or in the case of a rogue agent
7 missed billings. And so there's no surprises to the
8 customer. They're on the phone. They are considering a
9 certain type of service. They see exactly what they've
10 purchased, exactly what the cost is; and before that service
11 goes into effect and they are billed, they -- they
12 affirmatively accept that service.

13 As part of that, because it has not yet been
14 rolled out to new customers, new customers are subject to an
15 order recap by the sales agents on the phone. This is
16 something that CenturyLink has had for some time called
17 required call components. And so the agent, after going
18 through the sales process and the customer agreeing, the
19 agent will read a recap of the order, that you've ordered
20 this new package and that is so much per month and that
21 includes certain fees and taxes. And they even give the
22 customer the information about what their first bill will
23 look like. And so these disclosures are now a required part
24 of the sales process by the sales reps for new customers.
25 As I say, eventually they will get the electronic acceptance

1 as well.

2 And the second part of this, but related to this
3 and which we think is very significant, is that there's a
4 quality assurance audit program with respect to the work of
5 these agents. So these calls are recorded. The agents are
6 required to provide this information, the required call
7 components, and there's a review of the call records. A
8 score is tabulated. And if the agents do not live up to the
9 acceptable score, the agents are terminated. The agents
10 with low scores will be terminated. And so it's not just a
11 process where we ask agents to do something that they may or
12 may not follow, but we now follow up with that and we ensure
13 that they do what we ask them to do.

14 And I think the third -- Mr. Gudmundson mentioned
15 the credit reporting, which is significant, but I think the
16 third item I think is very significant here is we're not
17 just going to walk away if Your Honor approves this
18 settlement. There are three years of required compliance
19 reports to be provided to the plaintiffs, so plaintiffs
20 looking over our shoulders for the next three years. And,
21 of course, Your Honor knows that we've entered into a number
22 of attorney general settlements that have certain reporting
23 requirements. And so there's a lot of eyes looking over the
24 sales process for CenturyLink over the next few years. And
25 so these business practices that are either developed for

1 these purposes or were in the works will benefit both this
2 particular class, as well as the public and future
3 customers.

4 And so I would say just to conclude that this is
5 not just good business. It's obviously the right thing to
6 do. But we feel that as a result of this process
7 CenturyLink has become a better company. CenturyLink is a
8 more customer-friendly company. CenturyLink is going to
9 provide a better customer experience in the future than it
10 may have in the past. And that's both the result of the
11 many efforts that have been undergoing for many years, as
12 well as some of the specific requirements in this -- in this
13 settlement.

14 With respect to other reasons this is a good
15 settlement for the class, Your Honor, the plaintiffs faced,
16 we think, many obstacles in this case. They were facing
17 very complex, contentious and costly discovery. There were
18 significant defenses on the merits that we had, including
19 the voluntary payment doctrine. There were individualized
20 proof problems. There were problems potentially certifying
21 the class, and certainly there was a problem of an
22 unmanageable trial potentially with many varying claims.

23 And so that's a reason that we think it's a fair
24 and adequate resolution for the class, but I don't -- I
25 don't want to move on without saying we have vigorously from

1 day one denied the allegations in this case, as Your Honor
2 knows, and we would have vigorously fought this battle if we
3 hadn't struck this settlement. But I think the company
4 feels quite good in putting this matter behind it, if Your
5 Honor agrees, and focusing on building and improving its
6 business.

7 And along those lines, I'm pleased to inform the
8 court of something that the court may not know, which is
9 that the securities case that is before Your Honor has been
10 settled in principle and a term sheet is being worked out at
11 this time. And so we anticipate in the not-too-distant
12 future we'll be in front of Your Honor on that matter
13 addressing similar issues that we're addressing here today.

14 THE COURT: Well, that's good news.

15 MR. LOBEL: I thought you would think so, Your
16 Honor.

17 With respect to the objections, I'll just say,
18 Your Honor, briefly that I note that these eight objections
19 are not weighty in our view. About half of them were not
20 even actual objections. Some of them were almost
21 commercials for CenturyLink. And none were an impediment to
22 approval of this settlement, we think.

23 So, all in all, a very fair and a very reasonable
24 result with a lot of hard work that went into it with a lot
25 of parties. And we think that the class is much better off

1 for the efforts of all counsel involved.

2 I will second what Mr. Gudmundson said. I want to
3 commend Mr. Gudmundson and plaintiffs' counsel. We'd say
4 that we started out fighting pretty hard; and once we came
5 together, we worked pretty hard and we worked very well
6 together to bring this challenging case to hopefully a
7 conclusion. And I would say in my 38 years of practice this
8 was as good relations as I've had with opposing counsel in a
9 long and difficult case. And so I thank my colleagues on
10 the other side for that experience and their cooperation and
11 hard work to bring us where we are.

12 So, Your Honor, I just have one final point I'd
13 like to make as an aside, and it's a little bit of a
14 diversion.

15 I'm sure that the court recalls that there's an
16 appeal pending in the Eighth Circuit now regarding the
17 injunction provision of the preliminary approval order.
18 That was an injunction that appeared in paragraph 10 of the
19 preliminary approval. And there was a lot of discussion
20 about it, and these appeals were filed by the Keller Lenkner
21 firm. As a matter of timing, the Eighth Circuit has set the
22 oral argument on that appeal for December 16th, so about a
23 month from now. If the court enters a final order and final
24 judgment in this case, by its terms that injunction would
25 dissolve, and we think it moots the appeal before the Eighth

1 Circuit.

2 So, Your Honor, without being presumptuous, if the
3 court were inclined to enter the order and judgment in this
4 case in advance of that oral argument date, that would save
5 the Eighth Circuit and the parties, we think, substantial
6 time and resources in addressing that appeal. And that's
7 all I'll say about that, Your Honor.

8 So, in conclusion, we think there are no reasons
9 that this settlement should not be approved and we ask the
10 court to do so.

11 THE COURT: All right. I appreciate that.

12 I do want to note if Ms. Regan and Mr. Gutkin wish
13 to say a few words, they are welcome to.

14 MS. REGAN: No, Your Honor. Thank you.

15 THE COURT: All right. Mr. Gutkin?

16 MR. GUTKIN: No, Your Honor, nothing to add.

17 Thank you.

18 THE COURT: All right. All right. Let's move on
19 to objector Troy [audio disruption] attorney and
20 Mr. Nickitas. Do you wish to be heard?

21 MR. POETZ: Sure, Your Honor. Since you
22 mentioned --

23 MR. NICKITAS: Good morning, Your Honor. Peter
24 Nickitas.

25 MR. POETZ: Oh. Go ahead, sir.

1 THE COURT: Mr. Nickitas.

2 MR. NICKITAS: Thank you, Your Honor.

3 Thank you, Mr. Poetz.

4 Peter Nickitas. Yes, Your Honor. Peter Nickitas
5 here for Troy Scheffler. He, Mr. Scheffler, lodged an
6 objection to the proposed settlement.

7 I'd begin by noting first that Mr. Gudmundson did
8 reach out to me, and we had an amicable conversation, and he
9 addressed specific objections and addressed the fee
10 objection. All of this was amicable and certainly relative
11 to the proposed fee. We have shared our own experiences in
12 fee applications. And that's, with that said, that is no
13 longer a significant concern of Mr. Scheffler's. His
14 concern concerned the availability of billing.

15 Now, Mr. Scheffler did raise this as an issue, to
16 be able to go back to 2014 to determine objectively how much
17 he had been overbilled. And I do note that plaintiffs'
18 class counsel did provide bills going back to 2016 for
19 Mr. Scheffler. Still a couple years short.

20 Your Honor, I live in St. Paul, and I have been a
21 CenturyLink customer myself, so I just did a little
22 following up to see what bills would be available to me as
23 an ordinary CenturyLink customer. And two years were the
24 limit on available bills going backwards to determine
25 whether I as a customer had been overbilled or not. Any

1 reasonable customer would call customer service to get prior
2 bills, and they are told they don't exist past two years.
3 Evidently, they do.

4 If the billing beyond two years are available to
5 customers, that information for accessing those bills should
6 have been available on the class notice, and that way
7 prospective class members could more easily verify for
8 themselves have I been overbilled and, if so, how much or
9 have I not been overbilled. The measure of overbilling in
10 comparison to the \$30 per customer proffered payout still is
11 lacking an objective measure. We don't see the mass. We
12 don't see enough of the foundation to make sure that this is
13 the fair and reasonable settlement to Mr. Scheffler.

14 And with respect to any of the other points,
15 Mr. Scheffler did lay out his previous experience as a class
16 objector, and it is utmost to copy the customer
17 identification and class member identification number on his
18 declaration. So he respectfully lodges his objection with
19 the qualifications that I've brought before the court.

20 And thank you, Your Honor.

21 THE COURT: Thank you.

22 Objector Troy Poetz. Attorney Poetz, please.

23 MR. POETZ: Thank you, Your Honor.

24 And thank you, counsel.

25 I want to start by making it clear that I am not a

1 serial objector and I am not casting aspersions on anyone
2 that it is, but I've never been involved in a class action
3 as a member of the class and I've certainly never objected.
4 My objection here is sincere. This is not an economic
5 pursuit. I certainly have other work to do right now.

6 Mr. Gudmundson did describe my wife and my
7 experience with CenturyLink pretty accurately. We purchased
8 a hobby farm in 2019. I contacted CenturyLink and told them
9 what my needs were, and they -- they assured me that their
10 product was more than enough to handle what I would be
11 running in my house with my wife and I and three children.
12 That didn't turn out to be true. It didn't turn out to be
13 remotely true. And when COVID hits, sort of relegated to a
14 home office like a lot of us, and it became worse, and I
15 ended up just coming back to the office because the service
16 provided just could not handle the load. It doesn't even
17 really handle the basic internet needs in our house. And
18 I'm not saying that I was overcharged, other than in the
19 sense that I was provided a product and paid for a product
20 that I considered to be defective.

21 Here in my little part of the world CenturyLink is
22 the only provider that provides service in our rural area,
23 and they sort of tout themselves as that and they certainly
24 did in my communications with them. So they are the only
25 show in town that provides rural service like this.

1 My objection is not a commercial for CenturyLink,
2 and I don't think CenturyLink would want me starring in a
3 commercial about their -- about their company. Their
4 customer service I would say is lackluster, is a generous
5 way to describe it. Their service obviously, like I said,
6 just didn't meet the needs, and that's explicitly not what I
7 was -- not what I was told.

8 In regard to the settlement itself, multiplied
9 over a 17-million-person class, \$15.5 million seems to me to
10 be low, especially with the 1 percent take rate. This is a
11 company whose first quarter total revenue of 2020 is
12 \$15.2 billion with net income of \$314 million. Fifteen and
13 a half million isn't a rounding error, but it's not real far
14 off. And I am aware of the complaints that were flooded --
15 or that were flooding the AG's office. I'm aware of
16 CenturyLink's history. And if you take my small experience
17 here in central Minnesota and you multiply that over, you
18 know, thousands -- well, millions of class members, that to
19 me seems light.

20 Now, I certainly could opt out and arbitrate. I
21 decided not to do that. Again, I'm not looking to make a --
22 make a mission out of this, but I think I would have been
23 remiss if I didn't object to what I consider to be an
24 insufficient settlement amount for the class.

25 Thank you, Your Honor.

1 THE COURT: Thank you.

2 Any response from the plaintiffs or the defense to
3 the objectors?

4 MR. GUDMUNDSON: Yes, Your Honor. Just very,
5 very, very briefly on each one.

6 Regarding Mr. Scheffler, we did provide him his
7 invoices from 2016 and '17. It's our understanding -- and I
8 believe it may be set forth in Mr. Lobel's declaration in
9 support of this motion for final approval, but that was the
10 only other account Mr. Scheffler had after he settled all of
11 his claims regarding his prior account in 2014 and '15.
12 Certainly, my understanding is that records are available
13 prior to that, but that's all there was for him. And so,
14 again, there's really not any evidence that he was
15 overcharged or that this settlement is insufficient for him.

16 Regarding Mr. Poetz, just one clarification and
17 that is that there is -- there is plenty of money here to
18 pay all these claims. I set forth, and I won't set forth
19 again, that the amount of claims received is in line roughly
20 with the confirmatory discovery we did previously and that
21 all of the claims that were submitted by class members will
22 be paid and paid more than was anticipated.

23 That's all I have, Your Honor.

24 THE COURT: All right. Mr. Lobel?

25 MR. LOBEL: Yes, Your Honor. May I respond?

1 Your Honor, with respect to Mr. Scheffler's
2 objection, that's a serious objection in the sense that if
3 it were true that the records for the class members were not
4 available, that would threaten the fairness of the
5 settlement process. So we take it very seriously.

6 The fact is what Mr. Scheffler alleges is not
7 true. The company set up a process where the administrator
8 was to provide the records for the class members upon
9 request, because the company -- and this was something that
10 we discussed -- the company did not want the individual
11 representatives to be involved in providing materials to
12 class members. We needed the consistency and expertise and
13 uniformity of the administrator.

14 So if someone called the administrator and said
15 I'm a class member, I would like six years of bills, they
16 would get them. If someone called the customer service
17 representative and said I'm a class member, I'd like six
18 years of bills, the representatives had scripts that were
19 specifically directed to direct the customers to the
20 administrator.

21 Part of the problem here may be that if a customer
22 called a representative and simply said I'd like six years
23 of bills, well, that's not CenturyLink's policy. Their
24 policy is that they give two years of bills. And if the
25 representative didn't know that the customer was part of the

1 settlement or was a class member seeking bills for the
2 purposes of making a claim, then that might not have been
3 communicated and they might not have referred to the
4 administrator.

5 So that's -- that's really where this problem
6 arises, that Mr. Scheffler didn't follow the instructions
7 given to class members to contact the administrator for his
8 bills. And I would note that we're not aware of any other
9 customer that complained or certainly objected that they
10 couldn't get their bills. So this is not a rampant or even
11 common problem that the court should be concerned about. I
12 think it was just a misunderstanding in this particular case
13 with one customer.

14 THE COURT: All right.

15 MR. LOBEL: With respect to mister -- I'm sorry,
16 Your Honor. Did I interrupt?

17 THE COURT: No, no. Did I interrupt you, I should
18 ask.

19 MR. LOBEL: No.

20 THE COURT: Go ahead.

21 MR. LOBEL: That's all I have to say about
22 Mr. Scheffler.

23 With respect to Mr. Poetz, I am sympathetic to the
24 problem. We've all struggled with these issues during this
25 difficult time. But I read Mr. Poetz's objection as a

1 complaint about the service that he received or perhaps the
2 price that he paid, which is exactly what this class
3 settlement is about. And there are 115,000 other customers
4 who made a claim for similar reasons, perhaps not the exact
5 same issue, but related issues, and they are afforded
6 recovery under the structure of the settlement, or there are
7 about 12,000 other customers who opted out. Those were
8 Mr. Poetz's two choices. And I appreciate certainly, and no
9 one is minimizing his experience, but this is not an attack
10 on the settlement. This is an attack or a challenge to
11 CenturyLink services. And so that fits right within what
12 the class members are getting recovery for.

13 That's all I have to say about that, Your Honor.

14 THE COURT: All right. Thank you.

15 All right. The court will approve the final
16 settlement by the plaintiffs, and the court will deny the
17 objections that have been lodged.

18 The court will allow the acceptance of claims
19 14 days after the filing date, if that's the correct time
20 period, because of the postal service slowdown that happened
21 this spring and summer.

22 The court will grant the attorneys fees, the
23 reimbursement of costs and expenses and the class
24 representative services and awards filed by the plaintiffs.

25 The court will request that, dealing with the

1 expense records, to be able to determine the reasonableness
2 of those awarding expenses, plaintiffs' counsel shall submit
3 their expense records to the court by December 1st, 2020.

4 The court will request that the plaintiff get the
5 proposed order to the court within seven days, so the court
6 can review it and have it signed and filed before the
7 December 16th date dealing with the appeal, that it's before
8 the Court of Appeals for the Eighth Circuit.

9 Now, Mr. Poetz, if you can come back on the
10 screen. And I think you represent so many --

11 Can I get him back on the screen? Mr. Poetz?

12 Just speak for a second, so you come back on the
13 screen, so I can --

14 MR. POETZ: Oh, I'm sorry. Yeah. Oh, I'm seeing
15 myself on the screen.

16 THE COURT: Yes, yes.

17 MR. POETZ: Okay.

18 THE COURT: Unless you speak, I don't see you.

19 MR. POETZ: I see.

20 THE COURT: Now, I want you to know -- and I know
21 this is not going to solve your dissatisfaction. I've been
22 a federal judge for 26 years. I've been a judge for
23 37 years and practicing over close to 50 years, 47,
24 48 years. Being a federal judge, I've been very fortunate
25 to have a number of MDL, multi-district litigation cases.

1 And I think the lawyers involved in this case, of course,
2 they do their homework on who gets a settlement. I've
3 handled some very large MDLs and some small ones.

4 When I got this case, I was well aware of not
5 only, you know, what CenturyLink and the other providers of
6 the internet have caused so much havoc for customers. So
7 when I received the assignment to handle this, I looked at
8 my staff, and I had a big smile on my face, and I said this
9 is going to be a war that I won't be able to control. And I
10 can tell you that it has turned out just the opposite.

11 And we've had a set of lawyers, both on the
12 plaintiffs' side and the defense side, that have truly been
13 outstanding. They know what the problems were with this
14 case legally. And I don't know if you've gone through the
15 papers and the arguments. And so there were liabilities on
16 the plaintiffs' side that they were well aware of, and the
17 defense had some fantastic arguments, but they came
18 together. They didn't ask me, but they went to an
19 independent arbitrator or mediator, Judge Layn Phillips out
20 of Oklahoma. And I don't know him or her. And they spent
21 four days in heated mediation and were able to come up with
22 an agreement that just astounded me.

23 You should understand I am -- when I first got my
24 first MDL, I told the lawyers I don't take coupon cases, all
25 right, and no one is going to get paid that doesn't -- that

1 should not get paid, in any type of MDL that I'm involved
2 in. And I've made that clear during my career. And so the
3 legitimacy of class actions and MDLs are very important to
4 me because they hopefully streamline the system, so people
5 that have been wronged or injured or in some way taken
6 advantage by a corporation or company has some way of
7 getting some compensation. And I can tell you in this case
8 that the amount of money that the claimants are going to get
9 is one that I am totally satisfied with and I know that both
10 sides litigated and very strongly.

11 And this was not a lay down by the plaintiffs just
12 to get some money, so they could get some cash for their law
13 firms. That is just not the case. I know that sometimes in
14 MDLs the lawyers get, in the vernacular, a bad rap in taking
15 the money and leaving the injured parties with pennies on
16 the dollar, but that's not the case in this litigation.
17 There were some very difficult issues and hurdles on both
18 sides, and they recognize that. And I can tell you the
19 professionalism of the team of lawyers on both sides made my
20 job a lot easier.

21 The Zimmerman Reed firm knows that I handled the
22 *Baycol* litigation, which at one point was the third largest
23 MDL litigation in the country. And that was just to [audio
24 disruption] that I had to get under control. And I flew
25 around the country dealing with the different lawyers to

1 make sure that we could have a settlement where people died
2 or were seriously injured from a statin drug that was taken
3 off the market.

4 Here, you know, I have a smile on my face because
5 I'm towards the end of my career and it validates why I love
6 the law, is that we do have outstanding lawyers that are
7 pressing for justice and they're -- on both sides, because
8 we need equal representation on both sides and we had that.
9 The plaintiffs put together a team of lawyers that could
10 match the defense team, and the defense team put together a
11 team that could -- had to deal with all the litigation that
12 was going on across the country dealing with CenturyLink.

13 And I can tell you that in all the hearings that
14 I've had and all the briefings that I've had on this case
15 there was nothing said by any of the parties that was out of
16 line. It was all professional. And I think -- I don't know
17 what happened in the mediation or otherwise. I'm sure there
18 was some more heated discussions, and that's necessary, but
19 before me I did not have to get involved in slapping any
20 hands or finding anyone in contempt or -- and I've done that
21 before in these large litigations.

22 And so I just want to -- there is no doubt in my
23 mind how frustrated you are, and I wish I could wave the
24 magic wand and get that internet up and running for you in a
25 proper way for your second home, your hobby farm, but

1 hopefully through this litigation and through you making
2 your voice heard, which was very important for me, because
3 you are really representing all these individuals that got
4 poor service, you are their voice, and I need to see that
5 and hear that. And I'm glad that you've taken the time out
6 of your busy practice to be involved in this, because it's
7 important for the court to keep its finger on why I'm here,
8 and that's to do justice for not only the lawyers, but for
9 the parties. It is the parties that are the ones.

10 And I can't solve your problem, but I want you to
11 know that I hear you. I feel the pain, as they say. And I
12 know that the litigation across the country -- it shows
13 that, that there's so many people that were feeling the same
14 pain and frustration and anger that you show, but you
15 represented them in the highest manner possible. And I
16 appreciate you standing up. It just takes one. Always
17 remember that. It always takes one.

18 And we all can't say -- I received the card in the
19 mail on a class action recently, and I couldn't -- I
20 couldn't sign off on it because I couldn't remember whether
21 or not I received the telephone calls from the financial
22 institution, but because -- because I block most of them;
23 and if they don't show up with their name, I don't answer
24 the phone. So I could not check the box and try to get any
25 money from the class. But I understand the people that are

1 going to be involved in this settlement will be able to sign
2 and receive some money. And it is very seldom, as you well
3 know, in any litigation that anyone is made whole. It's
4 just -- our system is not made that way. But I just wanted
5 to talk to you for a few minutes because I'm so proud of
6 you, I really am.

7 MR. POETZ: Thank you, Your Honor. You don't know
8 me, but I know you just by reputation. And the fact that
9 you are putting your stamp of approval on the settlement
10 goes a long, long way, and I mean that. And I've worked
11 with Zimmerman Reed before too, and their reputation is
12 sterling. In fact, I've referred cases in the past to them.
13 And congeniality, like you said, is paramount to my practice
14 too. I'm a member of ABOTA, which is, you know, a
15 trial-lawyer-based organization.

16 THE COURT: Right.

17 MR. POETZ: Right. And we value congeniality and
18 professionalism above all else. So thank you very much for
19 your kind words. And I just wanted to say a little bit on
20 behalf of the class, and thank you for hearing that out.

21 THE COURT: All right. And let me tell you, I
22 appreciate you taking the time to stand up for the class.
23 It's so important. All right.

24 All right. Anything else that I need to do or
25 order or rule on at this point?

1 MR. POSTMAN: Your Honor, Warren Postman of Keller
2 Lenkner. One very brief point, out of an abundance of
3 caution.

4 You mentioned the motion to intervene and compel
5 arbitration by Keisha Covington and the other parties. I
6 just wanted to note that although your confirmation or final
7 approval of the settlement I think moots the obstacle of the
8 injunction, CenturyLink did repudiate their obligation to
9 arbitrate in a letter. I won't relitigate the issue. We
10 briefed that and why we think that issue is delegated. I
11 just wanted to note that that half of the dispute I think is
12 still alive and not mooted. And so you noted ruling on the
13 motion. I just wanted to note that there's still something
14 alive there.

15 THE COURT: All right. Mr. Lobel.

16 MR. LOBEL: Your Honor, we believe that the issue
17 of -- we believe that the issue of the injunction, once Your
18 Honor signs the two documents, consistent with paragraph 10
19 of the preliminary approval order, is -- is moot. If the
20 injunction is dissolved at that point, we don't think
21 there's anything further to be addressed.

22 THE COURT: All right. All right. Anything from
23 the plaintiff on this issue?

24 MR. GUDMUNDSON: No, Your Honor. Thank you.

25 THE COURT: No dog in that fight.

1 MR. GUDMUNDSON: Well, we do to the extent that
2 there's an appeal, but our argument is that these were
3 mooted at the outset when their clients requested exclusion,
4 but I'll leave it at that.

5 MR. POSTMAN: Your Honor, if I can just clarify.
6 I want to make sure we're not getting wires crossed.

7 I'm here not referring to the appellants in the
8 Eighth Circuit, and I'm referring to the fact that these
9 intervenors have sought under Section 4 of the FAA an order
10 compelling arbitration, and there are elements to that
11 claim. The injunction I agree is not stopping them from
12 arbitrating after they've opted out, but there are elements
13 to their FAA claim, and one is that they have an agreement
14 to arbitrate, two is that CenturyLink has refused to
15 arbitrate. And separate from the injunction, CenturyLink
16 has stated that they're refusing to arbitrate. They'd sent
17 a letter to our clients saying they're revoking unilaterally
18 their arbitration agreement.

19 And so I think we have a right under the FAA to
20 get an order compelling them to arbitrate, and we laid out
21 why in our brief, but our request for relief is very much
22 alive, and I won't relitigate it. I just want to separate
23 that out from the injunction.

24 THE COURT: All right. Mr. Lobel, anything?

25 MR. LOBEL: Your Honor, let me -- let me ask

1 Mr. Gutkin to respond to this, because Mr. Gutkin has been
2 involved, very involved in this issue.

3 THE COURT: All right.

4 MR. GUTKIN: I'll just respond briefly, Your
5 Honor, just to that.

6 The motion to compel arbitration and the relief
7 CenturyLink sought there was submitted and argued in June,
8 if I'm not mistaken. It's not on the docket today. The
9 issues today just relate to the final approval order, which
10 Your Honor has indicated he will approve. That also takes
11 off the table the injunction issue, which is the only thing
12 that's on the docket for today that involves the Keller
13 Lenkner firm. So I don't believe that Mr. Postman is right
14 that there's anything more Your Honor needs to do, unless
15 Your Honor chooses to rule on the old motion that
16 was submitted already.

17 THE COURT: Okay. All right. Anything further on
18 this issue?

19 MR. LOBEL: No, Your Honor.

20 THE COURT: I'll take this part under advisement,
21 so I can take a quick look at it.

22 MR. POSTMAN: Thank you, Your Honor.

23 MR. LOBEL: Thank you, Your Honor.

24 THE COURT: All right. Anything further from
25 plaintiff?

1 MR. GUDMUNDSON: Not from the plaintiffs, Your
2 Honor. Thank you.

3 THE COURT: From the defendants?

4 MR. LOBEL: No, Your Honor. Thank you.

5 THE COURT: All right. Again, thank you for all
6 of the hard work that you've put into this case.

7 And if you do have contact with Judge Phillips,
8 please give him my high regards and thanks for working with
9 you and being able to come to a mediation that solved and
10 resolved this matter.

11 With that, I want all of you to stay safe.
12 COVID-19 is here with us for a while, and we've had a number
13 of people in the legal profession who have gotten sick and
14 have passed away, so be very careful. And I hope you have a
15 Happy Thanksgiving and Happy Holidays and Happy New Year.
16 Thank you.

17 (Court adjourned at 11:54 a.m., 11-19-2020.)

18 * * *

19 I, Renee A. Rogge, certify that the foregoing is a
20 correct transcript from the record of proceedings in the
21 above-entitled matter.

22 Certified by: /s/Renee A. Rogge
23 Renee A. Rogge, RMR-CRR

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