

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PAUL FORD, DOLORES FORD, RUTH E.
BOBZIEN, AMY DICKERSON, BRUCE
DICKERSON, EVERETT CHAMBERS,
JOANNE CHAMBERS and RAY VINNEY, for
themselves and all others similarly situated,

Plaintiffs,

v.

SPRINT COMMUNICATIONS COMPANY
L.P., QWEST COMMUNICATIONS
COMPANY, LLC, and WILTEL
COMMUNICATIONS, LLC,

Defendants.

ORDER

12-cv-270-slc

In this proposed class action lawsuit, the parties have reached a proposed settlement that would resolve plaintiffs' claims arising from a practice under which telecommunications companies installed fiber-optic cable systems in railroad rights of way under agreements with the railroads possessing those rights of way. Before the court is the parties' joint motion under Federal Rules of Civil Procedure 23(b) and (e), asking the court to (1) certify the settlement class, (2) preliminarily approve the class-action settlement agreement, (3) approve the form and manner of notice to the class and (4) schedule a final fairness hearing after the week of November 5, 2012. Dkt. 11.

As an initial observation, I note that the parties' efforts to date are commendable. It is obvious that a substantial amount of work went into reaching the settlement agreement and that the parties have taken great care in preparing the necessary notices, claims forms and related documents. Although I do not have any major concerns with the parties' submissions, I would like the parties to clarify a few issues before I rule on the motion:

Questions on Settlement Agreement

- (1) It appears that a potential class member's property rights and possible benefit level depends on whether the land in question is a "non-land grant" (with different segments signifying different benefits), a "pre-1875 federal land-grant section" or a "pre-1875 land-grant non-section." Given these differences, why was the class not subdivided?
- (2) Specifically how are the named class members' interests typical of the proposed class and varying benefit levels? Is there a named class member representing each of the benefit levels? If not, can the named class representatives adequately represent the interests of those class members receiving a different level of benefit?
- (3) In order to be excluded from the class, a class member has to submit a "legal description contained in the deed to [the] land or other description." How burdensome is this requirement? This is of particular concern given that a class member who chooses to do nothing (perhaps daunted by the work involved in seeking exclusion) is subject to both an easement and the release of claims.
- (4) Is it possible for a class member to get an idea of what benefit level she or she may qualify for before the opt-out deadline? If a class member initially chooses to remain in the class and later becomes unhappy with the benefit level assigned to his or her property, can he or she then opt out of the class?
- (5) Would a longer opt-out deadline, perhaps 60 days instead of 45, be possible to address the concerns raised in questions (3) and (4)?
- (6) The agreement allows a settling defendant to withdraw from the agreement 30 days prior to the fairness hearing if it believes, in its reasonable discretion, that an excessive number of persons have opted out of the settlement class. What are the definitions of "reasonable discretion" and "excessive"?
- (7) It appears from the agreement that the settling defendants ultimately may sell, lease or provide third parties with access to the database of property owners. What privacy concerns does this raise? Is there a means by which a property owner can prevent unwanted solicitations or communications?
- (8) Plaintiffs submitted several preliminary approval orders, similar to the one requested in this case, that were entered by federal district courts across the country. Were those courts considering settlement agreements and class definitions substantially similar to those in the instant case?

Questions on Long-Form Notice

- (9) How will past owners of the affected property be notified?
- (10) Is it possible to include the following in bold in the box on page 1, to the right of "Submit a Claim Form": **Current landowners will be subject to an Easement (see Question 17).**
- (11) Is it possible in question no. 10 to notify potential class members that they will have to release any future claims?
- (12) Is it possible to define what is meant by "land grant corridor" on page 5 of the notice under "Benefit Levels"? Question no. 12 is a good start and possibly could be moved earlier in this section.

Comments on Summary Notice

- (14) It would seem helpful to include a bullet under "What are Class Member Rights?" about what happens if you choose to do nothing.
- (15) Also under "What are Class Member Rights?," a short phrase could be included to let people know that they would not be subject to an easement if they exclude themselves from the class.

The parties may have until June 8, 2012 to respond. They may file a joint submission and include any information that may be helpful to the court. For example, it might be relevant if any of the above issues were hotly contested during settlement discussions or were raised and addressed in by other courts reviewing similar state-wide settlement classes.

Entered this 25th day of May, 2012.

BY THE COURT

/s/

STEPHEN L. CROCKER
Magistrate Judge