

HON. THOMAS S. ZILLY

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JAMES JANTOS, individually, and on behalf
11 of similarly situated individuals,

Plaintiff,

v.

12 DIRECTV, a Delaware Corporation;
13 DIRECTV, LLC, a California Limited Liability
14 Corporation; and QWEST CORPORATION
15 d/b/a CENTURYLINK QC, a Colorado
Corporation,

Defendants.

NO. 2:18-cv-00413-TSZ

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

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17 THIS MATTER comes before the Court on the parties' renewed joint motion for
18 preliminary approval of class action settlement, docket no. 45, which is GRANTED as follows.
19 On December 12, 2018, Plaintiff James Jantos, on behalf of himself and the Settlement Class, as
20 defined below, and Defendants DIRECTV, DIRECTV, LLC, and QWEST CORPORATION
21 d/b/a CENTURYLINK QC ("Defendants") (collectively, "the Parties"), executed an Amended
22 Class Action Settlement Agreement and Release of All Claims ("Settlement Agreement" or
23 "Agreement"), docket no. 45-1. For purposes of this Order, all of the definitions for the terms set
24 forth in Section I of the Parties' Settlement Agreement shall apply. Having reviewed the
25 Settlement Agreement and considered the Parties' original and renewed submissions in support
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ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT - 1
[Case No. 2:18-cv-00413-TSZ]

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1 of preliminary approval of the Settlement, the Court now FINDS, CONCLUDES, AND ORDERS
2 as follows:

3 **I. CERTIFICATION OF THE SETTLEMENT CLASS**

4 The Agreement settles all Released Claims, as defined therein, that have been or could
5 have been brought in this putative class action. The Agreement provides for a nationwide class
6 settlement of the Released Claims concerning the alleged online accessibility by others of certain
7 information of Plaintiff and other Settlement Class Members found in their CenturyLink bills,
8 which is the subject of this litigation (the “Federal Action”) and in a corresponding lawsuit, Case
9 No. 17-2-12346-3, brought by Plaintiff in King County Superior Court for the State of
10 Washington (the “State Action”). The nationwide Settlement Class includes one subclass; namely,
11 the DIRECTV Subclass.

12 A. The Court hereby finds as follows:

13 1. CenturyLink has identified 855 of its current and former customers in the
14 United States and its territories as customers whose bills were potentially accessible online
15 by others, at a World Wide Web Uniform Resource Locator (“URL”) beginning with
16 “repsweb.centurylink.com,” between March 5, 2017, and May 18, 2017. Of those 855
17 CenturyLink customers, 311 also subscribed to DIRECTV services, information about
18 which was contained in their CenturyLink bills that were accessible online by others, at a
19 URL beginning with “repsweb.centurylink.com,” between March 5, 2017, and May 18,
20 2017. These numbers satisfy the numerosity requirement for class certification.

21 2. There are questions of law and fact common to all members of the
22 Settlement Class based on the online accessibility of their CenturyLink bills by others,
23 including:

24 a. Whether each Defendant qualified as a telecommunications or
25 satellite carrier;

1 b. Whether the information on the bills potentially accessible by
2 others online qualified as customer proprietary network information or personally
3 identifiable information concerning a subscriber;

4 c. Whether Defendants violated federal law in connection with the
5 online accessibility by others of the Settlement Class Members' CenturyLink bills,
6 some of which included information about DIRECTV services; and

7 d. Whether class members are entitled to statutory damages for that
8 alleged violation.

9 3. The Class Representative's claims are typical of the Settlement Class and
10 the DIRECTV Subclass. The Class Representative is a member of the Settlement Class
11 and the DIRECTV Subclass and alleges he has been damaged by the same conduct of
12 Defendants that he alleges has damaged other members of the Settlement Class, including
13 the DIRECTV Subclass. The Class Representative's claims are not in conflict with or
14 antagonistic to the claims of the Settlement Class as a whole or the claims of the
15 DIRECTV Subclass. The claims of the Class Representative and other members of the
16 Settlement Class and DIRECTV Subclass are based upon corresponding theories.

17 4. The Settlement Class is ascertainable. The unnamed members of the
18 Settlement Class have in common that they each were identified by CenturyLink as
19 someone whose CenturyLink bill(s) were potentially accessible online by others, at a URL
20 beginning with "repsweb.centurylink.com," between March 5, 2017, and May 18, 2017.

21 5. The Class Representative can fairly, fully, and adequately protect the
22 interests of the Settlement Class and the DIRECTV Subclass. Plaintiff's counsel is
23 experienced in prosecuting complex class-action litigation, and the Class Representative
24 and Class Counsel have no interest that conflicts with, or is adverse to, the interests of the
25 Settlement Class or the DIRECTV Subclass.

1 6. Questions of law and fact common to all members of the Settlement Class
2 predominate over any questions affecting only individual members for settlement
3 purposes.

4 7. A nationwide class action with one subclass for settlement purposes is
5 superior to other available methods for the fair and efficient adjudication of this
6 controversy.

7 B. The Court hereby CERTIFIES the following Settlement Class and DIRECTV
8 Subclass for settlement purposes only:

9 The “Settlement Class” shall consist of all 855 current and former
10 customers of CenturyLink in the United States and its territories who
11 were identified by CenturyLink as customers whose CenturyLink
12 bills were potentially accessible online by others, at a URL beginning
13 “repsweb.centurylink.com,” between March 5, 2017, and May 18,
14 2017.

15 The “DIRECTV Subclass” shall consist of Settlement Class
16 Members whose CenturyLink bills were potentially accessible online
17 by others, at a URL beginning “repsweb.centurylink.com,” between
18 March 5, 2017, and May 18, 2017, and included information about
19 their DIRECTV services.

20 C. The Court appoints Plaintiff James Jantos as the Class Representative of the
21 Settlement Class and the DIRECTV Subclass. The Court appoints the law firms of Sirianni Youtz
22 Spoonemore Hamburger, and Myers & Company, PLLC as Class Counsel for the Settlement
23 Class and the DIRECTV Subclass.

24 D. If for any reason the Settlement Agreement ultimately does not become effective,
25 the parties may request that this Order certifying a nationwide class and subclass be vacated and
26 that the Parties be returned to their respective positions in this lawsuit as those positions existed
immediately before the Parties executed the Settlement Agreement. Nothing stated in the
Settlement Agreement or in this Order shall be deemed an admission or waiver of any kind by

1 any of the Parties or used as evidence against, or over the objection of, any of the Parties for any
2 purpose in this action or in any other action or proceeding of any kind.

3 **II. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT**

4 A. Defendants have at all times disputed, and continue to dispute, Plaintiff's
5 allegations in this lawsuit, deny any liability for any of the claims that have or could have been
6 alleged by Plaintiff or other members of the Settlement Class, and maintain that no customers
7 suffered any actual damages as a result of the online availability of their CenturyLink bill.

8 B. The Settlement requires Defendants to provide specified benefits to each
9 Participating Settlement Class Member, as defined and set forth in the Settlement Agreement.

10 1. All Settlement Class Members that have not excluded themselves from the
11 Settlement will receive an activation code for one year of three-bureau credit monitoring
12 service and \$1 million in identity theft insurance, which has an approximate retail value
13 of \$180.

14 2. All DIRECTV Subclass members that have not excluded themselves from
15 the Settlement will receive, in addition to the ability to activate credit monitoring service
16 and identity theft insurance, \$520 in the form of a credit to their CenturyLink bill if they
17 are a Current CenturyLink Customer. Current CenturyLink Customers may seek
18 distribution of any credit balance on their account in accordance with the usual policies
19 and procedures of CenturyLink for refunding credit balances. The initial determination of
20 who qualifies as a Current CenturyLink Customer will be based upon CenturyLink's
21 records as of the date of this Order.

22 3. All DIRECTV Subclass members that have not excluded themselves from
23 the Settlement and who are no longer Current CenturyLink Customers as of the date that
24 the class benefit is provided to Settlement Class Members will receive, in addition to the
25 ability to activate credit monitoring service and identity theft insurance, \$520 payable by
26 check.

1 C. Defendants have already identified all Settlement Class Members and all
2 DIRECTV Subclass members and, therefore, no Settlement Class Member or DIRECTV Subclass
3 member will be required to prove their eligibility to receive the benefits stated herein.

4 D. On a preliminary basis, therefore, taking into account (1) the defenses asserted by
5 Defendants, (2) the risks to the Settlement Class Members that Defendants would successfully
6 defend against claims arising out of the facts and legal theories pleaded and asserted in this case,
7 whether litigated by members of the Settlement Class themselves or on their behalf in a class
8 action, (3) the statutory damages provision in the Satellite Home Viewer Extension and
9 Reauthorization Act, the violation of which is alleged by the DIRECTV Subclass only, and the
10 non-availability of statutory damages under the Telecommunications Act, the violation of which
11 is alleged by all Settlement Class Members, and (4) the length of time that would be required for
12 members of the Settlement Class, or any group of members of the Settlement Class, to obtain final
13 judgment through one or more trials and appeals, the Settlement appears fair, reasonable, and
14 adequate. Moreover, the Parties have reached the Settlement after litigating the claims and
15 defenses raised in this case and corresponding State Action, both formal and informal discovery
16 conducted by the Plaintiff, Class Counsel, and Defendants, and an arm's-length negotiation that
17 included a full-day mediation session and subsequent negotiations. Further, according to the
18 Parties, they reached the terms of the Settlement Agreement without agreeing on the reasonable
19 amount of attorneys' fees and litigation expenses to be awarded to Class Counsel, which further
20 suggests that the Settlement is the product of an arm's-length negotiation process. For all these
21 reasons, the Settlement falls within the appropriate range of possible approval and does not appear
22 in any way to be the product of collusion.

23 E. Accordingly, it is ORDERED and ADJUDGED that the Settlement Agreement
24 and corresponding Settlement are hereby preliminarily approved.

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**III. APPROVAL OF THE CLASS NOTICE, PLANS FOR ITS DISTRIBUTION
TO SETTLEMENT CLASS MEMBERS, AND RESPONSIBILITIES OF THE
SETTLEMENT ADMINISTRATOR AND THE PARTIES**

A. As provided for in the Settlement Agreement, the Parties have submitted (i) a form of Class Notice, including a Request for Exclusion form, and Frequently Asked Questions and Answers (“FAQ”), to be mailed and emailed to Settlement Class Members; (ii) a plan for distributing the Class Notice; (iii) a plan for establishing a Settlement Website, which will include the FAQ and other information and documents that the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, including a copy of the Class Notice, a copy of the FAQ, information relating to relevant deadlines, a copy of Class Counsel’s Fee Application, a complete copy of the Settlement Agreement, and relevant orders of the Court.

B. The proposed plan for distributing and publishing the Class Notice, FAQ, and Settlement Website appears reasonably likely to notify members of the Settlement Class of the Settlement. The proposed plan for publishing the Class Notice on the Settlement Website and for mailing and emailing (if Defendants can reasonably verify an email address) the Class Notice to Settlement Class Members is fair and reasonable. The proposed plan satisfies the notice requirements of Federal Rule of Civil Procedure 23(e) and all applicable federal laws.

C. The Class Notice, FAQ, and Settlement Website will fairly, accurately, and reasonably inform members of the Settlement Class of (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding this matter and the Settlement Agreement; and (3) appropriate information about, and means for, objecting to or excluding themselves from, the Settlement, if they wish to do so. The Class Notice and Settlement Website also fairly and adequately inform members of the Settlement Class that if they do not comply with the specified procedures and deadline for excluding themselves from the Settlement, they will be bound by the Settlement and lose any opportunity to bring any of the Released Claims against the Released Parties.

1 D. The Court, having reviewed the proposed Class Notice, the proposed FAQ, and
2 the proposed plan for distributing and disseminating each of them, finds and concludes that the
3 proposed plan for distributing and disseminating each of them will provide the best notice
4 practicable under the circumstances and satisfies all requirements of federal and Washington laws
5 and due process. Accordingly, the Court hereby ORDERS as follows:

6 1. The form and content of the proposed Class Notice and FAQ are hereby
7 approved with the following modifications:

8 a. In Paragraphs 10 and 12 of the proposed Class Notice, and
9 Paragraph 17 of the FAQ, the Parties have included language suggesting that the
10 Final Approval Hearing might occur on a date different from the one set forth in
11 the Class Notice and that the Final Approval Hearing could be rescheduled without
12 notice to the Settlement Class Members. These passages should be deleted
13 because they do not reflect the Court's views. If the Final Approval Hearing must
14 be continued for any reason, the Court will require that notice be sent to all
15 Settlement Class Members.

16 b. In the last sentence of Paragraph 13 of the proposed Class Notice,
17 the Parties suggest that Settlement Class Members will receive settlement benefits
18 if the Court approves the Settlement, but they have not mentioned the possibility
19 of an appeal or appellate decision affecting the Settlement, and the statement is
20 therefore inaccurate and potentially misleading, and it must be revised.

21 2. Promptly following the entry of this Order, the Parties and Settlement
22 Administrator shall prepare final versions of (i) the Class Notice, and (ii) FAQ,
23 incorporating into each of them the Court's amendments, the Final Approval Hearing date,
24 and the dates and deadlines set forth in Paragraphs III(D) and IV of this Order.
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1 3. By March 14, 2019, Defendants will file with the Court the Settlement
2 Administrator’s declaration of compliance with this plan of notice, including a statement
3 regarding the number of persons to whom the Class Notice was mailed and/or emailed.

4 4. By May 23, 2019, the Parties shall file any motion for final approval of
5 class action settlement, and shall note such motion for June 7, 2019. The Parties shall file
6 with such motion the Settlement Administrator’s declaration summarizing and attaching
7 the list of all Settlement Class Members who submitted Requests for Exclusion and any
8 objections received by the Settlement Administrator from Settlement Class Members.
9 Any response to such motion shall be filed by June 3, 2019. Any reply shall be filed by
10 8:00 a.m. on June 7, 2019.

11 5. The Settlement Administrator shall perform the following functions in
12 accordance with the Settlement Agreement, this Order, and subsequent orders that might
13 be entered by this Court in this case:

14 a. Establish, on or before February 21, 2019, a Settlement Website
15 that enables Settlement Class Members to: (a) Read the Class Notice, FAQ, Class
16 Counsel’s Fee Application, Settlement Agreement, relevant pleadings related to
17 the Settlement, and relevant orders of the Court; and (b) complete, review, and
18 submit a Request for Exclusion online.

19 b. Send or cause to be sent, by first-class United States Mail, on or
20 before February 28, 2019, the Class Notice to every Settlement Class Member.
21 CenturyLink will obtain or cause to be obtained address updates utilizing a
22 National Change of Address database (“Updated Addresses”). The Settlement
23 Administrator will use any Updated Addresses thus obtained. The Settlement
24 Administrator will forward Settlement Notices that are returned by the U.S. Postal
25 Service with a forwarding address.

1 c. Send or cause to be sent, via electronic mail, on or before
2 February 28, 2019, a copy of the Class Notice to every Settlement Class Member
3 whose email address Defendants can reasonably identify.

4 d. Process requests for exclusion from the Settlement.

5 e. Process objections to the Settlement.

6 f. At least three (3) days before the deadline set forth in Paragraph
7 III(D)(3), provide to Defendants' Counsel a declaration of compliance with
8 paragraphs III(D)(5)(a)-(c).

9 g. By May 10, 2019, provide to all counsel a list of all Settlement
10 Class Members who submitted Requests for Exclusion, any objections received by
11 the Settlement Administrator from Settlement Class Members, a list of Settlement
12 Class Members to whom notice was not delivered, and a declaration summarizing
13 the exclusions, objections, and notification failures.

14 **IV. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

15 **A. Final Approval Hearing**

16 The Court hereby schedules for June 7, 2019, at 11:00 a.m., a Final Approval Hearing at
17 the United States Courthouse, 700 Stewart Street, Courtroom 15206, Seattle Washington, 98101,
18 to determine whether the Settlement should receive final approval. At that time, the Court will
19 also consider any motion that might be made by Class Counsel for an award of attorneys' fees
20 and reimbursement of litigation expenses, and any request for a service award to Plaintiff, all in
21 accordance with the terms of the Settlement Agreement.

22 **B. Deadline for Members of the Settlement Class to Request Exclusion from 23 the Settlement**

24 Members of the Settlement Class who wish to be excluded from the Settlement must mail,
25 email, or submit online their requests for exclusion no later than April 30, 2019. Any exclusion
26 that is sent via first-class United States Mail must be postmarked by April 30, 2019.

1 **C. Procedure for Objecting to Matters to Be Heard at the Final Approval**
2 **Hearing**

3 Any objections to certification of the Settlement Class, the designation of Plaintiff as class
4 representative, the service award requested by Plaintiff, the appointment of Class Counsel, the
5 Settlement, the Settlement Agreement, or the amount of fees and expenses that Class Counsel
6 might request at the Final Approval Hearing, may be made in writing and submitted to the
7 Settlement Administrator by April 30, 2019.

8 Any member of the Settlement Class or his or her counsel may appear at the Final
9 Approval Hearing and present an Objection to the certification of the Settlement Class, the
10 designation of the Class Representative, the appointment of Class Counsel, the Settlement, the
11 Settlement Agreement, or the amount of attorney's fees, expenses, and/or service awards
12 requested, and/or present any other remarks, without submitting written objections or providing
13 advance notice of an intent to appear or request to be heard at the Final Approval Hearing. The
14 Court will consider all written and oral Objections submitted by any Settlement Class Members.

15 **D. Deadline for Filing Proposed Final Approval Order**

16 In conjunction with any motion for final approval of class action settlement, see Paragraph
17 III(D)(4), the parties shall file a proposed Final Approval Order, and shall attach a Word
18 compatible file containing such proposed Final Approval Order to an email sent to
19 ZillyOrders@wawd.uscourts.gov.

20 **V. CLASS COUNSEL'S APPLICATION FOR AN AWARD**
21 **OF ATTORNEYS' FEES AND COSTS**

22 On or before March 14, 2019, Class Counsel shall file any motion for attorneys' fees and
23 reimbursement of litigation expenses, and shall note such motion for June 7, 2019. Any response
24 shall be filed by June 3, 2019, and any reply shall be filed by 8:00 a.m. on June 7, 2019.

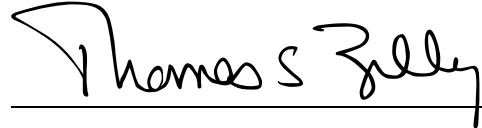
25 **VI. ABSENCE OF ANY ADMISSION; DENIAL OF ANY WRONGFUL ACT OR**
26 **OMISSION AND OF ANY LIABILITY**

The Parties entered into the Settlement Agreement solely for the purpose of compromising
and settling disputed claims. Defendants have at all times denied, and continue to deny, any

1 wrongful act or omission alleged by Plaintiff in the State and Federal Actions, and any liability of
2 any sort to Plaintiff or any member of the Settlement Class. Nothing contained in the Settlement
3 Agreement, in the documents relating to the Settlement Agreement, or in this Order shall be
4 construed, deemed, or offered as an admission by the Parties, or by any member of the Settlement
5 Class, for any purpose in any judicial or administrative action or proceeding, whether in law or in
6 equity.

7 IT IS SO ORDERED.

8 Dated this 29th day of January, 2019.

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11 Thomas S. Zilly
12 United States District Judge

13 Presented by:

14 SIRIANNI YOUTZ
15 SPOONEMORE HAMBURGER

16 /s/ Richard E. Spoonemore

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