

**If You Own or Owned Land Under or Next to Railroad Rights of Way Where Fiber-Optic Cable Was Installed,**

**You Could Receive Money from a Class Action Settlement.**

A right of way is the land over which the railroad operates.

*A federal Court authorized this notice. This is not a solicitation from a lawyer.*

- **Your legal rights are affected whether you act or don't act. Read this notice carefully.**
- A Settlement has been reached in a class action involving land next to or under railroad rights of way where CenturyLink (formerly Qwest), WilTel, or Level 3 Communications ("Defendants") have installed Telecommunications Facilities (such as fiber-optic, copper, or coaxial cables for the transmission of voice or data). The Settlement resolves litigation over whether the Defendants had the right to install Telecommunications Facilities within the railroad rights of way without the consent of people who own land next to or under the rights of way.
- The Settlement will pay landowners' claims and provide the Defendants certain telecommunications easement rights in the rights of way.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
<b>SUBMIT A CLAIM FORM</b>	The only way to get a payment. Claim Forms will be mailed after the Court grants final approval to the Settlement.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	Get no money from the Settlement. This is the only option that allows you to ever be part of any other lawsuit against the Defendants about the legal claims in this case. <b>Current landowners avoid giving Defendants an Easement (see Questions 17 and 21).</b>
<b>OBJECT</b>	If you do not exclude yourself, you may write to the Court about why you don't like the Settlement.
<b>GO TO A HEARING</b>	If you object, you also may ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up rights to ever sue the Defendants or the railroads about the legal claims in this case. <b>Current landowners will be subject to an Easement (see Question 17).</b>

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

Questions? Call 1-866-591-7266 or Visit [www.FiberOpticSettlements.com/NewMexico](http://www.FiberOpticSettlements.com/NewMexico)

**PLEASE DO NOT CONTACT THE COURT**

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## BASIC INFORMATION

### 1. Why is there a notice?

You have a right to know about a proposed Settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement.

The Court in charge of the case is the United States District Court for the District of New Mexico, and the case is called *Fager, et al. v. CenturyLink Communications LLC, et al.*, No. 1:14-cv-00870-JCH-KK. In this notice, the people who sued are called the Plaintiffs, and the companies they sued, CenturyLink (formerly Qwest), WilTel, and Level 3 Communications, are called the Defendants.

### 2. What is this lawsuit about?

Beginning in the 1980s, the Defendants or their predecessors buried fiber-optic cable and installed related telecommunications equipment within railroad rights of way across the United States. Defendants did so with the consent of the railroads. The Plaintiffs claim that the Defendants were also required to get consent from adjoining landowners before installing Telecommunications Facilities (such as fiber-optic, copper, or coaxial cables for the transmission of voice or data) in the railroad rights of way.

Railroads have differing levels of property rights in connection with the rights of way. The issue in this litigation is whether the railroads have enough rights to permit the Defendants to put Telecommunications Facilities in the rights of way without getting permission from owners of land next to or under the rights of way.

The Defendants claim the railroads had the right to allow them to install Telecommunications Facilities without the need for further permission from landowners. The Defendants deny they did anything wrong.

### 3. What is the status of the previous settlement?

You may recall seeing an earlier notice in August and September 2008 about a settlement in *Kingsborough v. Sprint Communications* that involved the same claims as this case. The *Kingsborough* court decided it did not have the power to decide whether that settlement should be approved. The parties then negotiated this new Settlement and are presenting it to this Court for approval.

### 4. Why is this a class action?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. A judge can determine that people who have similar claims are members of a class, except for those who exclude themselves from the class. U.S. District Judge Judith C. Herrera in the United States District Court for the District of New Mexico is in charge of this class action.

### 5. Why is there a Settlement?

There has been no trial. Instead, the Plaintiffs and the Defendants agreed to settle to avoid the costs and risks of trial. The Settlement provides the opportunity for payment to Class Members. In exchange, under the Settlement, Class Members give the Defendants an Easement in the railroad right of way. An easement permits a person to use property for a stated purpose. The Easement given through the Settlement will be for Telecommunications Facilities and is described more fully in Question 17.

## WHO IS IN THE SETTLEMENT

To see if you can get money from the Settlement, you first have to determine if you are a Class Member.

### 6. How do I know if I am part of the Settlement?

You are a member of the Class if you own or co-own (or formerly owned or co-owned) land in the following New Mexico counties: Bernalillo, Colfax, Doña Ana, Grant, Guadalupe, Hidalgo, Lincoln, Luna, Mora, Otero, Quay, San Miguel, Sandoval, Santa Fe, Sierra, Socorro, Torrance, or Valencia that is next to or under a railroad right of way where Telecommunications Facilities have been installed by CenturyLink, WilTel, or Level 3 Communications. This land is referred to as “Covered Property.”

## 7. Are there exceptions to being included?

You are not a Class Member if you are:

- A national, state, or local governmental entity,
- A railroad or a railroad-affiliated entity, or
- A Native American nation or tribe.

If you exclude yourself from the Settlement, you are also not included in the Class (*see* Question 21).

## 8. How do I determine if I'm in the Class?

If you received this notice in the mail without requesting it, land records show you may be affected by this case. You can go to [www.FiberOpticSettlements.com/NewMexico](http://www.FiberOpticSettlements.com/NewMexico) to see the description of the rights of way that are included in the Settlement. If you are still not sure if you are in the Class, you can call 1-866-591-7266 to see if your property is included in the Settlement.

## 9. What should I do if I move or sell my property?

If you move after receiving this notice and before the Settlement is finalized, in order to receive additional important notices, you must call the Claims Administrator at 1-866-591-7266 and give your new address. If you sell your property after receiving this notice and before the Settlement is finalized, you should inform the new owner of your decision whether to remain in the Class or to opt out of it because the new owner will be bound by your decision. You should also call the Claims Administrator and give the name of the new owner.

## THE SETTLEMENT

## 10. What does the Settlement provide?

A Settlement Agreement, available at the website, [www.FiberOpticSettlements.com/NewMexico](http://www.FiberOpticSettlements.com/NewMexico), describes the details about the Settlement. Generally, the Settlement will pay valid claims from Class Members. Also, as a result of the Settlement, the Defendants' Easements will include the right to install and use Telecommunications Facilities, as described in Section IV on pages 16-17 of the Settlement Agreement.

## 11. What can I get from the Settlement?

The Settlement will provide cash payments to those who qualify. **You do not need to calculate your payment amount. Your payment will be determined for you at a later date.** This information is provided to you to help you understand the potential value of the Settlement.

The amount of your payment will depend on a number of factors, including:

- How many feet of property you own next to the railroad right of way,
- How long you owned the property,
- How the railroad got its property rights, and
- How many people co-own the property with you.

## BENEFIT LEVELS

There are two different benefit levels.

- **1875 Land Grant Benefits** – If you owned the property for the entire Compensation Period, your payment would be \$0.75 per foot.
- **State Benefits** – You can try to get a larger payment if you can show that an earlier owner of your property obtained rights to it before the railroad got its right to use the property for railroad purposes. If you owned the property for the entire Compensation Period, your payment would be \$1.25 per foot.

The documents that must be submitted to qualify for benefits are described in the Claim Forms that will be distributed to Class Members if the Court approves the Settlement.

## 12. Why are there different benefit levels?

Over time, railroads acquired land in different ways. How broad a railroad's property rights are depends on how it got the land for its tracks and when it got the rights. The broader the railroad's property rights, the less likely it is that the Defendant telecommunications company needed permission from adjoining landowners to install its fiber-optic cable.

In the Settlement, the Defendants pay landowners different amounts depending on how and when the railroad got its property rights because these factors affect how broad or narrow the railroad's rights are.

## 13. What if I did not own my property for the entire time?

In some instances, a property has current and former owners. Your payment would be based on the proportionate period of your ownership during the Compensation Period. The start of the Compensation Period varies. You can find the start of the Compensation Period for the right of way next to your property at [www.FiberOpticSettlements.com/NewMexico](http://www.FiberOpticSettlements.com/NewMexico).

The Compensation Period ends 60 days after the "Effective Date." The Effective Date is the later of: (1) the date on which the Settlement becomes final; (2) the date on which an order awarding attorneys' fees becomes final (*see* Question 25); and (3) the date on which all periods during which any parties to the Settlement Agreement may exercise a right of withdrawal has expired. See the Settlement Agreement at [www.FiberOpticSettlements.com/NewMexico](http://www.FiberOpticSettlements.com/NewMexico) for more details.

## 14. What if I inherited my property?

If you inherited your property, along with any property-based claims that were owned by your deceased relative, you will be able to count any period of ownership by your deceased relative. For example, if you owned the property for 12 months and your relative owned the property for 24 months during the Compensation Period, your payment will be based on 36 months. Please note that you will need to provide the Claims Administrator with a personal representative's deed or beneficiary's deed showing you acquired your property by inheritance. You will also need to provide a deed or certificate of title that reflects your relative's acquisition of the property.

## 15. What if there are multiple owners of my property?

If you file a valid claim, the Claims Administrator will write a single check payable to all co-owners of the property. The check will be mailed in care of the person to whom this notice was mailed.

If your ownership of the Covered Property has changed during the Compensation Period, then each owner or group of co-owners (including estates) must submit a separate Claim Form for each period of ownership. Ownership may change, for example, through a transfer between family members, by or to a related corporation, or to a trust, or through the addition or deletion of co-owners.

## 16. What am I giving up to stay in the Class?

Unless you exclude yourself from the Settlement (*see* Question 21), you can't sue, continue to sue, or be part of any other lawsuit against the Defendants or the railroads to obtain any recovery as a result of a Defendant putting fiber-optic cable in the right of way next to your property. It also means that all of the Court's decisions will bind you. In addition, if you are a current landowner, as a condition of payment, you will be required to submit a signed Easement (*see* Question 17).

## 17. What is the Easement?

The lawsuit is about whether Defendants received from the railroads sufficient rights to use the railroad right of way next to your property for Telecommunications Facilities. That issue has not been resolved. The Easement will grant any rights the Defendants don't already have to use the right of way for Telecommunications Facilities. It will be granted to the Defendants that have already placed Telecommunications Facilities in the applicable right of way. The right of way usually extends a significant distance on either side of the railroad tracks. The Easement will:

- Cover a portion of the right of way adjoining your property, encompassing where the existing Telecommunications Facilities are buried or located;
- Allow the Defendants, if they don't already have the right to do so, to maintain, operate, repair, and relocate existing Telecommunications Facilities and to install additional Telecommunications Facilities within the Easement area;
- Allow the Defendants access to the right of way by using existing private roads when access from public or railroad roads or the adjoining right of way is not practical;
- **Not** allow the Defendants to add or substantially expand buildings on the right of way; and
- **Not** allow the Defendants to add microwave or cell towers.

You can read and download the Easement Deed at [www.FiberOpticSettlements.com/NewMexico](http://www.FiberOpticSettlements.com/NewMexico) or call 1-866-591-7266 to request a copy. You should not sign the Easement Deed now. Instead, the Easement Deed forms will be distributed to Class Members after the Court has approved the Settlement and a valid claim is made.

**Note:** If you are a current landowner and do not exclude yourself from the Settlement, you will automatically grant an Easement in the railroad right of way next to your land. The Court will authorize the Claims Administrator to sign an Easement Deed on your behalf if you do not sign the Easement Deed.

## THE CLAIMS PROCESS

### 18. How can I get a payment?

You don't have to do anything now. If the Settlement receives final approval, Class Members who received this notice in the mail will receive a Claim Form automatically. You can view the different Claim Forms at the website. Please note that you will not be able to submit a claim until after the Court grants final approval to the Settlement.

When you receive your Claim Form, you will need to complete it and supply the Claims Administrator with proof of your ownership of each parcel of property. There may be additional required documents based on the benefits for which you are applying. Please carefully read the Claim Form. If you still have questions about documentation requirements, you can call 1-866-591-7266.

### 19. When will I get my payment?

The Court will hold a hearing on **May 7, 2015 at 1:30 p.m.** to decide whether to give final approval to the Settlement (*see* Question 28). If the Court approves the Settlement, anyone in the Claims Administrator's database will be sent a Claim Form to complete and return to the Claims Administrator. After your claim is received, the Claims Administrator will determine if you qualify for payment. If you do, the Claims Administrator will send a Release of Claims to you as well as an Easement Deed to current landowners.

An appeal after the Court approves the Settlement may cause additional time delays. Claim Forms will not be distributed and payments will not be made while an appeal is pending. The amount of time an appeal takes is always uncertain, but can be more than a year. Please check the website periodically for updates on this case.

### 20. What if I disagree with the amount of my payment?

There is a process in the Settlement to resolve disagreements over whether you are eligible or the amount of your payment. If you file a claim, you will get further details in the letter you receive about your eligibility. You have the right to ask the Claims Administrator to reconsider the decision on your claim. Please review the letter carefully when you receive it because there are specific time limitations regarding the reconsideration process. More details are available in the Settlement Agreement, which is available at [www.FiberOpticSettlements.com/NewMexico](http://www.FiberOpticSettlements.com/NewMexico).

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from the Settlement, and you want to keep the right to sue or continue to sue the Defendants or the railroads on your own about the issues in this case, then you must take steps to get out. This is called excluding yourself—or is sometimes referred to as opting out of the Class. This is the only way to avoid giving an Easement to the Defendants (*see* Question 17).

### 21. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter that includes the following:

- Your name and address,
- The names and current addresses of any co-owners of land you own or owned next to or under a railroad right of way,
- A statement saying that you want to be excluded from the Class,
- The legal description contained in the deed to your land or other description and address of the land that is next to or under a railroad right of way, including your estimate, if possible, of the length (in feet) of the right of way next to your land, and
- Your signature.

You must mail your exclusion request, postmarked no later than **February 27, 2015**, to:

NM Fiber-Optic Cable Litigation Exclusions  
P.O. Box 1976  
Faribault, MN 55021-6172

Questions? Call 1-866-591-7266 or Visit [www.FiberOpticSettlements.com/NewMexico](http://www.FiberOpticSettlements.com/NewMexico)

**22. If I don't exclude myself, can I sue the Defendants for the same thing later?**

No. Unless you exclude yourself, you give up the right to sue the Defendants or the railroads for the claims that the Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit.

**23. If I exclude myself from the Settlement, can I still get a payment?**

No. You will not get any money if you exclude yourself from the Settlement. If you exclude yourself from the Settlement, do not send in a Claim Form asking for benefits.

**THE LAWYERS REPRESENTING YOU**

**24. Do I have a lawyer in the case?**

Yes. The Court has appointed the lawyers and firms listed below as "Class Counsel," meaning that they were appointed to represent you and all Class Members:

Nels Ackerson ACKERSON KAUFFMAN FEX, PC 1701 K Street, NW, Suite 1050 Washington, DC 20006	Henry J. Price PRICE, WAICUKAUSKI & RILEY, LLC 301 Massachusetts Avenue Indianapolis, IN 46204
Kathleen C. Kauffman ACKERSON KAUFFMAN FEX, PC 1701 K Street, NW, Suite 1050 Washington, DC 20006	Dan Millea ZELLE HOFMANN VOELBEL & MASON, LLP 500 Washington Avenue South, Suite 4000 Minneapolis, MN 55415
Irwin B. Levin COHEN & MALAD, LLP One Indiana Square, Suite 1400 Indianapolis, IN 46204	Eric E. Caugh ZELLE HOFMANN VOELBEL & MASON, LLP 500 Washington Avenue South, Suite 4000 Minneapolis, MN 55415
Scott D. Gilchrist COHEN & MALAD, LLP One Indiana Square, Suite 1400 Indianapolis, IN 46204	Andrew W. Cohen KOONZ, MCKENNEY, JOHNSON, DEPAOLIS & LIGHTFOOT, LLP 2001 Pennsylvania Avenue, NW, Suite 450 Washington, DC 20006
John K. Silver MCCLAUGHERTY & SILVER, PC P.O. Box 8680 55 Old Santa Fe Trail Santa Fe, NM 87501-2009	

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**25. How will the lawyers be paid?**

The Court will decide how much Class Counsel and any other lawyers will be paid. Class Counsel will ask the Court for attorneys' fees, costs and expenses of \$1,347,000. Other lawyers may make fee applications. Class Counsel will also request that \$1,300 be paid to the Class Representatives who helped the lawyers on behalf of the whole Class. The Defendants will separately pay these fees and expenses and the payment will not reduce the benefits available for the Class.

**OBJECTING TO THE SETTLEMENT**

**26. How do I tell the Court that I don't like the Settlement?**

If you are a Class Member, you can object to the Settlement or to requests for fees and expenses by Class Counsel or any other lawyers. To object, you must send a letter that includes the following:

- Your name and address,
- The title of the case, *Fager, et al. v. CenturyLink Communications LLC, et al.*, No. 1:14-cv-00870-JCH-KK,
- A statement saying that you object to the Settlement in *Fager, et al. v. CenturyLink Communications LLC, et al.*,
- The reasons you object, and
- Your signature.

Your objection, along with any supporting material you wish to submit, must be mailed and postmarked no later than **February 27, 2015**, to the following four addresses:

<b>Claims Administrator</b>	<b>Court</b>
NM Fiber-Optic Cable Litigation P.O. Box 1976 Faribault, MN 55021-6172	Clerk of the Court United States District Court for the District of New Mexico Pete V. Domenici United States Courthouse 333 Lomas Blvd. N.W., Ste 270 Albuquerque, NM 87102
<b>Class Counsel</b>	<b>Defense Counsel</b>
Fiber-Optic Cable Litigation Class Counsel P.O. Box 441711 Indianapolis, IN 46244	Christopher J. Koenigs Sherman & Howard LLC 633 17th Street, Suite 3000 Denver, CO 80202

**PLEASE DO NOT SEND ANY OTHER COMMUNICATIONS TO THE COURT.**

**27. What's the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

**THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses. You may attend and, if you submit a written objection and a Notice of Intention to Appear, you may ask to speak, but you don't have to.

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

The Court will hold a Fairness Hearing at **1:30 p.m. on May 7, 2015**, at the United States District Court for the District of New Mexico, located at 333 Lomas Blvd. N.W., Albuquerque, NM 87102, in the Brazos Courtroom. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.FiberOpticSettlements.com/NewMexico](http://www.FiberOpticSettlements.com/NewMexico). At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to pay Class Counsel and the Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**29. Do I have to come to the hearing?**

No. Class Counsel will answer questions Judge Herrera may have. But, you may come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, to the proper address, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

**30. May I speak at the hearing?**

If you submitted a written objection, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your Notice of Intention to Appear must include the following:

- Your name and address,
- The title of the case,
- A statement that this is your "Notice of Intention to Appear," and
- Your signature.

You must mail your Notice of Intention to Appear, postmarked no later than **February 27, 2015**, to the four addresses in Question 26.

## IF YOU DO NOTHING

### 31. What happens if I do nothing at all?

If you received this notice in the mail, a Claim Form will automatically be mailed to you after the Court grants final approval to the Settlement. If you do not file a claim, you will not get any money from the Settlement.

## GETTING MORE INFORMATION

### 32. How do I get more information?

You can visit the website at [www.FiberOpticSettlements.com/NewMexico](http://www.FiberOpticSettlements.com/NewMexico), where you will find answers to common questions about the Settlement and other information to help you determine whether you are a Class Member and whether you are eligible for a payment. If you still have questions, you can call 1-866-591-7266 toll-free or write to NM Fiber-Optic Cable Litigation, P.O. Box 1976, Faribault, MN 55021-6172. Please do not contact the Court for further information.