

R-16-05

**RESOLUTION AFFIRMING CLASS ACTION SETTLEMENT AGREEMENT (SPRATT, ET.  
AL. V. THE CITY OF WHEATON Case No. 04 L 792)**

WHEREAS, a class action entitled James Spratt, et.al. v. The City of Wheaton, et.al. 04 L 792 (hereinafter "the Litigation") has been filed against the City of Wheaton based upon legal disputes related to the Illinois Infrastructure Maintenance Fee Act (35 ILCS 635/1 et. seq.); and

WHEREAS, the City of Wheaton is the member of a municipal defense consortium in the Litigation; and

WHEREAS, attorneys for the Defense Consortium have negotiated a preliminary class action settlement in the Litigation which the Corporate Authorities of the City of Wheaton deem to be in the best interests and welfare of the citizens of Wheaton; and

THE Mayor and City Council of the City of Wheaton previously gave qualified approval to the Settlement Agreement in Executive Session contingent upon the trial Judge's preliminary approval of the Settlement Agreement; and

WHEREAS, on February 8, 2005, the trial Judge, Hollis Webster entered an order granting preliminary approval of the Settlement Agreement in the Litigation; and

WHEREAS, the Corporate Authorities of the City of Wheaton wish to affirm the approval of the Settlement Agreement in the Litigation; and

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois that the Class Action Settlement Agreement in the Litigation approved by Judge Hollis Webster on February 8, 2005, is hereby affirmed and the City manager is authorized to execute any and all documents necessary to effectuate said settlement upon review and approval by the City Attorney.

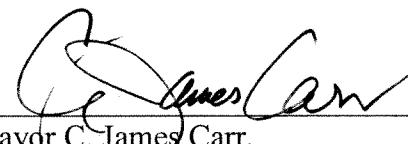
VOTED by the City Council of the City of Wheaton, Illinois, this 7th day of March, 2005.

AYES: Councilman Mouhelis, Councilwoman Corry, Councilman Johnson, Mayor Carr,  
Councilwoman Johnson, Councilman Mork

NAYS: None

ABSENT: Councilman Bolds

APPROVED by the Mayor of the City of Wheaton, Illinois, this 7<sup>th</sup> day of March, 2005.

  
\_\_\_\_\_  
Mayor C. James Carr,  
The City of Wheaton

March 9, 2005  
Date

ATTEST:

  
\_\_\_\_\_  
Emily Consolazio, City Clerk  
The City of Wheaton

**UNITED STATES OF AMERICA  
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
COUNTY OF DUPAGE**

## **NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

TO: ALL CUSTOMERS WHOSE BILLING ADDRESS WAS WITHIN THE CORPORATE LIMITS OF THE FOLLOWING MUNICIPALITIES AND WHO PAID A MUNICIPAL INFRASTRUCTURE MAINTENANCE FEE PURSUANT TO THE MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE ACT BECAUSE SUCH A FEE WAS IMPOSED ON SUPPLIERS OF ALL FORMS OF TELECOMMUNICATIONS SERVICE FROM JANUARY 1, 1998 THROUGH FEBRUARY 7, 2002: ADDISON, AURORA, BENSENVILLE, CAROL STREAM, DOWNS GROVE, ELMHURST, GLEN ELLYN, GLENDALE HEIGHTS, HINSDALE, ITASCA, LISLE, NAPERVILLE, OAK BROOK, OAKBROOK TERRACE, ROSELLE, VILLA PARK, WARRENVILLE, WEST CHICAGO, WESTMONT, WHEATON, WILLOWBROOK, WINFIELD, WOOD DALE, AND WOODRIDGE.

PLEASE READ THIS NOTICE CAREFULLY. IT RELATES TO A PENDING CLASS ACTION AND SETTLEMENT AND CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS. THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT WITH RESPECT TO THE TRUTH OF THE ALLEGATIONS IN THE DESCRIBED LITIGATION OR THE MERITS OF THE CLAIMS OR DEFENSES ASSERTED.

## WHAT THIS LAWSUIT IS ABOUT

1. In 1998, PrimeCo Personal Communications, L.P. (“PrimeCo”) and various affiliates of US Cellular Corporation (“US Cellular”) filed a complaint challenging a municipal charge on each monthly telephone bill. The municipal charge that was the subject of the complaint was called the Municipal Telecommunications Infrastructure Maintenance Fee (the “IMF Act Fees”), and it was authorized by an Illinois statute called the Municipal Telecommunications Infrastructure Maintenance Fee Act, 35 ILCS 635/1, et seq. (the “IMF Act”). For those municipalities that chose to impose IMF Act Fees, the fees were applied to both wireless and landline providers of telecommunications services.

2. The Circuit Court of Cook County allowed customers of wireless telecommunications service providers and customers of landline service telecommunications providers to intervene in the litigation, to challenge the IMF Act and seek refunds. That case is captioned PrimeCo Personal Communications v. Illinois Commerce Commission, 98 CH 5500 (the “PrimeCo litigation”). “Wireless telecommunications” means cellular or wireless telephone service in which the provider maintains no part of its infrastructure, except switching stations, on, over, or under the public rights-of-way. “Landline telecommunications” means a traditional telephone using, among other things, a physical connection to the telephone lines and using infrastructure maintained on, over or under the public rights-of-way.

3. In June 2001, the Illinois Supreme Court held the IMF Act to be unconstitutional as applied to the wireless providers PrimeCo and US Cellular. PrimeCo Personal Communications, L.P., et al. v. The Illinois Commerce Commission, et al., 196 Ill. 2d 70, 750 N.E.2d 202 (2001).

4. On March 28, 2003, as amended on August 5, 2003, the Circuit Court of Cook County (“Cook County Court”) certified the PrimeCo litigation as a class action. The Cook County Court allowed all potential members of the plaintiff and defendant classes to request exclusion (opt out) of their respective classes.

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5. All of the following municipalities requested exclusion from (that is, “opted out of”) the Cook County class: Addison, Aurora, Bensenville, Carol Stream, Downers Grove, Elmhurst, Glen Ellyn, Glendale Heights, Hinsdale, Itasca, Lisle, Naperville, Oak Brook, Oakbrook Terrace, Roselle, Villa Park, Warrenville, West Chicago, Westmont, Willowbrook, Winfield, Wood Dale, and Woodridge (the “Intervening Municipalities”). The City of Wheaton also requested exclusion from (that is, opted out of) the Cook County class. Other municipalities, not relevant for purposes of this notice, also requested exclusion from (that is, opted out of) the Cook County class.

6. On July 26, 2004, in the Circuit Court of the Eighteenth Judicial Circuit (“DuPage County Court”), James Spratt filed a class-action complaint against the City of Wheaton alleging that the imposition of the Municipal IMF was unconstitutional. James Spratt sought, among other things, refunds of IMF Act Fees he paid. Each one of the Intervening Municipalities identified in Paragraph 5 above joined in the defense of Wheaton. Wheaton and the Intervening Municipalities (collectively the “Municipalities”) imposed IMF Act Fees, but they deny any wrongdoing. The Municipalities filed an answer denying any wrongdoing and affirmative defenses, which Spratt denied.

7. Through the class-action complaint, James Spratt sought to represent a class of customers who paid IMF Act Fees to the Municipalities between January 1, 1998, and February 7, 2002. The class of customers is comprised of two separate subclasses: wireless telecommunications customers and landline telecommunications customers.

8. James Spratt’s class-action complaint defined these two subclasses in the following manner:

Wireless Customer Subclass: All members of the Plaintiff class from whom charges attributable to the IMF Act have been collected . . . in connection with the provision of wireless telecommunications services.

Landline Customer Subclass: All members of the Plaintiff class from whom charges attributable to the IMF Act have been collected . . . in connection with the provision of landline telecommunications services.

9. On October 6, 2004, the DuPage County Court granted conditional class certification.

10. In January 2005, the DuPage County Court certified the litigation filed by James Spratt as a class action. The DuPage County Court certified two subclasses:

- (a) all customers whose billing addresses were within the corporate limits of the Municipalities and who paid IMF Act Fees to one (or more) of the Municipalities for wireless telecommunications service from January 1, 1998, through February 7, 2002.
- (b) all customers whose billing addresses were within the corporate limits of the Municipalities and who paid IMF Act Fees to one (or more) of the Municipalities for landline telecommunications service from January 1, 1998, through February 7, 2002.

11. After investigating and litigating the claims in this case, the Municipalities and James Spratt have negotiated this proposed settlement of this class action lawsuit, which, if accepted by you and given final approval by the DuPage County Court, will enable you to obtain refunds of a percentage of the IMF Act Fees you paid. The Municipalities' willingness to settle this class-action lawsuit does not constitute an admission of liability or wrongdoing.

12. This Notice is to advise you of your rights. As more fully described below, to obtain refunds you must submit a full and complete Claim Form with copies of your telephone bills showing the amounts of IMF Act Fees you paid. If you are a member of the class (which consists of the two subclasses) and want to obtain refunds under the settlement, you must follow the procedures described in this Notice. If you do not respond to this Notice in the manner provided below and take no action, then you will be bound by the terms of settlement but will not obtain any refund of the IMF Act Fees you paid.

### **THE PROPOSED SETTLEMENT**

13. As stated above, the DuPage County Court has certified the litigation as a class action. As more fully described below, James Spratt is acting as the class representative, representing all customers of wireless and landline telecommunications providers who were charged a IMF Act Fee by one of the Municipalities between January 1, 1998, through February

7, 2002. The DuPage County Court has also granted preliminary approval of the settlement described in this Notice on February 8, 2005.

14. The terms of the proposed settlement are summarized below. The settlement will not become final and binding unless and until the DuPage County Court grants final approval and the order granting final approval becomes final and non-appealable:

- (a) Settlement Class members have the right to submit a Claim Form for all IMF Act Fees paid to the Municipalities during the class period. The Claim Form can be obtained at each Municipality's website, at each Municipality's Village or City Hall, and by requesting a Claim Form by calling the following telephone number and requesting one: (630) 571 – 0480, extension 29. A Claim Form can also be obtained and a claim made in person at the DuPage Managers and Mayors Conference, 1220 Oak Brook Road, Oak Brook, Illinois, 60523. Completed Claim Forms with copies of the necessary supporting documentation can be mailed or delivered to this address.
- (b) The Municipalities have obtained the services of a Claims Administrator to review all claims submitted by members of the Class for accuracy and validity before approving or denying a claim for refund under the terms of the settlement. The Municipalities have agreed to pay the entire costs associated with the Claims Administrator, including but not limited to the cost to class members to submit their respective Claim Forms by First Class U.S. Mail. The Claims Administrator will approve and pay all valid claims for refunds under the terms identified below. In the unlikely event of a dispute as to the amount of refund, the Settlement Class Member shall notify Larry D. Drury, Lead Class Counsel. Thereafter, parties' counsel will make reasonable efforts to resolve the dispute.
- (c) The Claims Administrator will pay those Class Members making claims sixty-five percent (65%) of all IMF Act Fees paid by them attributable to wireless telecommunications providers. The Claims Administrator will pay those Class Members making claims five percent (5%) of all IMF Act Fees paid by them attributable to landline telecommunications providers. The Claims Administrator will only pay claims for refunds that are consistent with the terms of the settlement and adequately substantiated through invoices showing the IMF Act Fees paid. The time period to make a claim will be sixty (60) days from February 22, 2005, resulting in an expiration date of April 25, 2005.
- (d) The Municipalities will pay all costs of notice to the Settlement Class.
- (e) Persons or entities that otherwise fall within the Settlement Class may request exclusion (that is, may opt out), as more fully described below. If they so chose, then they may separately pursue at their own expense and with counsel of their own choice any claims for refunds they may have against the Municipalities for IMF Act Fees paid. Any person or entity that requests exclusion (that is, opts out) of the Settlement Class will not be entitled to recover refunds or damages of any kind from the Municipalities under the Settlement Agreement.

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- (f) Separate from refunds paid to Settlement Class Members, in compensation for their work on behalf of the Settlement class, class counsel identified below have a right to file a request for attorneys fees, plus costs, in a total amount of \$1,161,401, which is subject to review and approval by the DuPage County Court. The Municipalities will pay, and not object to, class counsel's fees and costs up to this amount.
- (g) Any IMF Act Fees not paid pursuant to valid claims for refunds under the terms of the settlement or to class counsel for fees and costs approved by the DuPage County Court will remain the property of the Municipalities.

#### **RELEASE OF CLAIMS AND COVENANT NOT TO SUE THE MUNICIPALITIES**

IN CONSIDERATION FOR THIS SETTLEMENT, EACH MEMBER OF THE SETTLEMENT CLASS RELEASES ANY RIGHT TO SUE AND COVENANTS NOT TO SUE THE MUNICIPALITIES OR ANY ONE OF THEM OR ANY OF THEIR DEPARTMENTS, OFFICERS, MAYORS, MANAGERS, DIRECTORS, TRUSTEES, ALDERMEN, COUNCILMEN, OFFICIALS, EMPLOYEES, ATTORNEYS, AGENTS, OR ASSIGNS, FOR ALL CLAIMS RELATING IN ANY WAY TO THE MUNICIPAL IMF FROM JANUARY 1, 1998, THROUGH FEBRUARY 7, 2002.

#### **YOUR OPTIONS**

##### **YOU DO NOT NEED TO TAKE ANY ACTION TO REMAIN IN THE SETTLEMENT CLASS**

15. If you are and want to remain a member of the Settlement Class, you do **not** need to take any action. If you remain in the Settlement Class, any claims against the Municipalities for refunds and other relief arising from the Municipalities' conduct as alleged by James Spratt will be determined under the terms of the Settlement and cannot be presented again in any other lawsuit. By remaining in the Settlement Class, you will be included in and bound by the settlement, releasing all your claims against the Municipalities and covenanting not to sue the Municipalities. By remaining in the Settlement Class, you will not have to pay any of the cost and expenses of the Action.

16. If you do not exclude yourself from the Settlement Class in the manner described below, your interests will be represented by James Spratt and his counsel, as counsel for the Settlement Class. Attorneys for James Spratt and the Settlement Class are Larry D. Drury of Larry D. Drury Ltd., Lead Class Counsel, 205 West Randolph, Suite 1430, Chicago, Illinois 60606, and John H. Alexander of John H. Alexander & Assoc., Class Counsel, 100 W. Monroe, 21<sup>st</sup> Floor, Chicago, Illinois 60603.

17. If you are a Settlement Class Member and want to make a claim for a refund, you must obtain, complete, and submit (within the 60-day time period) a Claim Form with copies of your telephone invoices showing the IMF Act Fees you paid at anytime from January 1, 1998 through February 7, 2002. You also must submit adequate proof of your residency or residencies within the Municipalities during the time periods relevant to your claim for a refund.

## **YOU MAY REMAIN IN THE CLASS BUT OBJECT**

If you are a member of the Settlement Class but object to the settlement and want to have your objection(s) heard by the DuPage County Court, then you must submit your objections in writing to the Clerk of the Circuit Court of the Eighteenth Judicial Circuit and the attorneys listed below. Your objections must be post marked by April 25, 2005. Your written objections must be submitted to the following:

Larry D. Drury	Mark Burkland
Larry D. Drury Ltd.	Iain Johnston
Lead Class Counsel	James Chivilo
205 W. Randolph Street	Holland & Knight LLP
Suite 1430	131 S. Dearborn Street
Chicago, IL 60606	Chicago, IL 60603

John Alexander
John Alexander & Assoc.
Class Counsel
100 W. Monroe Street
21 <sup>st</sup> Floor
Chicago, IL 60603

## **YOU MAY EXCLUDE YOURSELF FROM THE CLASS**

18. If you do not want to remain in the Settlement Class, you may request to be excluded (that is, you may opt out).

19. You will be excluded from the Settlement Class **only** if you make a written request for exclusion, which you must prepare and mail declaring your wish to be excluded and which sets forth your name and address. The written statement must be sent to the address set forth below in Paragraph 22 and must be post marked no later than April 25, 2005.

20. If you request exclusion within the time and manner provided, you will neither be eligible to participate in the Settlement nor be bound by any judgment or other disposition rendered in this Action.

21. If you do not request exclusion from the Settlement Class, you may, if you so desire, enter an appearance through legal counsel of your choice and at your own expense.

22. If you do not want to remain in the Settlement Class, you will be excluded from the Settlement Class if you request exclusion. To be excluded from the Settlement Class, your written request must be post marked not later than April 25, 2005 and mailed to:

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Larry D. Drury	John Alexander
Larry D. Drury, Ltd.	John Alexander & Assoc.
Lead Class Counsel	Class Counsel
205 West Randolph Street	100 W. Monroe St.
Suite 1430	21 <sup>st</sup> Floor
Chicago, IL 60606	Chicago, IL 60603

23. A final fairness hearing has been scheduled for May 4, 2005, at 9:30 a.m. before the Honorable Hollis Webster, Circuit Court of the Eighteenth Judicial Circuit (DuPage County), Illinois, 505 N. County Farm Road, Wheaton, Illinois, 60187, to hear any objections to the settlement; to determine fully and finally, whether the proposed settlement is a fair, reasonable and adequate compromise of the claims of the Settlement Class; and to consider Class Counsel's application(s) for attorneys' fees and reimbursement of costs and expenses.

24. You may consult the files relating to this lawsuit at the office of the Clerk of the Circuit Court of the Eighteenth Judicial Circuit (DuPage County), Illinois, 505 N. County Farm Road, Wheaton, Illinois 60187.

**DO NOT CONTACT THE COURT DIRECTLY.**

Dated: February 8, 2005

This Notice is being sent pursuant to order of the Circuit Court of the Eighteenth Judicial Circuit (DuPage County), Illinois.

Judge Hollis Webster

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