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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MCI COMMUNICATIONS SERVICES,)
INC., and MCIMETRO ACCESS)
TRANSMISSION SERVICES, LLC)
Plaintiff,)
v.)
SECURITY PAVING COMPANY, INC.,)
Defendants.)

1: 15-CV-01940 - LJO - JLT
SCHEDULING ORDER (Fed. R. Civ. P. 16)
Pleading Amendment Deadline: 8/29/2016
Discovery Deadlines:
Initial Disclosures: 6/8/2016
Non-Expert: 1/30/2017
Expert: 3/27/2017
Mid-Discovery Status Conference:
11/14/2016 at 9:00 a.m.
Non-Dispositive Motion Deadlines:
Filing: 4/4/2017
Hearing: 5/2/2017
Dispositive Motion Deadlines:
Filing: 4/4/2017
Hearing: 5/16/2017
Settlement Conference:
11/21/2016 at 9:00 a.m.
510 19th Street, Bakersfield, CA
Pre-Trial Conference:
7/11/2017 at 8:30 a.m.
Courtroom 4
Trial: 9/12/2017 at 8:30 a.m.
Courtroom 4
Jury trial: 3-4 days

1 **I. Date of Scheduling Conference**

2 May 18, 2016.

3 **II. Appearances of Counsel**

4 James Proszek and Robert Shoecraft appeared on behalf of Plaintiffs.

5 Rayma Church appeared on behalf of Defendant.

6 **III. Magistrate Judge Consent:**

7 **Notice of Congested Docket and Court Policy of Trailing**

8 Due to the District Judges' heavy caseload, the newly adopted policy of the Fresno Division of
9 the Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set
10 before a District Judge, the parties will trail indefinitely behind any higher priority criminal or older
11 civil case set on the same date until a courtroom becomes available. The trial date will not be reset to a
12 continued date.

13 The Magistrate Judges' availability is far more realistic and accommodating to parties than that
14 of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize
15 criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge
16 may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of
17 Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a United States
18 Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

19 The Fresno Division of the Eastern District of California, whenever possible, is utilizing United
20 States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the
21 Local Rules, Appendix A, such reassignments will be random, and the parties will receive no advance
22 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern
23 District of California.

24 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
25 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel
26 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
27 whether they will consent to the jurisdiction of the Magistrate Judge.

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1 **IV. Pleading Amendment Deadline**

2 Any requested pleading amendments are ordered to be filed, either through a stipulation or
3 motion to amend, no later than **August 29, 2016**.

4 **V. Discovery Plan and Cut-Off Date**

5 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
6 on or before **June 8, 2016**.

7 The parties are ordered to complete all discovery pertaining to non-experts on or before
8 **January 30, 2017** and all discovery pertaining to experts on or before **March 27, 2017**.

9 The parties are directed to disclose all expert witnesses, in writing, on or before **February 13,**
10 **2017**, and to disclose all rebuttal experts on or before **March 6, 2017**. The written designation of
11 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),**
12 **and (C) and shall include all information required thereunder**. Failure to designate experts in
13 compliance with this order may result in the Court excluding the testimony or other evidence offered
14 through such experts that are not disclosed pursuant to this order.

15 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
16 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
17 included in the designation. Failure to comply will result in the imposition of sanctions, which may
18 include striking the expert designation and preclusion of expert testimony.

19 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
20 disclosures and responses to discovery requests will be strictly enforced.

21 A mid-discovery status conference is scheduled for **November 14, 2016** at 9:00a.m. before the
22 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
23 California. Counsel SHALL file a joint mid-discovery status conference report one week before the
24 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
25 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
26 completed as well as any impediments to completing the discovery within the deadlines set forth in this
27 order. Counsel may appear via CourtCall, providing a written notice of the intent to appear
28 telephonically is provided to the Magistrate Judge's Courtroom Deputy Clerk no later than five court

1 days before the noticed hearing date.

2 **VI. Pre-Trial Motion Schedule**

3 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
4 than **April 4, 2017**, and heard on or before **May 2, 2017**. Non-dispositive motions are heard before the
5 Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States Courthouse in
6 Bakersfield, California.

7 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
8 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
9 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
10 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
11 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
12 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the
13 obligation of the moving party to arrange and originate the conference call to the court. To schedule
14 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
15 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule 251**
16 **with respect to discovery disputes or the motion will be denied without prejudice and dropped**
17 **from the Court's calendar.**

18 All dispositive pre-trial motions shall be filed no later than **April 4, 2017**, and heard no later
19 than **May 16, 2017**, in Courtroom 4 at 8:30 a.m. before the Honorable Lawrence J. O'Neill, United
20 States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56**
21 **and Local Rules 230 and 260.**

22 **VII. Motions for Summary Judgment or Summary Adjudication**

23 **At least 21 days before** filing a motion for summary judgment or motion for summary
24 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
25 to be raised in the motion.

26 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
27 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
28 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the

1 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
2 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

3 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
4 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
5 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
6 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
7 statement of undisputed facts.

8 In the notice of motion the moving party **SHALL** certify that the parties have met and conferred
9 as ordered above, or set forth a statement of good cause for the failure to meet and confer. **Failure to**
10 **comply may result in the motion being stricken.**

11 **VIII. Pre-Trial Conference Date**

12 **July 11, 2017**, at 8:30 a.m. in Courtroom 4 before Judge O'Neill.

13 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**
14 The parties are further directed to submit a digital copy of their pretrial statement in Word format,
15 directly to Judge O'Neill's chambers, by email at LJOorders@caed.uscourts.gov.

16 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the
17 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
18 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
19 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
20 Court to explain the nature of the case to the jury during voir dire.

21 **IX. Trial Date**

22 **September 12, 2017** at 8:30 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill,
23 United States District Court Judge.

- 24 A. This is a jury trial.
25 B. Counsels' Estimate of Trial Time: 3-4 days.
26 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
27 California, Rule 285.

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1 **X. Settlement Conference**

2 A Settlement Conference is scheduled for **November 21, 2016** at 9:00 a.m. at 510 19th Street,
3 Bakersfield, California. The settlement conference will be conducted by Magistrate Judge Thurston. **If**
4 **any party prefers that the settlement conference be conducted by a judicial officer who is not**
5 **regularly assigned to this matter, that party is directed to notify the Court no later than 60 days**
6 **in advance of the scheduled settlement conference** to allow sufficient time for another judicial officer
7 to be assigned to handle the conference.

8 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
9 **appear** at the Settlement Conference **with the parties** and the person or persons having **full authority**
10 to negotiate and settle the case **on any terms**¹ at the conference. Consideration of settlement is a
11 serious matter that requires preparation prior to the settlement conference. Set forth below are the
12 procedures the Court will employ, absent good cause, in conducting the conference.

13 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
14 fax or e-mail, a written itemization of damages and a meaningful² settlement demand which includes a
15 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before** the
16 settlement conference, Defendant **SHALL** respond, via fax or e-mail, with an acceptance of the offer or
17 with a meaningful counteroffer which includes a brief explanation of why such a settlement is
18 appropriate.

19 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to their
20 Confidential Settlement Conference Statement, as described below. Copies of these documents shall
21 not be filed on the court docket.

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23 _____
24 ¹ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements
25 are subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by a
26 person or persons who occupy high executive positions in the party organization and who will be directly involved in the
27 process of approval of any settlement offers or agreements. To the extent possible the representative shall have the
28 authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's most recent
demand.

² "Meaningful" means that the offer is reasonably calculated to settle the case on terms acceptable to the offering
party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the other party. If,
however, the offering party is only willing to offer a settlement which it knows the other party will not accept, this should
trigger a recognition the case is not in a settlement posture and the parties should confer about continuing or vacating the
settlement conference via stipulation.

1 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

2 At least five court days before the Settlement Conference, the parties shall submit, directly to
3 Judge Thurston's chambers by e-mail to JLTorders@caed.uscourts.gov, a Confidential Settlement
4 Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on**
5 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference
6 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
7 Settlement Conference indicated prominently thereon.

8 The Confidential Settlement Conference Statement shall include the following:

- 9 A. A brief statement of the facts of the case.
- 10 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which
11 the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on
12 the claims and defenses; and a description of the major issues in dispute.
- 13 C. A summary of the proceedings to date.
- 14 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 15 E. The relief sought.
- 16 F. The party's position on settlement, including present demands and offers and a history of
17 past settlement discussions, offers and demands.

18 **XI. Request for Bifurcation, Appointment of Special Master, or other**
19 **Techniques to Shorten Trial**

20 Not applicable at this time.

21 **XII. Related Matters Pending**

22 There are no pending related matters.

23 **XIII. Compliance with Federal Procedure**

24 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
25 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
26 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
27 handle its increasing case load and sanctions will be imposed for failure to follow the Rules as provided
28 in both the Federal Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of

1 California.

2 **XIV. Effect of this Order**

3 The foregoing order represents the best estimate of the court and counsel as to the agenda most
4 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
5 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered
6 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by
7 subsequent status conference.

8 **The dates set in this Order are considered to be firm and will not be modified absent a**
9 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
10 **extending the deadlines contained herein will not be considered unless they are accompanied by**
11 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
12 **for granting the relief requested.**

13 Failure to comply with this order may result in the imposition of sanctions.

14
15 IT IS SO ORDERED.

16 Dated: May 18, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE