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16 ATTORNEYS FOR PLAINTIFFS

17 UNITED STATES DISTRICT COURT  
18 EASTERN DISTRICT OF CALIFORNIA

19 MCI COMMUNICATIONS SERVICES,  
20 INC. and MCIMETRO ACCESS  
21 TRANSMISSION SERVICES LLC,

22 Plaintiffs,

23 v.

24 SECURITY PAVING COMPANY, INC.,

25 Defendant.

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ATTORNEYS FOR DEFENDANT

Case No. 1:15-CV-01940-LJO-JLT

**STIPULATED PROTECTIVE ORDER**

**(Doc. 33)**

26 Plaintiffs MCI Communications Services, Inc. and MCIMetro Access Transmission  
27 Services LLC (collectively “MCI”) and Defendant Security Paving Company, Inc. (“Security”)  
28 (collectively “the Parties”) hereby stipulate to this order protecting the confidentiality of certain  
proprietary business and financial information or documents relating to the subject matter of this  
action as follows:

1. MCI possesses certain confidential and proprietary information and/or documents  
relating to the direct and root causes of the damage to MCI’s underground telecommunications

1 cable and/or networks that gives rise to this action, the duration of the disruption to MCI's  
2 network, the range and types of services affected, the scope and gravity of the impact across all  
3 platforms and geographic areas, specific equipment failures, the specific network elements  
4 impacted, remedial measures and/or best practices applied, and/or an appraisal of the  
5 effectiveness of those best practices which, in the course of discovery, may need to be disclosed  
6 or produced.

7 2. The Federal Communications Commission (the "FCC") and the Department of  
8 Homeland Security (the "DHS") have concluded that such information could be used by hostile  
9 parties to attack MCI's telecommunications network that is a vital part of the Nation's critical  
10 information infrastructure and that the disclosure of such information to the public could present  
11 an unacceptable risk of more effective terrorist activity. See In the Matter of New Part 4 of the  
12 Commission's Rules Concerning Disruptions to Communications, FCC 04-188, ET Docket  
13 No. 04-35, Report and Order and Further Notice of Proposed Rule Making (Released Aug. 19,  
14 2004) at ¶¶ 3,10-12, 40 (hereinafter the "FCC Order").

15 3. In the course of discovery it may also be necessary for MCI to disclose or produce  
16 certain confidential or proprietary information, and/or documents containing confidential or  
17 proprietary information, regarding the identities of specific customers affected by the damage to  
18 the cable and the types of, amounts of, and durations, those customers' services were impacted.

19 4. The FCC has concluded that, given the highly competitive nature of the  
20 telecommunications industry and the use MCI's competitors could make of such information, the  
21 disclosure of such information creates a presumptive likelihood of substantial competitive harm.  
22 See FCC Order at ¶¶ 42-45.

23 5. In the course of discovery it may be necessary for both Parties to disclose or  
24 produce:

25 a. confidential or proprietary information and/or documents containing confidential  
26 or proprietary information concerning the Parties' business practices and finances, including, but  
27 not limited to corporate business and financial records; or  
28

1           b.     other confidential or proprietary information and/or documents containing  
2 confidential or proprietary information, the release of which could cause significant harm to  
3 Parties.

4           6.     In light of these circumstances, good cause exists for the entry of the Protective  
5 Order to ensure that such information or documents are not disclosed to third parties or used for  
6 any purpose other than this litigation. The Court is authorized to enter a Protective Order  
7 pursuant to Fed. R. Civ. P. 26(c)(1)(G).

8           7.     For purposes of this Order, “proprietary or confidential information or documents”  
9 means any material, information, document (including writings, drawings, graphs, charts,  
10 photographs, phone records, transcript of oral testimony or recorded statement, and other data  
11 compilations from which information can be obtained) or its contents, or tangible things  
12 designated by any Party as confidential or proprietary because it contains information:

13           a.     Relating to the direct and root causes of the damage to MCI’s underground  
14 telecommunications cable and/or networks that gives rise to this action, the duration of the  
15 disruption to MCI’s network, the range and types of services affected, the scope and gravity of  
16 the impact across all platforms and geographic areas, specific equipment failures, the specific  
17 network elements impacted, remedial measures and/or best practices applied, and/or an appraisal  
18 of the effectiveness of those best practices;

19           b.     Regarding the identities of specific customers affected by the damage to the cable  
20 and the types of, amounts of, and durations, those customers’ services were impacted.

21           c.     The Parties’ confidential and proprietary business practices and finances,  
22 including, but not limited to corporate business and financial records.

23           d.     Other confidential and proprietary information, the release of which could cause  
24 significant harm to the Parties.

25           This Order shall govern the use of confidential or proprietary information or documents  
26 disclosed to or produced by any Party to any other Party in this litigation voluntarily, in discovery  
27 (including depositions), under court order or subpoena, or otherwise.

28

1           8.       For purposes of this Order, confidential or proprietary information or documents  
2 shall be so designated by the following:

- 3           a.       The notation “CONFIDENTIAL” on the face of the document,  
4           b.       Written correspondence from the providing Party to the receiving Party regarding  
5 the designation,  
6           c.       Oral notice of the designation on the record during a deposition or other recorded  
7 proceeding, or  
8           d.       Any other written or recorded method that is reasonably designed to notify the  
9 receiving Party that the information or document has been designated confidential or proprietary  
10 or that should reasonably have been understood by the receiving Party as designating the  
11 information or documents as confidential or proprietary because of the legends or other markings,  
12 the circumstances of the disclosure, or the nature of the information or documents themselves.

13           3.       All confidential or proprietary information or documents provided by any Party to  
14 any other Party shall be used only for the purposes of this litigation and for no other purpose  
15 whatsoever. Confidential or proprietary information or documents shall not be disclosed to any  
16 other person except as provided in this Order.

17           4.       A Party that receives information or documents designated as confidential shall not  
18 disclose them or their contents to or discuss them or their contents with anyone except for the  
19 purposes of this litigation only to the following persons:

- 20           a.       The receiving Party’s counsel and their legal staff (e.g., paralegals and clerical or  
21 other support staff).  
22           b.       Employees or agents of the receiving Party only when necessary for the receiving  
23 Party or its witnesses, employees, or agents to prepare for depositions, hearings, or trial; respond  
24 to discovery requests; prepare papers to be filed with the Court; or otherwise directly assist the  
25 receiving Party’s counsel in this litigation.  
26           c.       Consultants and expert witnesses employed or retained by or on behalf of the  
27 receiving Party to assist the receiving Party or its counsel in this litigation.  
28

1           d.       Representatives of an insurer of the receiving Party to assist the receiving Party or  
2 its counsel in this litigation, including the evaluation of the case and participation in any  
3 settlement negotiations or discussions or alternative dispute resolution procedures.

4           e.       The Court, subject to the providing Party's right to object to such disclosure.

5           5.       Each person designated in paragraph 4(b)-(d) above to whom confidential or  
6 proprietary information or documents are provided or otherwise disclosed shall agree in writing to  
7 be bound by the terms of this Order before being provided the information or documents. Each  
8 such person shall sign a written agreement in the form attached as Exhibit "A." Counsel for the  
9 receiving Party shall maintain a file of written agreements executed by all such persons. The file  
10 of written agreements shall not be available to opposing Parties or their counsel during the  
11 litigation except upon a showing of good cause made upon application to the Court. Upon  
12 termination of this litigation, whether by judgment, settlement or otherwise, those written  
13 agreements shall be made available to the providing Party or its counsel on request.

14           6.       If a Party files a pleading, motion, transcript, or other paper with the Court that  
15 references any confidential or proprietary information or documents or their contents, the Party  
16 shall follow the procedures set forth in LR 141 for filing documents, or portions thereof, under  
17 seal.

18           7.       No confidential or proprietary information or documents disclosed or produced  
19 pursuant to this Order may be reproduced, except as necessary or required in litigation for  
20 depositions, motion practice, trial preparation, exhibits or trial.

21           8.       Whenever a Party takes a deposition in which another Party's proprietary or  
22 confidential information or documents may be or is disclosed:

23           a.       The deposition shall be subject to the provisions of this Order on the designation  
24 of the Party whose witness is deposed. Such designation shall be made on the record whenever  
25 possible; and

26           b.       A Party may designate portions of a deposition transcript as containing  
27 confidential or proprietary information or documents after transcription if the providing Party  
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1 promptly notifies all other Parties of the designation in writing and the transcript or its contents  
2 have not already been disseminated beyond the class of persons designated in paragraph 4 of this  
3 Order.

4 9. A Party may waive the protections of this Order by so stating in a signed and dated  
5 writing.

6 10. If the Parties disagree regarding whether material has been designated properly as  
7 confidential or proprietary information or documents under this Order, on written request by the  
8 Party opposing the designation, the providing Party promptly will state, in writing, the basis for  
9 its claim that the material contains confidential or proprietary information or documents. If the  
10 disagreement cannot be resolved between counsel, the Party opposing the designation may refer  
11 the issue to the Court for a determination. The burden of demonstrating that the material is  
12 confidential or proprietary information or documents shall be on the providing Party. The  
13 material shall be treated as confidential or proprietary information or documents until the Court  
14 rules on the issue.

15 11. Within 90 days after termination of this litigation, each Party subject to this Order  
16 shall return to the providing Party all material subject to this Order, including all photocopies.  
17 This paragraph does not apply to copies that contain markings that constitute attorney work  
18 product of the receiving Party's counsel. The receiving Party and its counsel, however, must  
19 destroy such copies on termination of this litigation. Counsel for a receiving Party must certify  
20 compliance with this paragraph and deliver the certification to counsel for the providing Party.  
21 After a Party has returned or destroyed all material subject to this Order, the Party is relieved of  
22 any further obligations under this Order. This litigation is not deemed terminated until a  
23 settlement agreement is executed by all Parties or a full and final non-appealable judgment has  
24 been entered by the Court.

25 12. A Party's production or disclosure of confidential or proprietary information or  
26 documents pursuant to this Order shall not be deemed a waiver of confidentiality or other  
27 privileges.  
28

1           13. No act or omission by any Party and nothing stated in this Order shall be  
2 interpreted as a waiver of any claim, defense, or objection by any Party.

3           14. Notwithstanding the terms of this Order, each Party shall have the right to object to  
4 any discovery or to apply to the Court at any time for an order granting additional protective or  
5 other relief with respect to any confidential, proprietary, or privileged material.

6           15. This Order does not require any Party to produce any documents or information  
7 that are not otherwise subject to discovery.

8           16. In addition to any other legal or equitable remedy that may be available, the rights  
9 and obligations set forth in this Order may be enforced by injunction.

10          17. Nothing in this Order shall prevent any of the Parties from using or disclosing their  
11 own documents.

12          18. Neither the terms of this Order, nor any action taken in compliance with it, shall  
13 (a) operate as an admission by any of the Parties that any document or information is, or is not,  
14 confidential or proprietary, (b) prejudice the right of any Party to seek a Court determination of  
15 whether any document or information should be subject to the terms of this Order, or (c) operate  
16 as an admission by any Party that any document or information is, or is not, admissible in  
17 evidence at the trial of this action. Any Party may request that the Court modify or otherwise  
18 grant relief from any provision of this Order.

19  
20 IT IS SO ORDERED.

21 Dated: June 20, 2016

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

1 AGREED AS TO FORM AND SUBSTANCE:  
2  
3

4 /s/ James J. Proszek

/s/ Rayma Church

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FURTHER, AFFIANT SAYETH NOT.

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SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

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