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PHYLLIS WHITTEN

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 PHYLLIS WHITTEN,
19 Plaintiff,

Case No. 2:12-CV-02926-TLN-JFM

STIPULATED PROTECTIVE ORDER

20 v.

21 FRONTIER COMMUNICATIONS
22 CORPORATION, a Delaware corporation,
CITIZENS TELECOM SERVICES CO.,
23 KEVIN MAILLOUX, and Doe 1 through
Doe 10,

24 Defendants.

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for any
4 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to
5 and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this
6 Order does not confer blanket protections on all disclosures or responses to discovery and that the protection
7 it affords from public disclosure and use extends only to the limited information or items that are entitled to
8 confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in
9 Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information
10 under seal; Civil Local Rule 141 sets forth the procedures that must be followed and the standards that will be
11 applied when a party seeks permission from the court to file material under seal.

12 2. DEFINITIONS

13 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
14 items under this Order.

15 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
16 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
17 26(c).

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their
19 support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or items that it produces
21 in disclosures or in responses to discovery as “CONFIDENTIAL.”

22 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
23 manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,
24 and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

25 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
26 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in
27 this action.

1 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does
2 not include Outside Counsel of Record or any other outside counsel.

3 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not
4 named as a Party to this action.

5 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are
6 retained to represent or advise a party to this action and have appeared in this action on behalf of that party or
7 are affiliated with a law firm which has appeared on behalf of that party.

8 2.10 Party: any party to this action, including all of its officers, directors, employees, consultants,
9 retained experts, and Outside Counsel of Record (and their support staffs).

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this
11 action.

12 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
13 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
14 retrieving data in any form or medium) and their employees and subcontractors.

15 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
16 “CONFIDENTIAL.”

17 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
18 Party.

19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected Material, but also
21 (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or
22 compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their
23 Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and
24 Order do not cover the following information: (a) any information that is in the public domain at the time of
25 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party
26 as a result of publication not involving a violation of this Order, including becoming part of the public record
27 through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or
28 obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and

1 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be
2 governed by a separate agreement or order

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order
5 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.
6 Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with
7 or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals,
8 rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or
9 applications for extension of time pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
12 Party that designates information or items for protection under this Order must take care to limit any such
13 designation to specific material that qualifies under the appropriate standards. To the extent it is practical to
14 do so, the Designating Party must designate for protection only those parts of material, documents, items, or
15 oral or written communications that qualify – so that other portions of the material, documents, items, or
16 communications for which protection is not warranted are not swept unjustifiably within the ambit of this
17 Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be
19 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard
20 the case development process or to impose unnecessary expenses and burdens on other parties) expose the
21 Designating Party to sanctions.

22 If a Designating Party designates material and information as “Confidential,” the Designating Party
23 shall make such a designation only with respect to material and information that the Designating Party
24 reasonably and in good faith believes: (a) is Confidential and would not normally be revealed to others; (b) is
25 or reflects the work product of plaintiff Phyllis Whitten or Frontier Communications Corporation; or (c) is or
26 reflects attorney-client privileged communications by and between plaintiff Phyllis Whitten and/or Frontier
27 Communications Corporation. Any discovery materials designated Confidential shall be stamped in
28 substance “CONFIDENTIAL” in a manner that does not render any portion of the document illegible.

1 If it comes to a Designating Party's attention that information or items that it designated for
2 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that
3 Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
5 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

6 Material that qualifies for protection under this Order must be clearly so designated before the
7 material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
10 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
11 "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions of the material
12 on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
13 by making appropriate markings in the margins).

14 A Party or Non-Party that makes original documents or materials available for inspection need not
15 designate them for protection until after the inspecting Party has indicated which material it would like copied
16 and produced. During the inspection and before the designation, all of the material made available for
17 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it
18 wants copied and produced, the Producing Party must determine which documents, or portions thereof,
19 qualify for protection under this Order. Then, before producing the specified documents, the Producing Party
20 must affix the appropriate "CONFIDENTIAL" legend to each page that contains Protected Material. If only a
21 portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly
22 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
24 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all
25 protected testimony.

26 (c) for information produced in some form other than documentary and for any other tangible
27 items, that the Producing Party affix in a prominent place on the exterior of the container or containers in
28 which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the

1 information or item warrant protection, the Producing Party, to the extent practicable, shall identify the
2 protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
4 qualified information or items does not, standing alone, waive the Designating Party's right to secure
5 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
6 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
7 Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality
10 at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to
11 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay
12 of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to
13 mount a challenge promptly after the original designation is disclosed.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
15 providing written notice of each designation it is challenging and describing the basis for each challenge. To
16 avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to
17 confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties
18 shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in
19 voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service
20 of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality
21 designation was not proper and must give the Designating Party an opportunity to review the designated
22 material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for
23 the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it
24 has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to
25 participate in the meet and confer process in a timely manner.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the
27 Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 141.1 (and in
28 compliance with Civil Local Rules 140 and 141, if applicable) within 21 days of the initial notice of challenge

1 or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
2 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the
3 movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
4 the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if
5 applicable) shall automatically waive the confidentiality designation for each challenged designation. In
6 addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if
7 there is good cause for doing so, including a challenge to the designation of a deposition transcript or any
8 portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent
9 declaration, or similar document as may be required by the court, affirming that the movant has complied with
10 the meet and confer requirements imposed by the preceding paragraph.

11 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
12 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses
13 and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party
14 has waived the confidentiality designation by failing to file a motion to retain confidentiality as described
15 above, all parties shall continue to afford the material in question the level of protection to which it is entitled
16 under the Producing Party's designation until the court rules on the challenge.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced
19 by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting
20 to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under
21 the conditions described in this Order. When the litigation has been terminated, a Receiving Party must
22 comply with the provisions of section 15 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
24 manner that ensures that access is limited to the persons authorized under this Order.

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
26 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
27 item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
2 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
3 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
4 Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
6 to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and
7 Agreement to Be Bound” (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
9 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
10 (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, and Professional
13 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
16 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
17 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
18 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court
19 reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

20 (g) the author or recipient of a document containing the information or a custodian or other
21 person who otherwise possessed or knew the information.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
23 LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that compels
25 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
27 the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
2 litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order.
3 Such notification shall include a copy of this Stipulated Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
5 Designating Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with the subpoena
7 or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a
8 determination by the court from which the subpoena or order issued, unless the Party has obtained the
9 Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking
10 protection in that court of its confidential material – and nothing in these provisions should be construed as
11 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

12 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
13 LITIGATION

14 (a) The terms of this Order are applicable to information produced by a Non-Party in this
15 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with
16 this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions
17 should be construed as prohibiting a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
19 Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party
20 not to produce the Non-Party’s confidential information, then the Party shall:

21 1. promptly notify in writing the Requesting Party and the Non-Party that some or all of
22 the information requested is subject to a confidentiality agreement with a Non-Party;

23 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
24 litigation, the relevant discovery request(s), and a reasonably specific description of the information
25 requested; and

26 3. make the information requested available for inspection by the Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this court within 14
28 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-

1 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
2 protective order, the Receiving Party shall not produce any information in its possession or control that is
3 subject to the confidentiality agreement with the Non-Party before a determination by the court.¹ Absent a
4 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court
5 of its Protected Material.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
8 Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the
9 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures,
10 (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
11 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such
12 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as
13 Exhibit A.

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
16 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those
17 set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever
18 procedure may be established in an e-discovery order that provides for production without prior privilege
19 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
20 effect of disclosure of a communication or information covered by the attorney-client privilege or work
21 product protection, the parties may incorporate their agreement in the stipulated protective order submitted to
22 the court.

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
25 modification by the court in the future.

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27
28 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party
2 waives any right it otherwise would have to object to disclosing or producing any information or item on any
3 ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any
4 ground to use in evidence of any of the material covered by this Protective Order.

5 12.3 Filing Protected Material. Without written permission from the Designating Party or a court
6 order secured after appropriate notice to all interested persons, a Party may not file in the public record in this
7 action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with
8 Civil Local Rule 141. Protected Material may only be filed under seal pursuant to a court order authorizing
9 the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 141, a sealing order will
10 issue only upon a request establishing that the Protected Material at issue is privileged, protectable as an
11 attorney-client communication and/or attorney work product, or otherwise entitled to protection under the
12 law. If a Receiving Party’s request to file Protected Material under seal pursuant to Civil Local Rule 141 is
13 denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to
14 Civil Local Rule 140 unless otherwise instructed by the court.

15 13. FINAL DISPOSITION

16 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
17 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in
18 this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any
19 other format reproducing or capturing any of the Protected Material. Whether the Protected Material is
20 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if
21 not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category,
22 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving
23 Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
25 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
26 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
27 work product, even if such materials contain Protected Material. Any such archival copies that contain or
28 constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: April 18, 2013

/s/ George Duesdieker (as authorized on 04/18/13)
GEORGE DUESDIEKER
Law Office of George Duesdieker
Attorneys for Plaintiff PHYLLIS WHITTEN

DATED: April 19, 2013

/s/ Barbara A. Blackburn
MARGARET HART EDWARDS
ADRIANNE B. OSTROWSKI
BARBARA A. BLACKBURN
Littler Mendelson, P.C.
Attorneys for Defendants FRONTIER
COMMUNICATIONS CORPORATION, CITIZENS
TELECOM SERVICES COMPANY, L.L.C., AND
KEVIN MAILLOUX

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: May 9, 2013.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for the Eastern District of
California on [_____] in the case of Phyllis Whitten v. Frontier Communications Corporation, Citizens
Telecom Services Company, L.L.C., and Kevin Mailloux, Case No. 2:12-CV-02926-TLN-JFM. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern
District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my
California agent for service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]