# Before the WASHINGTON STATE DIG LAW SAFETY COMMITTEE Olympia, Washington

BCA Directional Drilling, LLC	)	
	)	
V.	)	Case No. 14002
	)	
Owest Corporation d/b/a CenturyLink OC	)	

## RESPONSE TO COMPLAINT

COMES NOW Qwest Corporation, d/b/a CenturyLink QC ("CenturyLink") and offers the following in response to the Complaint (Case No. 14002) filed by BCA Directional Drilling, LLC ("BCA") on December 26, 2013. This matter is set for hearing on May 14, 2014.

### **BACKGROUND**

CenturyLink is the incumbent local telephone company serving various communities within the State of Washington. CenturyLink is a part of the Washington One Call system and is an active participant in the locating and protection of utility infrastructure.

On August 1 and 8, 2013, utility locate requests were made by BCA for its planned installation of fiber optic cable for its client, Time Warner, in the vicinity of NE 162<sup>nd</sup> Ave and NE 18<sup>th</sup> St. in Vancouver, Washington (the "Project Site"). *See* Ticket Nos. 13201487 and 1327584, true and correct copies of which are attached hereto as Exhibits A and B. "QLN—Qwest Local Network"—that is, our company, Qwest Corporation—was identified as a utility with potential facilities in the vicinity of the project on each locate request.

A locating company, Locating, Inc., identified a duct bank on the pavement at the Project Site with a distinctive diamond with two lines indicating a duct structure.<sup>1</sup> True and correct



photos of the markings are attached hereto as <u>Exhibit C</u> and <u>Exhibit D</u>. BCA cut into the conduit facilities of CenturyLink, including a high capacity 900-count cable, and three conduits located atop one another at the Project Site (the "CenturyLink Facilities"). True and correct copies of photos of the conduit are attached hereto collectively as <u>Exhibit E</u>.

As explained below, because CenturyLink views BCA as the negligent party, CenturyLink invoiced BCA for the costs to repair the damage to the CenturyLink Facilities. A true and correct copy of the invoice mailed to BCA in the amount of \$20,977 is attached hereto as Exhibit F.

Instead of paying, BCA berated and harassed CenturyLink employees, refused to pay the merited claim, and instead, filed this baseless Complaint.

### **ARGUMENT**

# I. BCA Failed to Abide the Clear Markings of a CenturyLink Duct Bank

As noted above, CenturyLink's duct bank was clearly marked as such with a diamond and two lines. Despite these markings, BCA proceeded with its work as if a single, different duct was the only duct facility in at the Project Site. This was not the case.

- BCA did not heed the duct bank markings.
- BCA did not perform any amount of potholing or other investigation to determine the number of ducts under the duct bank markings.
  - BCA did not call Locating, Inc. back to the Project Site for further explanation.
- BCA did not request from Locating, Inc. the relevant plat maps that would have clearly shown the multiple duct facilities of CenturyLink at the Project Site. A true and correct copy of the relevant plat maps are attached hereto as <a href="Exhibit G">Exhibit G</a>.
  - Lastly, BCA did not contact CenturyLink prior to excavating.

Had BCA taken any of these steps, it likely could have avoided causing damage to CenturyLink's facilities. Workers on site conceded that they were seeking a water main with the

potholing that was performed, and thought the duct bank markings were in error once they found an unmarked, abandoned single duct located 30 inches from the *marked* CenturyLink Facilities.

Faced with these inconsistencies, BCA consulted with no one, and reviewed nothing to assess the validity of their errant assumptions. Instead, they recklessly moved forward and caused CenturyLink harm.

In short, BCA did not follow the standard of due care under Washington's dig laws, including the requirement that it pause and take protective measures to make sure it is familiar with all facilities in the area. *See, e.g.*, RCW 19.122.030(10).

## II. No Evidence Exists That CenturyLink Violated the Law

State law requires CenturyLink to have its facilities marked. See RCW 19.122.030(3)(a). The record here is that the CenturyLink duct bank was marked as a duct bank. See Exhibits C, D. At that point, it became incumbent upon BCA to investigate completely the marked facilities, including any conflict it encountered with the abandoned duct it found when potholing for the water line. Although the parties may differ as to the negligence of BCA, there should be no dispute that CenturyLink abided the law in having its duct bank clearly marked. CenturyLink also had available its plat maps for BCA to review. See Exhibit G. CenturyLink also was available for consultation. CenturyLink followed state law and the Complaint should be dismissed.

## III. BCA's Treatment of CenturyLink Employees

Instead of dealing with the damage it caused to CenturyLink facilities, BCA opted instead to argue with, and attempt to intimidate, CenturyLink employees. Such behavior began on the Project Site where BCA berated CenturyLink employees for failing to mark our facilities. It continued with a threatening voicemail left to CenturyLink's plant supervisor, Ms. Anita Floyd.

When Ms. Floyd advised the BCA employee that she would not respond to such threats, the

response was to belittle her and to goad her into a wager of the facts of this matter. A true and

correct copy of BCA's emailed response is attached hereto as Exhibit H.

BCA's Complaint is best viewed in this light. Instead of seeking CenturyLink or the

locator service's assistance before it ran roughshod over the CenturyLink Facilities, it sought to

berate our engineer and plant supervisor after the damage was complete. Instead of agreeing to

its liability for failing to follow the duct bank markings, BCA has brought this action to attempt

to divert attention from its own misconduct. This behavior should not be rewarded by

entertaining any further the BCA Complaint.

**CONCLUSION** 

BCA's Complaint is baseless and should be dismissed with prejudice. Further, the

Committee should consider whatever power it has to censure BCA for its behavior from the

beginning of this process to the present Complaint.

Respectfully submitted,

/s/

Daniel McGraw

Director, Engineering & Construction

CenturyLink

8021 SW Capitol Hill Rd

Portland, OR 97219

May 4, 2014

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## Certificate of Service

I, Eric J. Schwalb, Senior Corporate Counsel for CenturyLink, hereby certify on this May 4, 2014, that the foregoing was sent via email to:

 $\underline{safetycommitteewaucc@gmail.com} \\ \underline{allenbca@frontier.com}$ 

with paper copies delivered by overnight courier to:

Chelsie Rehfield Safety Committee 5808 Summitview PMB 227 Yakima, WA 98908

Allen Fleming BCA Directional Drilling LLC 11205 NE Hurleys Ln Newberg, OR 97132.

Eric J. Senwan

WASHINGTON ONE CALL

2 FULL BUSINESS DAYS **NEW TICKET** Ticket Ho: 13201467 Transmit Date: 08/01/2013 Time: 17:17 Op: orjack Original Call Date: 08/01/2013 17:08 Time: Op: orjack 00:00 Work to Begin Date: 08/08/2013 Time:

Caller Information

Fax Phone:

Company: BIC A CONSTRUCTION

Contact Name: ALLEN FLEMING Contact Phone: (503) 538-6244 Ext.

Address: 11205 NE HURLEYS LANE Best Time:

kdress: 11205 NE HURLEYS LANE Best Time:
NEVVBERG, OR 97132 Contact Email:

Alt. Contact Name: ALLEN CELL CALL 1ST Alt. Contact Phone: (503) 516-7955

Dig Site Information

Type of Work: INSTALL MAINLINE FIBER

Work Being Done For: TIME WARNER

Dig Site Location

State: WA County: CLARK Place: VANCOUVER

Address:

Street: NE 18TH ST
Nearest Intersecting Street: NE 167TH AVE

Location of Work:

SITE BEGINS APX 80FT E OF ABY INTER ON NISIDE OF NE 18TH AT POLE 17724, FROM THERE MARKIS ACROSS 18TH, TURN WIONIS SIDE OF 18TH AND MARKIAPX 2200FT WITO POLE 11584

Remarks:

AREA IS MARKED IN WHITE CALLER GAVE THOMAS GUIDE PAGE 538 3E

Twp: Rng: Sext-Qt

Twpx 1N Rngc 2E Sect-Qtr: 36-SvV,38-SE;1-MVV;1-NE

Members

District Code	Company Name	Marking Concerns	Damage/Repair	Customer Service
CMCST03	COMCAST CABLE COMM.MNGMT, LLC	(253)833-2343	(503)617-1212	(866)873-9735
CPU01	CLARK PUBLIC UTIL ELECTRIC	(253)833-2343	(360)992-8881	(360)992-3000
NV/N02	NWNATURAL	(503)220-2415	(800)882-3377	(503)220-2415
QLNVVA06	QLN-GWEST LOCAL NETWORK	(800)283-4237	(800)573-1311	(800)283-4237
VAN01	CITY OF VANCOUVER	(360)607-1565	(360)696-8177	(360)696-8177
VAN02	CITY OF VANCOUVER-SEWER	(360)281-6081	(360)696-8177	(360)696-8177
VAN03	CITY OF VANCOUVER STORM	(360)772-4953	(360)696-8177	(360)696-8177
VAN04	CITY OF VANCOUVER-TRAFFIC	(360)606-6474	(360)606-6474	(360)487-8177

WASHINGTON ONE CALL

2 FULL BUSINESS DAYS **NEW TICKET** Ticket Ho: 13207584 Transmit Date: 08/08/2013 Time: 08:30 Op: onnattp Original Call Date: 08/08/2013 Time: 08:26 Op: ornattp Work to Begin Date: Time: 00:00 08/13/2013

Caller Information

Company:

BCACONSTRUCTION

Contact Name: Address:

ALLEN FLEMING

11205 NE HURLEYS LANE

NEWBERG, OR 97132

All Contact Name:

ALLEN CELL CALL 1ST

Fax Phone:

Contact Phone:

(503) 538-6244

Best Time: Contact Email:

Alt. Contact Phone: (503) 516-7955

Dig Site Information

Type of Work:

INSTALLING MAINLINE FIBER OPTIC

Work Being Done For:

TIME WARNER

Dig Site Location

State: WA County:

CLARK

Place:

VANCOUVER

Ext

Street:

Address:

NE 18TH ST

Rearest Intersecting Street:

NE 162ND AVE

Location of Work:

SITE BEGINS AT SECORNER OF ABVINTER, FROM THERE, MARK W APX 600FT ALONG SIDE OF NEITSTHIST.

BEST INFORMATION AVAILABLE CALLER GAVE THOMAS GUIDE PAGE 538 E4

Twp:

Rng

Sect-Qtr:

Twp: 2N

Rng: 2E

Sect-Qtr: 24-SVV,24-SE,25-NVV,25-NE

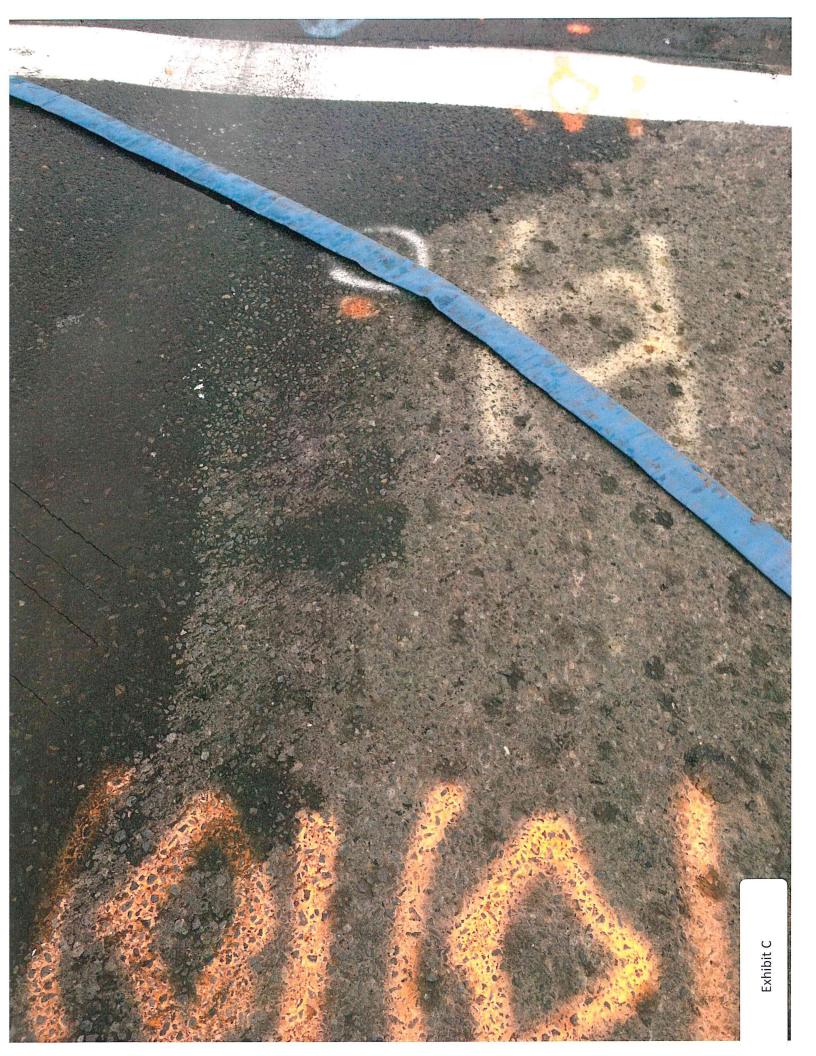
SE Lat: 45.6350896

Lon: -122.5054769

Lon: -122.5092107 ExCoord NW Lat: 45.6360831

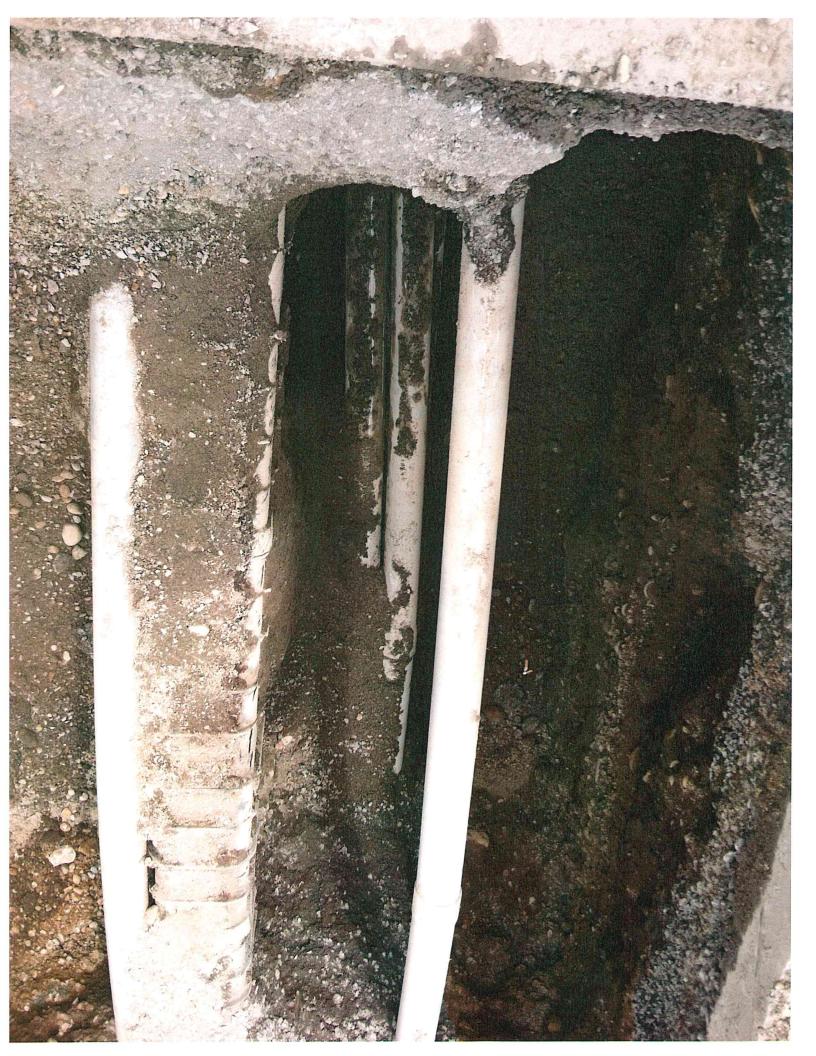
Members

District Code	Company Name	Marking Concerns	Damage/Repair	Customer Service
CMCST03	COMCAST CABLE COMM, MNGMT, LLC	(253)833-2343	(503)617-1212	(866)873-9735
CPS01	CLARK PUBLIC SERVICES	(360)921-3524	(360)397-2446	(360)397-2446
CPU01	CLARK PUBLIC UTIL ELECTRIC	(253)833-2343	(360)992-8881	(360)992-3000
NVVN02	NVVNATURAL	(503)220-2415	(800)882-3377	(503)220-2415
QLNWA06	QLN-QWEST LOCAL NETWRK	(800)283-4237	(800)573-1311	(800)283-4237
VAN01	CITY OF VANCOUVER	(380)607-1565	(360)696-8177	(360)696-8177
VAN02	CITY OF VANCOUVER-SEWER	(360)281-6081	(360)696-8177	(360)696-8177
VAN03	CITY OF VANCOUVER-STORM	(360)772-4953	(360)696-8177	(360)696-8177
VAN04	CITY OF VANCOUVER-TRAFFIC	(360)606-6474	(360)606-6474	(360)487-8177











ACCOUNT NO: WA BF551828

INVOICE NO: A275579-

INVOICE DATE: 09-30-2013

PREVIOUS	- PAYMENTS	+ CURRENT	+ LATE	= NEW	AMOUNT	PAYMENT	
BALANCE		CHARGES	CHARGE	BALANCE	DUE	DUE DATE	
.00	.00	20,977.70	.00	20,977.70	20,977.70	UPON RECEIPT	

DAMAGE DETAIL : 900 PAIR BURIED CABLE - TELEPHONE EXCAVATION

DATE OF DAMAGE: 08/14/13 CABLE LOCATE WAS ACCURATE : NE 162ND AVE & NE18TH ST, VANCOUVER WA

Damage Claim No: 0551828 Mail correspondence to: CenturyLink Claims PO BOX 60770

OKLAHOMA CITY, OK 73146

Contact your homeowner/business/auto liability insurance for coverage. To pay via check by phone, please call 8003214158

------ Detail of Current Charges

Labor Hours:

64.00 Regular Hours

Miscellaneous Costs:

CONTRACTOR/2013-09-13-135151 ADMINISTRATIVE LABOR COST DIRECT ADMINISTRATIVE COST

10,674.07 150.00 1,893.44

Vehicle Hours:

48.00 Hours MEDIUM TRUCK W/EQUIP

CONTINUED ON NEXT PAGE... Return this portion with your payment - please write the invoice # on your check.

ACCOUNT NO: WA BF551828 INVOICE DATE: 09-30-2013

INVOICE NO: A275579-725146 11902195

NEW	AMOUNT	PAYMENT
BALANCE	DUE	DUE DATE
20,977.70	20,977.70	UPON RECEIPT

AMOUNT	ENCLOSED:_	

RETURN PAYMENT TO:

CENTURYLINK P.O. BOX 2348 SEATTLE, WA 98111 2348

BCA DIRECTIONAL DRILLING LLC 11205 NE HURLEYS LN NEWBURG, OR 97132-0000

Exhibit F

ACCOUNT NO: WA BF551828

INVOICE NO: A275579-

INVOICE DATE: 09-30-2013

16.0	Hours MEDI	M TRUCK W/E	PUIP		
		SUMMARY	F CURRENT CI	AROES	
					CHARGES

MEDIUM TRUCK WITH EQUIPMENT MISCELLANEOUS COSTS LABOR - REGULAR HOURS

4,145.92 \$ 12,717.51

4,114.27

TOTAL CURRENT CHARGES \$ 20,977.70

 IF Y	OU HAVE	ANY	QUESTIONS	, PLEASE	CALL	(800)	321-4158	 
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