

photos of the markings are attached hereto as Exhibit C and Exhibit D. 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 Exhibit E.

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 Exhibit G.
- 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

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:

safetycommitteewaucc@gmail.com
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. Schwalb

WASHINGTON ONE CALL

Ticket No: 13201467 **2 FULL BUSINESS DAYS** **NEW TICKET**
Transmit Date: 08/01/2013 **Time:** 17:17 **Op:** orjack
Original Call Date: 08/01/2013 **Time:** 17:08 **Op:** orjack
Work to Begin Date: 08/08/2013 **Time:** 00:00

Caller Information

Company: B C A CONSTRUCTION **Fax Phone:**
Contact Name: ALLEN FLEMING **Contact Phone:** (503) 538-6244 **Ext:**
Address: 11205 NE HURLEYS LANE **Best Time:**
 NEWBERG, OR 97132 **Contact Email:**
Alt Contact Name: ALLEN CELL CALL 1ST **Alt Contact Phone:** (503) 518-7955

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 N SIDE OF NE 18TH AT POLE 17724. FROM THERE MARK S ACROSS 18TH, TURN W ON S SIDE OF 18TH AND MARK APX 2200FT W TO POLE 11564

Remarks:

AREAS MARKED IN WHITE CALLER GAVE THOMAS GUIDE PAGE 538 3E

Twp: **Rng:** **Sect-Qt:**
Twp: 1N **Rng: 2E** **Sect-Qt: 36-SW,36-SE,1-NW,1-NE**
ExCoord NW Lat: 45.8105878 **Long: -122.5121289** **SE Lat: 45.8061119** **Long: -122.498169**

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
CPUD1	CLARK PUBLIC UTIL ELECTRIC	(253)833-2343	(360)992-8881	(360)992-3000
NWNO2	NWNATURAL	(503)220-2415	(800)882-3377	(503)220-2415
QLNWA06	QLN-QWEST 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)281-8081	(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

Exhibit A



Exhibit C



Exhibit D



Exhibit E





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

INVOICE NO: A275579-

PREVIOUS BALANCE	- PAYMENTS	+ CURRENT CHARGES	+ LATE CHARGE	= NEW BALANCE	AMOUNT DUE	PAYMENT 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
 LOCATION : 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 10,674.07
 ADMINISTRATIVE LABOR COST 150.00
 DIRECT ADMINISTRATIVE COST 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 BALANCE	AMOUNT DUE	PAYMENT 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 DATE: 09-30-2013

INVOICE NO: A275579-

16.00 Hours MEDIUM TRUCK W/EQUIP				
SUMMARY OF CURRENT CHARGES				
				CHARGES

MEDIUM TRUCK WITH EQUIPMENT	\$	4,145.92
MISCELLANEOUS COSTS		12,717.51
LABOR - REGULAR HOURS		4,114.27
TOTAL CURRENT CHARGES	\$	20,977.70

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

